EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

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

Wednesday 03rd August 2022

Full Grid and Outlook Below

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Outlook for H2 2022,

Moving, fast and slow

In our view, there has been an observable slowdown in the pace of certain elements of regulatory reform across the EU and UK. In this chart, we highlight the initiatives that are being delivered at a slower pace, as expected, or faster than expected in our RO22.

Regulatory Initiatives	Speed of Delivery: Slow	As expected	Fast
Future Crypto Regulatory Framework (UK)/ MiCA (EU)	£	€	
SDR/SFDR	£	€	
Taxonomies	£ €		
Solvency II	£	€	
EMIR and CRR changes to clearing activity	€		
"Strong and Simple" Prudential Framework	£		
FRFR		£	
Overseas Framework (Including OPE)	£		
MiFID/MiFIR	£	€	
Taskforce on Nature Related Financial Disclosures			Global
ISSB sustainability-related disclosure/climate-related disclosures			Global

Key: £ UK reforms; € EU reforms; Global reforms

Evolving supervisory expectations; *supervisors' expectations and approaches have also continued to evolve in the first half of the year.*

- The FCA's new supervisory strategy*; In the UK, the FCA has recently adopted a three-year, outcome-based strategy. It promises to be a more assertive regulator, using its enforcement and intervention powers more proactively and to "act faster, challenging [itself] and testing the limits of [its] powers."*

- This suggests that the FCA may take a less conservative approach to enforcement action than it has done previously, and firms may have to recalibrate their expectations accordingly. A key focus will be shutting down problem firms, which do not meet basic regulatory standards.
- The FCA is increasing headcount in its authorisations department to strengthen scrutiny of new firms and new powers will enable it to quickly cancel or vary permissions for firms who are no longer carrying out FCA regulated activities.
- The FCA also promises to be tougher on its own performance and has, for the first time, published a set of detailed metrics against which it can be assessed and challenged. Demonstrating progress against these metrics will influence the FCA's priorities and approach to supervision. Firms need to be familiar with them and alert to the risk of any unintended consequences. For example, in line with its focus on problem firms, one of the FCA's metrics is increasing refusal/rejection rates for new firm authorisations. This may lead to higher standards in the quality of firms being authorised by the FCA but may also make it more challenging for new firms to enter the market, unintentionally affecting competition and innovation.
- Actions and implications for firms: firms need to engage with the strategy and choice of metrics to understand the FCA's priorities and how it will measure progress against them. Firms will need to review regulatory permissions regularly to ensure they are up to date and apply to remove those that are not needed.

- Cryptoassets; *Notwithstanding the UK's relatively slow progress on crypto, the UK regulators have set out how they will use their existing frameworks and powers to probe regulated firms' activities and exposures.*
  - The PRA issued a Dear CEO Letter which set out a detailed account of how the prudential framework applies to banks' and designated investment firms' crypto activity. At the same time the FCA published a notice reminding firms of their existing obligations when interacting with crypto, guided by its consumer protection and market integrity objectives.
  - The publications provide a stopgap in the form of short to medium-term regulatory clarity for firms building their crypto strategy now. Nonetheless, applying traditional frameworks not designed with crypto in mind is sub optimal and firms need clarity on the UK's long-term approach to crypto regulation if they are to build a sustainable crypto strategy
  - Actions and implications for firms: firms should embed the PRA's and FCA's interim expectations into their crypto risk and compliance approaches. They are a clear indication that supervisors will probe firms to ensure they have considered the impact of their crypto activities and exposures on their prudential health and have set aside sufficient capital.
- ECB desk-mapping review; The ECB published the findings of the first phase of its desk-mapping review, i.e. its review of booking and risk management practices across trading desks active in market-making activities, treasury and derivative valuation adjustments.
  - The review's findings set out the ECB's "very real concern" about banks' use of empty shell structures, as well as their use of both remote booking and backto-backs. The ECB is clearly concerned that its supervisory expectations are not being fully met.

- This is not the end of the ECB's supervisory work and investigations into credit risk-shifting techniques. The reliance on parent entities for liquidity and funding, and internal model approvals are still ongoing, although the ECB has not provided a timeline for when these might be concluded.
- Actions and implications for firms: all banks subject to ECB supervision (not only those that established new or expanded existing entities as a result of Brexit) will want to review their booking models to ensure they are aligned with the ECB's expectations. Many of the banks directly targeted by the ECB's review will have to appoint more senior staff to their EU entities and overhaul their booking model practices, adding to their costs. Banks will also want to ensure they consider the findings of the ECB's review alongside the EU's wider set of proposed reforms to third-country branches and cross-border market access.

- Model risk management; *The PRA published a consultation paper with proposals for five principles for model risk management for banks, building societies and designated investment firms.*
  - The PRA is concerned that models are increasing in both complexity and importance to decision making in firms, but that the standard of MRM in firms is declining. The CP proposes a definition of a model that is likely to be considerably broader than most firms' existing internal definitions, so the principles may apply to a significantly larger population of models than that to which firms currently apply model standards and governance.
  - Actions and implications for firms: the PRA's supervisory statement is not due until Q1 2023, however recent experience suggests that any changes from the consultation are likely to be minor. Firms with significant work to do may decide to start sooner rather than later in terms of identifying the set of models that meets the PRA's definition and initiating a gap analysis
- Funds' costs and charges; *In May 2022, ESMA reported on its 2021 CSA on costs and fees in UCITS funds.*
  - Overall, the CSA found a satisfactory level of compliance with the requirement not to charge investors undue costs. It therefore appears that ESMA is not minded to push EU fund managers to carry out more detailed value assessments, such as those required in the UK.
  - Nonetheless, ESMA did highlight some issues that needed improvement. For example, a key finding was that firms with smaller amounts of AUM had less formalised and sophisticated pricing processes in place, with delayed involvement from senior management. In addition, there was evidence of portfolio managers to which investment management was delegated exercising significant influence and sometimes deciding the level of costs and fees charged by the fund, raising concerns about the authorised UCITS manager not retaining enough control over the process. Furthermore, many UCITS managers did not have adequate policies and procedures in place on efficient portfolio management techniques, and many managers only returned 50-65% of gross revenues from securities lending to the fund.
  - Actions and implications for firms: EU UCITS managers should ensure they have a robust structured pricing process with senior management involved early in the process, especially where firms have smaller AUM or delegate to external portfolio managers. External portfolio managers should expect more scrutiny on costs and fees from UCITS managers. EU UCITS managers should ensure that

all net revenues from efficient portfolio management techniques are returned to the fund.

- Climate stress testing; *Sustainability related supervisory concerns have also continued to evolve. The BoE's CBES revealed that firms still have some way to go to understand and manage their climate risk exposures*.
  - The most pressing task for firms is to fill data gaps revealed by the exercise and engage with their counterparties to assess the quality and feasibility of their transition plans. Although the details differ, the sentiment that firms still have much work to do is consistent with the message from the ECB's feedback on eurozone banks' climate risk assessment and management capabilities.
  - In our view, the CBES marks a step-change in the BoE's tone on the issue of climate data. Gentle encouragement now appears to have given way to more robust direction for firms to adopt a more proactive approach to data gathering. We expect the ECB to strike a similar tone in its feedback from its own climate stress test for banks – as hinted at by Andrea Enria, Chair of the ECB's Supervisory Board.
  - The BoE's exercise also revealed that many firms are highly (and in some case probably unduly) reliant on the use of third-party vendor models. Although the BoE stopped short of telling firms not to use third party models, it wants to ensure that the complexity of climate risk does not drive firms to adopt "black box" climate risk capabilities.
  - Stefan Claus, Head of Insurance, Analytics Division at the PRA, provided some additional insights on the CBES results for insurers specifically. One point that stood out for us was that while, overall, climate costs to insurers should be absorbable, this is partly because some losses are passed to life insurance policyholders through lower returns in savings and retirement products. We expect this finding to attract attention from conduct regulators.
  - Actions and implications for firms: firms need to engage directly with their clients to populate physical and transition risk data gaps identified by climate risk scenario analyses, and to evaluate the quality and feasibility of clients' transition plans. Firms using thirdparty models as part of their climate risk management framework should be able to scrutinise, challenge and customise those models. Ultimately, firms need to apply the same rigour to reviewing climate models as they do with any other model. Life insurers should investigate the extent to which policyholders will bear the brunt of climate losses, and explore potential actions they can take to limit this exposure, particularly where the customers may be vulnerable
- Greenwashing; *Greenwashing has also become a top supervisory concern. In the UK, the FCA has said that it is actively monitoring markets for instances of greenwashing, whilst in the EU, ESMA demonstrated the importance it attaches to the issue by publishing a supervisory briefing which set out common criteria for NCAs to use for the effective supervision of the documentation and marketing materials of investment funds with sustainable features. We expect that this will drive a renewed focus on greenwashing amongst European regulators.*
  - There has also been high profile regulatory activity related to greenwashing on both sides of the Atlantic. BaFin has launched a greenwashing related investigation, while in the US, the SEC issued a $1.5mn fine to a firm for providing misleading information on the way ESG screening was undertaken for its funds.

This demonstrates that regulators are already stepping up their scrutiny of firms, with enforcement action to follow for those which are deemed to have made misleading claims.

- Actions and implications for firms: firms should ensure they undertake full due diligence on any ESG related claims they are making, especially in required documentation (such as prospectuses) and marketing materials. Firms should ensure that they properly scrutinise any third-party ESG related data and that any methodological gaps are assessed and, where appropriate, disclosed, as part of their own ESG related assessments.

Competing on competitiveness;

- The UK's financial services regulators will soon be subject to the first set of significant changes to how they approach regulation since the introduction of the "twin peak" structure in 2013. The UK government's FRFR will not only give the UK regulators responsibility for setting many of the direct regulatory requirements which are currently set out in retained EU law, but will also propose a new secondary competitiveness objective for them. What will a secondary objective focusing on competitiveness mean in practice? In a recent speech, the FCA's then Chairman, Charles Randell, set out his perspective on competitiveness, in particular the need to avoid any compromises with the FCA's primary objectives and any loss of regulatory independence or agility.
- Solvency II; This tension between the differing priorities of the Government and the regulators is already evident from the recent papers published on Solvency II reform by HMT and the PRA respectively.
  - HMT is proposing to reduce the size of the risk margin and expand the eligibility criteria for the MA (which benefits insurers that hold long-term assets which match the cash flows of similarly longterm insurance liabilities). On the whole HMT expects the reforms to reduce required regulatory capital by 10 to 15%. However, there seems to be a difference of view between HMT and PRA on how to calibrate the Fundamental Spread within the MA – the particular calibration chosen could negate some of the capital benefit from a reduction in the RM.
  - HMT is considering a wider set of calibrations for the Fundamental Spread, whereas the PRA proposes to be more restrictive to ensure policyholder protection. This issue is likely to be material to the degree of capital release that could be achieved by the reforms and, therefore, it will be an area of focus for both industry and regulator.
  - In addition, the UK's reforms aim to make it easier for third-country insurers to establish branches (in particular for wholesale/ commercial lines insurance businesses) in the UK and propose a relatively accommodating approach to regulation with no localisation of assets or requirement to maintain branch capital.
  - Unless branches are subject to a home-country capital regime at least as robust as the UK's, UK-based insurers could be disadvantaged
- Basel 3.1; The Solvency II reforms are also intended to make the UK's insurance market more competitive now that the UK has left the EU, a consideration that will also be of importance in the context of the UK and the EU's approaches to implementing Basel 3.1, which is also sometimes termed "Basel IV".
  - In the EU this will mean substantial divergence from the BCBS standards in the substance of the rules, particularly through the use of long transitional periods

- for the standardised Output Floor (which sets a minimum capital requirement derived from banks' internal models), and in the capital treatment of unrated corporate exposures.
  - In the UK, the primary legislation enabling the implementation of Basel 3.1 requires the PRA to do so with due regard to its impact on the mediumto-long-term financing of economic activity, and the UK's standing relative to other jurisdictions as a centre for financial services among internationally active banks.
  - While the PRA is typically very clear about its desire to stay close to the BCBS standards (as recently evidenced by Sam Woods' speech on bank capital buffers), areas where the EU will diverge will put pressure on it to follow suit if not doing so is seen as inimical to the competitiveness of UK-based banks.
- Crypto regulation; There are also signs of a tension between the priorities of the Government and regulators in the UK's emerging approach to crypto regulation.
  - In April 2022, HMT announced its ambition to make the UK a "global hub" for crypto technology and investment. It also announced a series of measures to help achieve this ambition, including bringing stablecoins used as a means of payment into the scope of regulation.
  - The FCA, on the other hand, is more focussed on tackling the consumer protection and financial crime challenges posed by crypto. The obligation for crypto firms providing certain services to comply with the MLRs and register with the FCA was implemented on the 10th January 2020. However, a Treasury Committee report criticised the registration process for being "too slow" and Lisa Cameron MP, Chair of the UK APPG on crypto and digital assets, argued that crypto firms had experienced "significant delays" in FCA registrations, and that this would "cost the UK in terms of jobs, talent, and revenue".
  - This demonstrates the tension the FCA faces in meeting its statutory objective to protect consumers, whilst also facilitating the Government's ambitions to make the UK a "crypto hub"
- Wholesale market review; *Competitiveness has also been an important angle in the UK's wholesale market review reforms, set to be implemented through a combination of upcoming FCA consultations and a financial services bill for those changes that need primary legislation.*
  - HMT's original blueprint stressed that it wanted the UK to be "an open and global financial hub" and this review is intended "to cement the UK's position as a global hub for wholesale markets."
  - What is interesting, is that it now appears that competitiveness-related concerns are influencing the EU's approach to its own set of MiFIR reforms which are currently being debated amongst EU member states.
  - In particular, the EU is considering amendments to reference price waivers, and both pre- and post-trade transparency regimes to ensure that the EU does not become competitively disadvantaged in response to the UK's own reforms. We see the beginnings of a new dynamic in regulation, at least between the UK and EU.
- Competing on competitiveness; Actions and implications for firms
  - Solvency II: international groups will want to consider how best to access the UK market, with branches becoming an easier pathway following the reforms. This

will be particularly relevant for wholesale and commercial lines insurance businesses.

- Basel 3.1: banks, particularly those with permission to use internal models, should not let the delay in implementation to 2025 lead to a loss of focus on the work needed to comply with the Basel framework. International banking groups will need to prepare for an increasingly divergent approach to Basel 3.1 adoption to become clearer in 2022 (particularly between the UK and EU) and consider how this will affect their internal impact assessments and planning for implementation.
- Crypto regulation: crypto natives should engage proactively with policymakers as they shape the UK's regulatory approach to crypto. HMT is establishing an industry crypto regulatory engagement group and the FCA recently launched a crypto policy sprint, demonstrating policymakers' willingness to engage with firms, including on key issues.
- Wholesale markets review: international firms with a presence in both the UK and EU will need to have clear governance and decisionmaking frameworks in place to enable them to decide whether it is both possible and cost effective to have a single, unified approach to compliance, or whether they will need to develop two (or more) approaches to deal with increasingly divergent sets of regulation, and the accompanying local particularities

Historically, the UK has often been one of the first to develop regulation in response to financial innovation or new risks, and this has often influenced the regulatory approach adopted by other countries. *It may do so again in areas such as Smart Data and Open Finance. Nonetheless, in several other areas mentioned above, it now looks as if the UK will be slower to deliver its frameworks, which may mean regulators and firms in the UK are able to learn from the regulatory experiences of other countries, for example with respect to sustainable disclosures or cryptoassets.*

- The MiCA framework is a good case in point. Firms with a footprint in the EU and UK should start to think about their cross-border approach to governance, risk management and compliance. This is true both for crypto natives and traditional regulated firms. They could consider deploying policies and procedures developed to MiCA standards in their UK business. This will serve as a baseline threshold for compliance which firms can adjust once the UK's regulatory approach becomes clearer. The reputational risk management benefits will likely outweigh the additional compliance costs.
- More generally, financial services firms will need to monitor the changing regulatory timelines closely, from both a business and operational perspective. Delays may introduce business benefits, in the form of reduced compliance costs, but may also deny firms opportunities to provide more products and services, for example in relation to digital assets. Boards and senior management will need to incorporate these considerations into their forward planning. Operationally, changes to regulatory timetables complicate resource planning, especially across change implementation and IT teams, with the associated risk of bottlenecks or, less likely, teams having to be stood down.

Market developments Actions and implications for firms;

- Sanctions: firms should look to bolster their sanctions teams' capabilities, either by bringing in new permanent staff to replace temporary staff taken on to manage the rapid ramp-up in activity, or by investing in enhanced client management systems, to allow them to identify affected clients more easily and take appropriate action. In order to provide comfort to senior management, the Board and supervisors, firms may choose to commission Internal Audit reviews of compliance with sanctions requirements, if they have not already.

- Credit risk: firms should focus their attention on the second-round effects from Russia's invasion of Ukraine, including how borrowers will be affected by the recent surge in inflation and consequent monetary tightening. We expect supervisors to focus on firms' credit exposures to borrowers whose business models are directly or indirectly affected (e.g., through complex supply chains) by Russia's invasion of Ukraine; and on banks' exposures to commercial and residential real estate and leveraged and/or highly leveraged loans. Lenders will also need to understand the additional impact of the ending or withdrawal of any pandemic-related government support measures. Banks will also need to ensure they have a robust understanding of their counterparties' CO2 emissions and sensitivity to changes in carbon prices – a key factor in the identification and measurement of climate change transition risks.
- Fund managers: side pockets can be challenging to set up and administer, especially for funds which have retail investors. Consequently, fund managers which have identified the need to establish a side pocket should act quickly and engage in a proactive dialogue with their regulator (to ensure compliance) and their customers (to explain how the side pocket works and the timelines involved).
- Cyber: firms need to remain alert as the Ukraine conflict continues, and when it is over, given the long lead times required to plan and launch sophisticated cyber-attacks. Firms should ensure that incident response and recovery plans are in order and that the work that has been done so far on implementing operational resilience requirements, focused on identifying important business services and potential harm done by their disruption, can be leveraged in the event of a successful attack.
- Energy security: firms will need to reflect on the balance between energy security and a sustainable transition to net zero. If firms revise their near-term transition strategies, they should ensure that their rationale for doing so is clearly articulated and fully consider the longer-term risk implications, including in terms of stranded assets and reputational risk.
- Insurers: insurers will be monitoring the impact of rising inflation on their claims and expense base to ensure their pricing reflects this new reality. However, further premium increases should be considered carefully to avoid exacerbating the number of customers struggling to afford premiums. Some insurers may want to go even further and perform a detailed claims review to understand the full impact on pricing for various products.
- Fair treatment of customers in financial difficulty: firms need to build on the progress made during COVID to support customers experiencing financial difficulty. They should continue to offer appropriate support and forbearance, tailored to customers' individual circumstances, and ensure that staff are adequately trained to identify the characteristics of vulnerability. Supervisors will look for evidence that all firms have embedded quality assurance around customer outcomes, including end-to-end outcome testing, and are addressing any issues identified. UK firms must also continue preparing for the introduction of the Consumer Duty by end April 2023. Immediate actions for firms include completing their gap analysis of the requirements of the Duty against product lifecycles and customer journeys; and developing and testing the value assessment framework.

- Crypto: as a no-regrets action, while we wait for finalised long-term EU/UK crypto frameworks and UK crypto promotions rules, crypto exchanges should review the level of due diligence they do when deciding whether and how to market tokens on their platform. When assessing a stablecoin, they should pay attention to the arrangement's stabilisation mechanism and governance arrangements.
- ESG funds: regulators will expect firms to have clear explanations for the inclusion and exclusion of particular assets or securities when marketing any ESG related funds to investors. Margining: firms should expect supervisory scrutiny of their and their counterparties' ability to meet margin payments under stress, and will consequently want to ensure they have suitably resilient margining policies and practices in place. Back testing: banks should ensure that they understand the reasons for any overshoots and are able to explain them to their supervisors.

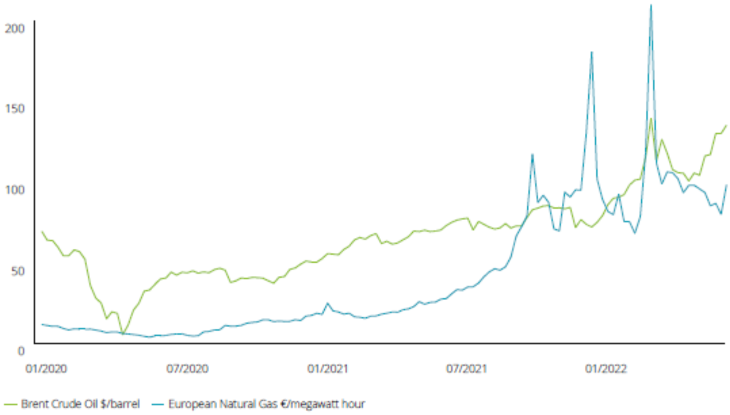
Market developments

Balancing energy security with sustainability

Russia's invasion of Ukraine has disrupted oil and gas supplies to European countries, raising concern amongst UK and EU governments about energy security. Resulting higher energy prices have compounded a cost-of-living crisis, providing an additional driver for government action.

Such action will likely necessitate trade-offs against pre-existing commitments to transition to lower-carbon sources of energy, complicating government and individual firm transition strategies. For example, in the UK, in his letter to the FPC in April, the Chancellor underlined that while the UK government remains committed to the transition to net zero, energy security needs to be maintained in the interim. The British government also appears to be willing to keep some coal-fired power stations open for longer to maintain energy security over the short term, with Germany also taking a similar approach.

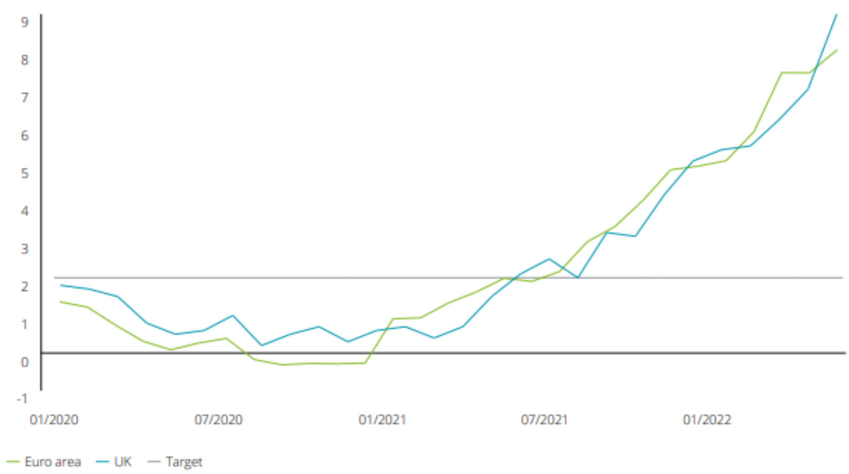
Chart 1. Energy prices



Since January, inflation and the cost of living have increased markedly and have quickly risen to the top of policymakers' agendas. Inflation has exceeded central bank targets across the EU, US and the UK, with the US and UK seeing the highest rates of inflation for 40 years. *Russia's invasion of Ukraine has exacerbated inflationary pressures, especially with respect to energy prices and agricultural commodities such as wheat.*

- There are also fears that stagflation may soon follow from inflation, with many countries also facing challenging growth outlooks. Rising prices are likely to create strong commercial headwinds, and many consumers may be forced to reconsider whether they can continue to afford certain financial products in the face of significant cost of living increases.
- Poorer households are likely to face greater pressure, with the UK-based Institute for Fiscal Studies estimating that they may face average inflation rates of 14%, compared to 8% for the richest households.
- Firms will find it challenging to balance the need to reach commercial targets whilst also ensuring they deliver good customer outcomes

Chart 2. Consumer price inflation



- Central banks have begun to tighten monetary policy in response, raising interest rates and starting to unwind quantitative easing programmes, while also setting out a path for further tightening should the rate of inflation continue to increase. While rising interest rates mean banks will benefit from improved net interest margins, they will also drive up the cost of debt for both companies and consumers. Certain sectors and types of counterparties could be particularly vulnerable, such as corporates with high energy consumption that are not able to pass on higher prices easily to end customers; and corporates that borrow at variable rates and whose balance sheets have been weakened by the pandemic. The ECB and the BoE took the slightly unusual step of issuing a joint statement expressing concern about declining credit standards in, and firms' increasing levels of exposure to, leveraged and highly leveraged lending. The ECB followed up with a Dear CEO letter.
- The factors above point to an increase in banks' impairments and loan loss provisions in the second half of 2022, although this may be mitigated by the general strength of corporations' balance sheets and high household savings levels. Given current capital levels, banks are well placed to absorb the capital impact of further credit losses.

Nevertheless, bank supervisors will continue to emphasise the importance of robust credit risk management practices.

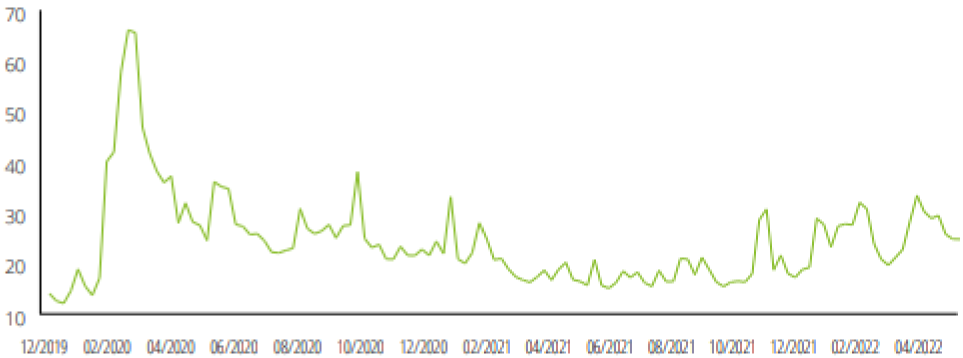
- The ECB's longstanding concerns around timely recognition of increases in credit risk, and adequate coverage through impairment or collateral, will remain high on its agenda. In the insurance industry, inflationary pressure is likely to affect commercial performance with many customers in financial difficulty potentially cancelling or missing their premium payments, plus rising claims inflation increasing loss ratios. Lines such as home and private medical insurance are likely to be particularly affected. We expect expense costs to increase across all product lines.
- An increase in defaults will also have implications for firms' treatment of consumers. Lenders will need to have processes in place to identify borrowers in financial difficulty; and enable consistent good outcomes by tailoring forbearance and support to their individual circumstances. Supervisors will expect early engagement and communication with consumers struggling with rising living costs, ensuring that they are aware of where they can get help including debt advice. Consumer credit firms will need to check their financial promotions do not exploit the cost-of-living crisis through misleading claims about the ease and consequences of taking on debt. Several EU countries are bringing, or looking to bring, BNPL products within the regulatory perimeter. The UK is also planning to regulate BNPL, although detailed rules are now not expected until mid-2023. Whatever the timeline, as they design the regulatory framework, regulators will need to balance consumers' access to affordable credit with protecting them from the build-up of unsustainable debt.
- Value for money will also come into sharper focus, as firms begin the value assessments required under the FCA's new Consumer Duty. This will be an extensive exercise and, with less than a year until the 30 April 2023 deadline, firms which have not begun developing their assessment frameworks may struggle to complete their reviews in time. Moreover, the FCA has been clear that it is not waiting for the Duty to come in before it acts to improve consumer outcomes and it will expect firms to start thinking now about how they support customers experiencing pressure from the rising cost of living.

Market volatility; *Russia's invasion of Ukraine also triggered a bout of market volatility, most notably with respect to commodity prices, particularly nickel. The LME suspended trading in nickel on 8 March and cancelled trades that had taken place earlier that day. The LME will now carry out its own independent review and there will also be reviews by the UK regulators.*

- The immediate concern in the first weeks of March was market participants' ability to meet margin payments on commodities contracts. Some were late in making payments, but the market found a way through. There is no doubt that regulators are continuing to watch developments in commodity markets, well beyond the LME and nickel. Regulators are particularly concerned about market participants' ability to manage and meet their margin calls, because of the effect this may have on their creditworthiness and the functioning of markets themselves, as well as the impact on the clearing houses that underpin these markets. We expect regulators in the UK and the EU to continue their work on margining practices, including firms' testing of their own and their counterparties' ability to meet margin payments under stress. ESMA Chair, Verena Ross, said ESMA would be looking "at measures that would improve the transparency in these [commodity] markets and would enable market participants and regulators to identify risks and maintain orderly markets."

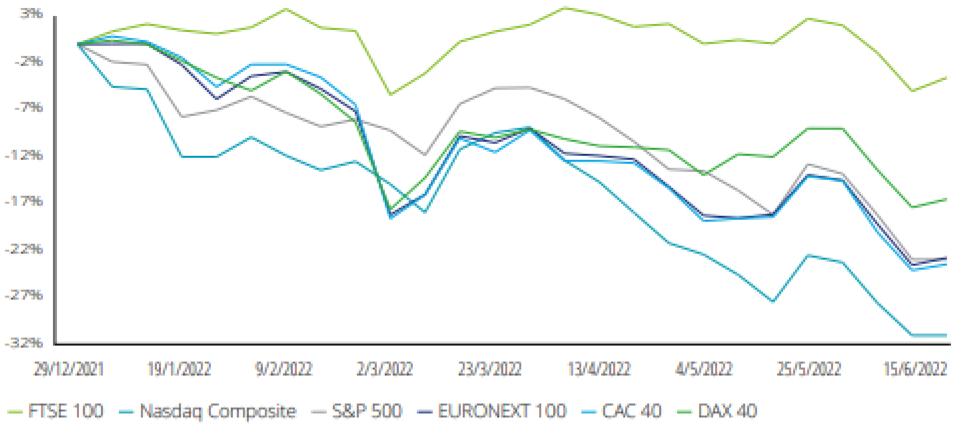
- Equity markets have also suffered a sharp downturn since the beginning of the year. This has also coincided with a large fall in value of various crypto-assets and some stablecoins being unable to maintain their price pegs. TerraUSD4 lost nearly all its value, while Tether5 lost its peg to the US dollar

Chart 3. VIX market volatility index



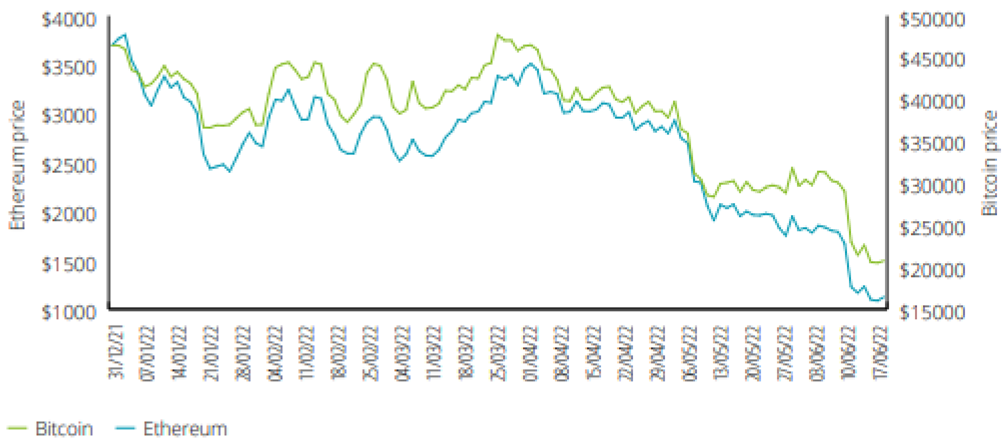
Source: Refinitiv Datastream.

Chart 4. Major equity market performance YTD



- Unsurprisingly policymakers worldwide have refocussed their attention on stablecoins with a view to setting out requirements to make them more "stable". Policymakers will continue to shape these long-term crypto frameworks in the second half of 2022, but they will not start to apply until at least 2023/2024. In the interim, this means that regulators will have limited tools to oversee the risks posed by stablecoin issuers and other key crypto natives i.e. businesses based on a decentralised protocol that enables a function currently carried out centrally, such as exchanges.

Chart 5. Major cryptoasset prices



- Although market volatility in 2022 has not reached the highs experienced in March 2020, heightened market stress caused some banks to experience increased levels of VaR model backtesting overshoots, leading to market risk capital add-ons for those banks. This raises the possibility that supervisors in some jurisdictions could reintroduce exemptions from capital add-ons, as they did during the early onset of COVID-19. However, this appears unlikely, particularly in the EU, given that it would require level 1 legislative changes and that banks currently have strong capital positions.
- For most insurers, the impact of market volatility is likely to be marginal given the long-term and conservative nature of their investment portfolios and, for life insurers, the smoothing impact of the Matching and Volatility Adjustment. Some insurers, particularly some smaller general insurers that are less diversified and that are exposed to more short-term assets, should monitor market movements closely and take action where necessary

Regulatory Outlook and Diary

2022	Australia	Expected finalization of APRA prudential standard for IRRBB (APS 117).
Q3 2022	Australia	Expected 2nd ASIC consultation on updating the Australian reporting regime.
Q3 2022	Global	The Financial Stability Board (FSB) recommends that regulators implement the CPMI-IOSCO Unique Product Identifier (UPI) Technical Guidance to take effect no later than in the third quarter of 2022
Q4 2022	Australia	Expected publication of the updated ASIC reporting regime, with a 1-year implementation period.
Q3 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.
Q4 2022	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
August 1, 2022	China	China's Futures and Derivatives Law to come into effect
August 18, 2022	EU	SOFR USD OIS clearing mandate becomes effective in the EU
August 29, 2022	US	Comments due on Federal Reserve's proposed regulation implementing federal legislation for the LIBOR transition. (See 87 Fed. Reg. 45268-45281 (July 28, 2022)).
September 2022	UK	Expected consultation on the Trading Venue Perimeter.
September 2022	UK	Expected consultation on new sustainability disclosure and labelling requirements
September 1, 2022	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan	Initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion. Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion. Initial margin and risk mitigation requirements apply to Phase 6 HKMA AIs and SFC LCs with an aggregate notional amount exceeding HKD 60 billion. Initial margin requirements apply to financial institutions with derivatives exceeding more than KRW 10 trillion. Initial margin requirements apply to counterparties whose aggregate month-end average position exceeds CHF 8 billion. Initial margin requirements apply to Phase 6 MAS covered entities with an aggregate notional amount exceeding SGD 13 billion.

	South Africa	Initial margin requirements apply to Phase 6 JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 billion. Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 15 trillion
September 1, 2022	US	Expiration date of No-Action relief issued by the Division of Trading and Markets at the US Securities and Exchange Commission in respect of Exchange Act Rule 19a-3. The relief provides that Staff will not recommend enforcement action if a nonbank Security Based Swap Dealer does not collect initial margin from a Phase 6+ Counterparty (those with CFTC AANA of USD 50 billion or less) before September 1, 2022, provided a record of such Phase 6+ Counterparties is preserved for at least three years
September 1, 2022	Canada	Remaining amendments to NI 94-101 Mandatory Central Counterparty Clearing of Derivatives come into force. The amendments are intended to refine the scope of market participants that are subject to the clearing requirement and reduce regulatory burden.
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.
September 30, 2022	Australia	Expiry of ASIC Corporations (Amendment) Instrument 2020/242, providing relief from reporting certain unique transaction identifiers (UTIs) and from NZ banks reporting entity information. Expiry of ASIC Corporations (Amendment) Instrument 2020/827, providing relief from reporting exchange-traded derivatives, name information and FX securities conversion transactions.
Q4 2022	UK	Expected consultation of the Basel 3.1 standards.
Q4 2022	Australia	Expected third consultation paper on reporting by ASIC.
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
October 7, 2022	US	Comments due on the CFTC's request for information on climate-related financial risks
October 9, 2022	Global	The Financial Stability Board (FSB) recommends that jurisdiction-level regulators implement the CPMI-IOSCO Unique Product Identifier (UPI) Technical Guidance to take effect no later than third quarter 2022.

October 9, 2022	Global	Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) recommend that jurisdiction-level regulators implement the CPMI-IOSCO Critical Data Elements (CDE) Technical Guidance to take effect no later than October 9, 2022.
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).
End 2022	Singapore	Expected publication of the updated MAS reporting regime; delay from originally indicative Q2 2022 timeline.
December 30, 2022	EU	Requirements under EU Regulation 2019/2088 on sustainability-related disclosures in the financial sector (SFDR) with respect to the comply or explain product-level adverse impacts (Article 7) shall apply
December 31, 2022	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.
January 2023	Australia	Expected effective date of APRA banking standards relating to the overall approach to capital requirements, SA-CCR and the internal ratings-based approach to credit risk.
2023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
January 1, 2023	Global	FRTB: Banks are required to report under the new market risk standards by January 1, 2023.
January 1, 2023	Global	Leverage Ratio: Banks are required to calculate leverage using the revised exposure definitions, including the G-SIB buffer from January 2023
January 1, 2023	Global	CVA: Banks are required to implement the revised CVA framework from January 2023.
January 1, 2023	EU	New application date for the leverage ratio surcharge for G-SIIs in the EU as agreed in the CRR quick fix legislation finalised in June 2020.
January 1, 2023	EU	Application of the Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation including disclosures for use of ESG-linked derivatives (except from first detailed reporting on the principal adverse impact indicators due by June 30, 2023).
January 1, 2023	EU	From 2023, the disclosure requirement under Regulation EU 2020/852 on the establishment of a framework to facilitate sustainable investment ('EU Taxonomy') with respect to the environmental objectives 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and 'the protection and restoration of biodiversity and ecosystem' (Article 9 (c) -(f)) have to be applied
January 1, 2023	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	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

	South Africa	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: Expected implementation of revised credit risk, CVA, operational risk, leverage ratio and FRTB frameworks.
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 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the calibration of the Standardised Approach for Counterparty Credit Risk (SA-CCR) which will potentially inform a future review by the European Commission.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the treatment of repos and reverse repos as well as securities hedging in the context of the Net Stable Funding Ratio (NSFR).
July 1, 2023	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
July 1, 2023	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
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.
Q3 2023	Australia	Expected go-live of the updated ASIC reporting regime.
September 1, 2023	US EU Australia Canada Hong Kong Korea Switzerland	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.

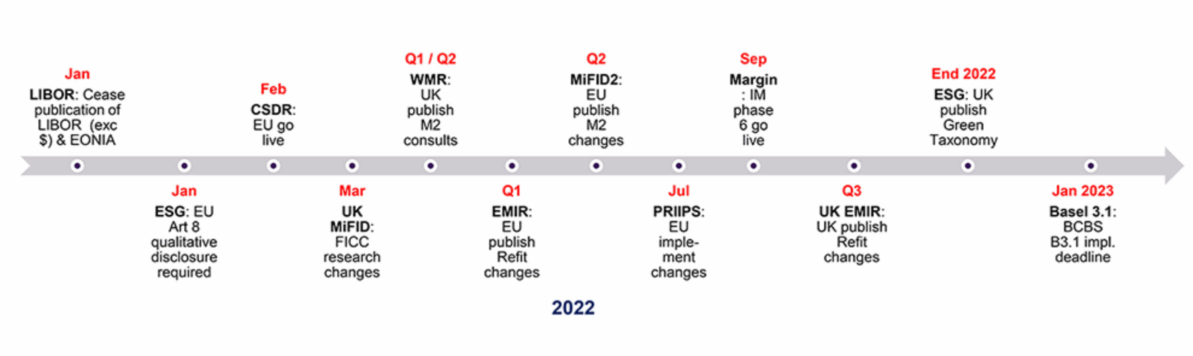
	Singapore Japan	Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion. Hong Kong: Initial margin and risk mitigation requirements apply to HKMA AIs and SFC LCs with an aggregate 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.
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	Stage 1 implementation of ASIC Derivative Transaction Rules (Reporting) 2022, consisting of the implementation of UTI, the full implementation of LEI requirements and other changes, but not any new data elements beyond those currently reported
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 EU Switzerland	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).

	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 100 billion threshold for initial margin requirements as of September 1, 2024.
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 guidances 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 01, 2024	Singapore	Expected go-live of the updated MAS reporting regime.
April 01, 2024	Australia	Stage 2 implementation of ASIC Derivative Transaction Rules (Reporting) 2022: Compliance start date for the reporting of the additional data elements and implementation of the UPI and ISO 20022 XML messaging standard.
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	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.
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion. South Africa Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion.
January 1, 2025	EU	Expected implementation of FRTB and CVA risk under the CRR III proposal.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
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.
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.

Timeline...



ESMA Overview of planned consultation papers 2022

https://www.esma.europa.eu/document/overview-planned-consultation-papers-2022

Topic	Topic	Planned publication
Benchmarks	Amendment to the RTS to reflect that ESMA becomes the competent authority of recognised 3rd country benchmark as of January	2022 Q2 2022
Cooperation	Guidelines on cooperation arrangement with third-countries on CCP recognition decisions	Q2 2022
EuVECA/EuSEF	RTS and ITS on European Venture Capital Funds and European Social Enterpreneurship Funds	September 2022
Sustainable Finance	Review of Principal Adverse Impact (PAI) indicators (SFDR)	Q3 2022
ECAI Mappings	Joint Committee ITS on External Credit Assessment Institutions' Mappings	Q3 2022
Benchmarks	RTS on the Clearing Obligation and the Derivative Trading Obligations (DTO) regarding the benchmark transition	July 2022
CCP resolution	RTSs to specify the minimum elements that should be included in a business reorganisation plan; and the criteria that a business reorganisation plan is to fulfil for approval by the resolution authority	Q3 2022
MMF	Update of MMF Stress Test methodology	Q3 2022
MIFID II	Guidelines on MiFID II product governance requirements (sustainability)	July 2022
EMIR	RTS on publication of derivatives data (EMIR)	Q3/4 2022

Derivatives	Amendment to Guidelines on calculation of positions in derivatives	Q3/4 2022
DLT	Guidelines on standard forms, formats and templates (under Distributed Ledger Technology (DLT) Pilot Regime)*	Q3/Q4 2022
Sustainable Finance	Review of Principal Adverse Impact (PAI) indicators (SFDR)	Q4 2022
Shareholder cooperation	Review of the Whitelist on acting in concert	TBC*

Treasury meets with UK and EU regulators. Over the last two weeks, *Treasury met separately with regulators from the UK and EU to discuss coordination efforts. Among the topics discussed were digital assets, nonbank financial intermediation, the LIBOR transition, operational resilience and anti-money laundering.*

	UK and U.S.	*EU and U.S.*
1	*international & bilateral cooperation*	*regulatory & supervisory cooperation in capital markets*
2	*benchmark transition*	
3	*financial innovation*	*regulatory developments in banking & insurance*
4	*sustainable finance*	*sustainable finance & climate-related financial risks*
5	*non-bank financial intermediation*	*market developments and financial stability risks*
6	*operational resilience*	*operational resilience & digital finance*
7	*cross-border regimes*	
8		*anti-money laundering & countering the financing of terrorism (AML/CFT)*

- UK and U.S. participants held the sixth meeting of the UK-U.S. Financial Regulatory Working Group (the Working Group) virtually on 21 July 2022. *The Working Group was formed in 2018 to deepen bilateral regulatory cooperation with a view to the further promotion of financial stability; investor protection; fair, orderly, and efficient markets; and capital formation in both jurisdictions.*
  - Participants included officials and senior staff from HM Treasury and the U.S. Department of the Treasury, and from UK and U.S. independent regulatory agencies, including the Bank of England (BOE), the Financial Conduct Authority (FCA), the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation (FDIC), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC). UK and U.S. participants shared views on issues in their respective areas of responsibility.
  - The Working Group meeting focused on seven themes: (1) international and bilateral cooperation, (2) benchmark transition, (3) financial innovation, (4)

sustainable finance, (5) non-bank financial intermediation, (6) operational resilience, and (7) cross-border regimes.

- At the meeting, participants took stock of market developments since Russia's unprovoked and unjustifiable invasion of Ukraine. The Working Group also discussed ongoing international and bilateral cooperation and areas of mutual interest where cooperation can continue to be strengthened to promote global standards. The Working Group Co-Chairs highlighted their continued commitment to, and support for, robust financial markets and international financial regulatory standards that promote financial stability and mitigate unintended market fragmentation. They also exchanged views on respective international financial sector priorities at the G7, the G20, the Financial Stability Board (FSB), and the International Organisation of Securities Commissions (IOSCO).
- Participants discussed risks in the Non-Bank Financial Intermediation (NBFI) sector and interconnectedness with other financial and non-financial actors. Participants discussed the need to take steps toward strengthening the resilience of the sector, including strengthening liquidity risk management practices and expressed support for future cooperation, including in relevant international fora, in this regard.
- The Working Group also discussed the mutual desire to promote multilateral cooperation around risk management in global derivatives and banking markets. It also discussed the importance of minimizing regulatory fragmentation by limiting differences in the substance and timing of implementation of international standards that would otherwise disincentivise market participants from undertaking certain cross-border activities.
- On Basel III reforms, participants reaffirmed their commitment to the final prudential standards and reiterated the value of global cooperation in their implementation. Participants agreed to discuss further when respective authorities bring forward their implementation proposals.
- On the topic of financial innovation, participants reflected on the outcomes of the U.S.-UK Financial Innovation Partnership meeting in June 2022. This included exchanging views on crypto-asset regulation and recent market developments, including those in relation to stablecoins, and the exploration of central bank digital currencies (CBDCs). All participants committed to continued cooperation to support safe financial innovation, as well as to strengthen regulatory outcomes for stablecoins across jurisdictions. Participants also considered future opportunities for further discussion on broader crypto-asset regulatory initiatives. Participants recognised the continued importance of the ongoing partnership on global financial innovation and acknowledged the importance of both maintaining and further engaging in multilateral discussions on these topics.
- Participants took stock of ongoing efforts in relation to LIBOR transition, the FCA's recent consultation on winding down 'synthetic' sterling LIBOR and its request seeking views on the need for any synthetic U.S. dollar LIBOR rates, and the importance of continuing to transition to robust alternative reference rates across jurisdictions, whilst welcoming the successful completion of the important end-2021 milestones. They noted the importance of maintaining a

coordinated approach in the lead up to the cessation of remaining USD LIBOR settings at the end of June 2023.

- Participants discussed domestic and international progress made on work relating to sustainable finance this year and discussed priorities and issues for continued work and cooperation, both multilaterally and bilaterally. They also provided respective domestic updates. U.S. participants discussed work undertaken by U.S. agencies, including as outlined in the U.S. Financial Stability Oversight Council's Report on Climate-Related Financial Risk. UK participants discussed the Climate Biennial Exploratory Scenario and the UK noted the usefulness of scenario analysis as a tool for supervisory risk assessments and financial institutions. Participants also discussed Environmental, Social, and Governance (ESG) data and ratings providers and provided updates on the development of climate-related financial disclosures regimes.
- UK and U.S. participants also welcomed the progress of the International Sustainability Standards Board (ISSB) as it develops a global baseline for corporate reporting on sustainability, noting the importance of interoperability of reporting across different jurisdictional approaches
- In addition, participants discussed ongoing cooperation on international efforts to address climate change issues within the financial sector, including the FSB's Roadmap for Addressing Climate-Related Financial Risk, and the G20 Sustainable Finance Working Group and Sustainable Finance Roadmap.
- Participants discussed regulatory approaches to 'critical' third-party providers, in particular those that provide services across borders and across sectors, and noted the need for financial authorities to understand and manage the financial stability and market confidence risks that could arise as a result of failure of or disruption at third-party providers. Participants discussed 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.
- Participants will conduct follow-up work on the above topics and other issues of mutual interest through bilateral engagement and in multilateral fora ahead of the next Working Group meeting, which is expected to occur later in 2022.

- EU and U.S. participants in the EU – U.S. Joint Financial Regulatory Forum ("the Forum") met on July 13-14, 2022, to exchange views on topics of mutual interest as part of their regular financial regulatory dialogue. *EU participants included representatives of the European Commission, the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Central Bank (ECB), and the Single Resolution Board (SRB).*
  - U.S. participants included officials from the U.S. Department of the Treasury and staff from independent regulatory agencies, including the Board of Governors of the Federal Reserve System (FRB), Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Securities and Exchange Commission (SEC), as well as the Public Company Accounting Oversight Board (PCAOB). U.S. participants expressed views on issues in their respective areas of responsibility.

- The Forum emphasised close ongoing EU and U.S. cooperation in a range of areas, including on sanctions, and focused on six themes: (1) market developments and financial stability risks, (2) sustainable finance and climate-related financial risks, (3) regulatory developments in banking and insurance, (4) regulatory and supervisory cooperation in capital markets, (5) operational resilience and digital finance, and (6) anti-money laundering and countering the financing of terrorism (AML/CFT).
- The current geopolitical situation, triggered by Russia's unprovoked and unjustified aggression against Ukraine, coupled with inflationary pressures, exposes a series of downside risks to financial markets both in the EU and in the U.S. However, financial markets have proven to be resilient so far. International cooperation in monitoring and mitigating financial stability risks remains essential in the current global environment in light of the negative impacts on global energy and commodities markets.
- Participants discussed issues related to sustainable finance and management of climate-related financial risks, acknowledging the importance of addressing climate and other sustainability related challenges for the financial sector, consistent with their respective mandates. Participants discussed their respective work on climate and other sustainability-related financial disclosures. In that regard, SEC staff gave an overview of the SEC's proposed rulemaking to enhance and standardize climate-related disclosures for investors, and the proposed rulemaking to promote consistent, comparable, and reliable information for investors concerning funds' and advisers' incorporation of environmental, social, and governance (ESG) factors. Likewise, ESMA presented its recent Supervisory Guidance on integration of sustainability risks and disclosure in the area of asset management. The EU participants presented the provisional agreement reached by the European Parliament and the Council on Corporate Sustainability Reporting Directive, which will require all large and all listed companies to report on all sustainability issues from a double materiality perspective. An update was also given on the work of the European Financial Reporting Advisory Group (EFRAG) to develop mandatory EU sustainability reporting standards.
- EU and U.S. participants agreed to continue the bilateral exchange on sustainability-related disclosures and to continue to engage in international fora, including with regard to the standards being developed by the International Sustainability Standards Board (ISSB). A discussion on the management of climate-related financial risks also took place and the ECB presented the aggregate results of its supervisory climate risk stress test assessing the preparedness of banks for financial and economic shocks stemming from climate-related financial risks.
- Participants from both sides also acknowledged the work being done on sustainable finance issues in international fora, including the G20 Sustainable Finance Working Group and the International Platform for Sustainable Finance.
- Regarding banking, participants discussed the implementation of Basel III reforms, the EU gave an update on the progress made on the Banking Package, and both parties informed each other on the progress and the scope of the implementation of Basel III reforms, including on securitization. Participants also discussed issues relating to the Foreign Account Tax Compliance Act (FATCA)

relevant to citizens and financial firms, and developments in the field of insurance that included climate-related financial risks and the Solvency II review.

- With regard to capital markets, participants discussed their continued monitoring of the transition from panel reference rates and the progress in their respective legislative and supervisory efforts to ensure a smooth transition away from LIBOR. The EU updated the Forum on the state of the review of the Markets in Financial Instruments Directive and Regulation, while the SEC staff discussed upcoming work to modernize rules related to equity markets structure. Participants discussed CFTC implementation of new capital and financial reporting requirements for swap dealers. Both sides also provided an update regarding issues under consideration in relation to open-ended fund reforms.
- Finally, in the field of statutory audit, the European Union provided an update on the progress of the renewal of the two underlying equivalence and adequacy decisions with regard to the PCAOB and SEC.
- During the meeting, participants shared views on digital finance and operational risk and resilience. The EU updated the U.S. on the provisional agreement reached on the Digital Operational Resilience Act (DORA), which will establish a comprehensive framework on cyber resilience for financial entities and information and communication technology (ICT) third-party service providers. The U.S. provided an update on proposed guidance for banking organizations regarding managing risks associated with third-party relationships, as well as the recent U.S. initiative for a multilateral Critical Providers Dialogue. Participants also discussed multilateral efforts including at the G7 Cyber Expert Group and the Financial Stability Board regarding the resilience of critical services provided by third-party providers. The discussions also touched upon recent developments regarding crypto-assets, including stablecoins. EU participants also updated the U.S. on the provisional agreement reached on the Markets in Crypto-Assets regulation (MiCA), which will protect consumers, market integrity and financial stability. MiCA will, for the first time in the EU, bring the vast majority of crypto assets including stablecoins under a regulatory framework, and will cover issuers of unbacked crypto-assets, the trading venues and the wallets where crypto-assets are held. The U.S. provided an overview of their work on crypto-assets, including stablecoins. The exchange also took stock of discussions around the development of potential central bank digital currencies.
- Participants also discussed progress made in strengthening their domestic AML/CFT frameworks. The EU provided an update on its AML/CFT legislative package, and the U.S. participants provided an update on its ongoing implementation of the Anti-Money Laundering Act of 2020, together with updates from the 2022 National Money Laundering, Terrorist Financing, and Proliferation Financing Risk Assessments and 2022 National Strategy to Combat Terrorist and Other Illicit Financing.
- Participants acknowledged the importance of the Forum in fostering ongoing financial regulatory dialogue between the U.S. and the EU. They agreed that regular communication on regulatory and supervisory issues of mutual concern is necessary to support financial stability, investor protection, market integrity, and a level playing field.

- Participants will continue to engage on these topics, as well as on other topics of mutual interest, ahead of the next Forum meeting, which is expected to take place in early 2023.

LiBOR Transition

The FCA issued a Call for Input (CFI) to better understand how data is being accessed and used in wholesale markets back in March 2020. We published our Feedback Statement on 11 January 2022. Our analysis showed that further work is needed to understand whether competition is working well in these markets. Our package of work includes (i) Trade Data, (ii) Benchmarks and (iii) Credit Rating Agencies.

- This email is in relation to our work on Trade Data where we are seeking views from a wide variety of participants. As a user of trade data in the UK, we would like to invite you take part in our Trade Data Review.
- This review is focused on understanding the pricing of trading data, and terms and conditions of the sale of trading data in order to understand whether data costs and contract terms may be creating harm to users.
- In the next few days, we will send you a survey link via Qualtrics to gather your views in relation to the Trade Data Review.
- If you have any questions, please reach out to Wholesale Trade Data Review WholesaleTradeDataReview@fca.org.uk. Best regards, FCA Wholesale Data Project Team

THE LATEST ON RFR ADOPTION; Chris Barnes July 19, 2022; The ISDA-Clarus RFR Adoption Indicator recorded another all-time high of **46.4%** in June 2022.

- SOFR adoption was at 49.7% of the market.
- 23.8% of EUR risk traded versus €STR, a new all time high.
- June 2022 saw the largest notional ever traded in RFRs, at $86.5Trn.

The ISDA-Clarus RFR Adoption Indicator for June 2022 has now been published.

ISDA Safe, Efficient Markets

ISDA-Clarus RFR Adoption Indicator

June 2022

ISDA-Clarus RFR Adoption Indicator tracks how much global trading activity (as measured by DV01) is conducted in cleared over-the-counter (OTC) and exchange-traded interest rate derivatives (IRD) that reference the identified risk-free rates (RFRs) in six major currencies.

RFR Adoption Indicator

46.4% RFR Adoption Indicator vs. 46% last month (Chart 1).	**39.8%** RFR-linked notional as % of total IRD notional transacted vs. 38.6% last month (Chart 3).
DV01 of RFR-linked IRD was **$18.0 Bn** vs. $15.1 Bn last month (Chart 2).	RFR-linked IRD notional transacted was **$86.5 Tn** vs. $65.9 Tn last month (Chart 3).

RFR Risk by Currency

GBP saw the largest percentage of RFR-linked IRD risk traded at 99.8% of total GBP IRD DV01 (Chart 5a).	**49.7%** of USD IRD DV01 was transacted in SOFR this month. (Chart 5b)	**JPY** saw the highest percentage of RFR-linked IRD DV01 executed as transactions with tenors >2Y (Chart 6).

Total IRD Activity

$38.8 Bn Total IRD DV01 transacted this month vs. $32.9 Bn the prior month.	**$217.4 Tn** Total IRD notional transacted this month vs. $170.6 Tn the prior month.	**$20.8 Bn** Other indices DV01 transacted this month vs. $17.8 Bn the prior month.

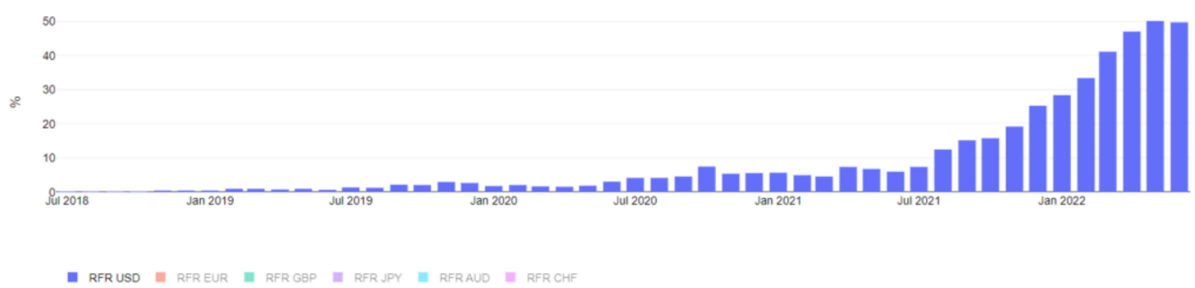
Showing;

1. SOFR adoption slipped very slightly to 49.7%.
2. GBP and CHF continue to see nearly 100% of risk traded as RFRs.
3. 23.8% of EUR risk was versus €STR, a new all-time high.
4. June 2022 saw the largest notional ever traded in RFRs, at $86.5Trn.
5. June 2022 saw the second largest amount of RFR risk ever traded at $18bn in DV01, second only to March.

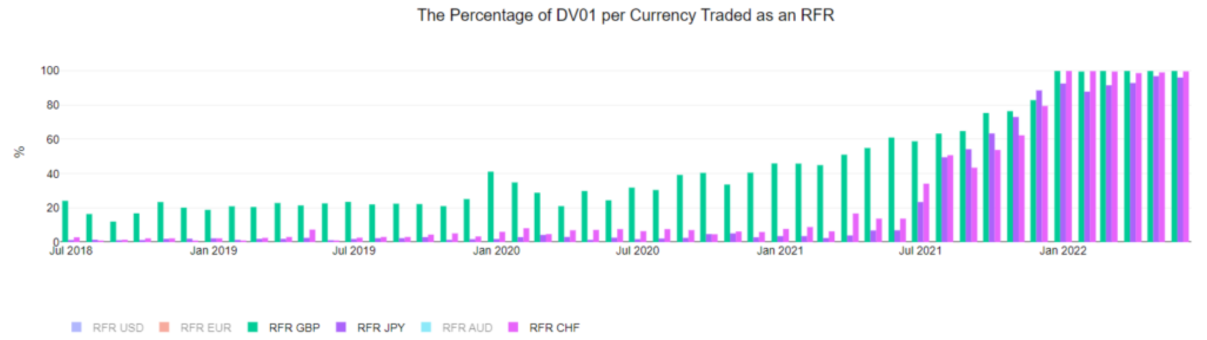
Let´s look at the charts behind each of those 5 points:

1. SOFR Adoption; SOFR has continued at about 50% of the market, with a small slip last month. That is the first decline we have seen in SOFR adoption since June 2021!

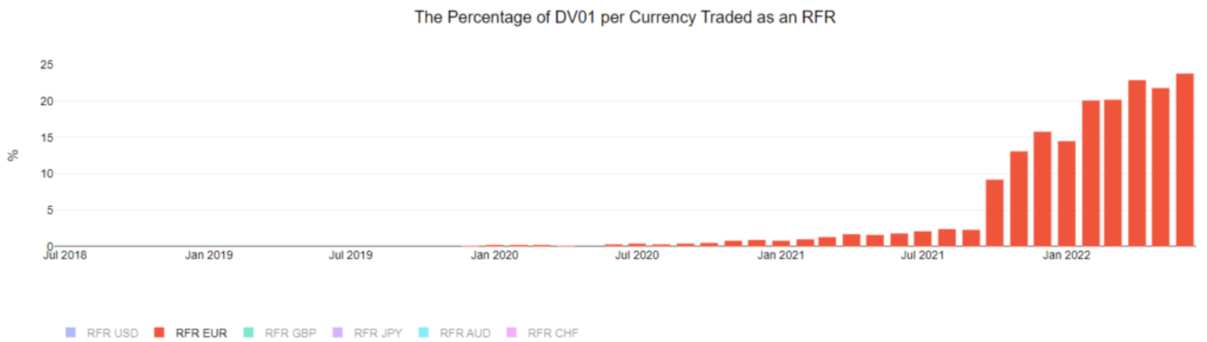
The Percentage of DV01 per Currency Traded as an RFR



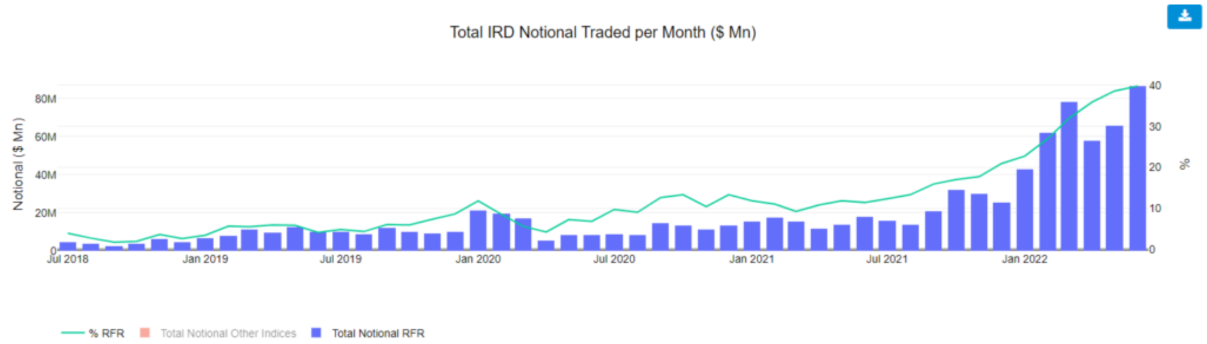
2. GBP and CHF; As we showed last month, we don't expect any changes here. You can probably add JPY into that mix as well, as little trading appears to be happening in TIBOR.



3. EUR €STR Adoption; The EUR market is heating up to be the most interesting aspect of RFR adoption for the remaining six months of the year. Can it break above 30-40% this year? What do our readers think? What about €STR futures?



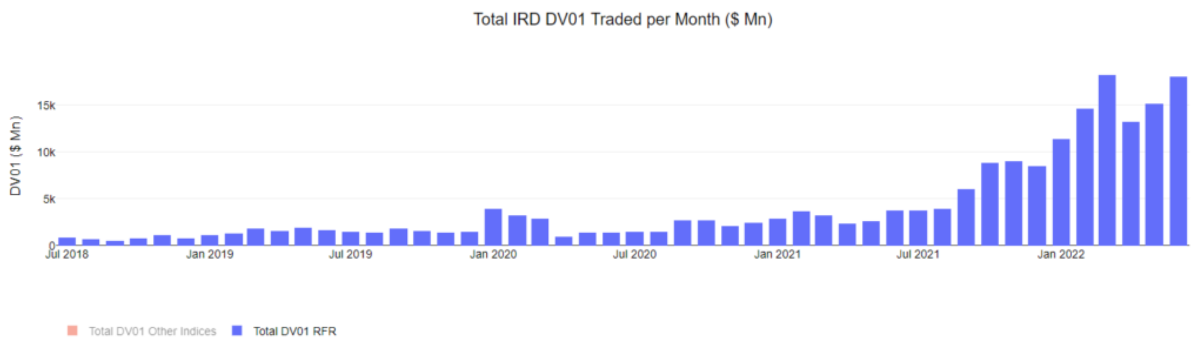
4. Largest ever RFR Notionals; Trading activity across the whole of the Rates market picked up in June after a couple of quiet months. This means that we saw the largest amount of notional ever traded versus RFRs last month. Quite an achievement!



5. A large amount of Risk; The total DV01 traded in RFRs was not quite a record – that still belongs to March 2022. Coupled with the large notional trading, this suggests that more short-end risk was transacted in June compared to March. Interesting and likely a sign of general market repositioning rather than anything RFR-specific.

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association



Libor Transition update: June 1 – July 20, 2022

1. Highlights
    - Fed's implementation of the LIBOR Act
    - Fake plastic LIBOR
    - DTCC LENS expansion
    - USD LIBOR swap rate fallbacks
    - Efterm
    - ISDA Benchmark Strategies Forum
2. RFR adoption: Derivatives
    - Futures
    - Swaps trading
3. Publications at a glance
    - National working groups
    - Regulators
    - Industry groups, infrastructure providers and other items
4. Target dates

Fed's implementation of the LIBOR Act

The Fed published its proposal to implement the Adjustable Interest Rate (LIBOR) Act, with comments due 30 days after publication in the federal register. In line with the requirements of the act, the Fed proposes the conventions for a series of spread-adjusted SOFR-based replacement rates and conventions that would replace references to USD LIBOR after June 30, 2023, in contracts lacking adequate fallback language. The fallbacks would also apply to contracts in which a determining party to select a replacement rate is specified but fails to act. The fallbacks would not apply in cases in which parties to a contract mutually agree to opt out of the LIBOR legislation.

The proposed replacement rates are aligned to existing ARRC guidance for fallbacks in new USD LIBOR-based contracts and evolving conventions for the use of risk-free rates (RFR). As stipulated in the LIBOR Act, all rates are based on SOFR and include a spread adjustment to account for the economic difference between SOFR and USD LIBOR. The spread adjustment values are equal to the values previously determined by ISDA as part of its IBOR fallbacks protocol.

- **Derivatives**: spread-adjusted SOFR, compounded in arrears

- - **Cash products (non-consumer or GSE):** spread-adjusted CME Term SOFR
- - **Consumer loans: spread**-adjusted SOFR for o/n LIBOR, or spread-adjusted CME Term SOFR for other tenors of LIBOR. The difference between spread-adjusted Term SOFR and USD LIBOR on the day prior to cessation would be phased in over one year, using daily linear interpolation.
- - **GSE contracts**: 30-day average SOFR, spread-adjusted

The Fed is seeking comments on a series of technical implementation issues, including the type of SOFR-based rates proposed for the different asset classes and additional clarifications the final rule should include. For instance, the proposal contemplates the need for additional clarifications related to the scope of the rule, requirements on notification periods for determining parties or additional detail on what may constitute benchmark conforming changes.

The Fed is also seeking comments on a proposed provision that would effectively prevent certain contracts governed by US law from referencing a synthetic USD LIBOR rate, should the FCA decide to compel the publication of such a rate after June 2023. We discuss that proposal in more detail in the following section.

The Fed's implementation of the LIBOR Act represents the biggest remaining puzzle piece in the transition away from USD LIBOR. It is also one of the last remaining opportunities for market participants to voice their opinion on a solution that will likely affect several trillion dollars' worth of legacy contracts. As with a number of previous consultations, institutions should take care to solicit input from all involved stakeholders within their organization. The details of the Fed's rule will do more than have a direct impact on contract economics. As market participants prepare their responses, they will also need to carefully consider legal implications, as well as potential impacts on operational processes and system capabilities.

While the replacement rates and conventions proposed by the Fed, including spread adjustments, are likely in line with market participants' expectations, employing the legislative solution as a fallback will nevertheless require some analysis and preparation. For instance, combination contracts consisting of a loan and corresponding swap would transition to SOFR-based fallbacks employing different conventions. Those situations — and others — could result in differences of calculated interest amounts or cash flow timing. While any differences are likely to be relatively small on an instrument-by-instrument basis, market participants holding a large number of such instruments should develop a plan to manage any resulting mismatch.

The included transition period for consumer products had long been recommended by the ARRC and eventually made its way into the LIBOR Act as well. At the same time, it's not exactly clear that all market participants have contemplated how to implement the necessary calculations. Daily interpolation for consumer loans, for instance, might pose challenges for some market participants.

It bears repeating that, irrespective of whether or not a contract contains appropriate fallback language, the proactive remediation of exposures should remain the preferred path to transition for contracts whenever possible. The remediation process has at times proven arduous — especially for commercial lending agreements. However, making the effort now to put in place the processes and resourcing to amend or close out positions wherever possible has many benefits. Not only does it allow market participants to retain control over the economic outcomes of contract transition, reliance on fallbacks — whether contractually agreed upon or dictated by means of legislation — for a large number of contracts might require widespread reliance on manual processes. Last but not least, there are additional costs associated with continuing to operate in a LIBOR environment. As liquidity has steadily shifted into alternative reference rates, hedging of LIBOR loans can be expected to become increasingly costly.

Fake plastic LIBOR

The FCA (FCA) issued a consultation on its plans to retire synthetic 1- and 6-month GBP LIBOR at the end of March 2023, rather than December 2022 as originally intended. Following the end of panel bank submissions for GBP LIBOR at the end of last year, the FCA mandated the continued publication of the benchmark rate using a calculation-based methodology. The resulting so-called "synthetic" rates are available for reference only by remaining legacy exposures that had not been able to transition prior to GBP LIBOR's cessation.

The UK banking regulator is also seeking input on whether it might be appropriate to compel the ongoing publication of synthetic USD LIBOR following its scheduled cessation date of June 2023. While the FCA has not yet made a decision on a potential synthetic USD LIBOR, it is looking to understand the size and nature of remaining USD LIBOR exposures that do not currently have an obvious transition path. At a recent conference on the remaining steps in the transition, hosted by the Fed, the FCA's Chief Executive Nikhil Rathi reiterated that synthetic LIBOR should only be considered as a bridging mechanism. Market participants were urged to provide specific and detailed examples of tough legacy exposures that do not have a defined transition path.

As part of the event, the ARRC released a guide on the transition of legacy cash products. The document includes a series of considerations for the analysis of contractual provisions, contract remediation and communication with counterparties as market participants look to implement fallbacks for different cash products. The guide includes a reference table that describes the outcome for different types of contracts, given the type of fallback provisions and governing laws that apply. In the absence of a published USD LIBOR, contracts subject to US law would transition to an alternative reference rate according to a contract's fallback provision.

Where such provisions are lacking, contracts would be subject to the legislative solution now in place. Should the FCA decide to compel the ongoing publication of USD LIBOR on a synthetic basis, however, there are situations in which even agreements subject to US law might reference synthetic LIBOR. Contracts that include a pre-cessation trigger would likely be unaffected, as the remaining tenors of USD LIBOR have already been declared non-representative after June 30, 2023. On the other hand, agreements without such a trigger could end up referencing synthetic USD LIBOR, as such a rate would continue to be published via existing channels.

The Fed offers to address the issue of pre-cessation triggers as part of its proposal to implement the LIBOR Act. In addition to establishing statutory replacement rates for USD LIBOR in contracts lacking adequate fallbacks, the Fed is proposing a rule that would apply to USD LIBOR-based contracts falling outside the scope of a Fed-recommended replacement rate, i.e., contracts containing valid fallback language. The provision would mandate the triggering of agreed-upon fallbacks in those contracts on or before June 2023, irrespective of whether or not they include a pre-cessation trigger. This would effectively stop contracts subject to US law from referencing synthetic USD LIBOR after June 30, 2023.

With the passing of the LIBOR Act earlier this year, the vast majority of legacy contracts subject to US law now have a defined transition path. However, given the pervasive use of USD LIBOR in financial transactions, there are bound to remain exposures in contracts and securities that may not be covered by US law. A synthetic USD LIBOR would provide an alternative solution for such contracts — and we expect that the voices in support of that approach will be loud and plentiful.

The fact that some contracts containing perfectly valid fallbacks might end up referencing synthetic LIBOR, however, might create some confusion. The ARRC's playbook begins to describe the complexities and possible fate of contracts depending on the various permutations of included fallbacks and governing law. The Fed's proposal would limit the variability of possible outcomes, as it would greatly reduce the odds that any contract based on US law would reference synthetic LIBOR. Preventing contracts from referencing a synthetic rate could also limit potential legal risks. US regulators had in the past cautioned against synthetic USD LIBOR for the US market, given its different litigation framework, suggesting that contracts referencing such a rate could be challenged in court. Contracts including clauses pertaining to the method of construction or calculation of the benchmark rate might especially be subject to legal challenge.

With respect to contracts not subject to US law, legislators in other jurisdictions may yet opt to put in place legislative solutions addressing legacy LIBOR contracts. The European Commission, for instance, could decide to declare a statutory replacement for USD LIBOR in contracts lacking adequate fallback provisions, which would be similar to legislation enacted for CHF LIBOR. Whether or not such contracts could reference synthetic USD LIBOR would depend on specific contractual provisions, such as pre-cessation triggers.

To state the obvious, none of this should be considered legal advice. Institutions will need to consult with their lawyers to determine the potential impact of synthetic USD LIBOR on their contracts, likely under a large number of potential permutations depending on contract language, governing law and other factors. Now, more than ever, in light of the immense variety and complexity of (often bespoke) contractual provisions in lending agreements, a detailed understanding of contractual language is required.

It is, of course, not at all certain that the FCA will ultimately decide to compel the publication of synthetic USD LIBOR. Regulators have consistently described synthetic LIBOR as a solution of last resort, reserved for legacy contracts that face "insurmountable barriers" to transition. Debt issuances that require unanimous consent from all holders for contract modifications remain the most prominent example.

The FCA has been very clear in the past, as well as during the Fed's recent event, that synthetic LIBOR should not serve as a solution for slower-than-expected remediation progress — or simply to reduce the burden of large-scale remediation presented by complex agreements.

DTC LENS expansion

The ARRC's playbook for legacy LIBOR-based cash products included an update on expansions to the Depository Trust Company's (DTC) Legal Notice System (LENS). LENS is a commonly used platform that allows issuers, calculation agents or other parties to notify investors of contractual changes related to DTC-eligible securities.

The ARRC notes that, due to the unstructured and non-standardized nature of notifications, the "existing LENS process does not ensure that all market participants will be made aware of the upcoming changes." In cooperation with the DTC and other market participants, the ARRC has proposed a series of changes to the workflow and structure of the date, which would allow information related to a change in contractual reference rates to be communicated and accessed "in a structured and harmonized way."

Issuers and paying agents will likely welcome a solution that enables easier dissemination of notices to investors, at least for many USD securities issued under US law. At the same time, communication is only a part of the puzzle, as paying agents will still need to develop the processes required to actually provide the amended cash flows.

Previous ARRC guidance suggested that investors be notified at least six months prior to a change in benchmark rates. As the solution is still being developed, there might only be a short time window at the end of the year to adopt enhancements and implement counterparty communications.

Once again, a detailed understanding of contractual terms and requirements will be an absolute necessity for issuers and paying agents. The exact nature of communications will depend not only on specific contractual terms, but also on the details of the Fed's implementation of the LIBOR Act, which is due within 180 days of March 15, 2022. As has been the case throughout the transition from LIBOR, proactive planning seems advisable.

Efterm

The European Money Market Institute (EMMI) began publication of a beta version of a forward-looking €STR term rate, called "Efterm." EMMI is planning to soon issue a consultation on the rate's suitability as fallback to EURIBOR, which is widely used as a reference rate in a variety of cash products. While there aren't any immediate plans to discontinue EURIBOR, both regulators and the working group (WG) on euro risk-free rates (RFR) have long stressed the importance of including robust fallbacks in EURIBOR-based contracts.

Similar to forward-looking term rates developed for other RFRs, Efterm is derived from prices of €STR-based interest rate derivatives and futures contracts. The rate, available in five tenors ranging from one week to two months, has been made for information and illustrative purposes and should not be referenced in financial contracts at this time

The publication of Efterm, shortly before a meeting of the WG on euro RFRs, may have come as a surprise to many market participants. The WG had previously invited benchmark administrators interested in developing a forward-looking €STR term rate to present on their methodology and progress but had also indicated that it would not make an official recommendation in favor of a specific administrator or benchmark.

The EMMI might have been the first out of the gate, but others are sure to follow. In all likelihood, market participants will eventually have the ability to evaluate, and choose from, any number of alternatives for an €STR term rate. Amid various options — and in the absence of a formal endorsement — market participants will have to carefully consider how to communicate their choices to counterparties. In particular, many retail clients that hold contracts based on EURIBOR might have little to no awareness of benchmark reform efforts to date.

USD LIBOR swap rate fallbacks

The ARRC issued a set of recommendations for agreements referencing the USD LIBOR ICE Swap Rate. Given that such contracts fall outside the scope of the federal "tough legacy" legislation, market participants are encouraged to remediate agreements proactively — either through conversion, incorporation of hardwired fallbacks or buyback. The ARRC had previously consulted on its suggested fallbacks, which are based on a formula that employs a spread-adjusted USD SOFR ICE Swap Rate (SOFR ISR, launched by the ICE Benchmark Administration in November of last year) and a number of adjustments to account for differences in conventions between SOFR and LIBOR swaps.

Subsequent to the ARRC's recommendations, ISDA published an additional module of the ISDA 2021 Fallbacks Protocol (including supporting FAQs) that effectively allows parties to incorporate the recommended fallbacks in transactions covered by the protocol. ISDA also published an updated amendment form to facilitate the inclusion of fallbacks in certain other legacy transactions, as well as a summary of the differences between the various modules and amendment forms related to the swap rate fallbacks.

Prior discussions on contracts indexed to ICE Swap Rates in currencies other than USD suggested that there wasn't a need for a protocol to amend derivative transactions. Now that we've moved on to transitioning the (larger) USD exposures, it's clear that appetites for a protocol-based solution have changed. As with all fallbacks, while the proposed solution is imperfect, it nevertheless represents a reasonable approximation. More importantly, it provides an operational solution to those that have LIBOR Swap Rate exposures in derivative form.

Further efforts will likely be required with respect to positions where the swap rates are embedded within the coupon payoffs of structured notes. Such agreements wouldn't be able to avail themselves of the ISDA protocol. They also fall outside the scope of the federal legislation, which applies only to USD LIBOR, rather than LIBOR Swap Rate indexed instruments. As has been the case for many issues related to the transition, industry solutions provide powerful tools to facilitate change for a significant portion of the market. But market participants need to ensure that those solutions are directly applicable to their instruments — and develop alternative solutions where required.

ISDA Benchmark Strategies Forum

ISDA's most recent forum on the transition away from LIBOR featured opening remarks from Chief Executive Scott O'Malia, a keynote from the FCA's Head of Markets Policy and a series of panel discussions on remaining steps, tough legacy exposures and alternatives to USD LIBOR. ISDA provided coverage of the event through its Twitter account, excerpts of which are provided below.

- We have seen really good progress in the transition to RFRs. We estimated there was £30 trillion worth of contracts linked to sterling LIBOR at start of last year. Following the transition, our estimate is that less than 1% of that £30 trillion remains, says Helen Boyd @TheFCA
- We understand good progress is being made to address legacy US$ LIBOR stock. Following the sterling transition, people have a blueprint available. No one should be relying on us making a synthetic LIBOR available in US dollar, says Helen Boyd @TheFCA
- All volumes in the rates market have been increasing, especially in the front end of the curve. SOFR has had the benefit in that it tracks closer what happens to monetary policy than LIBOR, says Guillaume Helie
- All volumes in the rates market have been increasing, especially in the front end of the curve. SOFR has had the benefit in that it tracks closer what happens to monetary policy than LIBOR, says Guillaume Helie @GoldmanSachs
- Term SOFR derivatives flows have been all one way. Dealers are hedging with o'night SOFR because of limits on the use of term SOFR derivatives. At some point, you'll get to a point where dealers need to think about how much of that risk they are willing to warehouse, says Helie
- Use of term #SOFR for derivatives is limited to direct hedging of loans and other cash products that reference term SOFR. We think it would helpful if the use of term SOFR could be used more broadly, so dealers can hedge themselves more efficiently, says Tamsin Rolls @jpmorgan
- The next 12 months will be all about prioritizing the transition of any remaining US$ #LIBOR exposures before the end-June 2023 deadline. Using #SOFR or another alternative reference rate is now the only real option in many cases, says @ScottOMalia
- In some jurisdictions, you may have multiple rates – this is a feature of the landscape – we need to continue to develop liquidity. You will find users want to be in the instruments that are most efficient and liquid, says Dixit Joshi @DeutscheBank
- We can't rest on our laurels. The US dollar transition is as large as the other four currencies combined, in an arguably more complex market. We need to continue to work with clients and help them transition appropriately, says Dixit Joshi

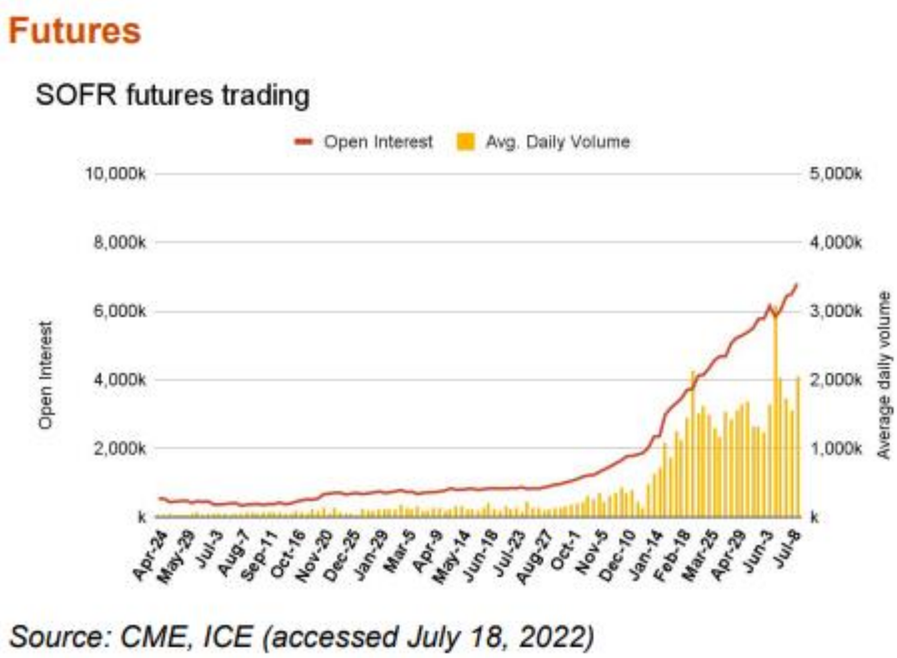
- The legislative solutions for tough legacy are quite complicated, and it's complicated how they interact with each other, so it's easier to move in advance or have a fallback in your contract if you can, says Janet Wood

The panel discussions highlighted many of the lessons learned from the transition in non-USD IBORs. Most important among them:

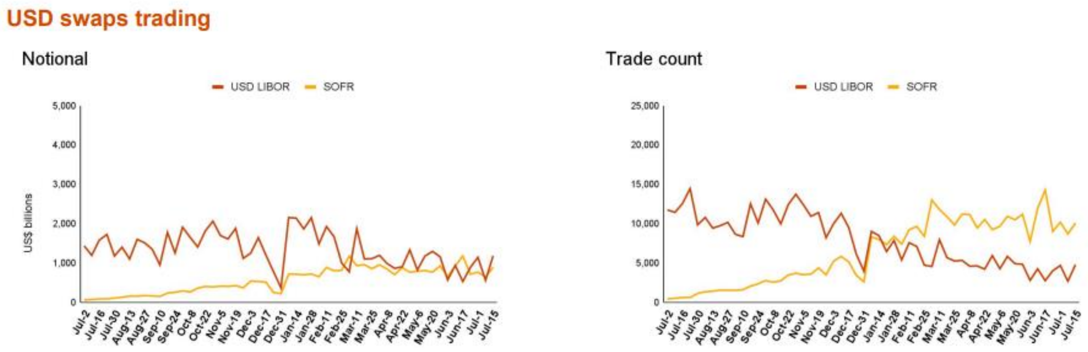
- Proactive remediation remains the single best solution to retain certainty and control over the impacts of transitioning contracts to alternative reference rates.
- That should hold true, especially as there will likely remain at least some USD LIBOR positions that could present a variety of challenges come cessation.
- Given the size of the overall USD LIBOR market, however, even a seemingly small proportion of exposures could pose significant issues.
- With respect to USD LIBOR's replacement, it is becoming increasingly clear that SOFR in its various forms has now established itself as the primary USD floating rate at this point.

At the same time, questions remain on the use of Term SOFR, primarily concerning limitations on derivative usage and the consequent impact on the cost of hedging that dealers will have to pass on to users. These challenges weren't entirely unanticipated. Now that these hypothetical concerns have turned into practical reality, we expect the voices

RFR adoption: Derivatives



Notionals and trade counts likely tell only part of the story when it comes to SOFR's adoption in the derivative markets. As noted in the ARRC's readout from the committee's July 13 meeting, SOFR's dominance over USD LIBOR becomes even more apparent when analyzed on a risk-adjusted basis. The ever-increasing shift toward SOFR as the market standard also aligns with our observations in the cash markets, where SOFR has firmly established itself as the preferred alternative to USD LIBOR on both the commercial and the consumer side.



Publications at a glance

National working groups

Alternative Reference Rates Committee ["ARRC"]

- Published guidance (also available in presentation format) on the transition of legacy LIBOR-based cash products.
- Welcomed Refinitiv's announcement regarding the upcoming publication of fallback rates based on Term SOFR.
- Published a readout of the committee's July 13 meeting.
- Issued a set of recommendations for agreements referencing the USD LIBOR ICE Swap Rate.

WG on Sterling RFRs: • Published a summary of meeting minutes from the working group's sub-groups and task forces for April and May 2022.

WF on euro RFRs; • Published minutes from the working group's June 17 meeting.

Canadian Alternative Reference Rate Committee; • Extended the deadline to comment on its Term CORRA consultation to June 30, 2022..

Steering Committee for SOR & SIBOR Transition to SORA; • Announced that the LCH had extended the tenors of cleared SORA derivatives from 21 years to 31 years.

Regulators

• FCA: Issued a consultation on its plans to retire synthetic 1- and 6- month GBP LIBOR at the end of March 2023, rather than December 2022. The regulator is also seeking input on whether it might be appropriate to compel the ongoing publication of synthetic USD LIBOR following its scheduled cessation date of June 2023.

• Bank of England: Issued a consultation on its proposal to add contracts referencing SOFR to the derivatives clearing obligation and remove contracts referencing USD LIBOR.

• Fed: Published a proposal for rulemaking under the LIBOR Act to designate SOFR-based, statutory replacement rates for USD LIBOR in contracts lacking adequate fallback language.

• FRB NY: President and CEO John Williams was joined by representatives from the FCA, infrastructure providers and other market participants at a conference on the final steps in the transition away from LIBOR.

• ESMA: Published a consultation on planned amendments to clearing and derivatives trading obligations. Under the proposal, overnight TONA swaps and additional maturities of SOFR-based swaps would be added to the clearing obligation, while certain maturities of €STRbased swaps would be added to the derivatives trading obligation. Responses are due by September 30, 2022.

Published an updated version of its Q&As on the Benchmarks Regulation.

• Reserve Bank of Australia: Published a set of considerations for fallbacks for BBSW securities. Industry groups, infrastructure providers and other items

Industry groups, infrastructure providers and other items
• ISDA (w/ ClarusFT): Published the RFR Adoption Indicator for June, which increased to 46.4% compared to 46.0% in May. The RFR Adoption Indicator had previously increased to 46.0% in May, up from 43.8% in April.

• ISDA: In its response to the CFTC's consultation on proposed updates to swap clearing requirements, ISDA suggests that the requirements to clear USD LIBOR swaps should end before the pre-emptive conversion of legacy LIBOR swaps at the CCPs.

Responded to FINMA's consultationv on amendments to swap clearing obligations, noting that its members supported central clearing of RFR-based derivatives.

Published an additional module of the ISDA 2021 Fallbacks Protocol, including supporting FAQs, that effectively allows parties to incorporate USD LIBOR ICE Swap Rate Fallback Provisions in transactions covered by the protocol.

ISDA also published an updated amendment form to include such fallbacks in certain other legacy transactions, including a summary of the differences between the various modules and amendment forms related to the swap rate fallbacks.

Chief Executive Scott O'Malia provided the opening remarks at the organization's latest Benchmark Strategies Forum.

• LSTA: Published final versions of its templates for revolving credit facilities and investment-grade term loans and revolvers based on SOFR (member access only).

Published final versions of its Term SOFR amendment forms, including cover amendments for conforming changes and benchmark replacement, draft provisions implementing adjusted Term SOFR and a consensual amendment to transition a LIBOR-based loan to either Term SOFR or daily simple SOFR (member access only).

In a blog post, the LSTA expresses concern that "the remediation of the back book has been slower than many might like."

• ICMA: Provided an update on the transition away from LIBOR in the bond market as part of its latest quarterly report.

• Association of Corporate Treasurers: The ACT published a LIBOR transition update for June 2022, reminding its members that the transition is "not over."

• EMMI: Began publication of a beta version of a forward-looking €STR term rate, called "Efterm." EMMI is planning to issue a consultation on the rates' suitability as fallbacks to EURIBOR in the near future.

• Eurex: Announced it had published a booklet detailing the CCP's approach to the preemptive conversion of USD LIBOR swaps ahead of the rate's cessation in June 2023 (member access required).

• CME: Published its proposed approach for the preemptive conversion of USD LIBOR cleared swaps.

In its latest Rates Recap, the CME notes that "SOFR options now capture 46% of Eurodollar options volume".

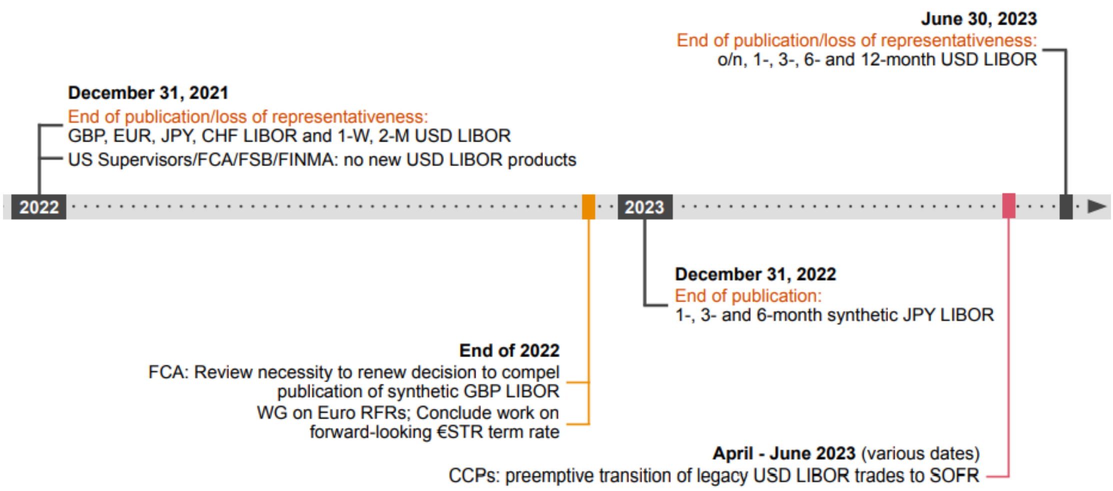
• Refinitv: Announced it would begin publication of fallback rates based on Term SOFR in September.

• Fannie Mae: Published an updated LIBOR Transition Playbook, in collaboration with Freddie Mac. Fannie Mae is also asking servicers to review legacy LIBOR transition notes for non-standard contract provisions.

• SOFR Academy: Notified the Fed of the upcoming official launch of across-the-curve credit spread indices.

• AFX: The American Financial Exchange published a research note on Ameribor's performance amid recent Fed interest rate increases.

LIBOR transition target dates



Working Group on Euro Risk-Free Rates - 17 June Meeting Minutes; Hybrid Conference of the Working Group on Euro Risk-Free Rates Friday, 17 June 2022 (15:00-17:00 CEST)

Summary

a. Introductory remarks, approval of the agenda and obligations of the working group members under competition law Mr James von Moltke (Chair) opened the call. He welcomed all the members of the Working Group (WG) to the second WG meeting of 2022 and the first hybrid meeting (with both in-person attendees and attendees connecting virtually) under his chairmanship. Mr von Moltke invited Ms Iliana Lani (ESMA) to inform the WG members about some organisational aspects of the meeting. Ms Lani explained to WG members that ESMA, in its capacity as Secretariat, had decided that market infrastructure members1 should not attend the discussion taking place under agenda item 2.
b. The affected market infrastructure members were previously bilaterally informed of such decision and no objections were raised. Ms Dominique Le Masson (BNP Paribas) informed the members of the WG that she will also recuse herself from the discussion taking place under agenda item 2. Mr von Moltke then mentioned that the €STR Taskforce has been active since the last WG meeting (on 2 March 2022) with a number of conference calls, the outcome of which will be presented under agenda item 3. Mr von Moltke thanked all of the WG members who contributed to the work of the €STR Taskforce. Mr von Moltke also made reference to the recent meeting of the Alternative Reference Rates Committee that highlighted that in the US the transition from USD LIBOR to SOFR use has become well established with the strong progress made in Q1 2022. Mr von Moltke noted that ISDA will present updated data on the transition to risk-free rates in the EU under agenda item 5.
c. Mr von Moltke informed WG members that the minutes of the previous WG meeting (on 2 March 2022) had been already approved and published. He reminded WG members of the agenda scheduled for today's meeting:

   1. Introductory remarks, approval of the agenda and obligations of the working group members under competition law
   2. Update by potential administrators of €STR-based forward-looking term structures
   3. Update by the €STR Task Force
   4. Update by the European Commission on the possible GBP LIBOR + JPY LIBOR designation
   5. ISDA market data presentation on the transition to RFR/€STR
   6. AOB

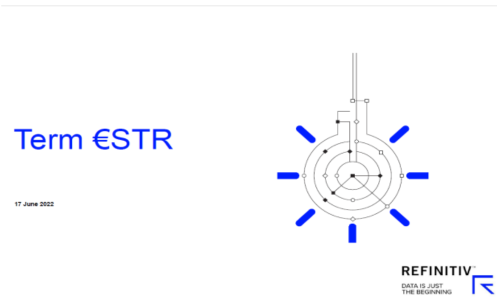
d. Finally, Mr von Moltke reminded the members of the WG of their obligations under EU competition law, as described in the guidelines on compliance with EU competition law published on the ESMA's website3.

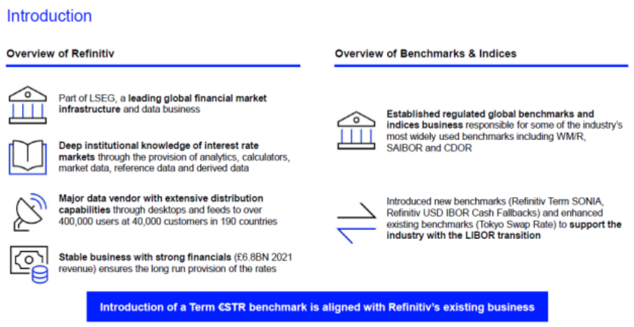
2. Update by potential administrators of €STR-based forward-looking term structures

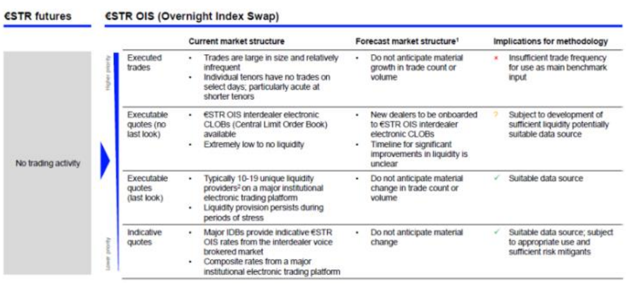
- Mr von Moltke gave the floor to Mr Jacob Rank-Broadley, Mr Robert Walton and Ms Shirley Barrow of Refinitiv to provide an update on the development of term €STR by Refinitiv.
- The slides presented by Refinitiv representatives are included in Annex 1 of this document.
- After the presentation, Mr von Moltke opened the floor to questions. A member asked Refinitiv representatives what Refinitiv status vis-à-vis the EU Benchmarks Regulation was. Ms Shirley Barrow replied that before Brexit, Refinitiv was authorised under the EU Benchmarks Regulation due to the authorisation granted by the UK FCA. Refinitiv is now building up its presence in the EU and considering the best option to be registered under the EU Benchmarks Regulation before the end of the applicable transitional period (on 31 December 2023).

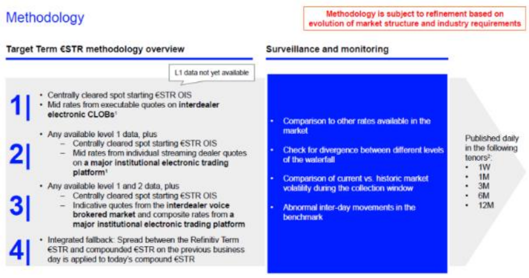
- Mr von Moltke thanked Refinitiv representatives for their presentation, invited them to leave the meeting, and handed over to Mr Jean-Louis Schirmann of EMMI and Mr Timothy Bowler of IBA to deliver the joint EMMI-IBA presentation on the development of term €STR. The slide presented by the EMMI and IBA representatives are included in Annex 2 of this document.
- After the presentation, Mr von Moltke opened the floor for questions. A member asked the presenters which entity owns the methodology of term €STR, to which Mr Jean-Louis Schirmannexplained that EMMI is the administrator of term €STR, since it is the owner of the methodology of term €STR and has the control over the provision of the benchmark, whereas IBA is the calculation agent of this rate.
- Mr Jean-Louis Schirmann added that since EMMI is a benchmark administrator authorised in the EU, term €STR will be a benchmark provided under the EU Benchmarks Regulation. Mr von Moltke thanked both Mr Jean-Louis Schirmann of EMMI and Mr Timothy Bowler of IBA and invited them to leave the meeting.

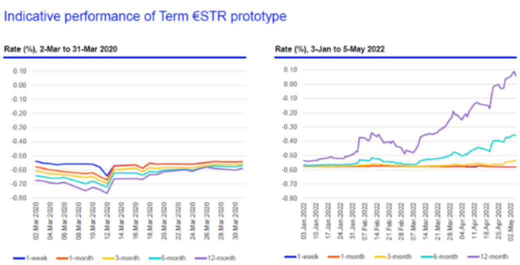
Annex 1 – Refinitiv presentation under item 2 of the agenda.

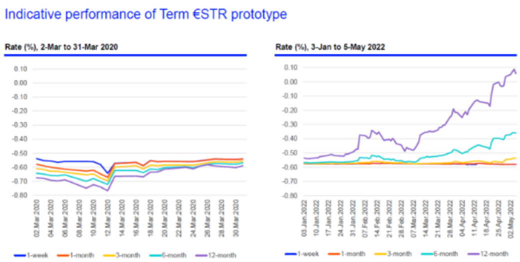












Implementation approach and timeline

Project approach and status

Topic	Approach	Status / next steps
Data licensing	• Extend existing license agreements with input data providers for use of €STR OIS rates in Term €STR benchmark	• Where data is available – Satisfactory completion of sample data review – Contract negotiations in progress; leverage existing agreements as precedent • Where data is not available: Awaiting liquidity development
Data integration	• Extend existing technical connectivity from data providers to Refinitiv benchmark calculation engine	• Integrated fallback data already connected • Validate existing connectivity is suitable by reconfirming data model and technical interface • Implement levels 1-3 input data integration
Technology and product	• Leverage existing term rate solution	• Implement methodology rules into calculation engine • Implement surveillance and monitoring rules into surveillance tool • Enable Term €STR on terminals, feeds & website • Distribute Term €STR via outbound partners
Operations	• Leverage established content operations team	• Test calculation engine output behaviour • Document processes • Complete content operations training

Forecast timeline

- Provision of Term €STR benchmark is contingent on data availability
- Development timeline for sufficient liquidity on interdealer electronic CLOBs is unclear and likely to benefit from official sector support
- Creation of freely available prototype rate: Approx. 3 months
- Industry testing of prototype, refinement of methodology and Approx. 6 months

Annex 2 – EMMI presentation under item 2 of the agenda.

The European Money Markets Institute | ICE Benchmark Administration

Developing a forward- looking term rate for €STR

Update to the Euro RFR WG on 17 June 2022
Jean-Louis Schirmann, CEO, The European Money Markets Institute
Timothy J. Bowler, President, ICE Benchmark Administration

The EMMI/IBA approach

- The European Money Market Institute (EMMI), as administrator of the €STR Forward-Looking Term Rate (EFTERM), has appointed ICE Benchmark Administration (IBA) as calculation agent.
- EFTERM benefits from each party's unique position and experience:
  - EMMI's well-established position as the authorised administrator of critical benchmarks in the eurozone and broad experience in governance and oversight
  - IBA's extensive experience in administrating and calculating critical benchmarks and forward-looking term rates for SONIA and SOFR

EFTERM Methodology

- 3-Level "Waterfall" Methodology (similar to Term SONIA and Term SOFR):
  - Level 1: snapshots of executable b/o prices and volumes of eligible €STR-linked OIS (as recommended by the Euro RFR WG) with standard market size are used to build synthetic order book
  - Level 2: same as Level 1, but built on eligible €STR-linked OIS dealer-to-client b/o prices and volumes
  - Level 3: eligible €STR-linked futures settlement prices and historical €STR settings are used to determine the rate, taking into account ECB rate change dates.

EFTERM Input Data

- Level 1: *potential* sources BGC Partners' BGC Trader, TP/ICAP i-Swap, Tradition Trad-X (in development)
- Level 2: current source Tradeweb (continuously available since Q4/2021)
- Level 3: ICE €STR 1M futures contracts (continuously available since Q1/2022)

Developments so far

- Input Data:
  - €STR Inter-dealer swaps market is still developing. Once deep in liquidiy EMMI and IBA expect to receive level 1 data.
  - Dealer-to-client OIS prices and volumes have been available since Q4/2021.
- Rate calculation:
  - IBA has been calculating daily rates based on available input data on a production-ready platform since start of 2022.
  - EMMI has concluded input data verification and back-testing on available data.
  - EMMI started publishing EFTERM indicative "beta" rates for testing and feedback purposes in early June 2022.

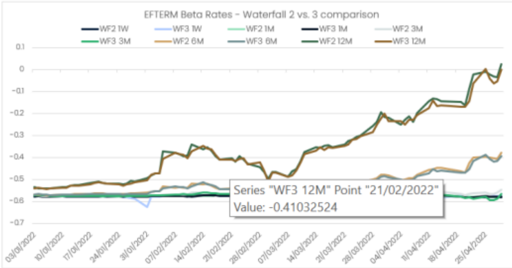
EFTERM Publication

- EFTERM will be published daily (Target 2) for all current EURIBOR® tenors (1 week, 1 month, 3 months, 6 months, 12 months).
- EMMI will distribute EFTERM as a potential fallback rate to EURIBOR® to all its subscribers through the established vendor distribution channels.

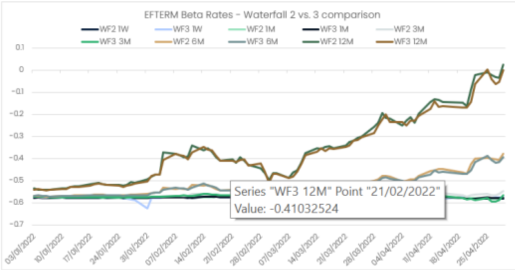
EFTERM Beta Rates

- IBA is able to calculate EFTERM beta rates using available input data for at Waterfall Levels 2 and 3. Tradeable quotes for the first Level of the Waterfall are not yet sufficiently available. EMMI and IBA propose to include Level 1 input data in the calculation process when eligible prices and volumes are available and sufficiently tested.
- EFTERM beta rates calculated over the testing period Q1/2022 have shown close alignment of the available Waterfall Levels, including when rate hike expectations started to influence the longer tenors more notably (next slides):

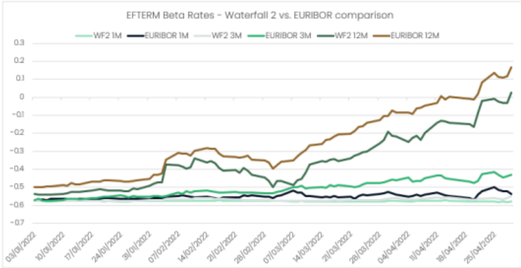
EFTERM Beta Rates



EFTERM Beta Rates



EFTERM Beta Rates



EFTERM Beta Rates

- EFTERM beta rates are published for information and feedback purposes every Monday for the preceding week, available on:

www.emmi-benchmarks.eu

Next steps

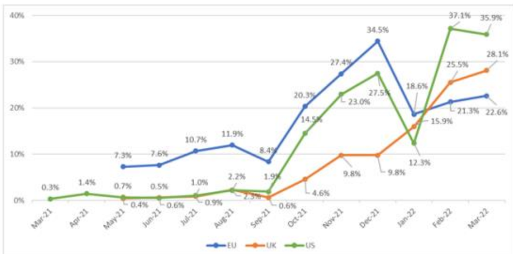
- EMMI will continue to publish EFTERM beta rates.
- Go-live as a benchmark for use in financial contracts is aimed for October 2022.
- EMMI expects to launch a two-month public consultation in early July. A feedback statement is expected to be published end-September and the final methodology will be made available.
- In the meantime: surveillance will be finetuned, and governance documentation and procedures will be finalised for the benchmark launch date.

Executive Summary

- ISDA has conducted the analysis of euro- and US dollar-denominated IRD by underlying reference rates to show the adoption of €STR and SOFR in different regions from March 2021 to March 2022.
- ISDA has analyzed three IRD data sets: transactions reported in the EU, transactions reported in the UK, and transactions reported in the US. All data sets include both cleared and non-cleared transactions.
- In the EU, the percentage of trading activity in €STR reached 22.6% of total euro-denominated IRD traded notional in March 2022 compared to 7.3% in May 2021. In the UK, €STR-linked traded notional increased to 28.1% from 0.4% over the same period. In the US, the percentage of trading activity in €STR increased to 35.9% of total euro-denominated IRD traded notional in March 2022 compared to 0.3% in March 2021.
- In the EU, the percentage of trading activity in SOFR reached 29.9% of total US dollar-denominated IRD traded notional in March 2022 compared to 7.0% in May 2021. In the UK, SOFR-linked traded notional increased to 20.0% from 1.1% over the same period. In the US, the percentage of trading activity in SOFR increased to 35.4% of total US dollar-denominated IRD traded notional in March 2021.

2 ISDA Safe, Efficient Markets

€STR Traded Notional as % of EUR-denominated IRD Traded Notional by Region



Source: DTCC SDR, European APAs and TVs
EU and UK data is available only starting in May 2021

3. Update by the €STR Task Force

- Mr von Moltke handed over to Mr Alex Wilson (Chairs Office and Chair of the €STR Task Force) to update WG members on the outcome of the work of the €STR Task Force so far. Mr Wilson started by reminding WG members that – in line with the WG ToR – the WG should aim to foster the use of €STR in a diverse range of financial products. Mr Wilson also highlighted the importance of increased adoption of EURIBOR fallback provisions for both contracts inside and outside the scope of the EU Benchmarks Regulation.
- Mr Wilson shared with the WG the outcome of the activity performed and discussions held by the Task Force since its set up following the previous WG meeting in March 2022. In particular, the focus has been on the adoption of EURIBOR fallbacks by market participants and on assessing issues related to the use of €STR as part of a multi rate environment for Euro. The work of the Task Force is still ongoing and the WG discussion was intended to take stock of the WG's preliminary view on the opportunity to issue future recommendations on these matters, including possible statements from EU authorities supporting the WG recommendations.
- Whilst noting that the Task Force is still exploring in which form and content the WG could issue further recommendations in the future, Ms Lani noted that the Task Force's call for a joint statement by EU public authorities confirming support on specific topics or delivering particular messages may not find the desired support within the public institutions. She said that there would not be added value in a public statement just reminding of the recommendations published in 2021 without any additional material content. Additionally, Ms Lani mentioned that ESMA encourages the €STR Task Force to focus its efforts also on a document
- 3 exploring how €STR can be used in new product(s) and providing practical guidance to market participants. Mr Thomas Vlassopoulos (ECB) echoed the views of Ms Lani, confirming that, at this stage, the ECB did not see merit in a public statement by the public authorities reiterating their support for the EURIBOR fallback recommendations of 2021.
- A member of the WG mentioned that, even a simple reminder, when issued by public authorities, can be effective in influencing the behavior of market participants. Ms Lani replied that the public sector already expressed full support for the WG recommendations on EURIBOR fallbacks which were published in May 2021 and will continue to do so via public speeches and participation in conferences.

4. Update by the European Commission on the GBP & JPY LIBORs designation

- Mr von Moltke handed over to Mr Rik Hansen (European Commission) for him to provide the latest update on the European Commission's proposed way forward with regards to a possible designation of a statutory replacement rate for both GBP & JPY LIBORs. Mr Hansen told WG members that the European Commission is working on developing a complete and exhaustive picture on the usage of these rates while awaiting the consultation from the UK FCA.
- Mr Hansen explained that, despite the various data collection exercises finalised by the WG or by the Expert Group of the European Securities Committee (EGESC), developing a clear and comprehensive picture of the market's exposures to GBP & JPY LIBORs in the EU still proved difficult. He mentioned that the UK FCA already confirmed that the synthetic JPY LIBOR will be discontinued at the end of 2022, while the future of the existing settings of synthetic GBP LIBOR will depend on the consultation that the UK FCA is about to publish. Therefore, Mr Hansen explained that the European Commission would not go ahead with an urgent designation but will keep monitoring the market developments, recalling WG members that every decision by the Commission regarding the designation of a statutory replacement rate will have to be subject to a public consultation. Mr von Moltke thanked Mr Hansen for the details he provided and the WG members that have provided input to the WG data collection exercises.

5. Presentation by ISDA on the market transition to RFR/€STR

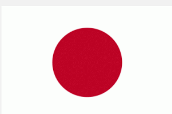
- Mr von Moltke handed over to Ms Olga Roman (ISDA) to present a variety of datasets aiming at providing members with the latest trends regarding the use and adoption of €STR and other risk-free rates. Ms Roman walked members through the presentation that is included in Annex 3 of this document.
- Ms Roman explained that ISDA had analysed three data sets covering: transactions reported in the EU, transactions reported in the UK, and transactions reported in the US. All data sets include both cleared and non-cleared transactions.
- She explained that in the EU, the percentage of trading activity in €STR reached 22.6% of total eurodenominated IRD traded notional in March 2022 compared to 7.3% in May 2021. In the UK, €STR-linked traded notional increased to 28.1% from 0.4% over the same period. In the US, the percentage of trading activity in €STR increased to 35.9% of total euro-denominated IRD traded notional in March 2022 compared to 0.3% in March 2021. Ms Roman also provided the same type of data in relation to trading activity in derivatives referencing SOFR in the EU, the UK and the US.
- Mr von Moltke thanked Ms Roman for the presentation, highlighting the encouraging signals of €STR adoption, and opened the floor for questions. A member asked whether ISDA would be able to further breakdown the maturities of the derivatives in the presentation, to better understand whether there is more liquidity in short- or long-term products. Ms Roman explained that there had been a trend towards longer maturities in the US market and mentioned that ISDA will consider including related metrics in next dataset. 4 6. AOB: i) Raise awareness to upcoming USD LIBOR usage survey Mr von Moltke informed the WG that the Secretariat and the Chair's office are working on a survey on USD LIBOR. The survey, to be shared with WG members during the summer, is intended to assess exposures to USD LIBOR as well as identify possible issues and areas of WG's intervention ahead of the USD LIBOR cessation in June 2023. The outcome could also be useful for the European Commission in the context of statutory replacement decisions. ii) Consultation by EU Commission on BMR third country regime Mr von Moltke asked participants if there was any other AOB.
- Mr Rik Hansen mentioned that the European Commission recently published a targeted consultation on the regime applicable to the use of benchmarks administered in a third country4. He mentioned that the consultation will be open until the 12 August 2022 and that the views of benchmarks users are particularly welcomed. Mr von Moltke thanked all the participants and said that the next WG meeting would be held on 14 September 2022.
- 1 List of members excluded by ESMA from Item 2: BME Clearing, Eurex Clearing, ICE Futures Europe, LCH Group, EMMI.
- 2 https://www.esma.europa.eu/sites/default/files/library/esma81-459-57_-_eurwgrfr_-_2_march_meeting_minutes.pdf 2
- 3 https://www.esma.europa.eu/sites/default/files/library/eu_competition_law_guidelines_for_the_working_group_on_euro_riskfree_rates.pdf

FRB Proposes Rule to Implement the Adjustable Interest Rate Act; *The Federal Reserve Board ("FRB") proposed rules to implement the Adjustable Interest Rate ("LIBOR") Act. The proposed rules would establish benchmark replacements for contracts that reference certain tenors of U.S. dollar LIBOR.*

- The proposal follows from the LIBOR Act in setting forth circumstances in which a Board-selected replacement will generally apply for contracts that (i) contain no fallback provisions, (ii) contain fallback provisions that do not identify a specific benchmark replacement or determining person or (iii) where a determining person is specified but has not made a selection by the earlier of the replacement date or the contractual deadline. For this purpose, fallbacks that reference LIBOR or polling for interbank lending rates are disregarded.

- The proposal sets forth the following rates as the "Board-selected Benchmark Replacements," in each case with relevant statutory spreads:
- Derivatives: Fallback Rate (SOFR);
- Cash Transactions - Consumer Loans: "simple" SOFR for overnight LIBOR and CME Term SOFR for other tenors;
- Cash Transactions - GSE Contracts: "simple" SOFR for overnight LIBOR and 30-day Average SOFR for other tenors; and
- Cash Transactions (other than Consumer Loans and GSE contracts): "simple" SOFR for overnight LIBOR and CME Term SOFR for other tenors.
- The proposal does not include any additional required "conforming" changes to address issues, but clarifies that for non-consumer loans, a "calculating person" retains the ability to make relevant changes, consistent with the LIBOR Act.
- **Comments on the proposal are due 30 days after publication of the proposal in the Federal Register.**
- Given the directives of the statute, the proposal largely follows what might have been expected based on ARRC recommendations. (The section of the proposal outlining the statute is worth reading - and relatively brief - for those unfamiliar with the LIBOR Act.)
- Two areas of discretionary authority are notable.
    - First, the FRB declined to provide any specific recommendations for conforming changes. Calculating persons will continue to have discretion as provided for in the statute, but there will be no governmental "baseline" to look to for this purpose.
    - Second, the Board raises questions, but makes no formal proposal, as to whether to address the circumstance in which publication of "synthetic" SOFR could result in certain contracts using that rate before moving to a specified fallback. (Also highlighted in the recently-published ARRC playbook.)
- This could arise, primarily, if a contract specified fallbacks, but did not have a trigger based on "representativeness." The Board indicated that it is considering whether to provide for LIBOR replacement for these contracts even if synthetic LIBOR is published. While the Board indicated that such a rule "may promote the purposes of the LIBOR Act," it also said that it "may be prudent... to leave these contracts unaffected."

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 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
	Euro Interbank Offered Rate (EURIBOR)	European Money Markets Institute (EMMI)				
	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 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
	Tokyo Interbank Offered Rate (TIBOR)	Japanese Bankers Association TIBOR Administrator (JBATA)				

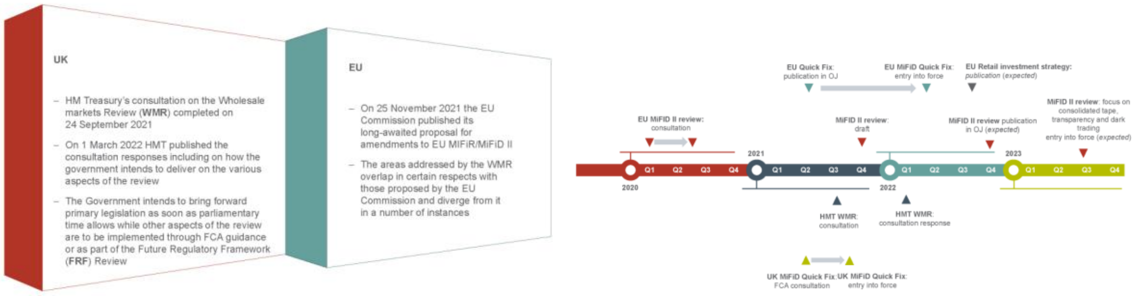
	Euroyen TIBOR	JBATA				ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Kuala Lumpur Interbank Offered Rate (KLIBOR)	Bank Negara Malaysia (BNM)	Malaysia Overnight Rate (MYOR)	Bank Negara Malaysia (BNM)	Financial 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

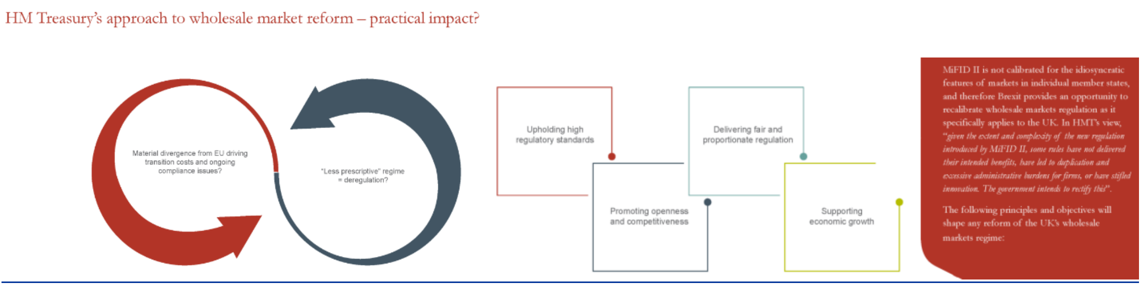
						Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Thai Baht Interest Rate Fixing (THBFIX)	Bank of Thailand	Thai Overnight Repurchase Rate (THOR)*	Bank of Thailand	Steering Committee on Commercial Banks' Preparedness on LIBOR Discontinuation	
	LIBOR	IBA	Sterling Overnight Index Average (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

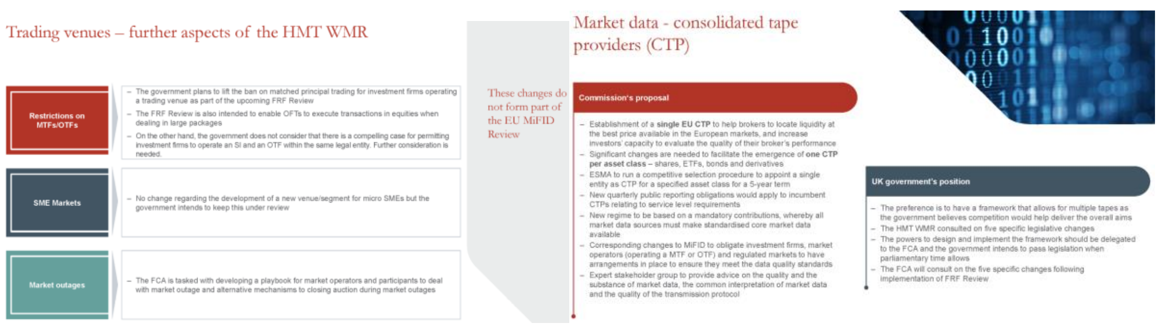
EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

Markets Conduct Regulations







Market data – further changes

Commission's proposal

- MiFIR provides that market operators and investment firms operating a trading venue must make pre and post-trade data available to the public on reasonable commercial basis
- Despite available ESMA Guidelines there are still divergent interpretations of the requirement
- The Commission proposes mandating ESMA to develop RTS to specify content, format and terminology.

UK government's position

- FCA published a feedback statement "Accessing and Using Wholesale Data" on 11 January 2022
- FCA will create further information gathering work and consult on changes to equities and non-equities trade reporting standards over the course of 2022

Equity markets – pre-trade transparency

ESMA recommendation

- Retention of the double volume cap (DVC) but with a number of modifications including the transformation of the DVC mechanism into a single volume cap by deleting the 4% trading venue threshold
- Restricting the use of the reference price waiver to large orders

Commission Proposal

- Replacement of the DVC mechanism with a single volume cap set at 7% of trades that are executed under the reference price waiver or the negotiated trade waiver
- Modifying the reference price waiver so that it is applicable to orders with a size greater than or equal to twice the standard market size (SMS). In addition, a CTP would become an eligible reference price source

UK Government's position

- The government intends to repeal of the DVC, subject to continuing monitoring of the use of dark trading by the FCA
- Reference price systems will be allowed to match orders at the midpoint within the current bid and offer of any UK or non-UK trading venue that offers the best bid or offer, so long as it supports best execution

Equity Systematic internalisers (SIs) - pre-trade transparency

ESMA recommendation(s)

- Increase the minimum quote size to 100% of SMS
- Not to extend the regime to illiquid instruments
- Determine the SMS by reference to average daily turnover rather than average value of transactions

Commission Proposal

- The transaction size threshold (at which an equities SI is no longer required to publish quotes) should be increased to twice the SMS
- Minimum quote size of twice SMS should be introduced
- SIs should be prohibited from matching orders at midpoint where the trade is less than twice the SMS

UK Government's position

- SIs to be allowed to execute client orders at the midpoint the extent to which their use of midpoint execution is consistent with their best execution obligations (legislative change when parliamentary time allows)
- As part of the FRF Review the FCA will take forward the initiative to increase the minimum quote size to a proportion of standard market size (SMS)
- Replace the existing complex quantitative tests with a qualitative test determined by its market activity (legislative change when parliamentary time allows)
- FCA to consult on simplifying the reporting regime for SIs

Equity markets – share trading obligation (STO)

ESMA recommendation

- Clarify the scope of the STO and limit to shares listed in EEA

Commission Proposal

- Clarify the scope of the STO and limit it to shares that are admitted to trading on an EEA regulated market
- Establish an EU official list of shares subject to the STO with the aim of avoiding current ambiguities in the perimeter

UK Government's position

- The government intends to remove the STO to allow firms to trade any shares on an OTC basis

Equity markets – further changes to UK regime

Market making strategy for algorithmic trading

- The requirement for algorithmic trading firms to enter into market making agreements with trading venues when they pursue market making strategies to be removed as part of the FRF Review

Tick size regimes

- **Overseas shares**: FCA to develop rules to allow trading venues to follow the tick size applicable to the primary market of a share, even when that market is overseas
- **New Shares**: FCA to develop rules allow trading venues to establish tick sizes for new shares until sufficiently robust data is available
- **Delegating the tick size regime to venues**: respondents were overwhelmingly against such delegation and the government does not intend to change rules at this stage
- **Future changes to tick size regime** will be delivered through implementation of the FRF Review

Fixed income and derivatives markets – derivatives trading obligation (DTO)

These changes are not part of the EU MiFID Review

ESMA recommendation(s)

- Full alignment between the EMIR clearing obligation, as amended by EMIR Refit, and DTO provisions

Commission Proposal

- Aligning the DTO under MiFIR with the clearing obligation for derivatives under EMIR Refit
- Introduce a stand-alone suspension mechanism to enable the Commission to suspend the DTO for certain investment firms acting as market makers with non-EEA counterparties, provided certain conditions are met

UK Government's position

- Primary legislation (where parliamentary time allows) to:
  - Realign the scope of the DTO and EMIR clearing obligation
  - Expand the grounds for an exemption from the DTO beyond portfolio compression to all post-trade risk reduction services
  - Retain the FCA Temporary Transitional Powers (TTP) to modify or suspend the DTO under certain conditions

UK specific topic: commodity derivatives

	Legislative change when parliamentary time allows	No change yet
Scope of the regime: Definition of commodity derivative		✓
Scope of the regime: Economically equivalent OTC contracts should not be automatically within scope of the commodity derivatives position limits regime	✓	
Position limits: Revoke the requirement for position limits to be applied to all exchange-traded contracts and will transfer the setting of position limits from the FCA to trading venues	✓	
Position limit exemptions: Creating position limit exemptions for (i) all liquidity providers, and (ii) investment firms offering risk-mitigation services to clients	✓	
Position reporting: no amendments to the regime		✓
Ancillary activities test (AAT) (which helps to determine whether firms participating in commodity derivatives markets need to be regulated) – current ancillary activities test to be revoked; the "commodity dealer exemption" to be re-introduced; and the annual notification requirements to be removed	✓ Secondary legislation under existing powers	

Fixed income and derivatives markets – transparency

Changes were made to the commodity derivatives regime in the EU by the MiFID Quick Fix

ESMA recommendation

- Streamline the deferral regime with a simplified system based on volume masking and full publication after two weeks, and by removing the supplementary deferral options left to NCAs
- Pre-trade SSTI waiver and the post-trade SSTI deferral should be deleted

Commission Proposal

- Simplify and harmonise post-trade deferrals for non-equities (possibility to defer the publication of the price of transactions until the end of the trading day, or the volume of transactions for a maximum of two weeks)
- ESMA tasked with developing RTS to determine whether deferrals should actually be as short as 15 minutes
- Removal of MS discretion to defer post-trade reports for non-equities (except re sovereign debt)

UK Government's position

- HMT consulted on simplifying the deferral regime and reducing the number of deferrals that are available
- The recalibration of the regime to be delegated to the FCA when parliamentary time allows
- The specific matters, including scope, liquid market determination and pre and post-trade transparency will be considered and taken forward by the FCA

Transaction reporting and reference data requirements

ESMA recommendation(s)

- ESMA published report on amendments to the MiFIR transactions and reference data reporting regimes in March 2021
- Report suggests various legislative amendments with the aim of simplifying the current reporting regimes whilst ensuring quality and usability of the reported data

Commission Proposal

- ESMA to be able to develop level 2 legislation defining the date by which transactions must be reported, or reference data submitted. In doing so ESMA should take into account international standards
- ESMA to prepare a feasibility report on greater alignment with transaction reporting under EMIR and SFTR

UK Government's position

- HMT asked for feedback on possible duplicative reporting requirements and mixed responses as to whether action should be taken to mitigate these
- Following a recent FCA consultation, SFTs with ESCB and BoE as counterparty are no longer be reportable under UK regime. SFTs with ESCB as counterparty will be reportable under UK SFTR only and SFTs with BoE as counterparty no longer reportable
- Further work required, some of which has already begun with FCA CP suggesting OTC derivatives should be identified using a UPIs and suggesting changes to TOTV concept for derivatives

Best execution reporting

Commission's proposal

- Deleting the RTS 27 best execution reporting requirement from MiFID following the temporary suspension of the obligation under the EU MiFID II "quick fix" amendments
- Changes to RTS 28 are not part of the Commission's proposal, but ESMA published a report on best execution on 16 May 2022 that suggests improvements to RTS 28

UK Government's position

- Best execution reporting did not form part of the HMT WMR since it had already been dealt with as part of the UK "quick-fix"
- Reference to RTS 27 and 28 obligations were deleted from the handbook as of 1 December 2021

EU specific topic: Prohibition of payment-for-order-flow (PFOF)

PFOF has effectively been banned in the UK and is thus not part of the Wholesale Markets Review

- ESMA statement in July 2021 reminded firms that the receipt of PFOF triggers a number of MiFID II obligations aimed at ensuring that they act in their clients' best interest when executing their orders
- Commission proposed prohibiting investment firms from offering PFOF with the expectation that, in the absence of PFOF, retail orders will be sent to a pre-trade transparent market for execution
- Ongoing debate regarding various aspect of the proposed ban with many regarding the proposal as ineffective and leaving significant gaps
- There are also different views in Member States, with diverging opinions between NCAs as to whether PFOF produces better or worse outcomes for clients

EU specific topic: dealing on own account by means of DEA

The scope of the dealing on own account exemption does not form part of the Wholesale Markets Review

Broadening the existing dealing on own account exemption under MiFID

- Currently dealing on own account by means of DEA is licensable under MiFID even if no other investment services are provided
- **Dealing on own account by means of direct electronic access (DEA)**
- **The Commission proposes to remove that licence requirement to the extent the firm does not provide or perform other investment services**

Outlook

01 **UK**: The WMR has completed and those elements requiring legislative change will make their way through parliament **as soon as parliamentary time allows.**
Other changes are implemented through the FRF Review (the second consultation closed in February 2022 with responses yet to be published) and some are for the FCA to take forward under its existing powers.

02 **UK**: The legislative changes include some of the measures seen as key to giving the UK a competitive edge, in particular, removing the STO and DVC to give firms greater choice about where they can trade and therefore get the best prices for investors.

03 **EU**: The Commission proposal modifies the STO and DVC but retains the concepts. They will likely feature prominently in discussions while the proposal makes its way through the EU legislative process. The changes in the final review package are due to apply from **Q2/Q3 2023.**

04 **EU**: Further changes to EU MIFID may be proposed in 2022 as part of the retail investment strategy (due to be published in Q3 2022) and could include changes to the investor categorisation framework.

Brexit Regulations

ESG & Disclosures

FSOC describes climate progress. *Yesterday, the Financial Stability Oversight Council (FSOC) met to discussprogress made since the publication of its October 2021 Report on Climate Related Financial Risk.*

- Following the meeting, FSOC released a fact sheet outlining actions its member agencies have undertaken in the last nine months. It notes that the FSOC's Climate-related Financial Risk Committee (CFRC) has been meeting regularly since February 2022 to share information and coordinate policies.
- It highlights several advances in climate-related policy including: (1) the SEC's proposal of disclosure requirements for public companies, funds and advisers; (2) the National Association of Insurance Commissioners' updated Climate Risk Disclosure Survey; (3) the CFTC's request for information on climate-related risk; and (4) the OCC and FDIC's proposed risk management principles.

The FRC and FCA find significant progress, but further improvement needed under new climate disclosure rules; *On 29 July 2022, the Financial Reporting Council (FRC) and Financial Conduct Authority (FCA) published two reports which found that premium listed companies have made significant steps forward in the quality of climate related information provided in their financial reports, but further improvements are needed. The first report provided a review of TCFD-aligned disclosures by premium listed commercial companies and the second report provided a CRR thematic review of TCFD disclosures and climate in the financial statements.*

- The FRC reviewed a sample of 25 premium listed companies more impacted by climate change and found that companies were able to provide many of the TCFD disclosures expected by the FCA's Listing Rules and in relation to climate-related reporting in financial statements, marking a significant improvement in comparison with previous years.
- However, the FCA identified several areas where companies will need to raise the quality of their disclosures in future years, including:
  - Providing more granular information about the effect of climate change on different business sectors and geographies.
  - Balancing the discussion of climate related risks and opportunities appropriately.
  - Linking climate-related disclosures to other risk management and governance processes.
  - Explaining how they have decided which climate-related information should be disclosed.
  - Explaining more clearly how the effects of different global warming scenarios and their own net zero commitments may affect the valuation of their assets and liabilities.

Elisabetta Cornago article in Oxford Institute for Energy Studies Energy Forum looks at: Russia's War On Ukraine And Potential Impacts On The Eu Emissions Trading System; OIES Energy Forum: https://lnkd.in/gFaDu7dr

- In response to russian invasion of ukraine, the european commission and national leaders have called for an acceleration of the EU's planned shift from fossil fuels to renewables
- This context is affecting ongoing discussions around the reform of the EU Emission Trading System EUETS
- Commission estimates that implementing the REPOWEREU plan would require investments of around €300 billion by 2030 and bulk of these funds would be reoriented from unused loans from Recovery and Resilience Facility
- But financing REPOWEREU investments is bound to have a direct impact on the EU ETS as the Commission has proposed to raise €20 billion by auctioning emission allowances currently held in the Market Stability Reserve (MSR) which currently functions based on predefined rules and thresholds
- Reaching for allowances to finance part of the REPOWEREU investments is a dubious approach that poses several risks for EUETS
- It is unclear how this auction could be organized without disrupting the carbon market as releasing more allowances risks reducing the carbon price at a time when its stability and direction of travel are ever more critical to drive investments in decarbonization
- This may also undermine the no-discretion principle on which the MSR is founded hurting the attractiveness of carbon market in the longer term
- EU commission also proposed to create a new emissions trading system (ETS2) to cover road transport and building heating as of 2026
- Critiques of extending emissions trading to consumer-oriented sectors complain about the distributional impacts of higher energy prices
- Author argues that this is a valid critique but it fails to recognize that making good use of revenues from ETS2 would make the scheme progressive

THE OXFORD INSTITUTE FOR ENERGY STUDIES

June 2022: ISSUE 132

forum

A QUARTERLY JOURNAL FOR DEBATING ENERGY ISSUES AND POLICIES

RUSSIA'S WAR ON UKRAINE AND POTENTIAL IMPACTS ON THE EU EMISSIONS TRADING SYSTEM

Elisabetta Cornago

Russia's invasion of Ukraine in February 2022 has massively raised energy prices that were already under pressure as the global economy recovered from the pandemic shock. The price of natural gas in Europe has increased over three-fold in the past year, peaking in early March. The price of crude oil is up 60 per cent from a year ago. Carbon prices within the EU Emissions Trading System (ETS) are hovering around €90 per tonne of CO_2, getting close to pre-invasion levels after a momentary dip.[1]

The European Commission and national leaders have called for an acceleration of the EU's planned shift from fossil fuels to renewables, to cut both emissions and the Kremlin's revenues from energy exports to the EU. This has resulted in sanctions on imports of coal and seaborne oil from Russia. However, there are disagreements on the longer-term policies needed to accelerate decarbonization and energy independence: some members of the European Parliament and member states are calling for the European Commission's plans to expand carbon pricing to be watered down or outright shelved. This article discusses how this context is affecting ongoing discussions around the reform of the EU ETS.

Energy policy after Russia's invasion of Ukraine

The energy price spike and Russia's invasion of Ukraine have prompted a range of policy responses in Europe, to address concerns of energy affordability and energy security and to accelerate energy decarbonization.

First, national governments have rushed to support households and businesses facing the drastic increase in energy prices with cuts to VAT and energy taxes, lump-sum transfers, caps on electricity retail prices, and exceptional taxes on windfall profits of energy companies. More recently, governments have extended price-mitigating measures to automotive fuel at the pump.

Second, Europe has come to face its dependency on Russian energy imports. In 2019, 41, 27, and 47 per cent of EU imports of gas, oil, and coal came from Russia. In some countries this dependency is even higher: about half of natural gas imports to Germany and Italy come from Russia, while this is above 75 per cent for member states such as Bulgaria, Hungary, and Austria.[2]

Green bond premium fading as supply increases As more green bonds come to market and bond buyers become more sophisticated in their evaluation of them, the so-called"greenium," with lower borrowing costs for environmental, social and governance-linked bonds, is diminishing. A report from the Association for Financial Markets in Europe shows that the greenium has declined from more than nine basis points in 2020 to around one or two basis points this year. Financial Times

Oxford Institute for Energy Studies Energy Forum: Article 6 And Voluntary Carbon Markets

👉 Link to OIES Energy Forum: https://lnkd.in/eUtp-FM7

- Completion of the rulebook for article6 of the Paris agreement is a necessary step towards building a robust framework in which participants can use collaborative approaches and a market-based mechanism to promote climate and sustainable development goals
- There is widespread expectation that the Article 6 rulebook will create the conditions for effective and robust international carbon markets to thrive including continued significant growth in private sector investments through voluntary carbon offset projects
- However there are still some uncertainties surrounding the wider implications of Article 6 for carbon markets
- Issues of the diversity of carbon credits available for investors and uncertainty faced by investors when investing and trading on projects and their underlying credits as well what corporations can claim by purchasing these different carbon offsets
- Participants in voluntary carbon market vcm will be closely examining the implications for investors in terms of balancing investments in corresponding adjusted versus non-corresponding adjusted credits and accessing high quality projects including carbon removal credits
- They will also be considering options to manage some of the risks associated with governments' authorization processes, how corresponding adjustments are applied, and the governance frameworks in place, and assessing the financial and reputational risks of some countries not being able to meet their Nationally Determined Contributions while engaging in large transfers of internationally transferred mitigation outcomes itmos
- Various supervisory efforts already underway to provide more clarity for users of these markets. These include the UNFCCC Article 6 Supervisory Body (scheduled to meet twice in 2022), the Taskforce for Scaling Voluntary Carbon Markets, the Integrity Council for Voluntary Carbon Markets, the Voluntary Carbon Market Integrity Initiative, and the various accreditor organizations
- Also the UN Secretary General has recently launched a high-level expert group with the task of assessing current standards and definitions for setting net-zero targets by non-state actors
- There is hope that as rules, guidance, and frameworks from regulated and market-led initiatives consolidate this would create the regulatory certainty to ensure the environmental integrity that investors seek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A QUARTERLY JOURNAL FOR DEBATING ENERGY ISSUES AND POLICIES

ARTICLE 6 AND VOLUNTARY CARBON MARKETS

Bassam Fattouh and Andrea Maino

In contrast to the top-down approach to setting climate and emissions targets implemented under the Kyoto Protocol, the Paris Agreement adopts a bottom-up approach in which each country sets out the mitigation contributions it pledges to undertake to reduce its emissions. Specifically, each ratifying party must submit and communicate a Nationally Determined Contribution (NDC) describing its mitigation contributions and climate actions. To achieve their NDCs, many countries have included the use of 'cooperative approaches'.

Article 6 of the Paris Agreement recognizes the role of collaboration in countries' efforts to implement their NDCs and to enable them to enhance their climate ambitions by increasing efficiency gains and lowering the marginal cost of abatement while promoting sustainable development and environmental integrity. Particularly, Article 6 establishes cooperative approaches in the form of bottom-up bilateral or multilateral agreements (Article 6.2) and a centralized mechanism (Article 6.4) whereby countries can agree to trade 'emission reductions' or 'mitigation outcomes' (terms explained below) to meet their NDCs as long as a robust accounting framework is applied. By doing so, it formally establishes international carbon markets within the perimeter of the Paris Agreement as essential towards meeting the Agreement goals.

The completion of the Article 6 rulebook and clarifications of related procedures and frameworks are some of the most important outcomes of COP26 in Glasgow. However, despite the important progress, uncertainty remains, especially around the implications of the voluntary carbon markets (VCMs) and what investors could claim by purchasing various types of carbon credits on the VCMs. Various supervisory efforts are already underway to help reduce uncertainty and provide more clarity for users of these markets. Market participants will be monitoring clarifications from a variety of initiatives and bodies. Also, the UN secretary general has recently launched a high-level expert group with the task of assessing current standards and definitions for setting net-zero targets by non-state actors.

It is hoped that these initiatives would provide more clarity about the operation of international carbon markets and enhance their environmental integrity. This, however, is a challenging task as there is an inevitable tension between promoting carbon markets to raise finance on the one hand and regulating and supervising those markets to ensure environmental integrity and sustainable development goals that investors seek on the other. There is also the risk that the proliferation of regulatory and supervisory efforts could add another layer of uncertainty about which regulations will eventually apply.

Another challenge is the nature of the carbon offsets credits to be offered in carbon markets. So far, the dominant form of carbon offsets has been 'avoidance' carbon credits—accounting for around 80 per cent of credits in the VCM, with the remainder made up mostly of 'nature-based solution' credits. But as the Intergovernmental Panel on Climate Change concludes in its latest report, carbon dioxide removal (CDR) technologies that pull carbon out of the atmosphere, such as direct air capture and storage (DACCS), will be essential to meeting the Paris Agreement targets by 2100. Carbon markets will need to continue

Type of ER credits which could be originated following the finalization of Article 6 of the Paris Agreement

Type of framework	Type of credits	Target	Governance	Specific procedures	Examples
Article 6.2	ITMOs	Receiving country NDC	Bilateral agreements	CAs at 'first transfer'	Switzerland and Peru agreement
		International compliance carbon market		CAs occur on host country's choice of authorization, issuance, use/cancellation	ITMOs to CORSIA
		Receiving country VCM			ITMOs to VCM
Article 6.4	ITMOs under Article 6.4 (Article 6.4 ERs)	Receiving country NDC	Centralized governance by Article 6.4 supervisory board	CAs at 'first transfer' Subject to haircuts: • 5% for Share of Proceeds for Adaptation • 2% for Overall Mitigation of Global Emissions • Administrative fees (to be determined)	Bilateral exchange by countries governed by Article 6.4
		International compliance carbon market			Article 6.4 ERs to CORSIA
		Receiving country VCM			Article 6.4 ERs to receiving country VCM
VCM	No authorization needed from host country	Private companies voluntary claims	Independent bodies, transparency initiatives such as the Voluntary Carbon Market Integrity Initiative, standards-setting bodies such as Gold Standard and Verra	Subject to standards and transparency agreements	VCM credits under the Verra registry
Compliance carbon markets	Part of country NDC	Economic sectors under coverage	Country, state level or international body	Regulation	EU-ETS, California ETS, other ETS

Conclusions

- The completion of the Article 6 rulebook of the Paris Agreement is a necessary step towards building a robust framework in which participants can use collaborative approaches and a market-based mechanism to promote climate and sustainable development goals. There is widespread expectation that the Article 6 rulebook will create the conditions for effective and robust international carbon markets to thrive, including continued, significant growth in private sector investments through voluntary carbon offset projects.
- However, there are still some uncertainties surrounding the wider implications of Article 6 for carbon markets.
- This short article has highlighted the potential impact of Article 6 on the diversity of carbon credits available for investors and the uncertainty faced by investors when investing and trading on projects and their underlying credits, as well as for corporations, particularly in what claims they can make by purchasing these different carbon offsets.
- Participants in carbon markets will be closely examining the implications for investors in terms of balancing investments in adjusted versus non-adjusted credits and accessing high-quality projects including carbon removal credits. They will also be considering options to manage some of the risks associated with governments' authorization processes, how CAs are applied, the governance frameworks in place, and assessing the financial and reputational risks of some countries not being able to meet their NDCs while engaging in large transfers of ITMOs.
- Participants will also be monitoring closely the ERs generated under the Article 6.4 mechanism and whether these will gain the credibility and integrity to be permitted to be used in other compliance markets such as the EU ETS, encouraging convergence across markets. There is hope that as rules, guidance, and frameworks from regulated and market-led initiatives consolidate, this would create the regulatory certainty to ensure the environmental integrity that investors seek.

Intercontinental Exchange acquires climate risk analytics firm

FMSB: Spotlight review: ESG Ratings; *On 20 July 2022, the Financial Markets Standards Board (FMSB) published a spotlight review on ESG ratings.*

- The review aims to facilitate additional disclosure and transparency of ESG ratings' methodologies and data collection processes, in order to enhance user understanding of ESG ratings and facilitate comparability across rating providers in wholesale financial markets.

- The review builds on an existing body of work produced by regulators, standard setters and industry participants and it focuses on issues identified in the following areas:
  - Output/objectives of ESG ratings.
  - Data inputs.
  - Methodology.
  - Post-assessment rating process.
- The review highlights:
  - The varied use cases of ESG ratings.
  - Issues associated with limited transparency and market understanding of ratings.
  - The different objectives of rating products.
  - The diversity between products with similar objectives.
  - The impact of controversies on an issuer's ESG rating can be material but little understood.
  - Efforts to increase issuer ESG disclosure are likely to improve the quality of ESG ratings.
  - Greater transparency helps to drive market solutions independent of regulation.

Conduct

Barclays' profit halves after misconduct provisions wipe out trading gains; *British bank set aside £1.3bn to cover litigation related to a mis-selling blunder and improper staff WhatsApp usage*

- Barclays also became the latest bank to take a $200mn provision for US regulatory probes into staff misusing their personal devices — via apps such as WhatsApp — for work communications. Rivals including Credit Suisse, Deutsche Bank and JPMorgan have also taken similar reserves.
- Despite the charges, Barclays said it would pay a dividend of 2.5p a share and buy back another £500mn of its stock, taking the total it has pledged to repurchase this year to £1.5bn.

Former Goldman banker, ex-FBI trainee charged with insider trading; A former Goldman Sachs banker, a former FBI agent trainee, and a technology executive were among those charged on Monday with insider trading in separate schemes that together generated millions of dollars in profits, U.S. prosecutors said. "Each of the defendants charged today corrupted the integrity of the markets," Damian Williams, the top federal prosecutor in Manhattan and one of Wall Street's main cops, told reporters. The U.S. Securities and Exchange Commission (SEC) filed related civil charges over the trading schemes. Among those charged were former Goldman Sachs Vice President Brijesh Goel, who faces six counts of securities fraud and obstruction of justice for allegedly giving a co-conspirator non-public information about potential mergers and acquisitions beginning in February 2017. He now works at private equity firm Apollo Global Management. /jlne.ws/3J8Rj1K

Former U.S. congressman Buyer charged with insider trading ahead of telecoms merger; Former U.S. Congressman Stephen Buyer has been charged with insider trading over purchases of shares in telecommunications company Sprint before it merged with T-Mobile US Inc, prosecutors said on Monday. Buyer, a Republican who represented Indiana in Congress between 1993 and 2011, was working as a consultant to T-Mobile ahead of the 2018 merger, according to an indictment filed by federal prosecutors in Manhattan. "It's always troubling whenever there's someone who has had a position of public authority... engaged in this conduct," Damian Williams, the top federal prosecutor in Manhattan, told reporters. Andrew Goldstein, a lawyer for Buyer, said the former congressman is innocent and that his stock trades were lawful. "He looks forward to being quickly vindicated," Goldstein said in a statement. /jlne.ws/3zvt62m

SEC Files Multiple Insider Trading Actions Originating from the Market Abuse Unit's Analysis and Detection Center; The Securities and Exchange Commission today filed insider trading charges against nine individuals in connection with three separate alleged schemes that together yielded more than $6.8 million in ill-gotten gains. Those charged include a former chief information security officer (CISO), an investment banker, and a former FBI trainee, all of whom allegedly shared confidential information with their friends, who then traded on that confidential information. Each of the three actions announced today originated from the SEC Enforcement Division's Market Abuse Unit's (MAU) Analysis and Detection Center, which uses data analysis tools to detect suspicious trading patterns. /jlne.ws/3OwLThT

SEC Charges Investment Banker and His Friend with Insider Trading; The Securities and Exchange Commission today filed a complaint in federal district court in Manhattan alleging insider trading by investment banker Brijesh Goel and his friend Akshay Niranjan, who was a foreign exchange trader at a large financial institution. The SEC alleges that the two men, close friends from business school, made more than $275,000 from illegally trading ahead of four acquisition announcements in 2017 that Goel learned about through his employment. The complaint further alleges Niranjan purchased call options on the target companies and later wired Goel $85,000 for Goel's share of the proceeds. /jlne.ws/3vfgIAM

SEC reportedly investigating Coinbase crypto listings; The US Securities and Exchange Commission's enforcement unit is investigating whether Coinbase is offering the trading of tokens that it deems require registration as securities, sources say. The probe reportedly started before the SEC accused a former employee of insider trading, and Coinbase's first-quarter earnings report noted that it received subpoenas "for documents and information about certain customer programs, operations, and intended future products, including the company's stablecoin and yield-generating products." Full Story: BNN Bloomberg (Canada)

Binance Fined €3.3M By Dutch For Unauthorized Trading; The Dutch central bank announced Monday that it has fined Binance Holdings Ltd. €3.3 million ($3.4 million) because the cryptocurrency giant offered digital assets services to customers in the Netherlands without being legally registered. Read full article »

- The Dutch Central Bank has fined cryptocurrency exchange Binance 3.3 million euros ($3.4 million) for continuing to offer services to Dutch citizens without required registration, according to a release on Monday.
- De Nederlandsche Bank (DNB) requires virtual asset service providers to complete registration under the Money Laundering and Terrorist Financing Prevention Act.
- The fine was increased from 2 million euros because Binance has "a very large number" of customers in the Netherlands, the bank said.
- The exchange objected to the fine, which was imposed on April 25.
- Binance has submitted for registration, which is being assessed by the central bank.
- In May, Binance received regulatory approval to operate in France and also obtained a provisional approval to operate as a broker-dealer in Abu Dhabi in April.

Want to Stream Full Amount on CboeFX? Be Code Compliant; *CboeFX says that from 1 August, only liquidity providers that have a signed Statement of Commitment to the FX Global Code will be allowed to stream to the firm's Full Amount venues in NY5 and LD4*.

- CboeFX' Full Amount venues aggregate liquidity at a single price to a desired size level and from next month these streams will be from Code adherers only.
- In July 2021, the Global Foreign Exchange Committee published an updated version of the Code with several changes and set an informal deadline of one year for market participants to assess the changes and their levels of adherence before re-committing to the Code. Probably the highest profile changes were to LP disclosures and the recommendation that LPs operate last look with a zero additional hold time. With the GFXC's deadline approaching many – but certainly not all – LPs have updated their disclosures and expressly committed to zero additional hold time, and Cboe's move is likely to ratchet up the pressure a little more.

- The last two months have seen many central banks complete their review and re-commit to the Code, they have also taken advantage of the opportunity to remind market participants that they too are expected to update. This has been accompanied by several liquidity consumers requesting "Code-only" liquidity from their chosen trading platforms.
- This is the latest in a series of moves made by CboeFX to ramp up transparency levels in the FX market, last year it started providing average response times and cost of reject data to customers and then last month started publishing responses times publicly along with percentage of volume executed anonymously on the platform.

Dutch Public consultation on changes to the Suitability Policy Rule 2012; *On 15 July 2022, the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten,* AFM*) and the Dutch Central Bank (De Nederlandsche Bank,* DNB*) published for public consultation a draft Decree amending the Suitability Policy Rule 2012 (Besluit tot wijziging van de Beleidsregel Geschiktheid 2012, the* Amendment Decree*).*

- The Suitability Policy Rule 2012 (*Beleidsregel Geschiktheid 2012*) clarifies what the AFM and DNB understand 'suitability' (*geschiktheid*) to mean and what aspects are taken into consideration when assessing a policymaker of a financial undertaking. Once amended, the policy rule will be cited as the Suitability Policy Rule 2022.
- The AFM and DNB have recently made an inventory of necessary changes to the policy rule, which include changes that are a result of amendments to European and national rules and regulations. Some of the most important changes contained in the Amendment Decree are listed below.

1. Authorised (sub-)agents (*(onder)gevolgmachtigde agenten*) and investment holdings (*beleggingsholdings*) will be added to group B. As a result, policymakers of authorised (sub-)agents, as well as those of investment holdings, will also be screened for suitability with regard to controlled and sound business operations. In particular in relation to authorised (sub-)agents this is deemed necessary because insurers often outsource important processes to authorised (sub-)agents, such as client acceptance, risk management, collection of premium and claims handling. The knowledge and experience of the policymakers of authorised (sub-)agents may have been acquired while working for a non-financial undertaking, but should be related to the nature of the activities of the authorised (sub-)agent.
2. The competences included in the annex to the policy rule, which are used to determine a policymaker's suitability, will be updated and supplemented. According to the regulators these changes are not substantive changes, but serve to clarify the understanding of competences.
3. The scope of group C will be extended to among others advisors and (reinsurance) intermediaries. Some advisors and (reinsurance) intermediaries will fall within the remit of the Digital Operational Resilience Act (DORA), a European regulation with the aim of ensuring that financial-sector ICT systems can withstand security threats. DORA contains specific requirements for the company's management body in terms of ICT risk management. These specific requirements are covered by the suitability requirements in relation to business operations. Therefore, the policymakers of some advisors and (reinsurance) intermediaries will as part of the suitability screening need

to demonstrate that they have knowledge of controlled and ethical business operations in the field of ICT risk management.

- The consultation documents can be downloaded on the AFM's website and on DNB's website. Instructions on how to submit a response are also provided on these websites. The consultation period ends on 15 September 2022.

Upper Tribunal considers the application of the MLRs to a cryptoasset exchange provider and comments on FCA procedures

- Introduction

- The business of Vladimir Consulting Limited (VCL) involved trading in cryptocurrency such as bitcoin on peer-to-peer exchanges which provide a market place for sellers and buyers of cryptocurrency. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) were amended with effect from 10 January 2020 to require cryptoasset exchange providers such as VCL to be registered with the FCA. VCL applied to the FCA in September 2020 and moved into a temporary registration regime pending the determination of its application.
- In March 2022, the FCA refused VCL's application (removing VCL from the list of firms with temporary registration). VCL referred the FCA's decision to the Upper Tribunal and also applied to the Upper Tribunal for a direction that the effect of the FCA's decision be suspended pending the outcome of the reference. By the time of the refusal, VCL was only trading in bitcoin on LocalBitcoins (the Exchange).
- The FCA is required to refuse to register any applicant as a cryptoasset exchange provider if it is not a fit and proper person to carry on that business or if any officer, manager or beneficial owner of the applicant is not a fit and proper person. In making a determination, the FCA must have regard to certain factors including whether the applicant has consistently failed to comply with the MLRs. The FCA considered that VCL had consistently failed to comply with a number of requirements under the MLRs including the requirement to assess, and where appropriate obtain information on, the purpose and intended nature of a business relationship or occasional transaction.
- When making a decision to suspend the effect of an FCA decision, the Upper Tribunal takes into account a number of matters including whether there is a case to answer and whether the suspension would prejudice the interests of persons intended to be protected (which required consideration of whether VCL would carry out its activities on a manner which was broadly compliant with the MLRs).

- Compliance with MLRs

- One of the matters in dispute between VCL and the FCA was whether VCL had a "business relationship" with its customers for the purposes of the MLRs which would require VCL to apply customer due diligence to all transactions (rather than to occasional transactions of €15,000 or more). VCL submitted that the MLRs required an assessment at the time contact with a customer was first established as to whether there was an element of duration to the relationship and that, at the time VCL's customers first made contact, VCL had no expectation that this would be the case. VCL does not create customer accounts and has no contractual relationship with them but merely offers services on an ad hoc basis. In any event, VCL submitted that it did take steps to verify the identity and address of all customers and, in terms of assessing the purpose of transactions, VCL made a reasonable assumption that its customers viewed bitcoin as a store of value, like gold, and that the purpose of customers transacting in cryptocurrency was to increase (by purchasing) or crystallise (by selling) the value represented by the asset.

- The FCA submitted that VCL did expect its relationships with most, if not all, of its customers to have an element of duration pointing out that a number of customers carried out repeat transactions and that VCL was wrong to make assumptions regarding the purpose of transactions but was required to establish each customer's actual intention so as to be able to assess whether the customer posed a risk of money laundering.
- The Upper Tribunal agreed with the FCA commenting that VCL was actively seeking to build customer loyalty and that VCL had a business relationship with at least some of its customers. The Upper Tribunal considered that VCL's failure to ask for information about "*the purpose and intended nature of the business relationship*" gave rise to a significant concern that VCL had not complied with the MLRs which raised a serious case to answer. The Upper Tribunal also took into account that, having failed to identify business relationships, VCL would also have failed to carry out the ongoing monitoring of such relationships as required by the MLRs and was likely to have failed to properly apply the enhanced due diligence requirements.
- An additional factor was VCL's approach of placing considerable weight on a belief that other parties involved in the transactions (the banks and the Exchange) were regulated which it viewed as reducing its own money laundering risk. The Upper Tribunal agreed with the FCA that VCL had not fully understood its role as a "gatekeeper" and that, in the absence of a formal contract permitting reliance, it was required to apply the MLRs independently of the checks carried out by third parties.
- VCL and the FCA also disagreed on other matters including VCL's identification procedures, the need for adverse media screening and screening of politically exposed persons (PEPs). The Upper Tribunal placed little weight on these matters commenting that VCL's approach to verifying identity documents may be broadly compliant with the MLRs and that there was no requirement in the MLRs to carry out an adverse media search or to use a commercial screening service.

- Upper Tribunal's Decision; Having balanced all the factors, the Upper Tribunal was not satisfied that VCL would carry on its business in a broadly compliant manner were the suspension application to be granted and so refused the application. The Upper Tribunal commented that VCL could withdraw the reference and could make a new application having taken specialist advice.
- In terms of the FCA's processes, VCL complained that the FCA had made its decision to refuse VCL's application without having taken into account VCL's representations. It appears that this may have been due to the fact that this was a case decided in accordance with the FCA's executive procedure in which there is no requirement for applicants to be provided with the FCA's response to representations. The Upper Tribunal commented that this practice was likely to lead to more references being made to it and the FCA's previous practice of disclosing communications between the

investigation and decision-making teams obviously assisted the subject of the decision in understanding why representations had not been accepted.

- VCL also expressed disappointment to the Upper Tribunal regarding the failure of the FCA to take a more constructive approach. The Upper Tribunal commented that, where the FCA has taken a particular stance in relation to the application of its guidance to a new industry (such as cryptoasset exchanges) as appeared to be the case in relation to adverse media and PEP screening, it would be helpful if the FCA's position were to be set out in advance *"together with practical options so businesses acting in good faith can know whether they have met the requirements of the MLR as interpreted by the FCA"*.

FCA Handbook Notice 101; *On 18 July 2022, the FCA issued its latest Handbook Notice (No. 101) describing the changes to the FCA Handbook and other material by the FCA Board under its legislative and other statutory powers on 23 June 2022 and 15 July 2022.*

- On 23 June 2022, the FCA Board made changes to the Handbook in the following instruments:
- Periodic Fees (2022/2023) and Other Fees Instrument 2022.
- Collective Investment Schemes Sourcebook (Side Pockets) (Russia) Instrument 2022
- On 15 July 2022, the FCA Board made changes to the Handbook in the following instruments:
- Funeral Plans (No 5) Instrument 2022.
- Dormant Assets Instrument 2022.

Transforming data collection; We are working with the FCA and industry to deliver our plan to transform data collection from the UK financial sector.

- Transformation Plan
- Our joint transformation programme
- Latest news and updates
- Reporting and Data Standards Transformation Board
- Nomination process
- Aligning with other initiatives
- How to get involved

Transformation Plan

In 2020, we carried out a Data Collection review. The review aimed to understand what issues industry face in supplying us with the data, what issues we face with receiving and using it, and what collectively we needed to do to tackle those issues. At the end of the review, we published our views in 'Transforming data collection from the UK financial sector: a plan for 2021 and beyond' (Transformation Plan) on 23 February 2021.

The Transformation Plan sets out our vision and approach to delivering improvements in data collection over the next decade.

Our vision is that: 'The Bank of England gets the data it needs to fulfil its mission, at the lowest possible cost to industry.'

Central to achieving our vision are three key reforms:

1. Defining and adopting common data standards that identify and describe data in a consistent way throughout the financial sector. These common standards should be open and accessible for use by all who need them. We think their adoption will bring benefits well beyond reporting.
2. Modernising reporting instructions to improve how our reporting instructions are written, interpreted and implemented. There are a range of steps we think this will involve, from setting up better Q&A processes to potentially rewriting our instructions as code.
3. Integrating reporting to move to a more streamlined, efficient approach to data collection. This reform includes making data collection more consistent across domains, sectors and jurisdictions, and designing each step in the data collection process with the end-to-end process in mind.

Find out more about the Data Collection Review.

We know delivery of our transformation plan will require initiatives both inside and outside the Bank. It will require changes to Bank processes and systems, as well as changes within firms. It will also require organisations to collaborate. This includes us working with the FCA and industry; as well as working with other authorities abroad. More information on the initiatives we are setting up with industry, and how we are engaging with external initiatives and bodies can be found below.

Our joint transformation programme

Central to our plan to deliver the reforms is our joint transformation programme. Work began in July 2021 to design and test solutions to address the issues we and industry face in today's data collection process.

Alongside Bank of England and FCA staff, the programme comprises industry participants with a wide range of knowledge and experience, drawn from across the financial sector. In the first phase of the programme there were around one hundred participants working across the programme. Following a nominations process, participants were selected by us, alongside the FCA, in line with our selection criteriaOpens in a new window.

We are currently in the process of planning for phase two of the programme. The initial nominations window for phase two closed on 22 June 2022, however, we are still looking for resource from firms in some areas of the programme and there are still lots of opportunities to get involved. If you would like to know more or are interested in providing resource for the programme, please contact TDCSecretariat@bankofengland.co.uk.

Approach

The joint transformation programme is being run in line with the Government Digital Service's industry-standard Service Design Approach (the SDA). This includes the use of Agile/Scrum project management techniques, and a focus on 'human centric design'. We are running our programme in 'Phases' with each phase being made up of a number of use cases. Each use case will, in turn, pass through a 'discovery and design' stage, where we will explore issues and design solutions, and then an 'implementation stage' (Beta). A use case is a collection, set of collections or aspect of a data collection.

Phase one of the programme started in July 2021 with a 'discovery and design' stage for the phase one use cases. This stage ended in March 2022. The recommendations for the phase one use cases have now been taken through internal governance processes and the Bank and FCA's responses have been publishedOpens in a new window. An 'implementation' stage, to be largely conducted outside the joint transformation programme, will run from September 2022 until Q2 2023.

Phase two of the programme, which will focus on new use cases, is expected to begin in September 2022 and run in parallel with the phase one implementation stage.

Use cases; There were three use cases in scope for phase one:

Quarterly statistical derivatives (DQ) return

The quarterly derivatives returns, submitted by 20-odd firms with liabilities over £10billion, summarise marked-to-market valuations of derivative positions at the end of each quarter. The data are primarily used by the ONS for national balance of payments statistics.

Commercial real estate (CRE) database

The CRE industry have a long running project looking to create a database on the CRE market. We hope delivery of this project will help us meet our reporting needs. Aligning with this project will allow us to develop common data standards in two core areas in the financial sector: loans and property. This in turn will help improve the quality of data in a market that is important to monitor for financial stability purposes.

Financial resilience survey (FCA use case)

In June 2020, the FCA commenced a regular quarterly financial resilience survey for solo-regulated firms. This use case will focus on opportunities to improve data quality, increase transparency about how the data is analysed, and consider how to transition the survey into RegData.

We are currently planning for phase two of the programme. Our work will sit alongside a number of data collection initiatives we will take forward as per our response to the phase one recommendationsOpens in a new window. We have identified five use cases we would like to explore as part of phase two.

A critical part of the resource we need for the programme to be successful is industry resource. If you would like to or are interested in, providing resource for the programme, please contact TDCSecretariat@bankofengland.co.uk.

Committees and delivery groups

In order to work effectively with industry, the Bank and FCA have established a governance and delivery framework for the joint transformation programme.

The work of the programme is carried out by two delivery groups: a Core Delivery Team and the Advisory Group. The programme is overseen by two committees: the Reporting Transformation Committee and the Data Standards Committee.

A high level overview of the role of each of the committees and delivery groups, along with information about members (where appropriate), and participating firms can be found below. Further information on the role of the groups can be found in the Terms of Reference for the Governance and Delivery GroupsOpens in a new window.

A list of participants, minutes of the committees, committee packs and any output created and published by the joint transformation programme will be published.

Third party suppliers to reporting firms will also be asked to contribute to the programme by way of workshops and request for input processes. If you are interested to be involved in these and are not already on our mailing list please contact TDCSecretariat@bankofengland.co.uk.

Reporting Transformation Committee

The Reporting Transformation Committee focuses on overseeing the design of solutions for parts of the reporting process where the Bank, FCA and reporting firms interact directly. This will cover aspects of modernising reporting instructions and creating a better integrated end-to-end reporting process.

The committee meets monthly and the minutes from each meeting are published.

- Minutes of the Reporting Transformation Committee
- Members and firms

Data Standards Committee

The Data Standards Committee is a forum for stakeholders including reporting firms, trade bodies and relevant standard setting bodies to discuss issues and propose solutions in the area of data standards.

The committee meets monthly and the minutes from each meeting are published.

- Minutes of the Data Standards Committee
- Members and firms

Core Delivery Group

The Core Delivery Group undertakes the various activities related to the work programme: understanding problems through user research, mapping and investigating possible solutions, and designing aspects of the solutions.

Advisory Group

Members of the Advisory Group are expected to be Subject Matter Experts (SME's). Their role will be to support the Core Delivery Group by reviewing the materials and artefacts produced, participating in solution design workshops And assisting the delivery team in prioritising the user requirements

- Firms involved

Latest news and updates

21 July 2022: We published Transforming data collection communication to firms – 21 July 2022.

21 July 2022: We published Transforming data collection - Phase one recommendations with Bank and FCA response.

27 April 2022: We published Transforming data collection nomination process – 27 April 2022.

13 April 2022: We published Transforming data collection communication to firms – 13 April 2022.

- Communications and updates
    - Transforming data collection communication to firms – 21 July 2022
    - Transforming data collection - Phase one recommendations with Bank and FCA response
    - Transforming data collection nomination process – 27 April 2022
    - Transforming data collection communication to firms – 13 April 2022
    - Transforming data collection communication to firms – 10 February 2022
    - Transforming data collection communication to firms – 8 December 2021
    - Transforming data collection – request for input to the solution design for our use cases
    - Transforming data collection communications to firms – 30 September 2021
- Governance group minutes
- Events

Reporting and Data Standards Transformation Board

Alongside the Joint Transformation Programme, we have set up the Reporting and Data Standards Transformation Board. The Board acts as a forum for discussing issues of common concern relating to reporting and the development of data standards to enable better reporting.

The Board will consider issues and relevant initiatives beyond the scope of the joint transformation programme.

The board meets every four months and the minutes from each meeting will be published.

- Minutes of the Reporting and Data Standards Transformation Board
- Board members and firms

Nomination process

The initial nominations window for phase two of the joint transformation programme closed on 22 June 2022. We received a good response from firms for the programme Committees and Advisory Group. The Bank and FCA are currently reviewing these nominations in line with our selection criteriaOpens in a new window.

That being said, to make sure we have representation from the wide range of firms across the financial sector, we are interested in further expanding these groups. If you are interested in providing resource for one of the programme Committees or the Advisory Group, please email TDCSecretariat@bankofengland.co.uk.

We have had some commitments for full time resource for the Core Delivery Group. We would like industry to contribute more full time resource to the programme to continue its work to transform data collection. If you are interested in providing full time resource for the programme, please email TDCSecretariat@bankofengland.co.uk.

Aligning with other initiatives

Alongside the joint transformation programme, we are working on internal improvements to data collection and collaborating with on-going data collection change projects. This includes working with colleagues in the PRA on relevant regulatory reporting initiatives. We also recognise our reform agenda overlaps with other private and public initiatives looking to make similar changes, particularly on the topic of common data standards. We are keen to coordinate and align with those initiatives with similar goals.

If you are working on a project with relevance to our reform agenda, we would like to hear from you. To do so please contact us at: TDCSecretariat@bankofengland.co.uk.

How to get involved

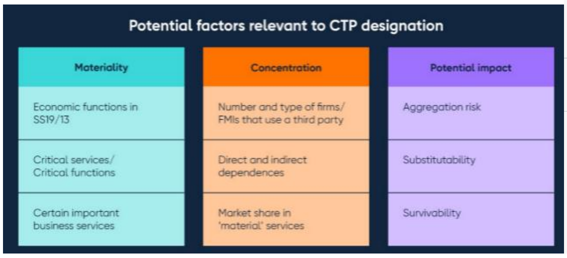
As we work towards transforming data collection, the joint transformation programme is working with industry in an open, collaborative and transparent way. This will ensure we have the widest possible set of views to get the best solutions to the issues we are tackling. There are still lots of opportunities to get involved.

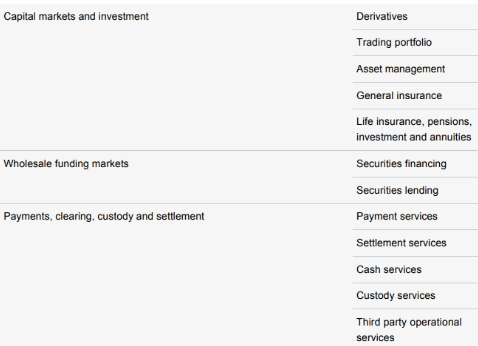
If you would like to be involved or would like to find out more, please contact TDCSecretariat@bankofengland.co.uk.

<u>Noting this outreach from the FCA, along with the BOE on identifying and deploying a reg framework around Critical Third Parties to the UK Finance Sector.</u>

The Discussion Paper stops short of asking firms to submit their currently unregulated and/or overseas supplier dependencies, but that's the direction of travel.

- This framework comes directly from the cross-references within yesterday's UK FS Bill, but more holistically from the long-running work on operational resilience, prudential risk mapping and cyber-crime.
- Do you have any comments on the topic, perhaps certain technology suppliers or middlewares would fit the description? Presumably for cloud settlement, v-CSDs and firms considering offering markets in cryptoassets there is a new cadre of technological dependencies.
- Should there be more testing and disclosures from middlewares and other tech?
- Would the designation of certain dependencies as CTPs be helpful in risk mapping and prudential capital add-ons?
- Is this a good or a bad idea? Are there risks to deterring third parties from entering the market or providing services to firms and FMIs, as a result of a third party being designated as a CTP? -> could any of your unregulated businesses, such as derived data provision, get prescribed?





<u>Questions</u>

1. Do you agree with the supervisory authorities' overview of the potential implications of firms' and FMIs' increasing reliance on third parties (in particular the potential systemic risks to the supervisory authorities' objectives)? Is there anything else that the supervisory authorities should consider in their analysis?

2. Do you agree with the supervisory authorities' assessment of the limitations of the current regulatory framework?

3. Do you agree that, when considering potential requirements for CTPs, it is appropriate for the supervisory authorities to focus on (a) minimum resilience standards, and (b) resilience testing,

in respect of the material services that CTPs provide to firms and FMIs? Are there any alternative or additional areas that the supervisory authorities should consider?

4. Do you agree with the potential advantages in aligning the potential measures for CTPs to the existing operational resilience framework for firms and FMIs? Are there additional ways in which the potential approach to CTPs could be aligned to the existing operational resilience framework? Are there alternative approaches the supervisory authorities should consider?

5. What are your views on the factors that the supervisory authorities should consider when assessing which third parties to recommend for designation as CTPs? Are there any aspects of the criteria discussed above that the supervisory authorities should clarify, develop or omit? Are there any additional factors that the supervisory authorities should take into account?

6. What are your views on the supervisory authorities' potential approach for assessing concentration, materiality and potential impact in the provision of third-party services to firms and FMIs? Are there alternative approaches for doing so that could be more effective or pragmatic?

7. What are your views on how best to take into account potential linkages with other regimes outside financial services when considering the recommendation of third parties as CTPs to HMT? How could the supervisory authorities improve coordination with other competent authorities and public bodies outside the finance sector?

8. What are your views on how best to avoid or mitigate potential unintended consequences, Page 68 including potential distortion, such as deterring third parties from entering the market or providing services to firms and FMIs, as a result of a third party being designated as a CTP?

9. Are the supervisory authorities' potential resilience standards for CTPs clear, comprehensive and proportionate? Are there any standards that the supervisory authorities could add, clarify, omit or review?

10. What relationship, if any, should recognised relevant certification and standards have with the supervisory authorities' possible minimum resilience standards for CTPs?

11. What are your views on the potential costs and benefits of complying with the minimum resilience standards discussed in this DP?

12. What are your views on the potential resilience testing tools for CTPs discussed in this chapter? Are there any additional or alternative tools that the supervisory authorities could consider applying to CTPs?

13. How could the supervisory authorities work with CTPs, firms and FMIs and other stakeholders to make resilience testing of CTPs efficient, proportionate and resource-effective?

14. In terms of the different potential forms of cyber-resilience testing discussed in this chapter, are there any that could be particularly effective for CTPs? Conversely, are there any that could be particularly difficult to implement in practice or give rise to unintended consequences?

15. What do you think could be the most effective way for the supervisory authorities to share the findings and recommended actions of any resilience testing performed by or on CTPs with, at least, those firms and FMIs that rely on them for material services? How could the supervisory authorities balance the need to share this information with relevant firms and FMIs with potential confidentiality or market sensitivity considerations? Could a rating system along the lines of the URSIT system used by the FFIEC in the US promote clarity and consistency in supervisory authorities' assessments?

16. Could a set of global, minimum resilience standards for CTPs be helpful? If so, what areas should these standards cover?

17. What additional steps could financial supervisory authorities around the world take to enable resilience testing of CTPs to be coordinated effectively on a cross-border basis?

18. What forms of testing could be most appropriate (ie sector-wide exercises, TPLT or other forms)? Are there any practical challenges in these cross-border exercises which the supervisory authorities should anticipate and manage?

19. Are there any other ways not covered in this DP to improve international regulatory and supervisory coordination in relation to the risks posed by CTPs?

20. What are your views on the possibility of the supervisory authorities taking into account resilience tests, sector-wide exercises and other oversight activities undertaken by or on behalf of non-UK financial supervisory authorities on CTPs (subject to certain conditions)?

21. Are there any other areas besides those discussed in this DP where cross-sectoral cooperation could be developed to support the possible measures for CTPs discussed in this DP?

From: Cyber Coordination Group <CyberCoordinationGroup@fca.org.uk>

- Sent: 21 July 2022 10:46
- To: Alice De Silva <Alice.DeSilva@fca.org.uk>
- Subject: Publication of DP22/3 Critical Third Parties to the UK Finance Sector
- Dear TACIG members,
- We, along with the Bank of England and PRA, have published a Discussion Paper (DP3/22 – Operational resilience: Critical third parties to the UK financial sector) seeking views on how we oversee the resilience of services third parties provide that many financial firms rely on.
- Some services provided by these third parties are critical to the resilience of the UK financial sector, but no one firm can manage the potential systemic risks from their disruption.
- Any measures would complement, rather than replace, firms' responsibilities to manage the potential impact to their firm of the failure or disruption of a third party.
- Please send your comments or enquiries to DP3_22@bankofengland.co.uk. We welcome feedback by Friday 23 December 2022. Kind Regards, The FCA Cyber Coordination Group Team CCG / Technology, Resilience & Cyber

UK proposes "light touch" approach for regulating artificial intelligence; *Like an elephant, the essence of AI is difficult to put into words, but you know it when you see it.* This poses a challenge for policymakers looking to use regulation to support the safe development of artificial intelligence. In a new policy paper, the UK Government chooses not to pin down what AI means and emphasises the flexibility of its approach. But the EU's first-mover proposal for an AI-specific Act may end up setting the global standard.*

- Pro-innovation regulation
    - In its policy paper, the Department of Digital, Culture, Media and Sport has put forward a "pro-innovation" vision for the future regulation of artificial intelligence. The paper sets out the building blocks of a cross-sectoral regulatory framework.
    - As the paper points out, the UK does not have laws written explicitly to regulate AI. This means that businesses rolling out AI systems must make sure they fit within existing legal and regulatory regimes. For example, the Information Commissioner's Office (ICO) has taken action against Clearview for its facial recognition tech and has promised to investigate concerns over the use of algorithms to sift recruitment applications. See also our note on how AI in financial services is regulated in the UK.
    - The lack of AI-specific regulation may, however, lead to confusion and hinder innovation. Respondents to a 2019 survey of financial institutions suggested that additional guidance on how AI fits within existing rules could encourage more firms to adopt AI.
    - To steer consistency across different industries, the DCMS intends to set cross-sectoral principles tailored to AI and ask regulators to contextualise these for the sectors they oversee.
- Principles and guidance, not rules
    - The DCMS has produced six guiding principles for regulators to consider when overseeing the use of AI in their sector. These are:
    - Ensure that AI is used safely
    - Ensure that AI is technically secure and functions as designed
    - Make sure that AI is appropriately transparent and explainable
    - Embed considerations of fairness into AI
    - Define legal persons' responsibility for AI governance
    - Clarify routes to redress or contestability
    - DCMS does not expect these principles necessarily to translate into new obligations. Instead, it plans to encourage regulators to consider lighter touch options in the first instance, such as guidance or voluntary measures. Regulators are told to adopt a proportionate and risk-based approach focusing on high-risk concerns.
    - This flexible approach is likely to be applauded but by choosing not to regulate in this area it could be that the EU's stricter rules become the de facto standard for AI regulation.
- EU divergence
    - Unlike the EU, the UK is not preparing to introduce AI-specific legislation. Instead, the DCMS suggests that responsibility should be delegated to regulators for designing and implementing proportionate regulatory responses.
    - The European Commission's bold proposal for an AI Act aims to regulate AI systems across the EU according to the level of risk they present. The draft

legislation seeks to ban AI systems that present unacceptable risks, impose strict requirements on those considered to be high risk (such as systems used to evaluate credit risk or provide credit scores), and potentially subject lower risk systems to transparency requirements.
    - The EU's regime could bring about sweeping changes, requiring businesses to assess the riskiness of their AI systems and comply with the relevant obligations. Failing to meet the requirements for high-risk AI systems could lead to fines of up to EUR 30 million or 6% of global turnover, whichever is greater. Read more in our blogpost on what the EU is doing to foster human-centric AI.
    - Another distinction between the EU and UK is the approach to defining AI. Whereas the EU AI Act includes a very broad definition, the DCMS policy paper chooses not to define AI. Instead, it notes core characteristics of AI technology which existing regulation may not be fully suited to address.
- These characteristics are:
    - Adaptiveness ie the logic behind an output can be hard to explain
    - Autonomy ie the ability to make decisions without express intent or human involvement
- It is the combination of these characteristics that demand a bespoke regulatory response for AI. By focusing on these core characteristics, the DCMS argues that a detailed universally applicable definition of AI is not needed.
- The DCMS acknowledges that its proposals diverge from the vision of AI regulation set out by the EU but argues that the EU's approach of setting a "relatively fixed definition" in legislation would not be right for the UK because it does not capture the full application of AI and its regulatory implications.
- Next steps for AI in financial services
    - The DCMS emphasises the importance of ongoing collaboration between UK regulators in the digital space including via the Digital Regulation Cooperation Forum, which includes the FCA.
    - As well as contributing to the DRCF, the FCA has been working closely with the Bank of England on AI, for example via the AI Public Private Forum. The results of a follow-up to the 2019 FCA-Bank of England survey on how machine learning is used in the financial services sector are expected later this year. The regulators also plan to open a discussion paper in 2022 which will aim to clarify the current regulatory framework and how it applies to AI.
    - For its part, the DCMS says that it is still at the early stages of considering how best to put its approach into practice but will set out further details in a white paper and consultation later this year. Its current thinking is to put the cross-sectorial principles on a non-statutory footing but the DCMS does not rule out the need for legislation as part of the delivery and implementation of the principles, for example to update regulators' powers.
- *The DCMS invites views on its policy paper by 26 September 2022.*

UK regulators set out potential measures to strengthen the resilience of services provided by CTPs; *On 21 July 2022, the Bank of England, PRA and FCA (the UK regulators) jointly published a Discussion Paper setting out potential measures to oversee and strengthen the resilience of services provided by critical third parties (CTPs) to the UK financial sector.*

- The Financial Services and Markets Bill (FSM Bill) provides for a proposed statutory framework for managing systemic risks posed by third parties designated as CTPs by HM Treasury.
- The Discussion Paper sets out how the UK regulators could use their proposed powers in the FSM Bill to assess and strengthen the resilience of services provided by CTPs to firms and financial market infrastructures (FMIs), thereby reducing the risk of systemic disruption. The potential measures set out in the Discussion Paper focus on material services that CTPs provide to the financial sector. The UK regulators would not have any responsibility or powers for wider regulation and supervision of CTPs or for the resilience of the services they provide to other sectors. This service-based approach recognises that some potential CTPs may provide services to many other sectors besides financial services.

- The potential measures set out in the Discussion Paper comprise three main building blocks:
    - A framework for the supervisory authorities to identify potential CTPs and recommend them for formal designation to HM Treasury. CTP designation by HM Treasury would recognise the potential systemic impact that disruption to the services provided by the third party could have on the supervisory authorities' objectives.
    - Minimum resilience standards for designated CTPs in respect of material services they provide to firms and FMIs. These standards would align to and build on the operational resilience framework for firms and FMIs, and would include a requirement for CTPs to develop and test 'financial sector continuity playbooks' to improve their ability to respond and recover from disruption affecting multiple firms and FMIs simultaneously.
    - A range of tools for testing the resilience of material services that CTPs provide to firms and FMIs. These tools could include, but not be limited to, scenario testing, participation in sector-wide exercises, cyber resilience testing, and skilled person's reviews of CTPs.
- The deadline for responding to the Discussion Paper is 23 December 2022.

Partnering in the Fight Against Financial Crime: Data Protection, Technology and Private Sector Information Sharing; *On 20 July 2022, the Financial Action Task Force (FATF) issued a report intended to help jurisdictions enhance, design and implement information collaboration initiatives among private sector entities in accordance with data protection and privacy (DPP) rules so that the risks associated with increased sharing of personal data are appropriately taken into account.*

- The report provides case studies that set out how members of the FATF and its Global Network have increased private sector information sharing within the legal requirements of their domestic DPP framework. Their experiences indicate that private sector information sharing measures can be achieved in compliance with DPP rules and obligations, subject to key tests and requirements.

- The report provides non-binding recommendations to assist countries that are considering increasing private sector information sharing to design and implement such initiatives responsibly and effectively.

FATF

PARTNERING IN THE FIGHT AGAINST FINANCIAL CRIME

DATA PROTECTION, TECHNOLOGY AND PRIVATE SECTOR INFORMATION SHARING

KEY RECOMMENDATIONS FOR RESPONSIBLE COLLABORATION

Collaboration and information sharing helps financial institutions to build a clearer picture of criminal networks and suspicious transactions, and better understand, assess, and mitigate their money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risks. It can also provide authorities with better quality intelligence to investigate and prosecute these crimes and ultimately help prevent crime from reaching our streets.

However, such collaboration initiatives need to be designed and implemented responsibly, in accordance with data protection and privacy rules, so that the risks associated with increased sharing of personal data are appropriately taken into account.

The FATF has drawn on lessons learnt across the jurisdictions of its Global Network to develop recommendations for the public and private sector to avoid common pitfalls. Successful private sector collaboration initiatives involve a range of stakeholders, take into account local regulation and context, take a phased approach and build public trust and understanding. There is no one-size-fits-all solution that addresses all the objectives of data privacy and protection, anti-money laundering (AML), countering the financing of terrorism(CFT), and countering proliferation financing (CPF) for all financial institutions globally. Each information sharing initiative needs to be considered on a case-by-case basis depending on their unique characteristics and the relevant data privacy and protection requirements.

The following recommendations may help jurisdictions or private sector entities that are considering enhancing information exchange. These recommendations are based on observations and lessons learnt across jurisdictions.

PARTNERING IN THE FIGHT AGAINST FINANCIAL CRIME | DATA PROTECTION, TECHNOLOGY AND PRIVATE SECTOR INFORMATION SHARING

RECOMMENDATIONS FOR THE PUBLIC SECTOR

TAKE AN ACTIVE FACILITATION ROLE, FOR EXAMPLE BY:

- Updating legal or supervisory instruments if necessary to provide a clear legal basis for data sharing and processing in line with data protection and privacy considerations.
- Highlighting the particular offences, typologies or key data types that would most benefit from sharing, in order to align sharing initiatives with national AML/CTF/CPF objectives.
- Identifying a lead agency or contact point on private sector information sharing to maintain dialogue with relevant data protection and other government authorities and ensure consistent advice.
- Providing consistent guidance or checklists on relevant provisions to help the private sector understand and navigate AML/CFT/CPF, data protection, and other relevant requirements.
- Making use of regulatory sandboxes and pilot programmes to test information-sharing initiatives, understand the policy implications, and build trust, ideally with the involvement of both AML/CFT/CPF and data protection authorities).
- Building a secured platform for private sector information sharing to provide the required financial and technological resources and ensure accessibility and affordability for institutions.
- Developing projects to harmonise and standardise data, such as common data standards and definitions or data cleaning/structuring initiatives.

ENSURE AND PROMOTE REGULAR DIALOGUE BETWEEN DATA PROTECTION AND AML/CFT/CPF AUTHORITIES (INCLUDING INTERNATIONALLY), FOR EXAMPLE BY:

- Holding regular forums between AML/CFT/CPF authorities, data protection authorities and private sector institutions to share experience, discuss challenges, and develop relationships.
- Devising a joint strategy on information sharing with proper data protection and privacy safeguards to encourage industry initiatives.
- Providing joint guidance or sector-wide engagement on data protection and privacy requirements and technological solutions
- AML/CFT/CPF authorities providing assistance to industry initiatives and helping build links between the private sector and data protection authorities
- Conducting joint initiatives, such as regulatory sandboxes or technology sprints.

- A single financial institution has only a partial view of transactions and sees one small piece of what is often a large, complex puzzle. Criminals exploit this information gap by using multiple financial institutions within or across jurisdictions to layer their illicit financial flows. As a result, it is increasingly difficult for individual financial institutions to detect these illicit activities.
- By using collaborative analytics, bringing data together, or developing other sharing initiatives in responsible ways, financial institutions seek to build a clearer picture of the puzzle, to better understand, assess, and mitigate money laundering and terrorist financing risks.
- This report aims to help jurisdictions responsibly enhance, design and implement information collaboration initiatives among private sector entities, in accordance with data protection and privacy (DPP) rules, so that the risks associated with increased sharing of personal data are appropriately taken into account.
- The report looks at global anti-money laundering, counter-terrorist financing and counter-proliferation financing requirements and how responsible private-to-private collaboration can contribute to their effective implementation.
- It also provides an introduction to the DPP principles and objectives that stakeholders should (or must) consider when designing private sector collaboration initiatives.

- The report provides case studies that set out how members of the FATF and its Global Network have increased private sector information sharing within the legal requirements of their domestic DPP framework. Their experiences indicate that private sector information sharing measures can be achieved in compliance with DPP rules and obligations, subject to key tests and requirements.
- Using these experiences and lessons learnt by members across the FATF Global Network, the report provides non-binding recommendations to assist countries that are considering increasing private sector information sharing to design and implement such initiatives responsibly and effectively.
- This report complements the FATF's report on Stocktake on Data Pooling, Collaborative Analytics and Data Protection (July 2021).

The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022; *On 21 July 2022, there was published The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022. Unless otherwise stated, the Regulations come into force on 1 September 2022.*

- The Regulations make a number of changes to The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017) in light of HM Treasury's response document setting out the steps the Government proposes to take amending the MLRs 2017 following its consultation in October 2021.
- In particular the Regulations insert a new Part 7A into the MLRs 2017 to expand the information sharing standard for wire/bank transfers to transfers involving cryptoassets (referred to as the "Travel Rule").
- The UK intends to take a tailored approach to meeting international Travel Rule requirements. Amendments will be made to the MLRs 2017 rather than the onshored Funds Transfer Regulation (FTR), which implemented the Financial Action Task Force's Recommendation 16 for transfers of funds, as the FTR is retained EU law and cannot be amended via secondary legislation to include cryptoassets.

KPMG receives its largest UK fine for misleading regulator; Big Four firm fined £14.4mn for providing false information about its audits of Carillion and Regenersis; KPMG has been handed its largest ever UK fine of £14.4mn for deliberately misleading the accounting regulator during inspections of its audits of collapsed outsourcer Carillion and another UK company, Regenersis. The fine was imposed by an industry tribunal that found the Big Four firm provided false and misleading documents and information to the Financial Reporting Council. /jlne.ws/3otxhWc

Banks Start Using Information-Sharing Tools to Detect Financial Crime; Technology can help banks team up to find money launderers, but the legal basis for information-sharing is murky in many countries; Banks have long struggled to spot illicit transactions among the multitudes they process daily because criminals move dirty money from one institution to another to cover their tracks, leaving compliance staff with only a partial road map of their actions. That has started to change, with financial institutions and service providers in several countries creating information-sharing platforms and messaging tools with the potential to vastly improve the detection of money laundering and fraud. /jlne.ws/3PD9Zc9

The Economic Crime (Transparency and Enforcement) Act 2022 – the conundrum of strict liability

- *The Economic Crime (Transparency and Enforcement) Act 2022 (the Act), which came into force in March 2022, aimed amongst other things, to give UK sanctions authorities greater power to take enforcement action and impose penalties on persons that breach sanctions restrictions, through the introduction of a "strict liability" test.*
- *These new powers of the UK's Office of Financial Sanctions Implementation's (OFSI), which are viewed as being more in line with the enforcement powers available to the US Office of Foreign Assets Control, apply to all cases where the potential breach took place on or after 15 June 2022.*
- OFSI's existing power to impose civil monetary penalties derives from the Policing and Crime Act 2017, and enables it to levy penalties against 'persons' (including natural persons, legal persons, bodies and entities) that breach a prohibition or fail to comply with an obligation, that is imposed by or under financial sanctions legislation.
- In the case of individuals, OFSI can take action against such persons both in their personal capacity (i.e. where the individual themselves breaches a prohibition or fails to comply with an obligation) and, in the case of 'officers of a body'[1], for breaches or failures by their relevant body corporate or unincorporated association that took place with the consent or connivance of the officer or which was attributable to any neglect on the part of the officer.
- Previously OFSI could impose such civil monetary penalties only if it was satisfied, on the balance of probabilities, that:
- the person had breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation, and
- the person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation.
- The Act removed limb (b) above, and OFSI is now able to impose civil monetary penalties on a 'strict liability' basis (i.e. to impose a civil monetary penalty, OFSI only needs to be satisfied, on the balance of probabilities, that a breach of financial sanctions occurred, not whether or not the person had knowledge or reasonable cause to suspect that such a breach had occurred). However, as set out in updated guidance (see OFSI enforcement guidance), the question of knowledge and suspicion remains relevant as OFSI will consider whether a person "knew or suspected that their conduct amounted to a breach" when assessing the severity of the breach and determining a "proportionate" response to enforcement.
- Notwithstanding that OFSI has retained "knowledge or suspicion" as a case factor, the introduction of a strict liability offence significantly expands the scope for sanctions enforcement in the UK. It has also created legal complexity, not least because the underlying provisions of the Russia (Sanctions) (EU Exit) Regulations 2019 (the Regulations) have not similarly been updated to remove concepts of knowledge and / or reasonable cause to suspect. The effect of this is that, to be considered to have

breached the asset freeze restriction, a person ("A") will need to have known or have reasonable cause to suspect that they were dealing with funds or economic resources owned, held or controlled by a designated person. However, OFSI has the power to impose a monetary penalty if A dealt with funds or economic resources that were owned, held or controlled by a designated person, even if A did not know or have reasonable cause to suspect that was the case. Added complexity arises when considering how this strict liability impacts the potential exposure that officers of a body corporate or unincorporated association might have for breach or failure by such firms. While OFSI does acknowledge in its updated guidance that it is possible for a mistake to cause a breach, it notes that even without the knowledge that the action would be a breach or any reasonable cause to suspect this, the matter would still meet the legal standard to impose a monetary penalty (subject to all relevant factors and the public interest).

- It remains to be seen whether further guidance will be published by OFSI on how it views the strict liability test under the Act interplaying with the underlying sanctions restrictions in the Regulations, and in particular what impact it may have for individuals / officers, or whether the market will need to await the outcome of enforcement actions to learn how these legal complexities will apply in practice.
- [1] 'Officer of a body' means: (i) in the case of a body corporate, a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity, (ii) in the case of a partnership, a partner or a person purporting to act as a partner and (iii) in relation to an unincorporated body other than a partnership, a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned.

Sanctions

Latest UK sanctions against Russia – Oil ban, insurance, gold, coal

- UK Oil Ban
- Overview
- The new restrictions are introduced under The Russia (Sanctions) (EU Exit) (Amendment) (No.14) Regulations 2022 (the "**UK 14th Amendment**") which amend the Russia (Sanctions) (EU Exit) Regulations 2019 (as amended, the "**UK Regulations**"). The UK 14th Amendment introduces, amongst other things, a prohibition on (1) the import, acquisition and supply or delivery of Russian oil and oil products **into the UK**, and (2) the provision of technical, financial and brokering assistance relating to such products **destined for the UK.**
- The oil ban comes into force on 31 December 2022 and, broadly speaking, brings the UK in line with Article 3m of Council Regulation (EU) 833/2014 (as amended, the "**EU Regulations**").
- Impact on UK Insurance Sector
- The restriction on providing financial services to oil and oil products has implications for the UK's insurance sector, given that the definition of "financial services" includes the provision of insurance and reinsurance services (as defined under Section 61(1)(a) of the Sanctions and Anti-Money Laundering Act 2018).

- As a result, from 31 December 2022, UK insurers will be prohibited from providing insurance services in respect of the import, acquisition and supply or delivery of the listed oil and oil products that originate in Russia or are located in Russia, that are destined for the UK.
- Notably, however, there is no equivalent UK restriction to that of Article 3n of the EU Regulations.
- There are limited exceptions to the oil ban, including if the oil and oil products are cumulatively: (i) non-Russian origin; (ii) not owned by a person connected with Russia; and (iii) only being loaded in, departing from or transiting through Russia.
- Further, the prohibitions will not apply to products necessary for the purposes of a UK petroleum project, meaning an oil or gas exploration or production project that is wholly or partially located within the United Kingdom or other specified areas.
- Alignment with EU Oil Ban; There are subtle differences between the two jurisdictions' restrictions. For example, the EU Exceptions
- restrictions are limited to oil products under commodity codes 2709 00 (crude) and 2710 (other petroleum oils). Meanwhile, the UK sanctions include a significantly broader list, comprising products falling under commodity codes 2709 to 2715 (including petroleum gases and jelly), 2207 (ethyl alcohol) and 3826 (biodiesel oil).
- Further, whilst the EU sanctions separate the wind-down periods for CN Code 2709 (crude, 5 December 2022) and CN Code 2710 (certain petroleum oils, 5 February 2023), the expansive list of oil and oil products under the UK restrictions are simply prohibited from 31 December 2022. Accordingly, under the UK rules, all transactions caught by the new restrictions described above must be concluded by 30 December 2022.
- Other Restrictions
- G7 dependencies and further goods list
- From 21 July 2022, there is a prohibition on the export, supply and delivery, and making available of goods (as well as related technical assistance, financial services and funds, andbrokering services), to, or for use in Russia, of a list of goods known as the "G7dependencies and further goods list".
- The list of goods, which the UK 14th Amendment introduces as a new Schedule 3E to the UK Regulations, is wide-ranging and includes chemicals, materials, machinery goods and electrical appliances. The goods have been targeted as items of significant importance to the Russian economy and goods for which Russia particularly depends on the UK and G7 partners. This list closely mirrors that of the list of prohibited products under Article 3k as listed under Annex XXIII of the EU Regulations.
- An exception applies for certain diplomatic missions, consular posts and international organisations and their staff afforded immunities under international law.
- Gold
- From 21 July 2022, there is a prohibition on the import, acquisition and supply or delivery of gold originating in Russia into the UK. Further, there are similar prohibitions on the provision of related technical assistance, financial services, funds, and brokering services. On 21 July 2022, the EU also introduced a ban on Russian gold under Regulation (EU) 2022/1269 (Article 3o) which is however, more wide ranging and also impacts restricted gold products destined for third countries.
- As with the G7 goods, an exception applies to certain diplomatic missions, consular posts and organisations afforded immunity.
- Coal

- From 10 August 2022, there is a prohibition on the import, acquisition and supply or delivery of coal and coal products into the UK. This is a coordinated ban with the EU, since under EU sanctions the winding-down period for purchasing, importing or transferring coal into the EU under pre-existing contracts pre-dating 9 April 2022 expires on 10 August 2022 (see Article 3j(3) of the EU Regulations).
- Amendments to energy-related goods and services
- The UK 14th Amendment also expands the existing prohibitions on energy-related goods and technology.
- These prohibitions take effect immediately as amendments to existing restrictions.
- **Professional and business services**
- From 21 July 2022, there is a prohibition on the provision (directly or indirectly) of accounting, business and management consulting, and public relations services to persons connected to Russia (which broadly speaking includes Russian nationals and companies incorporated under the laws of Russia (including Russian affiliates of non-Russian entities)).
- There are certain exemptions that may be applicable to UK persons for example services being provided to discharge or comply with UK statutory or regulatory obligations.

47 entries have been added under the Russia financial sanctions regime and Syria financial sanctions regime.

- On 26 July 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.
- 42 entries have been added under the Russia financial sanctions regime and are now subject to an asset freeze.
- Further, the following entries have been added under the Syria financial sanctions regime and are now subject to an asset freeze:
- Saleh Al Abdullah (Group ID: 15456)
- Nasser Deeb Deeb (Group ID: 15462)
- Ahmad Khalil Khalil (Group ID: 15460)
- Issam Shammout (Group ID: 15458)
- Sanad Protection and Security Services (Group ID: 15466)
- To see the Syria notice, click here.
- OFSI's consolidated list of asset freeze targets has been updated to reflect these changes.

OFSI licencing time frames; *Due to OFSI experiencing exceptionally high demand at present, we are unable to provide substantive engagement on specific licenses within four weeks .*

- We aim to review all new licensing applications as soon as practicable. We are prioritising cases where there are issues of personal basic needs and/or wider humanitarian issues at stake which are of material impact or urgency, or which are deemed to be of particular strategic, economic or administrative importance.
- If there are particular aspects of your application that you believe make your case especially urgent, please set these out clearly in your application for our consideration.
- For further information in OFSI's updated general guidance,

OFAC Issues General Licenses on Winding Down Russia-related Securities Transactions; *FAC issued a general license authorizing transactions "ordinarily incident and necessary to the wind down" of certain financial contracts with Russian Federation entities. OFAC also issued a general license authorizing transactions related to auction processes to settle Russia-related credit derivative transactions. OFAC added two new FAQs and amended two FAQs on the scope of the licenses and related matters.*

The new general licenses, issued under the "Russian Harmful Foreign Activities Sanctions Regulations" (31 CFR Part 587), include:

- General License 45, which authorizes through October 20, 2022 all transactions that are ordinarily incident and necessary to the wind down of financial contracts entered into on or before June 6, 2022 that involve, or are linked, to debt or equity issued by an entity in the Russian Federation otherwise prohibited by section (1)(a)(i) of Executive Order 14071 ("Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression"). The transactions authorized by this general license include the purchase by U.S. persons of debt or equity issued by Russian entities and the facilitating clearing, and settling of such a purchase, in each case so long as the purchase is ordinarily incident and necessary to the wind down of covered contracts.
- General License 46, which authorizes transactions related to the establishment, administration, participation in and execution of an auction process to settle credit derivative transactions with a reference entity of the Russian Federation that are otherwise prohibited by Executive Order 14071.
- OFAC published two new FAQs, FAQ 1071 and FAQ 1072, that clarify the scope of the two new general licenses. OFAC also amended FAQ 1053 and FAQ 1054 to provide additional guidance on transactions relating to divesting and selling securities of entities in the Russian Federation.

1. OFAC Recent Action: Issuance of Russia-Related General Licenses and Frequently Asked Questions; Russia-related Designation Update
2. OFAC General License No. 45
3. OFAC General License No. 46
4. OFAC Newly Published FAQs
5. OFAC FAQ 1071
6. OFAC FAQ 1072
7. OFAC Amended FAQs

EU FSF - New sanctions files available ; The following sanction files list have been updated: **Consolidated Sanctions List:**

- PDF - v.1.0
- XML (Based on XSD) - v.1.1
- XML (Based on XSD) - v.1.0

OFSI extends General Licence OFSI has extended general licence INT/2022/1968500 for a period of 2 months to the 30 September, allowing for the winding down of positions involving Rosbank.

OFSI is not currently minded to extend INT/2022/1968500 further. Any Persons intending to use the General Licence should consult the copy of the Licence and refer to OFSI's General Guidance.

Zero investments: China's Belt and Road Initiative investments in Russia have fallen to zero for the first time, signalling Beijing's reluctance to incur sanctions in the wake of the Ukraine war.

Iran to start accepting Russian Mir payment cards soon -official Iran will soon start accepting payments made with Russia's Mir bank cards, a top official was quoted by Russia's RIA news agency as saying, making it the latest country to adopt the Russian-made alternative to Visa and Mastercard .

UK allows sanctioned entities pay insurers from a frozen bank account Individuals or entities who are sanctioned by Britain can make payments to insurers from a frozen bank account, the British sanctions office said on Friday

Russia's invasion of Ukraine; *This means that all financial services firms will have had to consider whether these complex sanctions apply to them and, where they do, comply with them with little or no notice. Those with operations in Russia will have had (or chosen) to downsize or close them altogether.*

- The fact that the sanctions are similar in intent but different in the detail across different countries has added to the compliance complexity, at a time when firms' arrangements were already under scrutiny from regulators in the UK and EU. The frequent and ongoing updates and changes to the sanctions, and the need to increase associated transaction, company and individual scrutiny significantly, have caused firms considerable resource challenges. Firms both large and small continue to recruit staff to bolster their operations, although there is a relative lack of expertise, which has necessitated rapid and extensive training. This has taken up a considerable amount of (already scarce) senior management bandwidth at many firms, and left others that had significant presences in Russia nursing losses as they withdraw from the country.
- Both UK and Euro-area banks' direct exposure to Russia is relatively small (the UK's exposure is less than 1% of CET1 capital1 and Euro-banks around 0.2% of total assets2) and is unlikely to present a direct risk to financial stability. Supervisors have expressed more concerns about the second-round effects arising from the war, as in the words of ECB Vice-President Luis de Guindos, the war has "increased financial stability risks through its impact on virtually all aspects of economic activity and financing conditions".

- Valuation of some assets linked to Russia, Ukraine or Belarus has become challenging as they have become illiquid or untradeable. This has led to some fund managers having to suspend certain funds, although there are now signs of some funds reopening. ESMA released a public statement on the use of one particular liquidity management tool, referred to as a side pocket3, which could enable some funds to reopen in due course. The UK's FCA, Luxembourg's CSSF and the Central Bank of Ireland, have all signalled their willingness to allow side pockets to be used in retail funds subject to certain conditions.
- The conflict in Ukraine has also led to a higher worldwide state of alert to potential cyber threats, either as direct retaliation for Western sanctions placed on Russia, or as an unintended spillover of other cyber offensives between Russia and Ukraine. Many financial services firms and FMIs are viewed as critical infrastructures, and their exposure to attacks from state and state-backed cyber adversaries is likely to be heightened during this period of increasing geopolitical tension. While there is some evidence that malicious cyber activity has increased since the conflict began, a significant cyber-attack, on the scale of 2017's WannaCry ransomware or NotPetya malware attacks, has not yet occurred.