EVIA European Venues & Intermediaries Association

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Wednesday 05th October 2022

Full Grid and Thematic Outlooks

Markets View - October 2022

FCA kicks off its post-Brexit MiFID2 reforms with proposals for improving equity secondary markets

- Following the HM Treasury / FCA Wholesale Markets Review (**WMR**), the FCA is consulting on proposals reforming MiFID2-related rules and guidance aimed at improving UK equity secondary markets. These proposals are necessary reading for trading venues, investment firms and UK branches of overseas firms, as they present potential opportunities for reduced compliance costs but equally may require investment into IT and reporting systems. Investment managers and other buy-side firms should also take especial note, as the proposals could help rationalise post-trade transparency obligations and improving the quality of execution they receive.
- Designated reporter regime (DRR)
- The FCA proposes replacing the SI regime with a new designated reporter regime (**DRR**) by separating post-trade transparency from systematic internaliser (**SI**) status and simplifying OTC transaction reporting. Under the DRR, firms would be able to voluntarily register as "designated reporters" with the FCA and the status would apply at entity level, regardless of whether they are an SI in any instrument. Firms may then voluntarily assume trade reporting obligations when trading with their clients in any instrument (equities and non-equities). As now, only counterparties to a trade will be able to report that trade.
- Conceptually, the DRR is a like-for like swap for SI status (at least for firms that only had SI status for post-trade reasons). The FCA intends that the SI regime's fundamental principles would continue to apply, i.e., firms executing trades OTC would have to report transactions through APAs. The DRR should enable market participants to identify more

quickly and easily who is responsible for reporting a trade and may also lead to lower operating costs.

- The proposals should be reviewed by all current SIs and trade reporting entities, particularly as the proposed changes would require investment in IT and reporting systems. We expect firms will have comments, in particular, about the regime's proposed scope, namely its limitation to entity-level registration (rather than an opt-in at individual asset class level).
- Post-trade transparency
- The FCA has proposed excluding certain non-price forming OTC arrangements / trades from post-trade reporting requirements. These transactions were not clearly scoped in by the initial MiFID2 drafting and tend to both add noise to post-trade transparency information and increase firms' reporting costs, so their exclusion should make post-trade transparency more useful. The two most helpful proposed exclusions involve:
    - Requests for market data (RFMD) give-ups—the FCA proposes to exclude these from the reporting obligation, as they often do not provide information additional to that already reported in the market leg of trades concluded by the executing broker. The FCA proposes to include RFMD in the definition of give-up / give-in trades where the trade is passed to hedge the prime broker's derivative position with the client. In contrast, as ESMA confirmed in its recent RTS 1 report, RFMD give-ups will still have to be reported as benchmark transactions in the EU.
    - OTC intra-group transactions—where these are undertaken for risk management purposes, e.g., for complying with margin or collateral requirements, the FCA proposes they be excluded from reporting, as they provide no additional visibility in addressable market liquidity. While some systems workflow amendments may be required for investing firms (and APAs), these proposals could streamline reporting around post-Brexit risk management arrangements between UK and EU affiliates. We recommend buy-side firms, though, seek clarification (by responding to the consultation) whether this proposed amendment would cover managed accounts, e.g., where there is a rebalancing, as this does not currently appear to be the case (but logically it should, as such rebalancing does not add to addressable market liquidity).
- Besides the above, the FCA proposes to simplify trade flags and other reporting fields and introduce amendments aimed at creating greater consistency / limiting duplications in the use of flags for trades that are exempted from post-trade transparency, the share trading obligation and pre-trade transparency under the negotiated trade waiver (reflecting that unlike in the EU, the double volume cap mechanism is being deleted in the UK). These changes should improve reports' information content and aid multi-source data consolidation, but as with other changes, would require investment into IT and reporting systems.
- Pre-trade transparency waivers
- The FCA is proposing changes to the reference price and order management facility (OMF) waivers. This may make venue liquidity slightly more attractive by removing some of the hurdles to benefit from these waivers. These amendments are relatively targeted, so we expect that there will be more material changes to come later in the WMR. The proposed changes include:
    - Most relevant market in terms of liquidity (MRMTL) definition—The MRMTL definition used for the MiFIR reference price waiver test would be amended to

allow venues operating dark pools to derive reference prices from non-UK venues (provided that the price is transparent, robust and offers the best execution result); and

- Order management facility (OMF) waivers—With the aim of lowering the overall cost of trading for market participants, the FCA proposes removing the minimum size threshold requirement for reserve / iceberg orders benefitting from OMF waivers and proposes delegating the decision to set a minimum size threshold for these orders to trading venues.

- Tick size
- For shares traded on UK venues whose main pool of liquidity is located on a trading venue outside the UK (usually the exchange where they are listed), the FCA proposes allowing UK equity trading venues to use a minimum tick size from the most liquid overseas market when that tick size is smaller than the one determined on data from UK venues. This should solve issues with the interaction between tick sizes and overseas markets endemic to the regime since it came into force, lowering transaction costs and providing greater selection and access to overseas shares for UK investors.
- Outages
- Building on wider regulatory operational resilience reform efforts, the FCA is consulting on the detail of future guidance on trading venue market outage communications and protocols. The guidance, largely in line with previous FCA suggestions, is aimed at both trading venues and members of trading venues. Both these groups should focus on these proposals in case they lead to further implementation work, though we note that the guidance for members of trading venues, relating to outage preparedness, may already be covered in existing policies. In any case, our Trading Venue Reviewer will pick up any trading venue rulebook changes to be consumed by venue members.
- Next steps; Having closed on 16 September 2022, the FCA intends to publish a policy statement next Easter.

EU DLT Pilot Regime—Shaping the future of DLT-based financial markets and digital securities

- The EU has published its finalised plans for a DLT pilot regime (**DLTPR**). The DLTPR provides an opportunity for firms to obtain authorisation to operate DLT market infrastructure (**DLT MI**) within the EU while taking advantage of certain exemptions from existing financial services regulation. With the DLTPR, the EU has taken a true 'sandbox' approach, recognising that DLT is often not well served by traditional regulation, and allowing firms relative freedom to develop technology and infrastructure under supervision.
- Under the DLTPR, investment firms, market operators and CSDs already authorised within the EU under MiFID2 or the CSDR may apply for an additional permission to operate certain DLT MI. For authorised investment firms and market operators, this includes either DLT multilateral trading facilities (**DLT MTFs**), and for authorised CSDs, this includes DLT settlement systems (**DLT SS**). The DLTPR has also introduced a new infrastructure type, trading, and settlement systems (**DLT TSS**), which may be operated by either investment firms / market operators or CSD. This is a novel development, as it provides an opportunity for CSDs and investment firms to expand their service offerings to cover both trading and settlement (albeit only within the realm of DLT). Significantly,

new entrants who are not yet authorised may apply for temporary authorisation concurrently with permission to operate a DLT MI.

- Firms may be granted permission for a period of up to 6 years (or until the DLTPR expires) and this permission may be passported EU-wide. At present, it is unclear what will happen to DLT MIs when the regime expires. ESMA will report on the regime's future midway through the pilot period (i.e., by 24 March 2026), with its views on whether the regime should end, be changed, or be made permanent. Some firms wishing to participate may be put off by the risk of investing in building the necessary infrastructure with no certainty that the regime will survive beyond the six-year period that the DLTPR is set to run.
- The financial instruments that may be traded or settled under the DLTPR are limited. The regime only applies to crypto-assets that already fall under EU financial services legislation, i.e., MiFID2, and it places threshold requirements on the assets, both individually and in aggregate. For example, shares traded or settled must be issued by an issuer with a market capitalisation of €500 million or less, and bonds that embed derivatives or utilise a structure that makes risk difficult to understand for clients are excluded entirely. If DLT MI reach an aggregate of €9 million in assets, they must start a "transition strategy" designed at decreasing their activity or winding down. While these restrictions may help mitigate risk for clients (especially important given the potential for retail client participation, as discussed below), they will constrain DLT MI operators and may deter some firms from participating. These requirements also imply additional costs for firms as regular reporting will be required to ensure that DLT MI remain under the relevant thresholds.
    - For firms that receive approval and adhere to the financial instrument restrictions, however, there are some key exemptions from existing regulation (i.e., MiFID2 and the CSDR) available, including:
    - **For DLT MTF and TSS operators**—exemptions from intermediation requirements, opening up the ability to interact with retail investors directly (along the lines of [FTX in the US]), as well as exemptions to some transaction reporting requirements; and
- **For DLT SS and TSS operators**—exemptions from some cash settlement requirements, certain arrangements regarding settlement fails and certain CSDR definitions.
- These are not automatic blanket exemptions. Firms wishing to operate DLT MI must apply for specific exemptions when applying for permission to operate the DLT MI. They will need to demonstrate why each exemption should be granted, with the idea being that each operator's granted exemptions should be tailored to their individual business model.
- DLT MI operators will also be subject to some additional requirements aimed at mitigating risk. Some of these requirements are client risk management-based, e.g., ensuring certain standards of client asset safeguarding and investor protection procedures are met, or mandating that information for clients on how the DLT MI operates and how this differs from non-DLT infrastructure is published and available. Other requirements focus on operational risks, by for example requiring that all DLT MI operators have robust IT and security systems, as well as a clear business plan and rulebook. Existing sectoral legislation provisions will also continue to apply, insofar as the DLT MI operator is not exempt, and this will include not only EU-wide legislation like MiFID2 or the CSDR, but in many cases may also include non-harmonised provisions of national law.

- The DLTPR will largely take effect on 23 March 2023, at which point interested firms may start to apply to their relevant competent authorities to participate. ESMA is currently consulting on the format and content of applications.

European Commission extends deadline for pension scheme arrangement clearing obligation

- The European Commission (EC) has published a Delegated Act setting the final deadline for pension scheme arrangement (PSA) compliance with OTC derivatives clearing obligations under EMIR to 18 June 2023. While this is not technically a further extension, the EC has made clear that supervisory authorities should not take action against non-compliant PSAs during this period. This follows a letter from ESMA in January 2022 calling for an end to the extensions, but requesting an implementation period instead.
- As discussed in the letter, while PSAs do appear to be largely operationally ready to clear OTC derivatives in general, there is some concern over capacity. Several PSAs have such large portfolios that EU clearing members may not have sufficient capacity to clear their trades. Many PSAs rely on UK CCPs.
- There is also concern over liquidity risks, i.e., the need to post collateral in cash in the event of market stress. While PensionsEurope has suggested that the answer could be to allow EU CCPs to provide liquidity to PSAs through temporary conversions of high-quality government bonds to cash, no solution has yet been decided, and the implementation period will provide time to explore this point further.
- Regardless, this pseudo-extension will give PSAs some breathing room to prepare. We recommend that they use this additional time to put in place the necessary clearing arrangements with clearing members (noting that the EU commissioner for financial services has made clear that the expectation is that PSAs must clear via EU CCPs) and set-up the necessary facilities to source cash to meet the CCP's variation margin requirements.

FCA launches reviews into trade data, benchmarks, and credit rating data

- Following a Call for Input on accessing and using wholesale data launched in March 2020 and a Feedback Statement relating to the same in January 2022, the FCA has commenced a trade data review. The FCA is concerned that ownership of trade data by trading venues may be limiting competition through charges that: result in increased costs to end investors; affect asset managers' investment decisions; and affect price formation. There is also concern that regulatory provisions for free delayed data may not be effective. The FCA aims to publish its findings on the trade data review (and provide any next steps) in January 2023.
- Separately, the FCA aims to launch a combined study of benchmarks and credit rating data this November. This study aims to cover a number of potential issues identified by the FCA including:
    - Benchmarks—namely, how benchmarks are priced, contractual terms and barriers to switching; and
    - Credit rating data—including pricing and contractual relationships, barriers to entry and the scope for and level of innovation.

- The FCA reached out regarding these issues to a sample of trade data suppliers in June 2022 and to users in July 2022. Stakeholders who didn't receive an information request are invited to contact the FCA directly via WholesaleTradeDataReview@fca.org.uk.

ESMA consults on changes to cash penalty collection and distribution; ESMA has released a consultation paper seeking industry feedback on proposed changes to Article 19 of the RTS on settlement discipline.

- These changes would see CSDs take over the process of collecting and distributing cash penalties in all circumstances. As it currently stands under Article 19, CCPs manage the process for cash penalties resulting from cleared transactions, while CSDs manage the process for uncleared transactions. The consultation is open until 9 September 2022.
- The current process has led to additional costs and burdensome adaptations for both CSDs and CCPs alike, as the parallel framework has meant that neither of the two groups is able to operate the penalties process independently. It has also created additional operational risks, particularly in the context of cross-border activities.
- ESMA notes that stakeholders including CCPs, CSDs, banks and industry bodies, such as EACH, have all previously expressed support for a single framework overseen by CSDs, and as such is merely seeking to confirm that this simplification is "still relevant" now that the CSDR cash penalties regime has been in effect for a few months.

ESMA consults on extending scope of clearing and derivative trading obligations; ESMA has launched a consultation into clearing and derivative trading obligations, primarily focusing on the introduction of new risk-free rates (RFR) and amending the maturity of overnight index swaps (OIS) classes referencing current RFR following the discontinuing of EONIA and LIBOR rates and in line with the ongoing EU benchmark transition. The consultation closes 30 September 2022.

- Specifically, ESMA proposes to:
- regarding the clearing obligation (CO), introduce the OIS class referencing the Tokyo Overnight Average Rate (TONA) and extend the maturity of the OIS class referencing the Secured Overnight Financing Rate (SOFR) from 3 to 50 years; and
- regarding the derivatives trading obligations (DTO), introduce certain classes of OIS referencing the Euro Short-Term Rate (ESTR).
- These proposals are meant to complement a set of RTS published in February of this year which introduced ESTR and SOFR to the CO and are being introduced following an observed significant increase within the EU in SOFR, TONA and ESTR liquidity.
- Further amendments to the CO and DTO are expected as the transition away from EONIA and LIBOR continues to progress, so this is a space firms should watch.

ESMA provides update on recognition of third-country CCPs; Following the suspension of several applications by third-country CCPs for recognition within the EU under EMIR, ESMA has now provided an update on how it intends to move these applications forward.

- For jurisdictions where the European Commission has adopted equivalence decisions (as is the case in China, Chile, Indonesia, Israel, and Malaysia), ESMA will begin processing applications and grant recognition as soon as possible, subject to the relevant conditions for recognition being met.

- For jurisdictions where there is no equivalence decision (i.e., Argentina, Colombia, Russia, Taiwan, Thailand, and Turkey), ESMA will start refusing applications, but notes that CCPs that are refused may re-apply for recognition if the EU later adopts an equivalence decision in the relevant jurisdiction.
- ESMA has also clarified that CCPs currently operating in the EU under Member State national law who had applied for recognition under the EMIR transition provisions may continue to provide clearing services in the relevant Member State (or States) until a decision is made on their application.

Regulatory Outlook and Diary

Q4 2022	Australia	Expected finalization of APRA prudential standard for IRRBB (APS 117).
Q4 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 fourth quarter of 2022
Q4 2022	Australia	Expected ASIC Schedule 1 Technical Guidance for public consultation.
Q4 2022	Australia	Expected third consultation paper on over-the-counter (OTC) derivatives reporting and technical guidance by ASIC. Expected publication of final OTC derivatives reporting rules by ASIC
Q4 2022	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
Q4 2022	UK	Expected consultation of the Basel 3.1 standards.
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 7, 2022	US	Comments due on SEC Proposal for Clearing Agency Governance and Conflicts of Interest (See 87 Fed. Reg. 51812 (August 23, 2022))
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.
October 31, 2022	Global	Comment deadline for the Regulatory Oversight Committee (ROC) consultation on Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) Revised CDE Technical Guidance – version 3.
October 31, 2022	US	CFTC Effective Date for the Clearing Rules to Account for the Transition from LIBOR (See 87 Fed. Reg. 52182 (August 24, 2022)). The portion of the rule effective on this date adds a requirement to clear OIS referencing US dollar SOFR (seven days to 50 years) and the Singapore Overnight Rate Average (seven days to 10 years)
October 31, 2022	UK	Clearing requirement swaps referencing SOFR added
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.
December 31, 2022	UK	Deadline for Chief Risk Officers to respond to the PRA's Review of the use of the SIMM Model: Conclusions.
January 2023	Australia	Expected effective date of APRA banking standards relating to the overall approach to capital requirements, SA-CCR and the internal ratings-based approach to credit risk.
2023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
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, now we expect negotiations to take place among Member States and the European Parliament to work on the CRR 3 banking package in the coming months, with an expectation they will secure their respective position in the second half of 2022 and a finalization of the package in trilogue in the first half of 2023. As a result of these negotiations, the implementation date of January 1, 2025, will be subject to change
January 1, 2023	US	Regulatory initial margin requirements apply under US prudential regulations for covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion) based on the calculation period which ended August 30, 2022.
January 1, 2023	US	CFTC Position Limits second compliance date for economically equivalent swaps / risk management exemption.
January 1, 2023	Australia	Basel III: Expected implementation of revised leverage ratio requirements, including revised treatment for client clearing.
January 1, 2023	Singapore	Basel III: Expected implementation of FRTB framework for supervisory reporting purposes.
January 1, 2023	Singapore	Basel III: Expected implementation of revised credit risk, operational risk, output floor and leverage ratio frameworks.
January 1, 2023	Malaysia	Discontinuation of publication of 2-month and 12-month KLIBOR by BNM.
January 2, 2023	EU	In the context of EMIR 2.2, the European Commission shall produce a report assessing the effectiveness of: • ESMA's tasks, in particular the CCP Supervisory Committee's, in fostering the convergence and coherence of the application of EMIR2.2 among the competent authorities; • the framework for the recognition and supervision of third-country CCPs; • the framework for guaranteeing a level playing field among CCPs authorized in the EU and third-country CCPs; and • the division of responsibilities between ESMA, the competent authorities and the central banks of issue (EMIR article 85 (7)).
February 12, 2023	EU	CCP R&R (Article 37 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum elements that should be included in a business reorganisation plan. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph.
February 12, 2023	EU	CCP R&R (Article 38 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority.

March 01, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan South Africa Saudi Arabia	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2023, or January 1, 2024 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations. For RSA, Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds either the ZAR 15 trillion or ZAR 8 trillion threshold for initial margin requirements as of September 1, 2023.
March 31, 2023	Japan	Basel III: Implementation of leverage buffer for G-SIBs (in connection with the implementation, JFSA will publish certain rules for extension of, and amendment to, certain transitional arrangement based on the public consultation which was closed on August 15, 2022)
April 24, 2023	UK	Removal of clearing obligation for swaps referencing SOFR.
June 2023	UK	Deadline for ending reliance on US dollar LIBOR.
June 1, 2023	US	Three-month calculation period begins under US prudential regulations to determine whether the material swaps exposure, or daily average aggregate notional amount, of swaps, security-based swaps, FX swaps and FX forwards for an entity and its affiliates that trade with a prudentially regulated swap dealer exceeds $8 billion for the application of initial margin requirements as of January 1, 2024
June 15, 2023	EU	The European Commission shall adopt a Delegated Acts (DA) to designate exempted FX spot rates from the scope of the EU BMR.
June 15, 2023	EU	The European Commission (EC) shall submit a report to the European Parliament and to the Council on the scope of the BMR, in particular with respect to the use of third country benchmarks. If appropriate, the EC shall accompany the report with a legislative proposal.
June 18, 2023	UK	End of the temporary exemption for pension scheme arrangements from clearing and margining under UK EMIR
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the calibration of the Standardised Approach for Counterparty Credit Risk

		(SA-CCR) which will potentially inform a future review by the European Commission.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the treatment of repos and reverse repos as well as securities hedging in the context of the Net Stable Funding Ratio (NSFR).
July 1, 2023	US	CFTC Effective Date for the Clearing Rules to Account for the Transition from LIBOR (See 87 Fed. Reg. 52182 (August 24, 2022)). The portion of the rule effective on this date removes the requirement to clear interest rate swaps referencing US dollar LIBOR and the Singapore Dollar Swap Offer Rate in each of the fixed-to-floating swap, basis swap and FRA classes, as applicable.
July 1, 2023	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
July 1, 2023	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
July 31, 2023	US	Expiration of a second extension of relief to Shanghai Clearing House permitting it to clear swaps subject to mandatory clearing in the People's Republic of China for the proprietary trades of clearing members that are US persons or affiliates of US persons (CFTC Letter No. 22-07).
Q3/ Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
Q3 2023	Australia	Expected go-live of the updated ASIC reporting regime.
September 1, 2023	US Australia Canada Hong Kong Korea Singapore	Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion. 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 Brazil Saudi Arabia	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. Initial margin requirements apply to covered entities belong to a group whose average aggregate month-end notional amount of non-centrally cleared derivatives exceeds EUR 8 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 Repeal the ASIC Derivative Transaction Rules (Reporting) 2013 and make the ASIC Derivative Transaction Rules (Reporting) 2022 ('ASIC TRRs 2022') in the very same form.
December 04, 2023	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45, and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023.
December 31, 2023	EU	The amended Benchmarks Regulation that entered into force on February 13, 2021, extends the BMR transition period for non-EU benchmark administrators until December 31, 2023, and empowers the European Commission (EC) to adopt a delegated act by June 15, 2023, to prolong this extension by maximum two years until December 31, 2025. It also enables the EC to adopt delegated acts by June 15, 2023, in order to create a list of spot foreign exchange benchmarks that will be excluded from the scope of Regulation (EU) 2016/1011.
January 1, 2024	US EU	Under US Prudential Regulations only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). EU: Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion.

	Switzerland UK	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 Saudi Arabia	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2024, or January 1, 2025 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations.

March 01, 2024	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 8 trillion threshold for initial margin requirements as of September 1, 2024 (per amended rule pending finalization)...
March 31, 2024	Japan	Basel III: Implementation of revised credit risk, CVA, market risk (FRTB) for international active banks and domestic banks using IMM. JFSA has launched the public consultation on amendments to relevant rules based on the finalized Basel III on September 9, 2022 (which will close on October 11, 2022).
April 01, 2024	Japan	Expected implementation of transaction reporting requirements updated based on the technical guidance published by CPMI and IOSCO in February 2017, September 2017 and April 2018, the public consultation closed on May 30, 2022, and JFSA will publish the final rules. JFSA has launched the public consultation on the guidelines therefore on September 12, 2022 (which will close on October 12, 2022).
April 01, 2024	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.
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	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.

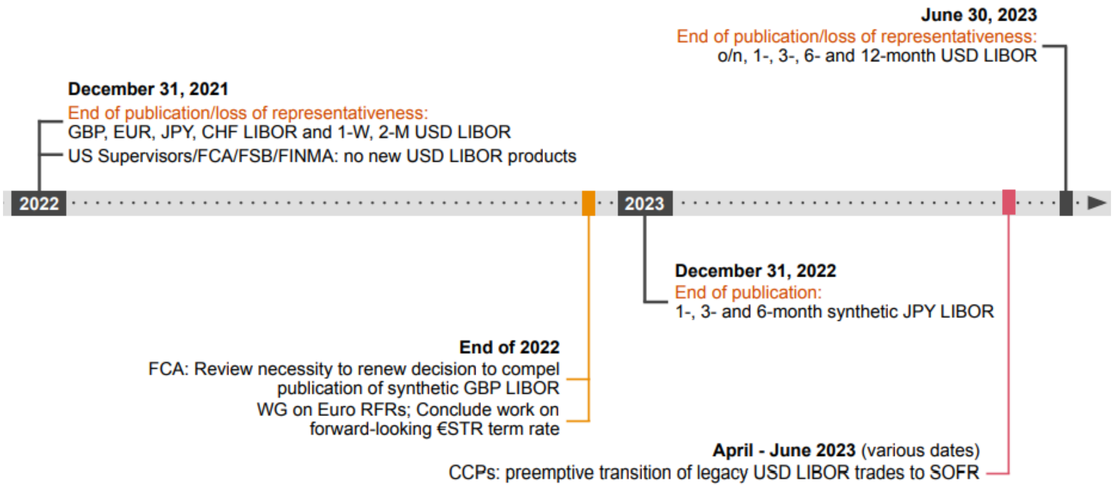
	Korea Singapore Japan Brazil South Africa Saudi Arabia	Korea: Initial margin requirements apply to financial institutions with derivatives exceeding more than KRW 10 trillion. Singapore: Initial margin requirements apply to MAS covered entities with an aggregate notional amount exceeding SGD 13 billion. Japan: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion. Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion. SA: Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization). Initial margin requirements apply to covered entities belong to a group whose average aggregate month-end notional amount of non-centrally cleared derivatives exceeds EUR 8 billion.
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
October 1, 2024	US	Expiration of temporary CFTC relief regarding capital and financial reporting for certain non-US nonbank swap dealers (See CFTC Staff Letter No. 22-10 and CFTC Staff Letter No. 21-20) *relief would also expire upon the Commission's issuance of comparability determinations for the jurisdictions in question.
January 1, 2025	EU	Expected implementation of FRTB and CVA risk under the CRR III proposal.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
March 1, 2025	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 100 billion threshold for initial margin requirements as of September 1, 2025 (per amended rule pending finalization)
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.

Q4 2024/Q1 2025	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
January 1, 2025	UK	Expected implementation of the Basel 3.1 standards
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
September 1, 2025	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion (per amended rule pending finalization).
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR have to comply with real capital/large exposures/liquidity regime under Investment Firms Regulation (IFR) provisions on liquidity and IFR disclosure provisions.
August 12, 2027	EU	CCP R&R (Article 96): The Commission shall review this Regulation and its implementation and shall assess the effectiveness of the governance arrangements for the recovery and resolution of CCPs in the Union and submit a report thereon to the European Parliament and to the Council, accompanied where appropriate by proposals for revision of this Regulation.

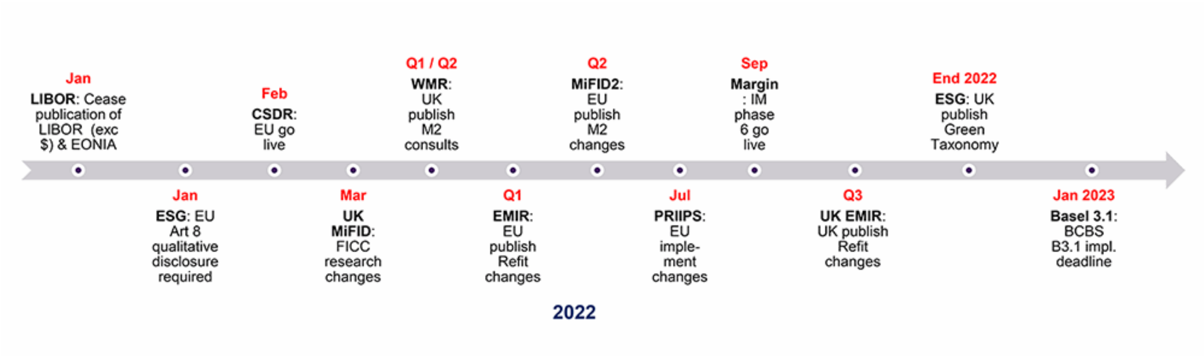
ESMA Overview of planned consultation papers 2022;

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

LiBOR Transition



Timeline...



ISDA have now filed our [response to the EC Targeted Consultation on BMR] and co-published an updated version of our briefing paper "The Importance of Reforming the EU Benchmarks Regulation" alongside GFXD, ASIFMA, EMTA, FIA and the EACT.

- https://www.isda.org/2022/08/11/reforming-the-eu-benchmarks-regulation-updated-recommendations/?_zs=J3rp81&_zl=BnNo6. A press release detailing these events can be found here.

In terms of next steps, it is broadly expected that the European Commission will recommend an extension of the BMR transitional period to December 2025. Subsequently, a proposal for a reformed BMR is slated for the end of the year. We have now reached out to the EC to talk about the issues raised ahead of them taking their next steps.

Milestone 100 trillion; *Last week the 100 trillion milestone has been reached. The YTD volume at LCH passed that milestone for both LIBOR and SOFR on the same week. Emphasizing if needed that if we are in a "SOFR First" period, it is only by a very small margin*.

- The YTD numbers were on 2022-09-16: LIBOR 100.29 trn, SOFR 101.85 trn and EFFR ... 130.32 trn. If SOFR beat LIBOR by the smallest of margin, it is still more than 25% below EFFR.

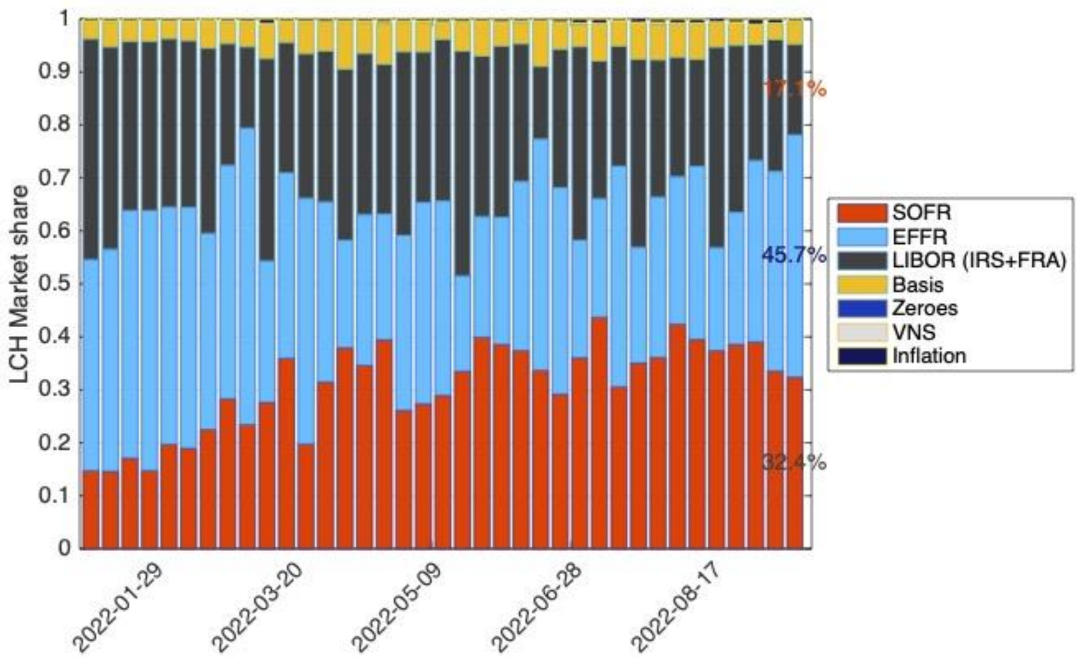
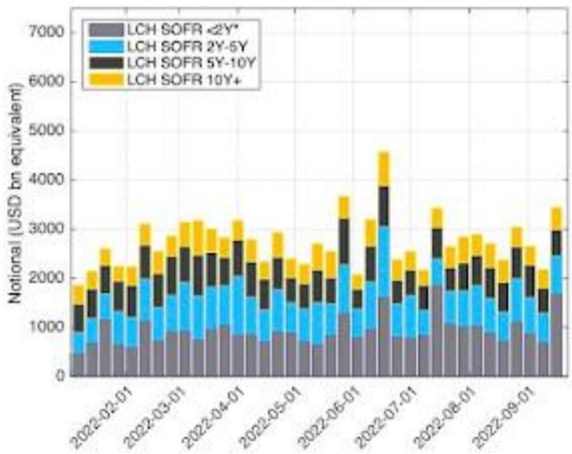


Figure 1: Weekly share by product types at LCH

The recent period has seen several monetary policy changes in EUR and USD. The activity around those policy changes is clearly seen in the EUR-ESTR volume data, a lot less in the USD-SOFR data. For USD, EFFR still take a large part of the short-term activity.

The comparison between EUR-ESTR and USD-SOFR is provided in Figure 2. The usual clear difference in the short part of the curve is clearly visible.



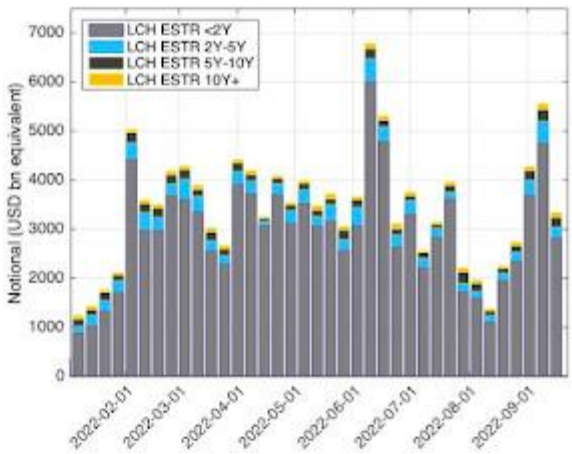


Figure 2: USD-SOFR and EUR-ESTR weekly volume comparison.

RFRS are Now Half of the Market; Chris Barnes September 20, 2022

- The ISDA-Clarus RFR Adoption Indicator has now climbed above 50% for the first time.
- In August 2022 it hit a new all-time high at **51.1%**.
- SOFR adoption increased to a new all-time high, at 57.2%.
- GBP and CHF continue to see nearly 100% of risk traded as RFRs.
- €STR trading slipped (again) to 19.3%, the second month of consecutive decline.
- Overall trading activity was 40% higher than last August, but still below August 2019.

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

ISDA Safe, Efficient Markets

ISDA-Clarus RFR Adoption Indicator

August 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

51.1% RFR Adoption Indicator vs. 46.4% last month (Chart 1).	**44.0%** RFR-linked notional as % of total IRD notional transacted vs. 39% last month (Chart 3).
DV01 of RFR-linked IRD was **$16.2 Bn** vs. $13.7 Bn last month (Chart 2).	RFR-linked IRD notional transacted was **$81.2 Tn** vs. $67.3 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).	**57.2%** 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

$31.8 Bn Total IRD DV01 transacted this month vs. $29.5 Bn the prior month.	**$184.3 Tn** Total IRD notional transacted this month vs. $172.8 Tn the prior month.	**$15.6 Bn** Other indices DV01 transacted this month vs. $15.8 Bn the prior month.

Showing;

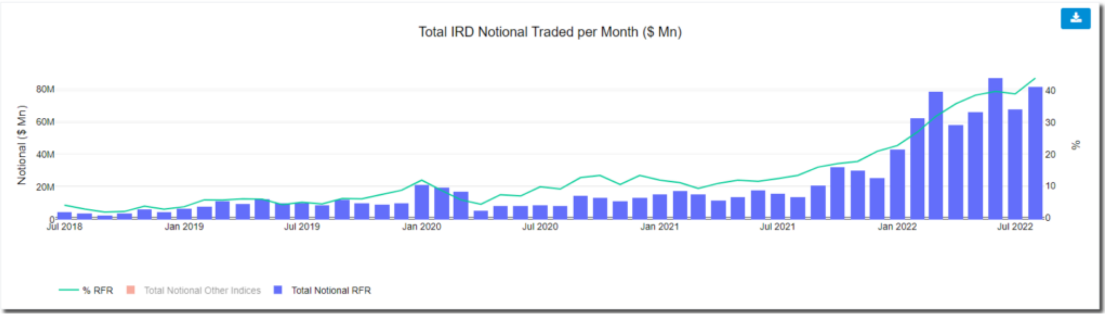
1. RFR adoption increased to a new record at 51.1%.
2. SOFR hit a new high at 57.2% of total traded USD risk.
3. GBP and CHF continue to see nearly 100% of risk traded as RFRs.
4. 19.3% of EUR risk was versus €STR.
5. August 2022 saw $31.8Bn of DV01 traded across all Rates products, 8% higher than last month and over 40% larger than August 2021.

The Chart Blitz

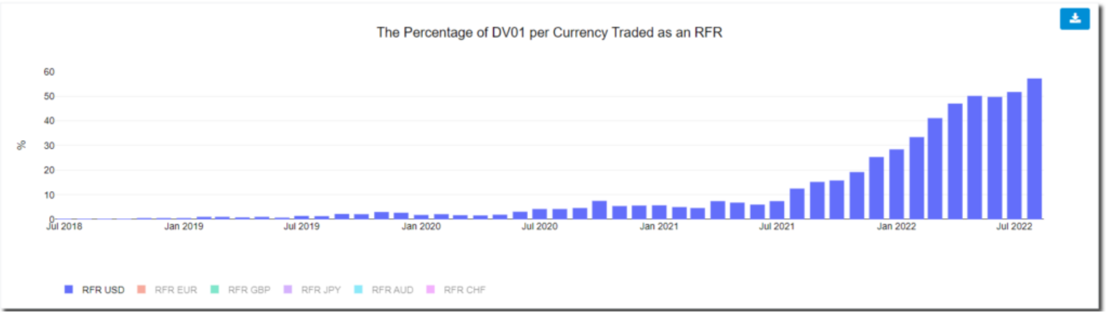
With such a strong showing in RFR trading this month, this blog pretty much writes itself. Key take-aways include:

- The headline indicator hit a new all-time high above 50% for the first time.
- It jumped nearly 5% higher since last month.
- This is only the second time that the RFR Indicator has ever increased by such a large amount in a single month.
- Previously, RFR adoption increased from 26.3% to 31.7% between November and December 2021, just as 3 LIBOR indices were about to cease.

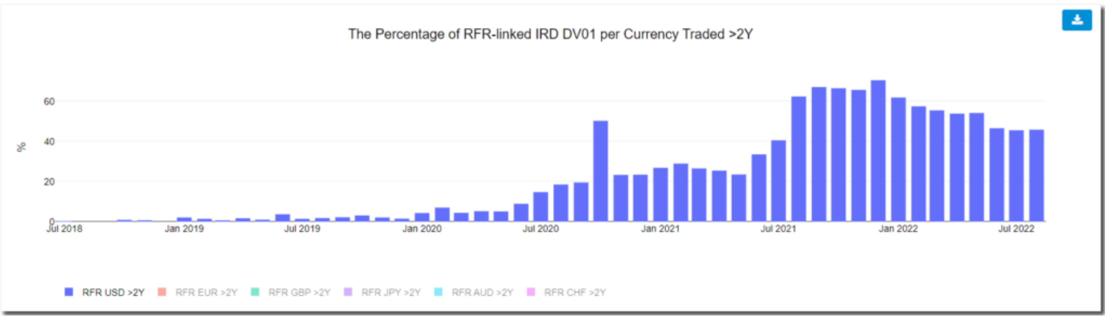
With the headlines covered, the underlying data is pretty interesting too!



- This chart looks at notional amounts traded rather than DV01 (risk).
- At 44% of total IRD *notional traded*, this was another new record for RFR Adoption.
- In fact, August 2022 saw the second largest ever amount of RFR-linked notional transacted. That is pretty incredible for a "quiet" Summer month (although I'm not sure I would necessarily characterise August 2022 as a quiet month!).
- $81.2Trn of RFR linked notional was transacted across all Derivatives in the six currencies – covering both OTC and Futures markets.



- The second chart looks at only SOFR adoption. All charts are available at rfr.clarusft.com.
- As we highlighted previously, USD Rates are so big that the overall Indicator is very sensitive to the amount of SOFR trading.
- In a record-breaking month for RFR Adoption it is therefore no surprise to see SOFR adoption also hit a new high.
- SOFR adoption jumped by over 5% last month, increasing from 51.7% to 57.2%.
- For comparison, it wasn't until April 2021 that GBP SONIA broke the 50% barrier.

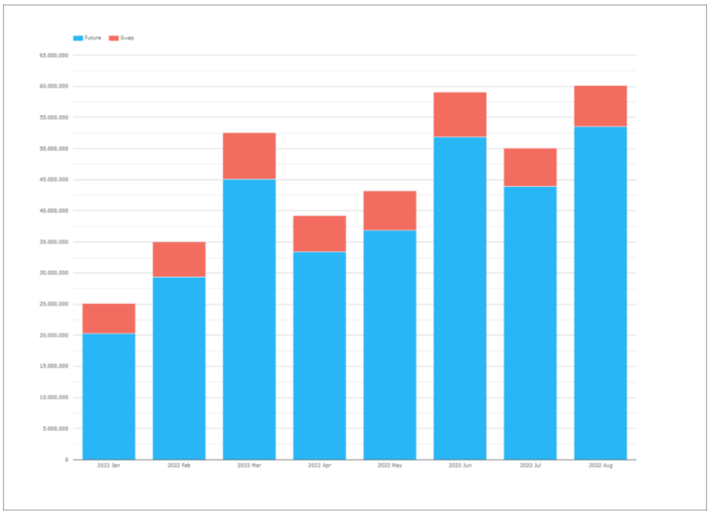


- This chart looks at the maturities traded in SOFR.

- The share of long-dated risk in SOFR reduced last month.
- It has nonetheless been pretty steady since June at 45-46% of total SOFR risk.
- This shows that activity in short-dated SOFR trading, including SOFR futures, are still increasing.
- Whilst much of the initial transition story was focused on long-dated OTC markets, we now see a more even spread of SOFR activity across the curve.

The charts in this blog therefore show that more SOFR notional traded and that there was relatively more short-dated trading. There was also a larger percentage of total USD risk that was SOFR-linked than ever before.

All of this leaves us with one final chart, highlighting in CCPView that last August 2022 saw the largest amount of SOFR-linked notional ever traded, breaking $60Trn for the first time – $10Trn higher than even last month!



Notional amount of SOFR-linked derivatives traded each month in 2022

The data is clear – it is onwards and upwards for SOFR adoption!

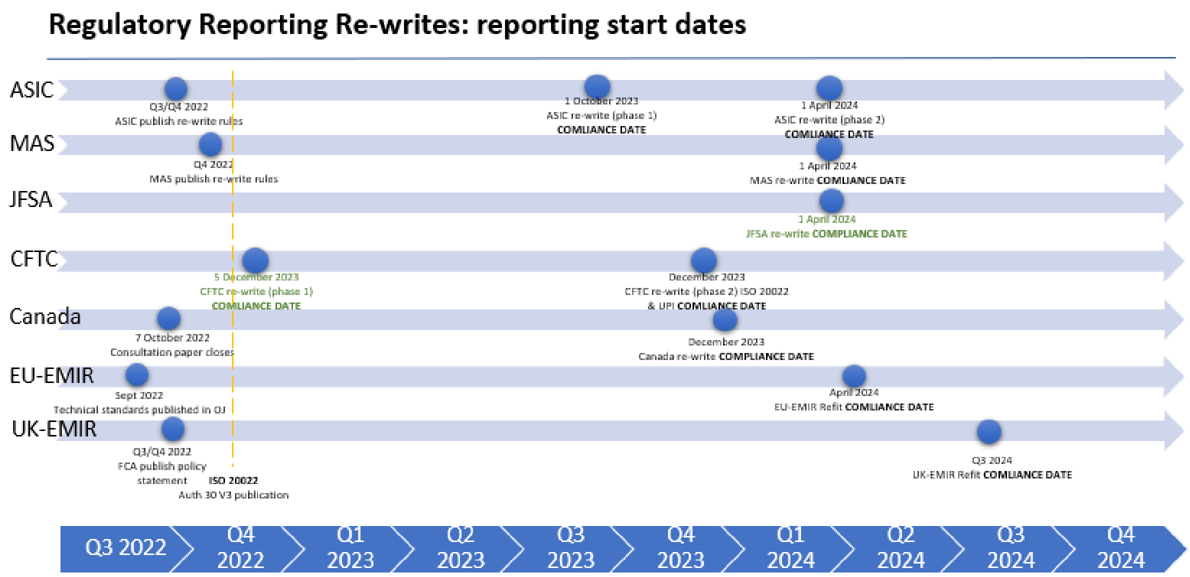
IBOR Currency	IBOR	IBOR Administrator	Alternative RFR	Alternative RFR Administrator	Public-/Private Sector Working Group	Fallback-related Announcements
	Bank Bill Swap Rate (BBSW)	Australian Securities Exchange (ASX)	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA)	Reserve Bank of Australia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

						Bloomberg announcement regarding fallback spread for 6m and 12m CDOR ISDA Tenor Cessation Guidance – 6m and 12m CDOR
	Copenhagen Interbank Offered Rate (CIBOR)	Danish Financial Benchmark Facility	DESTR (Denmark Short-Term Rate)	Danmarks Nationalbank	Working group on short term reference rate	Upcoming changes to the CIBOR and Tom/Next benchmarks
	LIBOR	IBA				
	Euro Interbank Offered Rate (EURIBOR)	European Money Markets Institute (EMMI)	Euro Short-term Rate (€STR)	European Central Bank (ECB)	Working Group on Euro Risk-free Rates	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Hong Kong Inter-bank Offered Rate (HIBOR)	Treasury Markets Associations (TMA)	Hong Kong Dollar Overnight Index Average (HONIA)	TMA	Working Group on Alternative Reference Rates (WGARR) under the Treasury Markets Association (TMA)	
	Mumbai Interbank Forward Outright Rate (MIFOR)	Financial Benchmark India Pvt. Ltd (FBIL)	FBIL Modified Mumbai Interbank Forward Outright Rate (Modified MIFOR)*	Financial Benchmark India Pvt. Ltd		
	LIBOR	IBA				
	Tokyo Interbank Offered Rate (TIBOR)	Japanese Bankers Association TIBOR Administrator (JBATA)				
	Euroyen TIBOR	JBATA	Tokyo Overnight Average Rate (TONA)	Bank of Japan	Cross-Industry Forum on Interest Rate Benchmarks	FCA Announcement on the Future of the LIBOR Benchmarks IBA Press Release ICE LIBOR Feedback Statement on Consultation on Potential Cessation Bloomberg Announcement on the Spread Adjustment Fixing ISDA Guidance
	Kuala Lumpur Interbank Offered Rate (KLIBOR)	Bank Negara Malaysia (BNM)	Malaysia Overnight Rate (MYOR)	Bank Negara Malaysia (BNM)	Financial Markets Committee (FMC)	BNM announcement on launch of MYOR
	Bank Bill Benchmark rate (BKBM)	New Zealand Financial Markets Association (NZFMA)	Official Cash Rate (OCR)	Reserve Bank of New Zealand		
	Norwegian Interbank Offered Rate (NIBOR)	Norske Finansielle Referanser AS (NoRe)	Norwegian Overnight Weighted	Norges Bank	Working Group on Alternative Reference	

			Average (NOWA)		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

Markets Conduct Regulations



Public Register for the Trading Obligation for derivatives under MiFIR

Public Register for the Clearing Obligation under EMIR

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

2.1. EU trading venues

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

Table 3: EU trading venues relevant for the trading obligation

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

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

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

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

Conduct

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	Speed of Delivery: As expected	Speed of Delivery: 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			🌐
ISSB sustainability-related disclosure/climate-related disclosures			🌐

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 back to-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 pushing 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 third-party 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 long-term 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 medium to-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 of 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 decision-making 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.

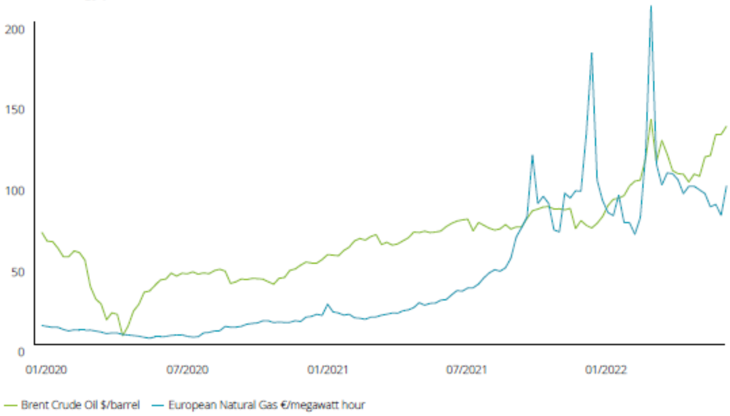
Market developments

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.

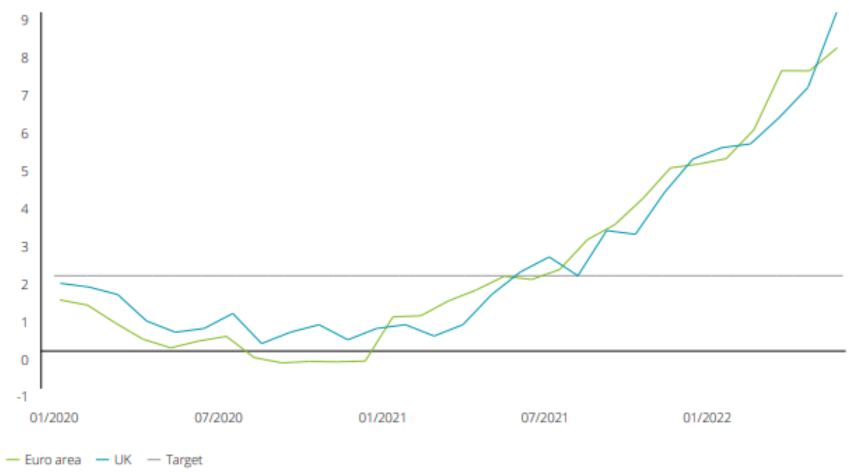
Chart 1. Energy prices



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.

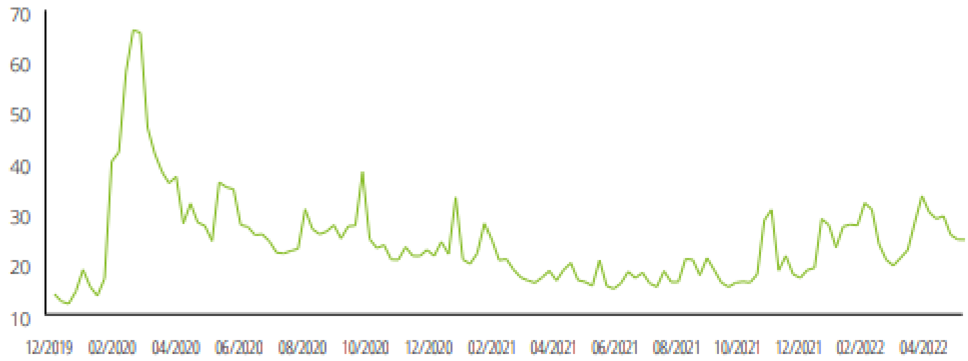
- The ECB's longstanding concerns around timely recognition of increases in credit risk, and adequate coverage through impairment or collateral, will remain high on its agenda. In the insurance industry, inflationary pressure is likely to affect commercial performance with many customers in financial 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."

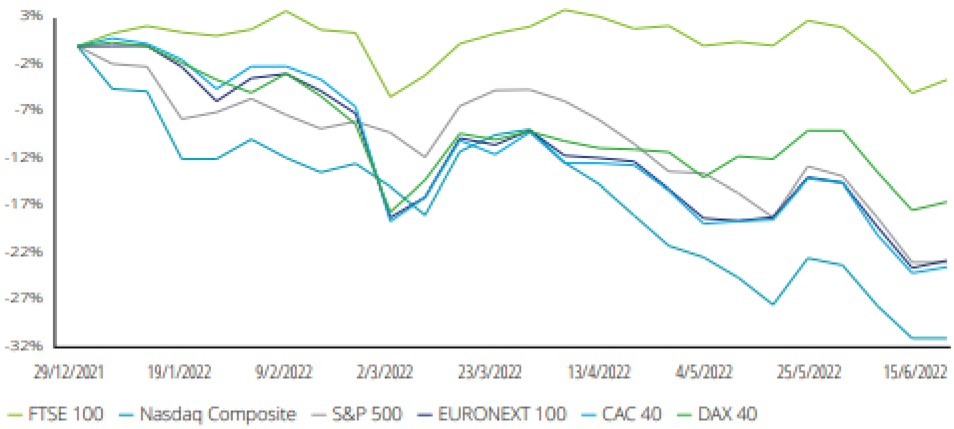
- Equity markets have also suffered a sharp downturn since the beginning of the year. This has also coincided with a large fall in value of various crypto-assets and some stablecoins being unable to maintain their price pegs. TerraUSD4 lost nearly all its value, while Tether5 lost its peg to the US dollar

Chart 3. VIX market volatility index



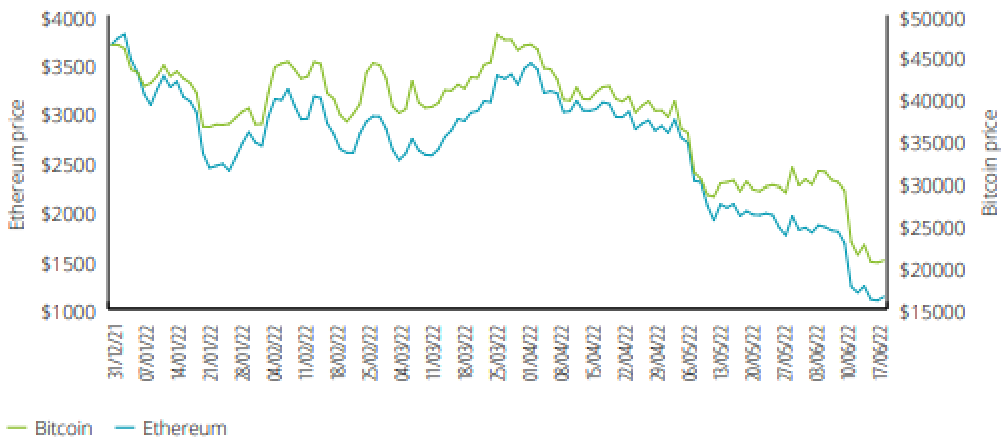
Source: Refinitiv Datastream.

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 back testing 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

Sanctions

Land grab and sanctions; *The Russian president is doubling down on his faltering invasion of Ukraine — and sending a stark message to the west. Taking over the parts of Donetsk, Luhansk, Zaporizhzhia and Kherson regions that Russia controls does little to end the war*.

- Putin was forced to mobilise the army's reserves, a deeply unpopular move he had put off for months, to bolster the 1,000km front line. Russia is now laying claim to large swaths of territory even as Ukraine's armed forces have been successful in their counteroffensive. The logic behind this latest land grab was laid bare when Putin vowed to retaliate against any future attempts to reclaim what he is now calling part of Russia. He said that would include nuclear weapons, if necessary ("this is not a bluff") — a threat aimed at persuading the west to stop its support for Ukraine.
- In Brussels, ambassadors are meeting today to discuss an eighth round of sanctions as the EU seeks to respond to the latest Russian escalation. The key element of the

package is a price cap on seaborne shipments of Russian crude that has been agreed in principle by the G7 capitals. The aim of the cap is to drive down Putin's oil revenues while ensuring that third countries can still gain access to Russian crude. While diplomats want to agree the EU implementation of the measures before an informal summit of leaders next week in Prague, it will not be straightforward. A particular concern is Hungary, which reiterated yesterday that if there were energy sanctions involved it could not support the measures.

- All this is true to form, given Prime Minister Viktor Orbán spent weeks resisting the EU ban on Russian crude oil imports in May — before winning a temporary exemption from the embargo on pipeline shipments. Member states are already considering ways of bringing pressure to bear, if necessary. One option would be to impose tariffs on Russian oil being piped into the EU, given that these would hit Hungary right away.
- A senior EU diplomat said: "Hungary of course has an exemption from the EU ban on Russian oil deliveries via pipeline. It would be 100 per cent possible to impose tariffs on Russian oil shipments into the EU using a qualified majority vote and hit Hungary if Orbán doesn't play ball on the oil price cap." Another unresolved question is the level of the proposed cap, including the mechanism that will determine it. People familiar with the proposals expect it to be a dynamic cap that fluctuates alongside movements in global oil prices.
- Several member states object to the European Commission's ideas for setting the level, however. "The implementation measures being proposed are contentious, and could derail the whole thing," said one diplomat. "They give too much power to the commission." Is the EU's response to Vladimir Putin's annexation of Ukrainian territories adequate? Tell us what you think and click here to take the poll.

EU Consolidated Sanctions List:

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

92 entries added, 5 entries amended on the consolidated list; *92 entries have been added to, and 4 entries have been amended on the consolidated list under the Russia financial sanctions regime. 1 entry has been amended under the Libya financial sanctions regime.*

- On 26 September 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.
- 92 entries have been added to the Russia financial sanctions regime and are now subject to an asset freeze. 3 entries have been amended and 1 entry corrected under the Russia financial sanctions regime and remain subject to an asset freeze.

- The following entry has been amended under the Libya financial sanctions regime and remains subject to an asset freeze:
- Yevgeniy Viktorovich Prigozhin (Group ID: 13968)

- The Libya notice can be found here.
- OFSI's consolidated list of asset freeze targets has been updated to reflect these changes.

OFSI imposes monetary penalty; *OFSI has imposed a monetary penalty of £30,000 against UK registered company, Hong Kong International Wine and Spirits Competition Ltd ("HKIWSC") for breaches of Ukraine (European Union Financial Sanctions) (No.2) Regulations 2014 and Council Regulation (EU) No 269/2014 (Ukraine Misappropriation and Human Rights).*

- The penalty relates to 3 payments and 78 wine bottles HKIWSC received from a designated entity for entry into competitions between September 2017 and August 2020. The total cumulative value of tangible economic resources and funds received by HKIWSC is estimated at £3,919.62. Additionally, HKIWSC made publicity, considered an intangible economic resource, available to that designated entity.
- HKIWSC did not make a voluntary disclosure in this case, and therefore a penalty reduction discount was not applied in line with OFSI's published enforcement guidance.

The EU's statements on the eighth sanctions package refer to:

- Individuals and entities
- Updated listings of individuals and entities that have been sanctioned and additional restrictive measures to be adopted. The updated list will target key decision makers, oligarchs, senior military officials, and propagandists. The Russian authorities in the four partially occupied regions of Ukraine (Donetsk, Luhansk, Kherson and Zaporizhzhia) and high-ranking officials in the Russian Ministry of Defence will also be added to the blacklist.
- Import and export bans
- New, sweeping import bans are to be imposed on Russian products in order to keep such products out of the EU market. It is expected that the implementation of the import bans will deprive Russia of an additional EUR 7 billion in revenue. However, it is unclear at this stage what products will be included and whether the bans will impact Russian metal.
- The list of products subject to an export ban is also to be extended, with the aim of depriving Russia's military complex of key technologies such as aviation items, electronic components, and chemical substances.
- Additional bans on providing EU services to Russia, and a prohibition on EU nationals sitting on the governing bodies of Russian state-owned enterprises will also be imposed.
- Lastly, the geographical scope of restrictions previously applying to Crimea, Luhansk PR and Donetsk PR, approved at the beginning of 2022, is to be extended to cover all areas of Ukraine not controlled by the Ukrainian government.
- Russian oil
- In addition to the existing EU plan to ban the seaborne transportation of Russian crude oil into the EU as of 5 December 2022, the G7 have also agreed to introduce and provide the legal basis for a price cap on Russian oil for third countries. The oil price cap will reduce Russia's revenues while keeping global energy markets stable.
- The level of the G7 cap is still yet to be defined.

- Circumvention of sanctions
- The Commission is increasing its efforts to crack down on the circumvention of sanctions, thus expanding the designation criteria by adding a category whereby it can list individuals, with the aim of deterring others.
- The EU Commission's press statements.
- The accompanying legislation as well as the timetable for the above measures have not yet been published. However, it has been reported that an agreement on the next sanctions package against Russia, or at least major parts of the package, is expected before next week's EU summit.

FINRA Updates Sanctions Guidelines; The FINRA National Adjudicatory Council revised its Sanction Guidelines to more accurately reflect the levels of sanctions imposed in disciplinary proceedings. The revisions establish separate guidelines applicable to firms and individuals. In addition, the new guidelines:

- establish different fine ranges for firms, separating the ranges into (i) small- and mid-size firms and (ii) large-size firms;
- remove the upper limit of the fine range for certain AML violations by mid- and large-size firms;
- implement AML guidelines;
- include non-monetary sanctions for consideration;
- implement single, fixed fine ranges for actions relating to the Quality of Markets guidelines and other select guidelines;
- establish a $5,000 minimum fine for all firms regardless of size; and
- remove and/or modify other select guidelines.
- FINRA Regulatory Notice 22-20: The National Adjudicatory Council (NAC) Revises the Sanction Guidelines
- FINRA News Release: National Adjudicatory Council Enhances FINRA's Sanction Guidelines

Some specific guidance and FAQs hot off the press from OFAC regarding our favourite DApp, Tornado Cash, details regarding dusting and prohibitions:

- 🌪 for transactions involving Tornado Cash that were initiated prior to its designation on August 8, 2022, but not completed by the date of designation, U.S. persons or persons conducting transactions within U.S. jurisdiction may request a specific license from OFAC to engage in transactions involving the subject virtual currency.
- OFAC is aware of reports following the designation of Tornado Cash that certain U.S. persons may have received unsolicited and nominal amounts of virtual currency or other virtual assets from Tornado Cash, a practice commonly referred to as "dusting." Technically, OFAC's regulations would apply to these transactions. To the extent, however, these "dusting" transactions have no other sanctions nexus besides Tornado Cash, OFAC will not prioritize enforcement against the delayed receipt of initial blocking reports and subsequent annual reports of blocked property from such U.S. persons.
- While engaging in any transaction with Tornado Cash or its blocked property or interests in property is prohibited for U.S. persons, interacting with open-source code itself, in a

way that does not involve a prohibited transaction with Tornado Cash, is not prohibited. For example, U.S. persons would not be prohibited by U.S. sanctions regulations from copying the open-source code and making it available online for others to view, as well as discussing, teaching about, or including open-source code in written publications, such as textbooks, absent additional facts. Similarly, U.S. persons would not be prohibited by U.S. sanctions regulations from visiting the Internet archives for the Tornado Cash historical website, nor would they be prohibited from visiting the Tornado Cash website if it again becomes active on the Internet.

Sanctions malaise: Six months after many Russian oligarchs were sanctioned by the west, there is little sign that the asset freezes and travel bans have pressured them into plotting a "palace coup" against Putin, write Max Seddon in Kyiv and Polina Ivanova in London in this FT Big Read.

OFAC Issued Guidance on Virtual Currency Mixer Sanctions; OFAC issued four FAQs related to a previously sanctioned virtual currency mixer used in facilitating illicit activities for OFAC-sanctioned entities.

1 entry has been added to and 3 entries removed from the Russia financial sanctions regime. Furthermore, amendments have been made to entries under the Russia, Democratic People's Republic of Korea and Libya financial sanctions regimes. *The following entries have been amended under the Democratic People's Republic of Korea regime and remain subject to an asset freeze:*

- Singwang Economics and Trading General Corporation (Group ID: 13427)
- Weihai World-Shipping Freight (Group ID: 13645)
- This follows an update to the UK Sanctions List, enacting the UN's decision made on 14 September 2022 to amend 2 entries.
- 3 entries have been removed from the Russia regime and 118 entries amended. The relevant notice can be found here.
- Furthermore, 1 amendment has been made under the Libya regime. This entry remains subject to an asset freeze. The relevant notice can be found here.
- OFSI's consolidated list of asset freeze targets have been updated to reflect these changes

On September 9th, Treasury published preliminary guidance regarding the upcoming ban of maritime transportation of Russia-related oil set to take effect on December 5, 2022. The guidance explains that the ban will have an exception for Russian oil purchased at or below a price cap to be established by a coalition consisting of the G7 and EU (the Coalition).

- The exception does not apply to importation of Russian oil into the United States, which has been strictly prohibited following an Executive Order issued by President Biden earlier this year. Instead, it allows non-US jurisdictions to import Russian oil through the price cap exception without facing "secondary sanctions," which would impose penalties -potentially including being cut off from the US financial system - for engaging in sanctioned activity.

- **The guidance also clarifies that purchasers of oil under this exception will be required to provide documentation and attestations related to adherence to the price cap, and service providers will be required to obtain this information prior to engaging in business with purchasers**. It establishes new categories for entities involved in Russian oil-related transactions, providing that:
  - **"Tier 1 Actors,"** which are those with direct access to price information such as commodities brokers and refiners, should retain documentation such as invoices, contracts and receipts showing that oil was purchased at or below the price cap.
  - **"Tier 2 Actors,"** which are those that are sometimes able to receive price information from their customers such as financial institutions providing trade finance, should obtain documentation that show that oil was purchased at or below the price cap as well as attestations from their customers committing to not purchase Russian oil above the price cap.
  - **"Tier 3 Actors,"** which are those that do not regularly have access to price information such as insurers and indemnifiers, should obtain attestations from customers committing to not purchase Russian oil above the price cap.
- **Under the guidance, firms that reasonably rely on such documentation and attestation from customers will be provided with a safe harbour from sanctions penalties.** It explains that they should nevertheless monitor for a number of red flags to ensure that their reliance is reasonable. Such red flags include evidence of deceptive shipping practices, refusal to provide requested price information, unusually favorable payment terms, opaque payment mechanisms, evidence of manipulated shipping documentation, newly-formed entities registered in high-risk jurisdictions, and abnormal shipping routes.
- **The exemption provided by the Coalition and described in this week's guidance could provide significant relief to those countries that are dependent on Russian oil and fearful of continuing energy scarcity as winter approaches**. However, significant unknowns remain that will need to be hashed out before the exemption becomes practical to implement. For example, it is not clear what the price cap will be set at, how often it might change, and what the expectation for financial institutions will be to account for these changes. It will likely require constant monitoring to confirm both that firms know what the price is and that their clients are adhering to the price cap.
- **While there is some ambiguity in the guidance around documentation, providing that firms should take the actions outlined "when practicable," the key for Tier 2 and Tier 3 companies will be to keep good records.** This includes maintaining a robust paper trail of attestations and confirming that they maintain documents from clients that clearly state that the oil falls below the price cap. Firms should keep in mind that there is a high likelihood of sanctions evasion and efforts to obscure the true price of the oil being sold, so being able to very clearly demonstrate that they reasonably relied on this paper trail will also be necessary to protect against enforcement.
- **As such, they should be performing effective due diligence on the validity of the documents they are receiving - including outside research on the transactions and companies involved - to make sure that they aren't faked or forged.** They should also be monitoring for the red flags identified by Treasury and other international entities, because as the guidance makes clear, it will not be good enough to simply rely on client attestations if there are other red flags in place.

Energy Regulations

ESMA responds to EU Commission on energy derivatives markets; *The European Securities and Markets Authority (ESMA) has submitted its response to the EU Commission regarding the current level of margins and of excessive volatility in energy derivatives markets.*

- ESMA's response sets out its high-level assessment concerning the areas where the Commission requested input, namely on measures to limit excessive volatility, such as circuit breakers, and central counterparties (CCP) margins and collateral. It has also made a number of further suggestions on commodity clearing thresholds, improving regulatory reporting on commodity derivatives, and regulating and supervising commodity traders.
- According to the letter, ESMA and national competent authorities (NCAs) have been focusing and strengthening their respective market monitoring and surveillance activities on the energy derivatives markets. ESMA intends to continue this cooperation to counter possible threats to market integrity and ensure that any potential signal of market manipulation is followed up and investigated.

Brexit Replacement Regulations

Retained EU Law (Revocation and Reform) Bill introduced to Parliament; *The Retained EU Law (Revocation and Reform) Bill has been introduced to the House of Commons and given its first reading.*

- The Bill will end the special status of retained EU law in the UK statute book and sunset the majority of retained EU law so that it expires on 31 December 2023. All retained EU law contained in domestic secondary legislation and retained direct EU legislation will expire on this date, unless otherwise preserved.
- Any retained EU law that remains in force after the sunset date will be assimilated in the domestic statute book, by the removal of the special EU law features previously attached to it. This means that the principle of the supremacy of EU law, general principles of EU law, and directly effective EU rights will also end on 31 December 2023. The Bill includes an extension mechanism for the sunset of specified pieces of retained EU law until 2026. This is intended to allow the Government additional time where necessary to assess whether some retained EU law should be preserved.
- MPs will next consider the Bill at second reading. The date for second reading has not yet been announced.

Growth Plan 2022: Chancellor sets out measures on financial services; *The Chancellor of the Exchequer, Kwasi Kwarteng, has delivered his Growth Plan 2022 to Parliament. The plan* *makes growth the UK Government's central economic mission, setting a target of reaching a 2.5% trend rate, and includes tax cuts, tax reform and measures to tackle rising energy prices.* As part of the plan, the Chancellor has announced that:

- later this autumn, the Government will bring forward a deregulatory package for the UK financial services sector, which will include repealing EU law for financial services and replacing it with new rules, as well as discarding EU rules from Solvency II;
- the Prudential Regulation Authority (PRA) will remove the current cap on bankers' bonuses, which limits variable remuneration of certain bank staff to 100% of their fixed pay (or 200% with shareholder approval);
- a new GBP 40 billion Energy Markets Financing Scheme (EMFS), delivered with the Bank of England, will provide a backstop source of additional liquidity to energy firms to meet extraordinary variation margin calls. The scheme will provide liquidity to firms through a 100% guarantee, delivered via commercial banks, and will open to applications from 17 October 2022; and
- in line with the cancellation of the increase in the Corporation Tax rate, the scheduled change to the rate of the Bank Corporation Tax Surcharge will also be cancelled. From April 2023 banks and building societies will continue to pay an additional 8% rate of tax on their profits, rather than the reduced 3% rate that would have been the legislative default, leading to a combined rate of 27%.

Enforcement Fines on Reporting matters

SEC and CFTC announce $1.8B settlement for recordkeeping violations. On September 27th, the SEC and CFTC announced that they had reached settlements with 15 broker-dealers and one investment adviser for not preserving and maintaining their employees' "off-channel communications" including messaging through text and encrypted applications. The firms agreed to pay fines totalling $1.8 billion and conduct comprehensive reviews of their electronic communications retention policies and procedures. The SEC's Deputy Director of Enforcement warned supervised firms that the Commission will continue to enforce recordkeeping requirements, saying "the time is now to bolster your record retention processes and to fix issues that could result in similar future misconduct.

- SEC and CFTC Sweep Uncovers "Egregious Misconduct" Related to Off-Channel Business Communications; *Sixteen dually registered entities settled SEC and CFTC charges for recordkeeping and supervision violations related to "off-channel" communications involving employees' personal devices.*
- After an enforcement sweep, the SEC and the CFTC found that the firms failed to preserve the "substantial majority" of communications related to the business activities each firm conducted on messaging platforms like WhatsApp. The regulators said that the misconduct was "egregious and widespread," and involved employees at multiple levels of authority, including senior employees who are typically responsible for monitoring potential misconduct. As a result, the firms also failed to adequately supervise their employees and were unable to produce the communications when

requested by the respective regulators. The regulators said that the misconduct also violates each firm's internal policies.

- To settle the charges, each of the firms agreed to (i) cease and desist, (ii) a censure, (iii) a civil monetary penalty and (iv) undertakings to improve its supervision of "off-channel" communications, including retaining an independent compliance consultant. The monetary penalties paid to both the SEC and the CFTC total $1.8 billion.
- CFTC Commissioner Kristin N. Johnson said that these cases present an opportunity to consider additional policies to deter this type of misconduct in the future. She emphasized that even new communication technologies must comply with the CFTC's recordkeeping requirements. CFTC Commissioner Christy Goldsmith Romero said that requiring the firms to admit guilt and pay high penalties echoes the CFTC's broader zero-tolerance message. "We will not allow Wall Street to undermine our law enforcement by obfuscating or deleting communications surrounding trading," she said.
- These cases demonstrate no systemic effort to conceal information from the SEC. The communications technology just moved ahead of the recordkeeping technology. While penalties were doubtless warranted, there should be some greater proportionality between the underlying violation and the penalty. That seems to be lacking here.
- In these Orders, the SEC and the CFTC make mention of electronic communication surveillance systems. Given the number of personal electronic devices capable of sending communications an average employee likely possesses, monitoring them in a meaningful way would, at minimum, present a huge logistical challenge. While firms are clearly able to monitor communications made through firm systems on personal devices, it is not clear how they could reasonably monitor the host of other potentially used messaging systems.
- Perhaps a good start for firms might be (i) to emphasize to employees that essentially all communications internally with coworkers and externally with clients will be treated as communications relating to the business, (ii) to establish a clear procedure for making records of any inadvertent communications sent or received off firm-approved systems and moving such conversations appropriately, and (iii) to establish a system of internal flagging and escalation when using an unapproved communication platform. These steps could be particularly useful in preventing the sort of widespread violation that can arise when a manager suggests that an entire team move to an unapproved platform for convenience.

Commodity Trading Software Operator *bZeroX, F*ined for Operating as Unregistered DCM/FCM; *The CFTC sanctioned bZeroX, a digital asset commodity trading platform for failing to register with the CFTC as either a designated contract market ("DCM") or a futures commission merchant ("FCM") and offering trading in CFTC-regulated products to retail investors.*

- In the Order, the CFTC found that the firm provided retail investors - who did not qualify as eligible contract participants and therefore could not enter into swaps - with the ability to enter into leveraged or margined retail commodity transactions that did not result in actual delivery within 28 days. The firm marketed a blockchain-based software protocol to allow trading in contracts, the value of which was determined by changes in the price difference between two digital assets.

- At a time when U.S. regulators are clearly pursuing enforcement actions against digital assets, it is really not prudent to publicly market a product to retail investors in illegal off-exchange swaps and proclaim one of the product's advantages is that it allows evasion of AML regulations. It only compounds the idiocy to announce that one is converting the operation of the protocol to a DAO so as to avoid regulatory obligations.
- In situations such as this (where there is obvious misconduct), U.S. regulators' pursuit of the misconduct seems to cast doubt on the viability of DAOs as a corporate structure. This action ought not to be read to conclude that a DAO is not a feasible structure where the DAO is established for legitimate reasons; *i.e.*, to operate a protocol the primary benefits of which are something other than evasion of U.S. law.
- There will certainly come a time when an interesting case is tried as to who has liability for the conduct of a DAO. This is not it.
- Additionally, the CFTC found that the firm marketed noncompliance with CFTC regulations by advertising a superior trading experience predicated on its refusal to follow know-your-customer, AML and other required protocols. The firm further claimed that it did not take custody of user assets and offered high levels of liquidity at all times. The firm offered its software service to customers anywhere in the world without taking proper steps to screen for U.S. residents (or other non-eligible contract participants) or establishing a proper customer identification program. The firm later transferred control of the protocol to an affiliated decentralized autonomous organization ("DAO") in an attempt to "insulate the [protocol] from regulatory oversight and accountability for compliance with U.S. law[,]" with no changes to its operational methodology. The CFTC also charged the DAO with similar violations.
- As a result, the CFTC determined that the firm violated CEA Section 4(a) ("Regulation of futures trading and foreign transactions") and Section 4d(a)(1) ("Dealing by unregistered futures commission merchants or introducing brokers prohibited"), as well as CFTC Rule 42.2 ("Compliance with Bank Secrecy Act"). To settle the charges, the firm agreed to (i) cease and desist, (ii) pay a civil monetary penalty of $250,000 and (iii) initiate undertakings to ensure future compliance with CFTC regulations.
- CFTC Commissioner Summer K. Mersinger dissented, arguing that the decision "arbitrarily decide[s] who is accountable for those violations based on an unsupported legal theory amounting to regulation by enforcement while federal and state policy is developing.
- CFTC Order: bZeroX, LLC, Tom Bean and Kyle Kistner
- CFTC Complaint: Ooki DAO (formerly d/b/a bZx DAO)
- CFTC Press Release: CFTC Imposes $250,000 Penalty Against bZeroX, LLC and Its Founders and Charges Successor Ooki DAO for Offering Illegal, Off-Exchange Digital-Asset Trading, Registration Violations, and Failing to Comply with Bank Secrecy Act
- CFTC Commissioner Summer K. Mersinger: Dissenting Statement Regarding Enforcement Actions Against: 1) bZeroX, LLC, Tom Bean, and Kyle Kistner; and 2) Ooki DAO

CFTC Orders tpSEF to Pay $850,000 for Violation of 15-Second Delay Rule for Execution of Cross Transactions on a SEF; September 29, 2022; *Washington, D.C.* — *The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against* tpSEF, Inc.*, a registered swap execution facility (SEF), for failing to comply with the CFTC 15-second delay requirement for certain required transactions on a SEF order book.*

- Specifically, the CFTC regulation requires that for orders that are pre-arranged or pre-negotiated and will result in two customers' orders being crossed or a broker or dealer taking the opposite side of a customer's order, the SEF must subject the broker or dealer to at least a 15-second delay between the entry of the orders. tpSef failed to comply with this requirement and failed to enforce its own rule related to the 15-second delay requirement.
- The order requires tpSEF to cease and desist from violating the CFTC time delay regulation, pay a $850,000 civil monetary penalty, and to comply with undertakings requiring tpSEF to review all transactions on the SEF from August 2020 to the present for compliance with the SEF's own rule related to the 15-second delay requirement, and review its policies and procedures designed to deter and detect future violations of that rule. The order further requires tpSEF to report its findings to the CFTC within 180 days of the date of the order.
- "The CFTC's time delay requirement is important to ensure a competitive regime on swap execution facilities, and the CFTC will act to ensure that registered entities comply with CFTC regulations and their own rules," said Division of Enforcement Acting Director Gretchen Lowe.
- Case Background
- The order finds that tpSEF provides execution services across a full range of asset classes, including interest rate swaps and credit default swaps. The majority of swaps executed on tpSEF involve transactions in which a broker or dealer executes two customers' orders against each other.
- According to the order, from October 2016 to July 2020, tpSEF permitted execution of 301 swap transactions that did not comply with the requirement of a 15-second delay between the entry of each side of the transaction as required under CFTC regulations and tpSEF's rulebook. As a self-regulatory organization, tpSEF has oversight obligations for conduct on the SEF and is required to enforce its rules. tpSEF, however, failed to enforce compliance with the CFTC's regulation as well as its own rule in connection with the requirement that orders for these required transactions be subject to at least a 15-second delay.
- A swap execution facility shall require that a broker or dealer who seeks to either execute against its customer's order or execute two of its customers' orders against each other through the swap execution facility's Order Book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15 second time delay between the entry of those two orders into the Order Book, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction, whether for the broker's or dealer's own account or for a second customer, is submitted for execution.
- tpSEF's Rulebook mirrors this requirement in its Rule 4011:

(a) With respect to Required Cross Transactions3, the following conditions must be satisfied:

(1) in the case of an execution by a Participant as principal/dealer against a customer Order, the customer Order shall be entered into the Order Book as a firm quote and exposed to the market for at least 15 seconds before the Participant's Order may be entered, and

(2) in the case of an execution by a Participant acting as broker of two customers' Orders against each other, one side of the potential Transaction (the "Displayed Order") shall be entered into the Order Book as a firm quote and exposed to the market for at least 15 seconds before the second side of the potential Transaction (the "Waiting Order") may be entered.

- During the Relevant Period, as a result of a coding error that occurred when tpSEF upgraded the software that operates its Order Book, tpSEF failed to prevent Participants from executing 301 transactions through tpSEF's Order Book that did not comply with the 15-second delay required under Regulation 37.9(b)(1) and tpSEF Rule 4011.
- All 301 of these transactions involved instances in which a Participant was acting as a broker of two customers' orders against each other. tpSEF did not take adequate steps to timely detect and remedy the coding error, and thereby, did not adequately enforce compliance with its Rule 4011 in connection with these transactions.
- Of these 301 transactions, seven involved credit default swaps and two hundred and ninety-four (294) involved interest rate swaps. These transactions fall into the following categories:
- Two hundred sixty-two (262) transactions involved instances in which: (1) multiple separate Displayed Orders, which were packaged as one transaction, were entered onto the SEF's Order Book seconds apart; (2) a Waiting Order was entered that executed against the combined total of the Displayed Orders previously entered; and (3) although the Waiting Order executed against the first Displayed Order more than 15 seconds after it was entered, it executed against the subsequent Displayed Order(s) in less than 15 seconds after it was entered. All of these transactions involved interest rate swaps.
- Twenty-seven (27) transactions involved instances in which: (1) a Displayed Order was entered onto the SEF's Order Book; (2) the Displayed Order's amount was subsequently modified; and (3) the modified Displayed Order was then executed against within less than 15 seconds of the modification being entered. All of these transactions involved interest rate swaps.
- Twelve (12) transactions in which a Displayed Order was executed against in less than 15 seconds after it was entered onto the SEF's Order Book. Of these transactions, 5 involved interest rate swaps and 7 involved credit default swaps.

Release Number 8604-22; CFTC Orders Swap Execution Facility to Pay $1.9 Million for Swap Reporting and Core Principle Violations; September 30, 2022; *Washington, D.C.* — *The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against* ***BGC Derivative Markets, L.P.*** *(BGCD), a swap execution facility (SEF), for failing to report or accurately report thousands of swap transactions to the CFTC, a swap data repository (SDR), or the public; failing to timely correct reporting errors; and violating SEF Core Principles.*

- The order requires BGCD to cease and desist from further violations, pay a $1.9 million civil monetary penalty, and to comply with specified undertakings—including conducting a comprehensive review of its swaps reporting program and implementing a reconciliation process for transactions occurring on and reported by the SEF. The order further requires BGCD to submit a written report to the CFTC in one year. In the report, BGCD's Chief Compliance Officer and Chief Executive Officer must certify that BGCD's reconciliation process and compliance program are reasonably designed to detect and prevent violations of the Commodity Exchange Act (CEA) and CFTC regulations that are the subject of the order.

- "Today's enforcement action highlights the importance of accurate and timely swaps reporting and makes clear that persistent and recurring reporting failures violate SEF Core Principles. Accurate and timely swaps reporting is necessary for the CFTC to safeguard the integrity of our markets and to ensure market transparency," said CFTC Acting Director of Enforcement Gretchen Lowe.
- Case Background
- The order specifically finds that from January 2017 to March 2022, as a result of 11 separate reporting systems issues, BGCD failed to report or accurately report nearly 12,500 swap transactions to the CFTC and/or to the public on its public website. As a result of three other reporting systems issues during this same time period, BGCD failed to report real-time transaction and pricing data for over 3,500 transactions to an SDR and further failed to timely submit corrected data to the SDR for a subset of those transactions. In aggregate, these 14 issues led to BGCD's failure to report or accurately report (including both under and over reporting) over 16,000 swap transactions in various products (interest rate, FX, credit, and equities), on hundreds of trading dates.
- The order further finds BGCD had inadequate processes and procedures for reporting swap transactions and identifying reporting issues as they arose. As a result, BGCD did not timely identify the majority of these reporting issues. Specifically, over half of BGCD's reporting issues were unknown to BGCD for eight months or more, with two of them being undetected (and uncorrected) for over four years. Moreover, these persistent and recurring issues, according to the order, show BGCD's capacity to capture and transmit accurate and complete trade information to the public and to the CFTC was deficient. Further, the order finds BGCD was aware it lacked a process for reconciling its reports with the SEF's trading activity, but failed to timely implement a reconciliation process or other policies and procedures to significantly reduce, if not eliminate, these reporting and publication errors.
- The Division of Enforcement appreciates the assistance of the Division of Market Oversight and the Division of Data.
- During the Relevant Period, BGCD failed to report or accurately report thousands of swap transactions executed on the SEF. BGCD's reporting errors stemmed from at least fourteen distinct systems issues. As a result of eleven of those systems issues, BGCD failed to report or accurately report nearly 12,500 swap transactions to the Commission and/or publish them on its public website as required under Part 16 of the Regulations, 17 C.F.R. pt. 16 (2021).
- As a result of three other systems issues, BGCD failed to report real-time transaction and pricing data for over 3,500 transactions to a swap data repository ("SDR") as required under Part 43 of the Regulations, 17 C.F.R. pt. 43 (2021), and, for a subset of these transactions, also failed to submit corrected data to the SDR until weeks after discovering the error.

- In aggregate, these fourteen incidents led to BGCD's failure to report or accurately report (including both under and over reporting) over 16,000 swap transactions in various products (Interest Rate, FX, Credit, and Equities), on hundreds of trading dates.
- During much of the Relevant Period, BGCD had inadequate processes and procedures for reporting swap transactions and identifying reporting issues as they arose. Specifically, BGCD had no system in place to validate that reportable transactions occurring on the SEF were complete and accurately included in its real-time and end of day ("EOD") reporting to its SDR, the Commission, and on its website. As a result, BGCD did not timely identify the majority of these incidents. Over half of these reporting incidents were unknown to BGCD for eight months or more, and for two of these incidents, BGCD did not detect them for over four years. BGCD learned of many of the reporting incidents only as the result of an inquiry from a third party or in the course of responding to requests in connection with the Division's investigation.
- BGCD was also slow to address the deficiencies in its processes and procedures for reporting swap transactions and identifying and correcting reporting issues. By at least March 2020, BGCD's compliance department had identified the need for a reconciliation process to confirm that all transactions on the SEF were being reported, and even recommended to BGCD's Board of Directors, as part of the 2019 Annual Chief Compliance Officer's Compliance Report, that a reconciliation process be established. However, BGCD did not implement a reconciliation process until April 2021. By this time, BGCD was aware both of additional swap reporting errors and that its swap reporting was the subject of a Division investigation.
- BGCD represents that in April 2021 it implemented reconciliation tools to allow it to identify and begin correcting reporting errors on no longer than a T+1 basis for all Interest Rate products executed on the SEF, and that these tools have now been expanded to Credit swaps executed on the SEF. BGCD further represents that it has corrected its past reporting to the Commission or the SDR, as applicable, and that it has either corrected or removed any erroneous published data from its website related to these incidents.

Statement of Commissioner Christy Goldsmith Romero Regarding Enforcement Action and Settlement with Swap Execution Facility BGC Derivative Markets, L.P. Systemic Swap Reporting Violations Harm Market Transparency and Integrity; September 30, 2022

- Swap reporting is fundamental to post-crisis financial regulation – a critical tool for promoting transparency and market integrity in swap markets that used to be opaque. It has been a decade since the Commodity Futures Trading Commission ("CFTC") implemented Dodd-Frank Act requirements for swap reporting. However, in my six months of serving as a CFTC Commissioner, I have seen multiple enforcement cases involving swap reporting failures, which is troubling.
- As a market regulator, we must send a strong message that systemic swap reporting failures are unacceptable. Swap Execution Facilities ("SEFs") should have a culture of compliance. I support the Commission's enforcement action against BGC Derivative Markets, L.P., an affiliate of Cantor Fitzgerald, L.P. ("BGCD") based on its systemic failure to report, or misreporting of, swap transactions. But I do not

support the provisions of the settlement. I do not agree that the $1.9 million penalty combined with no admissions by BGCD in settlement is sufficient to deter future violations or provide accountability and transparency. Therefore, I vote to concur, rather than fully support.

- A higher penalty and defendant admissions to wrongdoing would serve as a stronger deterrent for BGCD and other SEFs. Further, this case warrants the heightened accountability and transparency that comes with requiring the defendant to admit to its wrongdoing.[1]
- The CFTC should have required BGCD admissions because BGCD's violations were egregious. BGCD had systemic reporting problems for five years. Because BGCD had inadequate processes and procedures for reporting swap transactions and identifying reporting issues as they arose, BGCD failed to report, or accurately report, over 16,000 swap transactions under CFTC rules intended to enhance transparency in swap markets. BGCD took more than a year to implement a reconciliation process identified by its compliance department in March 2020 that would ensure that all transactions on the SEF were being reported.
- As the Commission's proposed order states, "Reporting is at the heart of the Commission's market and financial surveillance programs, which are critical to the Commission's mission to protect market participants and promote market integrity. Accurate swap data is essential to the effective fulfillment of the regulatory functions of the Commission, including meaningful surveillance and enforcement programs."
- If reporting is at the heart of the Commission's market surveillance and enforcement programs, we should take a hard stance when we find violations of our swap reporting rules.

Release Number 8603-22; CFTC Orders Designated Contract Market to Pay $6.5 Million for System Safeguard, Reporting, and False Statement Violations; September 29, 2022; ***Washington, D.C.*** *— The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against* ***CX Futures Exchange, L.P.*** *(CX), a designated contract market headquartered in New York, N.Y., for violations of the Commodity Exchange Act (CEA) and CFTC regulations relating to system safeguards, swap reporting, option reporting, and a giving a false statement to the CFTC.*

- The order requires CX to pay a $6.5 million civil monetary penalty, cease and desist from violating the applicable provisions of the CEA and CFTC regulations, and comply with certain conditions and undertakings, including that CX back-report all required swap reporting data.
- "The Commission's system safeguard regulations are critical for protecting the security of the financial markets," said Acting Director of Enforcement Gretchen Lowe. "The CFTC will continue to promote the safety and reliability of our markets by ensuring that all designated contract markets comply with these rules."
- Case Background
- The order finds from approximately September 2017 to August 2021, CX failed to comply with multiple aspects of system safeguard regulations applicable to designated contract markets. In particular, CX failed to conduct controls testing; failed to conduct sufficient internal and external penetration testing; failed to

conduct adequate enterprise technology risk assessments (ETRA); failed to review ETRAs and testing results at the board level; and failed to notify the CFTC in a timely manner of a planned change to its automated systems that may impact the security of such systems.

- In addition, the order finds from approximately November 2017 to at least June 2020, CX failed to report certain data for over 200,000 options transactions to the CFTC, consisting primarily of weather-related binary options and pari-mutuel options contracts, in violation of the CFTC's options reporting regulations. And, from approximately November 2017 to at least August 2022, CX failed to report certain data for the same transactions, which were also considered swaps, to a swap data repository (SDR), in violation of the CFTC's swap reporting regulations.
- The order also finds that in connection with a 2017 request for a no-action letter regarding its SDR reporting obligations, CX falsely represented to CFTC staff that it was reporting data to the CFTC as required by CFTC's option reporting regulations and would continue to do so. In fact, CX should have known it was not reporting such data at the time of its request and did not report such data to the CFTC until approximately June 2020.
- In accepting CX's settlement offer, the CFTC recognizes CX's substantial cooperation during the Division of Enforcement's investigation. The CFTC notes that CX's cooperation and remediation are recognized in the form of a reduced civil monetary penalty.

Release Number 8602-22; CFTC Orders Futures Commission Merchant to Pay $500,000 for Supervision Failures Relating to Improper or Fictitious Trade Transfer Requests; September 29, 2022; *Washington, D.C. — The Commodity Futures Trading Commission today issued an order simultaneously filing and settling charges against* ADM Investor Services Inc. *(ADMIS), a registered futures commission merchant (FCM) in Chicago, Illinois. The order finds that ADMIS failed to supervise its employees and agents in their handling of commodity interest accounts and failed to perform its supervisory duties diligently. The order requires ADMIS to pay a $500,000 civil monetary penalty and to cease and desist from any further violations of the Commodity Exchange Act (CEA) and CFTC regulations, as charged.*

- "FCMs are obligated to adequately supervise their agents and employees," said CFTC Acting Director of Enforcement Gretchen Lowe. "As this case shows, it is essential that registrants have adequate policies and procedures in place to deter and detect wrongdoing, and to ensure they perform their supervisory duties diligently."
- Case Background
- The order finds that from December 1, 2016 to September 1, 2019, ADMIS, a registered FCM, failed to diligently supervise the handling by its employees and agents of commodity interest accounts carried by ADMIS and introduced by ADMIS' Guaranteed Introducing Brokers (GIBs), as well as the activities of its employees and agents relating to its business as a registered FCM. The order finds that prior to Spring 2018, ADMIS' account review policies and procedures were inadequate because they failed to provide adequate guidance regarding account changes requests submitted by individual brokers. The order further finds that ADMIS failed to perform its supervisory duties diligently because it failed to detect repeated

incidents in which brokers employed by ADMIS or ADMIS' GIBs executed improper or fictitious trade transfer requests that violated the CEA and CFTC regulations. Through these transfers, which collectively persisted for several years, the brokers executed trades and then submitted improper or fictitious trade transfer requests to allocate winning trades to preferred customers or to accounts that they controlled or managed, while allocating losing trades to other accounts they controlled or managed.

- In accepting ADMIS' settlement offer, the CFTC recognizes ADMIS' cooperation with the Division of Enforcement's investigation of this matter.

Report From FINRA Board of Governors Meeting - September 2022; FINRA's Board of Governors held its fourth meeting of the year—the first with Eric Noll as Chair—on Sept. 21-22 in New York. The Board approved two rulemaking items and continued its engagement with key stakeholders by hosting officials from the Securities and Exchange Commission (SEC). The FINRA Board often hosts SEC officials and various stakeholders during a portion of its meetings. During the September meeting, the Board was joined by three SEC senior leaders—Richard Best, Director, Division of Examinations; Joy Thompson, Acting Deputy Director of the Division of Examinations and Associate Regional Director of the SEC's Philadelphia Regional Office; and Kevin Goodman, Associate Director, FINRA and Securities Industry Oversight Examination Program—to discuss the work undertaken by FINRA and SEC staff to coordinate their respective examination activities and efforts to enhance investor protection. This was the first such meeting for Best and Thompson; the FINRA Board last hosted Goodman in September 2019. /jlne.ws/3dW91tR

ESG & Disclosures

FMSB pushes voluntary carbon markets to adopt clear standards The Financial Markets Standards Board has called for more clearly defined standards for voluntary carbon markets to help the sector's growth. "Integrity of and transparency related to market data are integral to transitioning Voluntary Carbon Markets from niche to mainstream," said FMSB CEO Myles McGuinness. Global Investor

PDF FMSB; Spotlight Review on Volentary Carbon Markets; 29Sep2022.pdf

PDF ICE to accept EUAs as collateral; Emissions certificates accepted to offset short EUA futures positions, subject to 14-day comment period; 28Sep2022.pdf

Summary

This paper explores the history and current landscape of carbon markets, with a particular focus on credits from voluntary emission reductions that are traded in the Voluntary Carbon Markets (VCM). While intended as a succinct primer, it is hoped that even experienced practitioners in this space will find value in the discussions on the markets' future evolution (from section five onwards).

Carbon credits originate from individual projects designed to generate verified emission reductions, measured against validated business-as-usual baselines. Credits may be generated through the avoidance of carbon emissions (e.g., the protection of forests, building of renewable energy plants), or the removal of existing carbon from the air (e.g., planting of new trees, or more recently, technological carbon capture and storage methods, which store carbon dioxide and/or convert the gas into a more inert form, delaying or stopping the re-release back into the atmosphere[1]), and have historically been marketed to be an "offset" to an end-user purchaser's own emissions[2].

The concept of carbon credits accelerated and became more widespread through the Kyoto Protocol applications, and several standards and methodologies that have further developed under the VCM have become accepted by both compliance markets (e.g., the California Cap-and-Trade Program) and semi-compliance markets (e.g., the International Civil Aviation Organization's Carbon Offsetting and Reduction Scheme for International Aviation – CORSIA), which allow a percentage of a regulated entity's emission allowance to be met by carbon credits.

In contrast to a carbon credit, a carbon allowance is a permit to pollute under a regulatory scheme, with no underlying emission reduction. A carbon allowance is arguably the purest form of commodity: as a contract for an intangible, there are no potential deviances from good delivery standards within an individual regulatory market. However, while holding and retiring a carbon credit is theoretically equivalent to holding and retiring an allowance, each representing the same unit of emissions, credits are not yet traded in as high a volume as allowances. Credits are created as a by-product of a specific (and often small) project's operation, with each project's credits distinct from those generated from other projects.

The VCM has begun to develop protocols which allow similar carbon credits to be grouped, hence enabling a diversification from an Over-The-Counter model with a broker as intermediary, to credits capable of trading on an exchange. However, this market, while growing rapidly, remains small.

Illiquidity does not explain why the pricing of carbon credits varies so significantly compared to the allowances traded on the compliance markets, given the theoretical parity between credits and allowances, each representing an additional tonne of emissions permitted, nor the differing prices between allowances under different compliance schemes, and between credit types and providers. As at 14 September 2022, the highest compliance market allowance price (the EU Emissions Trading Scheme) is over USD$69 while California's Cap and Trade allowance stands at USD$27. At the same time, natured-based voluntary carbon credits can be easily found for as little as $10. As allowances operate under distinct regulatory jurisdictions, they are not fungible between compliance schemes, so this disparity is driven by regionalised supply and demand, with authorities having a role in determining the acceptable price range for carbon emissions, and adjusting the scarcity of total available allowances respectively.

There is also significant variance in the quality of carbon credits and their underlying projects. Regulators of compliance markets have criteria for the types of credit that they view to be of sufficient quality or geographical origin to count as equivalent to a carbon allowance. A mature VCM must be able to distinguish between the quality of two products, which both purport to represent the same unit, to be truly efficient.

There are three key challenges with the VCM at the time of writing:

- Supply-side standards exist for carbon credits and their projects, and standard bodies/registries are well-established enough that almost all projects are now independently verified in this way. However, the standards need to evolve in the light of their historical performances, especially in a post COP26 world, to maintain trust in their quality and integrity.

FMSB Voluntary Carbon Markets: An Overview Spotlight Review | Introduction | 1. History of Carbon Markets | 2. Carbon credits and the Voluntary Carbon Markets | 3. Creating supply-side integrity | 4. Creating demand-side integrity | 5. Buil infrast eco

Summary continued

- The demand-side for carbon credits has limited regulation, meaning that claims made by purchasers can be misleading (even if inadvertently). While multiple standards do exist, including from highly respected bodies such as the ISO, the landscape is incomplete, and adoption is inconsistent. Insufficient knowledge and confusion between terminology means that incentives to voluntarily comply with existing standards are limited. For example, there may not be sufficient additional benefit for a business claiming that their consumer product is "carbon neutral" to have this claim independently certified to PAS 2060 standards[3].
- Market infrastructure is nascent, with initiatives to allow greater liquidity and price discovery through other tools only gathering pace in the last year. More development is needed to create commonly accepted taxonomy, and market participants need to converge on metrics and drivers to allow for meaningful comparative analysis between types of carbon credits and issuers.

These issues are pressing for two intertwined reasons. From an environmental perspective, with the VCM entrusted to be a significant component of the world's path to Net Zero[4], trust in carbon credits and transparent price discovery are vital to ensure that the markets can grow at scale, and that capital can be directed in time to both reduce carbon emissions and help fund the development of carbon capture and storage solutions, which may have high initial costs and lead time before becoming commercially deployable at scale. Lessons also need to be learned from previous attempts to scale carbon markets, such as the failure of the Chicago Climate Exchange of the 2000s and the issues faced by the EU Emissions Trading Scheme (ETS) during its Phase II in the aftermath of the 2008 financial crisis. From a market perspective, newer and rapidly expanding markets without sufficient established standards of best practice are more likely to be prone to distortion, whether deliberate or not, and especially when they are complex.

If a mature carbon market should allow the greatest volume of capital to flow into green projects, other asset classes show that it may be possible for the VCM to support all qualities and types of project. However, this should be balanced against the need to maintain trust and integrity in the VCM as it grows, and market participants should remember that the VCM is only one tool in providing funding to projects which drive climate action. Transparency, while reducing complexity by allowing projects to be easily compared through metrics, will be key to ensuring a flourishing, fair and efficient market.

The five sections of this paper provide an overview of the Voluntary Carbon Markets and essential background information. First, we introduce carbon markets and their history, before leading into an explanation of carbon credits and their creation. Next comes an overview of current problems and key initiatives to solve them in the VCM. Section five focuses on future market infrastructure, and concludes with a vision of how a mature carbon market ecosystem could look. A table of key acronyms and initiatives is provided in the appendix.

1 In this paper, "carbon" refers to its form as carbon dioxide in the atmosphere, unless the context requires otherwise.
2 Other use cases include acting as a mechanism for results-based finance, making climate finance contributions, or surrendering the credits in a compliance market context, such as Singapore's carbon tax.
3 BSI, PAS 2060 – Carbon Neutrality Standard and Certification.
4 Net Zero is the target of eliminating all greenhouse gases emitted from human activity.

Derivatives

- Already well-established in the compliance allowance markets, derivatives may help to assist with hedging.
- CME has been active in expanding derivative contracts to carbon credits, and has jointly launched futures contracts with Xpansiv CBL, whose spot contracts form the

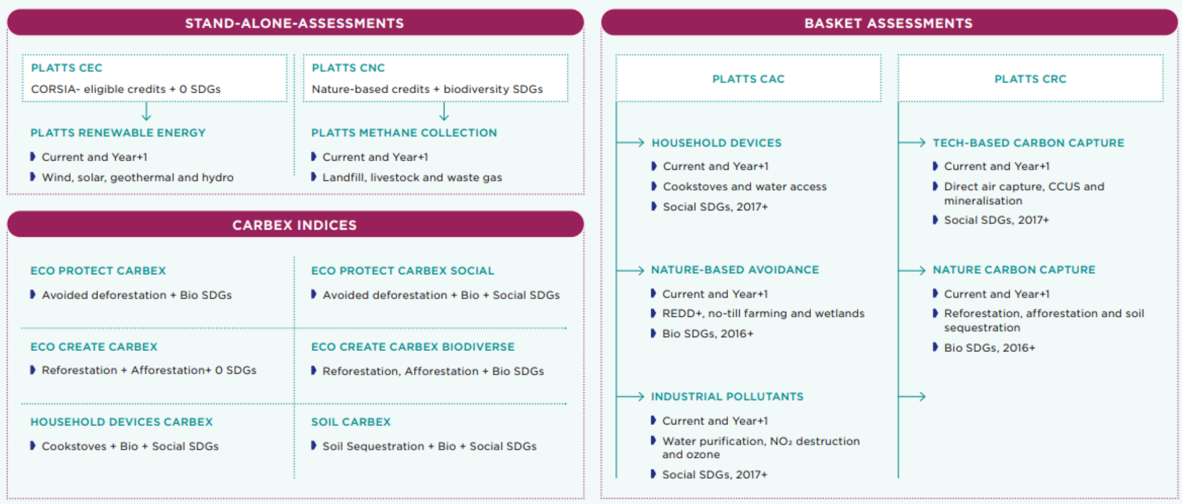
underlying, with the GEO future first trade occurring in March 2021, and N-GEO and C-GEO futures following in August 2021[57] and March 2022[58] respectively. Two more trailing futures contracts are expected to launch in August 2022[59]. ICE, although predominantly covering compliance markets with its index and futures products, has also launched a Nature-Based Solutions future (NBS), allowing delivery of credits certified by Verra and deriving from Agriculture, Forestry and Other Land Use (AFOLU) Projects

- CME Group, CBL Global Emissions Offset Futures.
- CME Group, CME Group Announces First Trades of Nature-Based Global Emissions Offset (N-GEO) Futures.
- CME Group, CME Group to Launch CBL Core Global Emissions Offset Futures.
- CME Group, CME Group Expands Suite of Voluntary Carbon Emissions Offset Contracts Amid Record Volume, Open Interest.
- Intercontinental Exchange, ICE Launches its First Nature-Based Solutions Carbon Credit Futures Contract.
- ISDA, Legal Implications of Voluntary Carbon Credits.

- Futures contracts will also help the market to price the time-element of carbon credits, towards the creation of forward curve-like metrics.
- The International Swaps and Derivatives Association (ISDA) has signalled its intention to strengthen its involvement in this space in due course, with the expected publication of its Voluntary Carbon Credits template later in 2022[61].

Fig. 12 S&P Platts VCM Indices and Baskets

Source: S&P Platts



Ice Clear Europe is preparing to accept European Union emissions allowances (EUAs) as collateral to help offset large margin calls, as the energy crisis continues to squeeze market participants. In a circular released on Monday, September 26, the clearing house said it would accept emissions certificates, each of which permits a company to emit one tonne of carbon dioxide, to offset any short EUA futures positions. The clearing house said the amendment is intended "to provide market participants with more options and flexibility regarding the assets they provide to the clearing house as margin cover, as well as assisting the energy markets with the current liquidity pressures".

ISDA co-signs industry letter on safeguarding proper functioning of the EU ETS; *On September 15, ISDA co-signed a letter with seven other trade associations on the importance of safeguarding the EU emissions trading system (ETS) following recent proposals by the European Parliament, which risk undermining the efficient functioning of the EU ETS and put at risk the EU's ability to meet its climate goals in an efficient manner.*

- The letter raises concerns about support of members of the European Parliament for amendments to limit participation in the EU ETS to compliance entities and financial intermediaries purchasing allowances on their behalf, amid unsubstantiated claims that rising energy prices are directly linked to speculative behaviour on the part of financial intermediaries. The associations particularly stress the detrimental effects of market access restrictions for financial market participants, while highlighting that rising EU ETS prices are not linked to speculative behaviour of financial companies.
- The letter also refers to supportive analysis by the European Central Bank and the European Securities and Markets Authority (ESMA) in that regard, which demonstrates that recent spikes in the carbon price have been driven by changing market fundamentals. It also notes that a diverse ecosystem of participants ensures the EU's carbon market is resilient, less costly to access, and better equipped to provide hedging and risk management solutions to companies, and urges co-legislators not to impose the restrictions.

The ESA's have published an additional 8 questions which have been submitted to the European Commission but to date remain unanswered. *The publication raises some critical questions that industry has been grappling with and the hope is that the European Commission will be swift in its response.*

- Demystifying some key uncertainties: The request covers two of the biggest unanswered questions, the definition of "sustainable investments" and what it means to "consider" principal adverse impacts. Other questions cover the definition of Article 9(3) products which have the objective of reducing carbon emissions, the timing of periodic reports for portfolio management services, and the 500 employee test for mandatory PAI compliance. We have produced a detailed briefing note here, which sets out key issues around each question and what we are seeing as current market practice.

BaFin has published a Q&A document to provide clarifications on how to interpret aspects of the SFDR as well as the Q&A documents published by the European Commission in July 2021 and May 2022.

- Good news: In a welcome move, BaFin's Q&A provides some detailed guidance on the application of SFDR, ruling independent financial advisors out of scope. It also clarifies its wider understanding of the term 'promotion' for Article 8(1), and provides guidance on a firm's best approach to pre-contractual/ periodic disclosures. For a full analysis, see our briefing here.

- The CBI has confirmed it will operate a fast track process for SFDR Level 2 compliance. More details are to follow, but financial market participants will need to file updated prospectuses along with the pre-contractual disclosure annexes by 1 December, to ensure approval before 1 January 2023. The pre-contractual disclosure annexes need to be filed separately from the prospectus updates as standalone pdfs for technical reasons.
- Surprising news: The CBI will allow fund re-classifications under the fast-track process provided the financial market participant explains the rationale in a covering letter. For further details, see our briefing here.

Whilst the UK's new Government was only formed early this month, it has wasted no time in bringing forward some key decisions on the UK's sustainability agenda. These include dropping the UK Bill of Rights, taking some swift energy crisis actions (including a pledge to expand oil and gas production from the North Sea) and ending the ban on fracking. The new Prime Minister, Liz Truss, announced, a plan to review the UK's Net Zero strategy, to ensure it is delivered in the most economically efficient way that is both "pro-business" and pro-growth". Whilst the appointed Cabinet contains some with powerful green credentials, there are concerns that it is not pro-climate enough which could result in the UK losing its green agenda momentum. It will take some time to see how the actions of the new Government will impact the UK's ultimate net zero road map. We will be watching this closely - not least given the High Courts' ruling earlier this year

On 20 September 2022, the International Energy Agency released a detailed report on the actions needed to scale up the energy transition and bring about carbon reductions through new technology. Whilst the report notes some progress, the key message is that much more remains to be done. The report recommends increased international cooperation and includes twenty-five specific steps ranging from cross-border supergrids to purchases of low carbon steel and new agricultural standards. Whilst many such reports have been published by different bodies in the past, it is interesting that this comes from an intergovernmental body like the IEA, which was previously often criticised as hostile to renewables and alternatives to fossil fuels.

Earlier this month, the European Commission set out proposals to mitigate the effects of high energy prices in Europe. At the time of writing, these are currently being debated by member states. The Commission's proposal is to cap prices chargeable by generators that do not use gas – primarily renewables and nuclear, with the difference between the cap and the market price. In parallel, discussions are underway to cap natural gas prices, though it remains unclear how such caps would work. The electricity price cap proposals will be finalised on 30 September, but since the original proposals were made, more flexibility is likely to be given to member states to implement their own measures. Watch this space to see how things develop but the implications of price caps on existing contracts such as power purchase agreements will need to be examined closely.

On the 31st August 2022, the UN High Commissioner for Human Rights (OHCHR) released a damning report finding numerous human rights violations committed in the Xinjiang region of the People's Republic of China. The report describes large scale discriminatory detention of Uyghur and other minority Muslim communities, as well as reports of torture, gender-based violence and restrictions on privacy and movement. The report goes so far as to say that the detentions 'may constitute crimes against humanity'. We will be keeping a watchful eye on the outcomes of the UN Human Rights Council 51st session, closing on the 7th October, to see whether the UN will act upon the report and demand action from China.

As part of the Japanese Government's National Action Plan on Business and Human Rights, it has released Guidelines on Respect for Human Rights in Responsible Supply Chains. These are the first guidelines (English draft) in Japan that set out specific guidance for companies to establish human rights due diligence processes and remedies up and down their national and global supply chains in line with international standards. Whilst, the guidelines are not legally binding, the expectation is that all businesses in Japan regardless of size should comply.

ESRB to publish a report on whether bank capital requirements can be an effective tool for reducing carbon emissions; *On 29 September 2022, the European Systemic Risk Board issued a press release reporting on the meeting that its general board held on 22 September 2022.*

- At the meeting, the general board issued a warning on vulnerabilities in the EU's financial system. The general board concluded that risks to the financial stability in the EU and the probability of tail-risk scenarios materialising have increased.
- The general board also covered two reports from its Advisory Scientific Committee that will be published in the coming month. The first report focuses on two specific instruments that central banks around the world have used: enhanced lending operations and direct interventions involving purchases of illiquid financial instruments. It explains the design and potential costs of both instruments as well as the rationale behind them. The second report analyses whether bank capital requirements can be an effective tool for reducing carbon emissions and dealing with prudential risks arising from climate change. The report concludes that while bank capital requirements can effectively address prudential risks arising from climate change, they are not likely to be the most effective tool for reducing carbon emissions.

Net Zero review; *On 29 September 2022, the Department for Business, Energy & Industrial Strategy (BEIS) announced that it has commissioned an independent review of the government's approach to delivering its net zero target.*

- The review will assess the economic co-benefits associated with different policies and how the government can drive down the cost curve for net zero technologies. It will consider innovative approaches and ways of delivering the target that ensures the government maximises the economic opportunities presented by net zero.

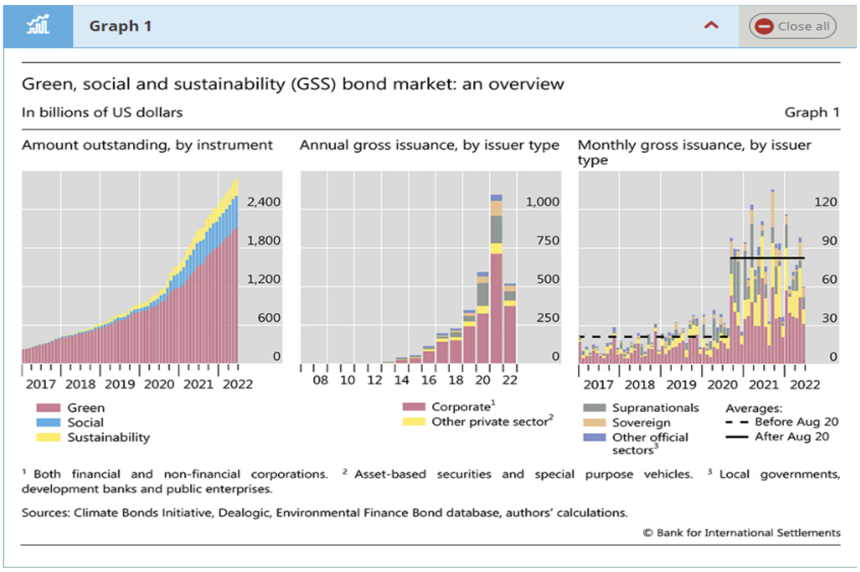
- The review will consider how the approach to net zero can:
  - Deliver maximum economic growth and investment, driving opportunities for private investment, jobs, innovation, exports and growth right across the UK.
  - Support UK energy security and affordability for consumers and businesses and the need to rapidly increase and strengthen UK energy production and supply.
  - Minimise costs borne by businesses and consumers, particularly in the short-term.
- As part of the review, the government is issuing a call for evidence which is intended to provide an open channel to the general public to give their views on the transition, in

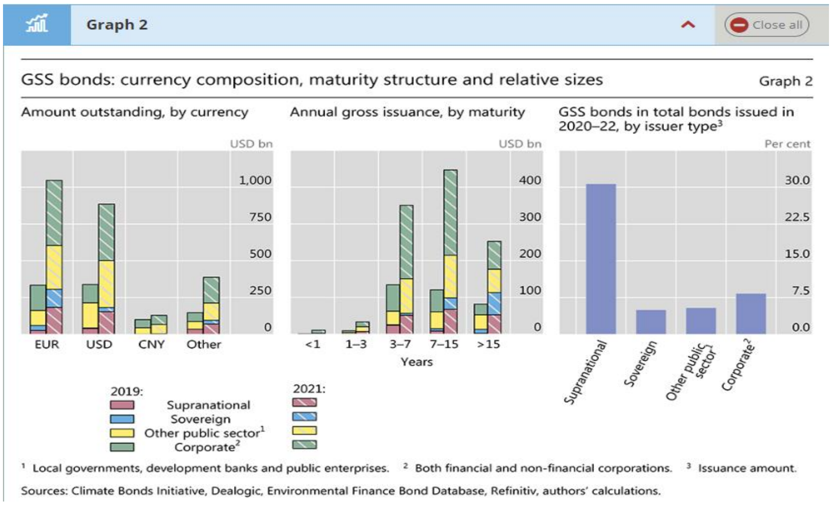
particular giving a voice to the public and small and medium enterprises. The deadline for responding to the call for evidence is 27 October 2022

Saudi Arabia's wealth fund hires banks for debut green bonds Saudi Arabia's sovereign wealth fund, the Public Investment Fund (PIF), has hired banks including Citi and JPMorgan to arrange a debut issuance of multi-tranche U.S. dollar-denominated green bonds, a document showed on Tuesday

BIS; Sovereigns and Sustainable Bonds; The BIS has Tuesday published a report on 'sovereigns and sustainable bonds: challenges and new options.'

- The sustainable bond market has developed rapidly, reaching $2.9 trillion at end-June 2022, with sovereigns joining late but increasing their share from 4% to 7.5% over the past two and a half years.
- Tensions between sovereign green bonds' prescribed use of proceeds and the fungibility requirements of public debt can be partially overcome through refined reporting standards and external review.
- Sovereign sustainability-linked bonds with meaningful climate targets and penalties for non-compliance that are material in the public's eye could help sovereign issuers make progress towards carbon emission reduction targets.
- BIS Quarterly Review | September 2022 | 19 September 2022;; by Gong Cheng, Torstein Ehlers and Frank Packer; PDF full text (147kb) | 10 pages





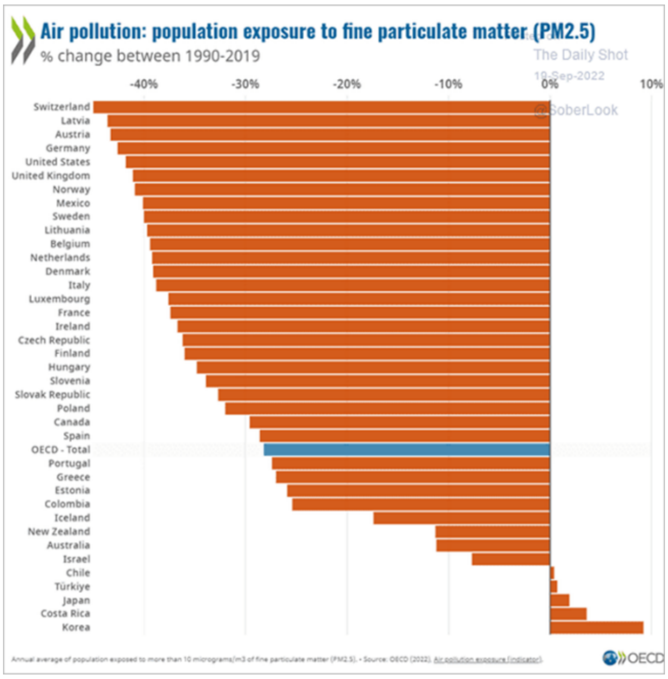
Decarbonisation of Corporate Bond Holdings; *ECB on how it aims to gradually decarbonise the corporate bond holdings; The ECB Tuesday published further details on how it aims to gradually decarbonise the corporate bond holdings in its monetary policy portfolios, on a path aligned with the goals of the Paris Agreement.*

- One goal is to reduce the Eurosystem's exposure to climate-related financial risk, following the Governing Council's July 2022 decision to tilt the Eurosystem's corporate bond purchases towards issuers with a better climate performance. Furthermore, these measures support the green transition of the economy in line with the EU's climate neutrality objectives.
- The overall climate score that will be used to tilt bond holdings combines the following three sub-scores:

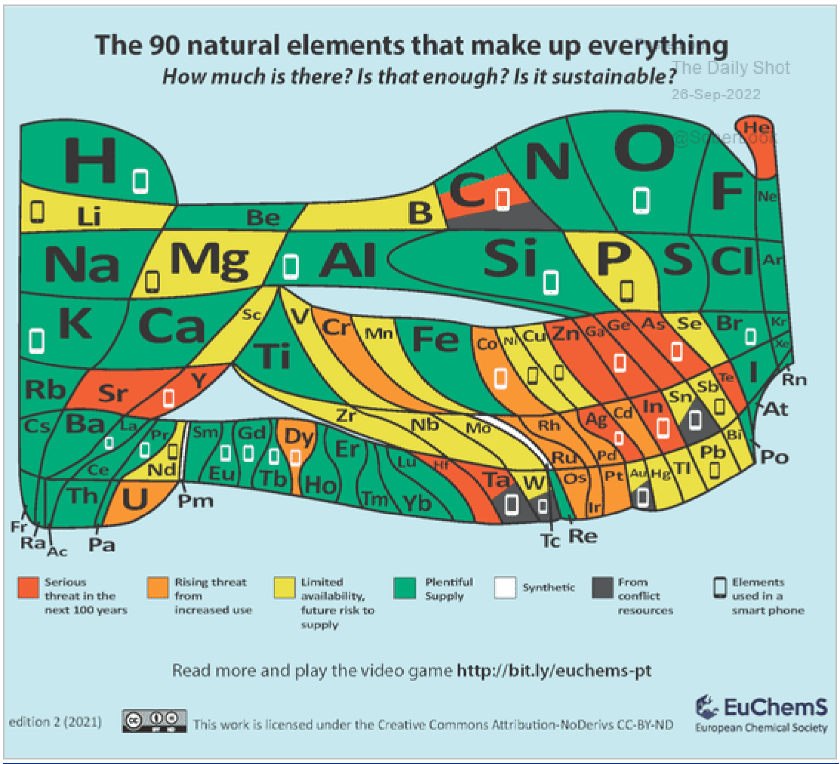
1. The backward-looking emissions sub-score is based on issuers' past emissions. It looks at how companies perform compared with their peers in a specific sector as well as compared with all eligible bond issuers. Those performing better receive a better score.
2. The forward-looking target sub-score is based on the objectives set by issuers to reduce their greenhouse gas emissions in the future. Companies with more ambitious decarbonisation targets receive a better score. This incentivises them to reduce their emissions.
3. The climate disclosure sub-score is based on the assessment of issuers' reporting of greenhouse gas emissions. Those issuers with high-quality disclosures receive a better score. This incentivises bond issuers to improve their climate-related disclosures.

- Issuers' climate scores will affect their relative weighting in the benchmark guiding the Eurosystem's ongoing reinvestment purchases of corporate bonds. This will result in the purchase of more bonds issued by companies with a good climate performance and fewer bonds from those with a poor climate performance. Additionally, the Eurosystem will use the climate score to adjust its bids on the primary market to favour issuers with a better climate performance and to impose maturity limits on bonds from lower-scoring issuers.

- The Eurosystem will take the climate score into account in all purchases of corporate bonds – whether under the corporate sector purchase programme (CSPP) or the pandemic emergency purchase programme (PEPP) – settled as of 1 October 2022. The overall volume of corporate bond purchases will continue to be determined solely by monetary policy considerations. The eligibility criteria for corporate bond purchases remain unchanged at this point.



[The periodic table of "endangered" elements.]


The 90 natural elements that make up everything
How much is there? Is that enough? Is it sustainable?
The Daily Shot
26-Sep-2022
Serious threat in the next 100 years
Rising threat from increased use
Limited availability, future risk to supply
Plentiful Supply
Synthetic
From conflict resources
Elements used in a smart phone
Read more and play the video game http://bit.ly/euchems-pt
edition 2 (2021)
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EuChemS
European Chemical Society