EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

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

Wednesday 07th December 2022

Full Grid and Outlook Below

Regulatory Barometer

November was a busy month in the US with Congressional elections taking place on November 8th. Although Republicans took control of the US House of Representatives, it appears that the Senate remains in the hands of the Democrats.

- This is important for financial services firms because the aggressive rulemaking approach of the SEC will likely continue unabated unless Congress is united in its oversight. However, the recent collapse of FTX will likely find Republicans and Democrats working together to push through the long-awaited cryptocurrency legislation.
- The SEC just published its forward strategic workplan and also held its annual compliance outreach seminar for compliance personnel on November 15th. The seminar gave the SEC the opportunity to discuss its recent rulemaking, including its impact on non-US based investment advisers. This was underscored by recent remarks by the Director of Investment Management, William Birdthistle.
- In short, financial firms servicing US clients from outside the US are expected to comply with US regulation as it relates to those clients. We note a current focus by the Division of Examinations on UK firms. These examinations often include inquiries as to the Compliance team’s knowledge of US regulations and a desire to see adequate references to US regulations in firms' policies and procedures.

Conduct

CFTC Recognizes the UK FCA for Cross-Border Enforcement Cooperation; November 03, 2022; Release Number 8619-22; *CFTC recognized and expressed appreciation to the UK FCA (UK FCA) for taking actions that demonstrated critical cross-border cooperation to ensure the integrity of U.S. markets and markets abroad.*

- The UK FCA diligently pursued and obtained information from United Kingdom-based traders on behalf of the CFTC during an investigation of certain crude oil trading on a U.S. derivatives exchange, which is a CFTC designated contract market. On November 2, the Court of Appeal of England and Wales refused permission for those traders to proceed with a judicial review of the UK FCA's decision to assist the CFTC.
- "In order to fulfill its mission of promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets, the CFTC must be able to obtain information from individuals and entities who are trading on U.S. markets," said Gretchen Lowe, Acting Director of the Division of Enforcement. "U.S. derivative markets are available worldwide, and the Court of Appeal of England and Wales' decision shows traders cannot hide from regulatory oversight just because they are overseas. The CFTC is grateful for the FCA's efforts to secure this result and its commitment to cross-border enforcement cooperation."
- Derivatives and securities transactions are increasingly cross-border in nature. As such, international cooperation is key to ensuring the integrity of the markets in the U.S. and throughout the world. The CFTC relies on the cooperation of its fellow domestic and foreign derivatives regulators to effectively investigate violations of the Commodity Exchange Act that involve cross-border conduct or misconduct by market participants located abroad.
- The UK FCA has been assisting the CFTC Division of Enforcement to obtain records of certain traders located in the UK who have refused to produce records requested by the UK FCA on behalf of the CFTC. The traders have challenged the UK FCA's authority to obtain the records in assistance to the CFTC. This ruling ends those traders request to proceed with a judicial review of the UK FCA's decision to assist the CFTC.
- For additional information, see the UK FCA's press release.
- Decision of the Court of Appeal - R (Sutton) v FCA
- Press Releases First published: 02/11/2022 Last updated: 02/11/2022
- The FCA welcomes the decision by the Court of Appeal to deny permission for a judicial review.
- The Court of Appeal has refused permission for a group of traders to proceed with a judicial review of the FCA's decision to provide assistance to the United States CFTC (CFTC) in an ongoing investigation.
- The FCA issued notices requiring production of information by UK residents (the UK subjects) in order to assist the CFTC in an investigation of certain crude oil trading on a U.S. derivatives exchange.
- An application to judicially review the FCA's decision was brought by the UK subjects to overturn the decision to seek evidence from them.
- A person seeking judicial review is required to seek permission of the court before doing so. The initial application for permission to apply for judicial review by the UK subjects

was initially rejected by the court. They appealed the decision to the Court of Appeal which has also rejected their application for permission.

- Under the Financial Services & Markets Act, 2000, the FCA is able to use its investigation powers to assist foreign regulators. The FCA also commonly seeks assistance from foreign regulators in relation to its own investigations.
- Both the FCA and the CFTC are signatories to a multi-lateral memorandum of understanding which commits the signatories to provide relevant assistance to one another. There are over 100 signatories to this memorandum. The FCA will take all appropriate steps to assist international partners such as the CFTC to protect financial markets and prevent harm.
- In this case, the FCA has arranged to ensure all materials requested by the CFTC are provided by the traders without further delay.
- Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA said: 'We welcome today's decision. The powers to seek information needed for investigations by the FCA, including where doing so is to assist a foreign regulator, are vitally important in ensuring investigations involving multiple jurisdictions are able to be conducted properly. The FCA will not permit subjects of international investigations who are located in the UK to hide behind unmeritorious claims or to delay international investigations through abuse of legitimate remedies.'

On 31 October 2022, the FCA published Handbook Notice No 103. *The Handbook Notice describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers on 28 October 2022.*

- Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental stages if they wish. On 28 October 2022, the FCA approved the Supervision Manual (Reporting No 18) Instrument 2022 which amends form FSA035 in order to reflect the prudential requirements that firms have in Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) 5.4.3R.
- The same text also exists in SUP 16 Annex 24R and the guidance on validation in SUP 16 Annex 25G. The instrument also amends labelling errors in SUP 16 Annexes 24R and SUP 16 Annex 25G. The instrument comes into force on 31 December 2022.

FINRA looks to extend pandemic-era remote inspections The Financial Industry Regulatory Authority wants a one-year extension of a pandemic initiative that permits remote branch office inspections. The extension would offer regulatory continuity while the SEC considers a three-year inspection pilot program, FINRA says. Financial Advisor IQ Investment News

Gensler signals tough stance on misleading investors SEC chair Gary Gensler told a conference that the agency will continue to crack down on firms and executives that mislead investors, saying: "If you defraud any investor -- retail or institutional, sophisticated or not -- you will be held accountable." Gensler said disgorgements and penalties issued by the SEC reached a record $6.4 billion in fiscal year 2022, with more than 700 enforcement actions filed. Pensions & Investments The Block Bloomberg

Hong Kong mulls allowing retail trading of cryptoassets The Hong Kong Securities and Futures Commission will open a consultation on whether to open access to cryptoasset trading to retail investors. The move would reverse the territory's existing policy which limits crypto trading to professional investors. Financial Times The Wall Street Journal

Anti-competition probe of the City delayed again The four-year, £3 million probe of the City of London's suspected anti-competitive financial services actions by the Competition and Markets Authority has been extended for the third time. No details of the probe's new delay or an undated timetable have been released. Financial News

KRM22 is pleased to announce that a major global provider of broking and execution services headquartered in London, has selected KRM22 to deliver its suite of market risk products covering At-Trade P&L and Exchange Margin calculations, as well as Post-Trade Stress analysis.; *Given recent global events and unprecedented market volatility, the demand for real-time risk controls that our products are uniquely positioned to deliver has grown significantly. Firms are looking to identify risks quickly using complimentary tools that address both immediate exposures but also help guard against the impact of potential future events too.*

- As a new member of the LME, the firm recognized the need to put in place stringent risk controls to protect against events such as the suspension of Nickel trading earlier this year. KRM22's At-Trade P&L and Exchange Margin engine will allow them to evaluate P&L and margin requirements across multiple instruments and exchanges in real-time, viewing exposures by product, account, branch or for the firm globally to highlight risks that need to be addressed as a priority.
- Furthermore, KRM22's Post-trade Stress tool will allow the anticipation and reaction to extreme volatility and predict future P&L outcomes by configuring and analyzing multiple "market shock" scenarios simultaneously. By combining P&L and margin calculations with stress analysis into highly configurable risk dashboards, they can address vulnerabilities quickly and protect future profitability of their customers and the firm.
- Market volatility is not going away and it's becoming apparent that our customers are overwhelmingly challenged by the need for more granular and frequent risk reports. KRM22's Risk Cockpit, delivered in conjunction with the market risk product suite, will give the firm access to the business analytics and visualization tools needed to help extract valuable insights from both risk and operational data generated as their business grows. The Risk Cockpit provides invaluable input into an organisations internal and external reporting processes, providing a continual health-check on the business and the comfort management are looking for.
- Dan Langley, KRM22 Business Development Manager, said "We are delighted to have been selected to deliver the market risk product suite to support this growing business. Deployed through our cloud hosted Global Risk Platform, we can deliver a broad set of functionality quickly while reducing the technology impact for our customers and enabling them to manage the risks facing their business with confidence".

The FCA has recognised the "administrative and financial burden" ad hoc surveys place on firms by replacing its Financial Resilience Survey with a regulatory return. The new reporting requirement now excludes MIFIDPRU firms but brings into scope up to 100 non-MIFIDPRU firms previously excluded.

- *Earlier this month, the FCA opened a consultation on a baseline financial resilience regulatory return for solo-regulated businesses. Since the start of the Covid-19 pandemic, the FCA has been asking around 23,000 solo-regulated firms to report, approximately every quarter, on their financial position, initially via the "Covid-19 Impact Survey". This subsequently became the "FCA Financial Resilience Survey (FRS)".*
- Changes to reporting requirements; The proposals are set to introduce a new return, referred to as 'FIN073 – Baseline Financial Resilience Report', which will be collected via the RegData system. Compared to the FRS, this will instead be a quarterly return and have five questions rather than 14:

1. What is the total amount of liquid assets that you control or have unrestricted access to?
2. What are your average monthly cash needs arising from fixed costs?
3. What is your net profit OR loss in the last quarter?
4. What was your revenue in the last financial year?
5. Please report your net asset or liability position at the end of the last (calendar) quarter.

- One of the main changes introduced by these proposals includes the removal of MIFIDPRU firms from the scope, as they already provide the data the FCA needs. However, up to 100 non-MIFIDPRU firms currently subject to the Automated Financial Resilience Monitoring programme, previously excluded from the FRS, will be brought into scope. The proposals will also not apply to all FCA regulated firms, with those unaffected including:

    - Credit brokers
    - MIFIDPRU investment firms
    - Not-for-profit debt advice bodies
    - PRA-authorised persons
    - Supervised run-off firms; and
    - Temporary Permission firms

- For every other firm, this will be an additional filing obligation in Regdata.
- Improving market resilience; The regular collection and access to baseline financial resilience over the last two years has allowed the FCA to meet its objectives of protecting consumers and enhanced its ability to ensure market integrity. The data has helped it monitor the risk of firm failure through the pandemic, the Russia/Ukraine conflict, and other global macroeconomic changes.
- Based on its findings, the FCA has identified several material concerns which have allowed it to act earlier than it may otherwise have done on over 100 firms. These firms were required to increase capital and put new wind-down plans in place, with some being prevented from taking on new business whilst addressing the underlying issues. As a result, these firms are now considered less likely to undertake a disorderly wind-down.
- Despite this, the FCA acknowledges the administrative burden that has been placed on firms due to the ad-hoc nature of the current requests. Its proposal aims to rationalise and standardise data collection, reducing the burden of these surveys and increasing the "quality and consistency of financial resilience data". Using the RegData system will

mean firms have access to guidance on how to complete and plan for the returns, as they will be visible in their schedule.
- The FCA is seeking feedback on the consultation paper by Friday, 2 December 2022, and the policy statement and final rules are expected in Spring 2023.
- What firms should consider; All firms regulated by FCA are expected to have a wind down plan that complies with the guidance set out in the FCA Handbook. Banks need a Recovery and Resolution plan as, in our experience, these are documents regulators often ask to see. Following feedback from the FCA's recent thematic review on wind down plans, plans produced by firms typically don't meet the standards regulators expect to see, putting them at risk.

Bovill; Regtech showcase: Managing compliance risk; *Effective risk management is at the heart of compliance. And regulators expect to see evidence that it is done well. But all too often it creates ever-growing unwieldy spreadsheets which need regular review.*

- In this webinar we'll look at what the FCA expects to see when it comes to risk management. In particular we'll look at common challenges - whether you're looking at financial crime, market abuse, CASS, prudential or wider conduct risk.
- We'll be joined by our friends at Grath to take a look at how software can help. We will walk through how their platform can streamline risk identification and assessment, build and automate risk monitoring plans and track actions with attestation management.

Designing your control matrix for safeguarding and CASS; *The words 'compliance control matrix' or 'risk and control framework' can conjure up images of wading through spreadsheets and ticking meaningless boxes. But when set up right, these tools can unlock more efficient and seamless compliance. Done properly, a control matrix can be a live representation of what happens across your firm and provide the foundation for effective governance. Adopting an automated approach will help, as will understanding the pitfalls. Above all staying on top of your control matrix is vital to make sure you get value out of it.*

- Designing a control matrix: pitfalls to avoid
- Beware of the spreadsheets
- The IT issues
- Outsourced/Offshored arrangements
- Business line differences
- Automated risk and control mapping
- Next steps
- Beware of the spreadsheets; companies use spreadsheets to manually document rule applicability, risks and controls. This can be a good starting point, but it has several drawbacks:
- Manual nature; spreadsheets are big. They're not easy to navigate or extract insight from. They take a lot of time and effort for their maintenance and are also prone to becoming corrupted.

- Static nature; spreadsheets are static. It's difficult to use them to do real-time impact assessments or to monitor the management of risks.

- For example, if you have a new product, and you would like to understand if the current control environment can support it, it would be difficult to filter out the relevant controls and assess if changes to them are required. This is because there's a lot of 'noise' within this type of spreadsheet making it difficult to get a clear overview between the risks, controls and processes at the firm.
- Prone to inconsistencies; The manual nature of the matrixes means there is an increased risk of inconsistencies and duplications.
- For example, we often see the same control included against multiple risks but with different wording used each time. This can make it look like there are several separate controls, which can cause 'noise' and impact MI and reporting.
- Changes in regulation not captured promptly; When rules change, it's time consuming to capture them in your spreadsheet, meaning they may not be reflected within your control environment promptly, risking non-compliance.
- Prone to control gaps; When maintaining a risk matrix in a spreadsheet, the risk of control gaps is higher, and they are less straightforward to identify. We see that to try and make the spreadsheets easier to work with, firms sometimes amalgamate rules and therefore miss nuances, for which additional controls are needed.
- Difficult to identify systemic failures in controls; With control matrixes maintained manually in spreadsheets, we also usually see highly manual breach and incident management processes. This can result in firms working to resolve the breach but not fully linking the cause of the breach to a specific control failure.
- The IT issues; We often see firms failing to map IT controls and dependencies to their regulatory control environment. Mapping of automated controls is often good, but firms often miss dependencies on manual IT controls, such as detective controls relying on data derived by key systems.
    - Another thing that firms often miss is documenting data validation controls around data feeds between systems. For example, in the internal client money reconciliation, system feeds into the free cash calculation need to include only client money for clients who fall under the CASS 7 rules. Firms often forget to map controls that ensure that balances for all clients feed into the calculation and likewise, those that ensure that only client money feeds into the calculation.
    - Lastly, firms often fail to document controls relating to user access, certifications, recertifications and change management as part of their regulatory matrix.
    - Failure to fully engage in your IT environment when mapping controls can result in incomplete or inaccurate information feeding into the control matrix.
- Outsourced/Offshored arrangements; When firms outsource or offshore processes and controls, they retain regulatory responsibility for compliance and therefore, need to have arrangements in place to oversee the activities performed by the third-party administrator (TPA). It's important that control matrixes properly identify which controls are outsourced/offshored and which third parties they are outsourced/offshored to. This will allow an appropriate focus on outsourced/ offshored controls and processes, and therefore ensure that they are captured as part of the firm's control framework.
- Business line differences; We often see that even good control matrixes do not have sufficient information to ascertain which rules apply to which business lines. This can lead to a risk that rules are scoped-in for business lines to which they are not applicable

or conversely, that business lines are relying on controls, which do not include relevant information for this business line.

- Automated risk and control mapping; For many, an automated risk and control mapping system is the answer to a lot of these problems and provides some clear benefits.
- Complete regulation mapping updated automatically; You have all relevant rules and regulations mapped within a system which are automatically updated in real time. The system highlights to you when this happens, so you know you need to act. The triggers also depend on what the change type, for example whether it's a new rule, an amended rule, or a deleted rule. This allows you to consult your control matrix and assess the change's impact on your control framework as it happens.
- Effective gap analysis; You can view your entire control framework and analyse how it maps back to the regulation as well as how the regulation maps back to your controls. The system can flag if there are any controls not mapped to rules, rules which have flagged as applicable but not mapped to controls, or rules not assessed for applicability
- Effective third-party administrator (TPA) oversight

- You can have the capability to tag where your controls operate – are these performed in-house, or do you outsource/offshore these to a third-party administrator (TPA)? If you use outsourcing arrangements, you can see which controls are impacted. Through the reporting functionality of automated solutions, you can also see:

    - How many CASS-critical activities sit with each outsourced entity – this can guide the level of oversight to different TPAs you would be using, with higher risk TPAs being monitored more closely.
    - If there is duplication of activities that can be streamlined into one location – for example with controls performed in the exact same way for different markets in different locations, rather than one centrally operated control for all markets – thus increasing efficiencies and cutting on costs.
    - Which third-parties controls are outsourced to. This is essential, as it can be used to map back to the service level agreements with these TPAs and ensure that there is such an agreement and that the activities listed in the agreement correspond to the activities undertaken. This can also be used as part of the CMAR process when responding to the question in Section 9.
    - This will show where oversight efforts should be focussed and can help you assess if the third-party administrator is still appropriate to perform these controls.

- Incorporation of IT controls within your regulatory environment; An automated solution can also help you to assess how well your general control environment is automated and where there are human dependencies that might increase risk.

    - Further, through the reporting capabilities of the automated solution, you would be able to see how many controls rely on the same dependencies, thus identifying which of these are higher risk and require more monitoring activities (relating to change management or access).

- **Effective breach management;** So, you have a robust control matrix. Your solution also has built in attestations, which allows you to map control deficiencies, near misses, breaches and other incidents to your controls.
    - This gives you a real insight into where your control weaknesses lie and therefore effectively target their remediation, be that through introducing new preventative or detective controls, or through changing the mix or design of controls. And if managed in sufficient detail, you can see where incidents due to a control failure in one control can have an impact over the operation of another control.

- **Next steps;** With all the above in mind, the number one best practice is to keep on top of your control matrix, regardless of whether it is automated or manual. Only in doing so would you be able to exercise effective governance and derive real insight from any reports and information retrieved from your control matrix.

Superior Financial Services, Inc.; settled FINRA charges for failing to properly test the firm's AML compliance program.

- In a Letter of Acceptance, Waiver, and Consent, FINRA found that the broker-dealer failed to conduct sufficient annual testing of its AML compliance program, as required. The broker-dealer had contracted an outside audit firm to conduct the test, and despite the auditor confirming that the broker-dealer's cash disbursements and its written AML policies were reviewed, the auditor did not assess the adequacy of the broker-dealer's program or its compliance with its own policies.
- As a result, FINRA determined that the broker-dealer violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade") and Rule 3310(c) ("Anti-Money Laundering Compliance Program"). To settle the charges, the broker-dealer agreed to a $5,000 civil monetary penalty.
- FINRA AWC: Superior Financial Services, Inc.

Considerations for Spoofing Detection – Proving Intent As the CFTC continues to aggressively pursue spoofing violations, the charges and orders also provide insights into what the CFTC believes is proof of intent to spoof, writes Chris Waitz, Director of Regulatory Affairs at Eventus. In this article, Mr. Waitz offers eight examples of what the CFTC considers evidence of spoofing, based on past cases. More

- In recent enforcement action, The CFTC charged one trader and fined two other traders and one proprietary trading firm for spoofing violations. The two traders and the firm received fines totaling $850,000 and the traders also received trading suspensions of four months and six months.
- While these actions show the CFTC continues to aggressively pursue spoofing violations, the charges and orders also provide insights into what the CFTC believes is proof of intent to spoof. The following elements were detailed by the CFTC as evidence:

- Spoof, or non-Bonafede orders, were typically between 10 and 50 times larger than the genuine orders
- Genuine orders were often placed as 'Iceberg' or hidden orders while spoof orders were fully displayed to the market
- The spoof orders were cancelled far more quickly than the genuine orders. In one of the cases the spoof orders were, on average, cancelled after 11.8 seconds while the genuine orders, on the occasion they were cancelled, were cancelled after an average of 55.4 seconds
- In the event the genuine orders were completely, rather than partially, filled, the spoof orders were cancelled after just 2.3 seconds
- Spoof orders were on average cancelled more quickly when the market moved towards those orders, and cancelled more slowly when the market moved away from those orders
- In instances when multiple spoof orders (i.e., layering) were placed at varying price levels, the spoof orders closest to top of book were cancelled before spoof orders deeper in the book
- During the relevant period, the genuine orders were filled or partially filled 89% of the time, while spoof orders were filled or partially filled just 2% of the time
- Incidents of spoofing were repeated hundreds of times
- Of particular note is the length of time spoof orders were live in the market prior to being cancelled. In the past, spoof orders were often only briefly live before being cancelled. This made it relatively easier to detect spoofing as the time window to monitor was limited. A longer time period, 10-15 seconds or more, presents a challenge to compliance officers and surveillance teams as spoof orders could potentially stay on book as long as a typical genuine order. As a result, genuine trading activity is more likely to trigger spoofing alerts resulting in potentially large numbers of false positives.
- VIP: Validus' trade surveillance and algo monitoring tools offer a suite of procedures designed to detect instances of potential order manipulation including spoofing and layering. These procedures can be configured to identify spoofing activity taking place over any period of time, such as 10-15 seconds. However, configuring a spoofing procedure for this type of "long spoofing" may generate a greater number of false positive candidate alerts. To handle these candidate alerts, Validus offers robotic process automation to efficiently process the candidates and assigns a probability score to present only the highest-risk alerts for human review.
- Available automations include indicators such as order book imbalance and market dominance, but they can also be customized for each client's unique requirements.
- The factors listed above showing intent to spoof provide insight on automations that may be useful to identify the highest risk spoofing alerts for surveillance analysts' review. Additionally, Validus' reporting suite allows users to generate trend analysis which can be used for pattern and practice review to identify repeated instances of potential spoofing by a single or group of traders or accounts.

Crypto's JPMorgan mutates into Bear Stearns; *Sam Bankman-Fried was supposed to play the role of cryptocurrency saviour, the J. Pierpont Morgan of his industry and era. Instead, the founder of exchange FTX, recently valued at $32 billion, has gone from rescuing smaller firms struggling with price crashes to grabbing onto a lifesaver himself. He provisionally agreed on Tuesday* *to sell the non-U.S. bits of his business to rival Binance, a speedy reversal that speaks to the immaturity of digital currencies.*

- Cryptocurrency exchanges such as FTX, whose rivals also include Coinbase Global, are different beasts to their more traditional counterparts Intercontinental Exchanges or London Stock Exchange Group. These newer bourses often lend directly to fund leveraged trades by customers, much like a broker-dealer or investment bank, and issue their own digital tokens entitling users to discounts and other goodies. FTX is a particularly unusual case because of its links to hedge fund Alameda Research, also founded by Bankman-Fried, which owns a large chunk of FTX's token, FTT, according to a CoinDesk report.
- FTT has been crashing in recent days, not least because Binance founder Changpeng Zhao said in a Twitter post that he was dumping his company's holdings. The message contributed to swirling social-media chatter about FTX's solvency and links to Alameda, prompting customers to pull funds. FTX experienced some $6 billion of withdrawals in the 72 hours before Tuesday morning, Reuters reported, citing a message Bankman-Fried sent to staff. This "liquidity crunch", as Zhao called it on Twitter, prompted Bankman-Fried to reach out to Binance for help. Binance has now signed a non-binding letter of intent to buy FTX's non-U.S. assets, pending due diligence, per Zhao.
- Any such deal under the circumstances would look like a bailout, similar to JPMorgan riding to the rescue of Bear Stearns in 2008. It's quite a sudden twist given how Bankman-Fried was scurrying around just months ago saving parts of the cryptocurrency world. For FTX's fortunes to flip so quickly exposes the lack of regulatory guardrails and just how far the fanatical dream of building a trust-less, decentralised financial system is from becoming reality.
- The downfall also will sting Bankman-Fried's backers. A $25 billion funding round about a year ago counted 69 investors, including Sequoia Capital, Temasek and the Ontario Teachers' Pension Plan Board. SoftBank Group invested in the next round, only months later, at a $32 billion price tag. They all thought they were backing Morgan, but only got a pale imitation.

FIF Calls for Bifurcated Reporting Timeframes for Manual Trades; *Financial Information Forum ("FIF") criticized related FINRA and MSRB proposals to shorten the required reporting time for certain fixed income securities. (See FINRA Notice 22-17; MSRB Notice 2022-07.)*

- As previously covered, the proposed rule changes would amend FINRA Rule 6730 ("Transaction Reporting") and MSRB Rule G-14 ("Reports of Sales or Purchases") to require trades in covered fixed income securities to be reported to their respective trade reporting systems within one minute from the time of execution.
- In a comment letter, FIF expressed concern about the viability of reporting a transaction to the Trade Reporting and Compliance Engine system ("TRACE") or the MSRB Real-Time Transaction Reporting System ("RTRS") within one minute for manually executed transactions. FIF said that requiring manual trades to be reported within one minute of execution may severely restrict firms' ability to negotiate the terms of a trade, as firms may rush to comply with the shortened timeframe. Additionally, FIF recommended that FINRA and MSRB permit firms to report non-disseminated information on an end-of-day basis.

- FIF urged FINRA and the MSRB to implement a separate set of reporting requirements for manually executed trades that gives firms more of a cushion in the time to report transactions. FIF encouraged FINRA and the MSRB to issue guidance to firms on how to best comply with the new reporting timeframe. FIF also recommended that FINRA and the MSRB should institute a long compliance period, as updating to comply with a one-minute timeframe will require a multi-year effort.
- Financial Information Forum Comment Letter: MSRB Notice 2022-07 and FINRA Regulatory Notice 22-17 – Proposals to Shorten Fixed Income Trade Reporting Timeframes

NRF have published a new briefing note, Spotlight on the Appointed Representatives regime: what you should be doing now. This briefing note follows our first briefing note on the revised Appointed Representatives regime. In this briefing note focussed on five key areas including where the FCA has revised its original consultation proposals. We also propose some steps for firms to consider taking now, if not doing so already, to ensure they are compliant when the new FCA rules and guidance take effect from 8 December 2022.

Wedbush Securities Inc. settled FINRA charges for (i) failing to disclose that certain corporate and municipal bonds held by its customers were in default and (ii) failing to deliver a number of required disclosures to its customers.

- FINRA AWC: Wedbush Securities Inc.
- In a Letter of Acceptance, Waiver, and Consent, FINRA said that the broker-dealer distributed account statements to certain customers showing that some of the held bonds were making payments when they were actually in default. FINRA determined that the broker-dealer had notice of the defaults, but the account statements did not reflect this information. In failing to maintain accurate records for these bonds, FINRA found that the broker-dealer violated FINRA Rule 4511 ("Books and Records Requirements — General Requirements") and MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors").
- FINRA concluded that the firm failed to deliver certain (i) privacy disclosures in violation of Regulation S-P ("Privacy of Consumer Financial Information and Safeguarding Personal Information"), (ii) order execution notices in violation of SEC Regulation NMS Rule 242.606 ("Disclosure of order routing information"), and (iii) margin disclosures in violation of FINRA Rule 2264 ("Margin Disclosure Statement"). FINRA found that the firm had inadequate supervisory systems, violating FINRA Rule 3110 ("Supervision") and MSRB Rule G-27 ("Supervision").
- To settle the charges, the broker-dealer agreed to (i) a censure, (ii) a civil monetary penalty of $850,000 ($300,000 pertaining to the MSRB rule violations) and (iii) undertake improvements to its notice and disclosure processes.

Deutsche Bank Faces Threat of Fines Over Money-Laundering Controls; Move by German regulator BaFin suggests it is unhappy with the bank despite years of pressure; Germany's top financial watchdog threatened to fine Deutsche Bank AG if it doesn't implement controls against money laundering by a set deadline, suggesting the regulator isn't satisfied with the bank's efforts to police dirty-money flows. BaFin, as the regulator is known, said late Friday that on Sept. 28 it told Deutsche Bank to take specific measures to prevent money laundering and terrorism financing so it could fulfill requests BaFin had made in 2018 and 2019. The regulator said it would impose financial penalties if the bank doesn't comply. /jlne.ws/3FQc7Lz

FINRA AWC: Vanguard Marketing Corporation settled FINRA charges for exercising a customer's expiring options after the FINRA-designated exercise cut-off time.

- In a Letter of Acceptance, Waiver, and Consent, FINRA found that the broker-dealer accepted instructions to exercise out-of-the-money put options after 5:30 pm EST on expiration day, at the instruction of a firm supervisor. According to the Letter, the supervisor said that the firm could exercise the options under the firm's "best efforts basis" exception that allowed the firm to exercise options after its internal cut-off time of 4:30 pm EST in special circumstances. FINRA said that the options would have otherwise expired worthless, but because of a significant change in price of the underlying stock after hours, the options were exercised "in-the-money." FINRA said that the failure was caused in part by insufficient internal controls that did not recognize the FINRA-designated cut-off time as a cut-off for "best effort basis" redemptions.
- As a result, FINRA determined that the broker-dealer violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), Rule 2360 ("Options") and Rule 3110 ("Supervision"). To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $50,000.

SEC Staff Identifies Order Flow Disclosure Deficiencies; *The SEC Division of Examinations found deficiencies in reports on how broker-dealers identified venues, classified orders and calculated aggregate net rebates, in violation of SEC Regulation NMS Rule 242.606 ("Disclosure of order routing information").*

- In a Risk Alert, SEC staff reported that broker-dealers routed orders to a clearing firm without providing a Rule 606 report ("Quarterly report on order routing") or incorporating the clearing firm's report or misclassified certain routing firms as a venue on the report. Broker-dealers often misclassify order percentages, according to the alert, resulting in inaccurate disclosure of net aggregate rebates for each order type. SEC staff observed that many broker-dealers also used incorrect dates for determining inclusion of a stock in the S&P 500 index.
- SEC staff found that broker-dealers failed to disclose materially important information relating to relationships with routing brokers or execution venues, including rebate arrangements. SEC staff warned against using a generic set of criteria that may not capture the full details of a particular arrangement.
- SEC staff also found that many broker-dealers did not maintain written policies to ensure the accuracy of Rule 606 reports and encouraged firms to review existing policies related to Rule 606 to ensure the completion and accuracy of the necessary disclosures.

Fed releases latest Supervision and Regulation Report. O*n November 10th, the Fed published its latest Supervision and Regulation Report. The report notes that some unresolved supervisory findings "are taking longer than expected to remediate, especially for global systemically important banks (GSIBs) and other large banks" and states that examiners are focusing on remediation of* *findings in areas such as independent risk management and controls, compliance, operational and cyber resilience, and information technology.*

FMSB Review:

- UBS' Ciara Quinlan led output on Trading Practice Disclosures.
- World Gold Council's David Tait led the Precious Metals Post-Trade review Working Group.
- Barclay's Jonathan Brown led work on the Standard for the sharing of investor allocation information in the fixed income primary markets.
- Goldman Sachs' Tony Kim and HSBC's Vincent Domien co-ran the LBMA Precious Metals Auctions workstream producing this Standard.
- Citi's David Flowerday led a working group of FMSB Members, legal and consultative bodies to update seminal work on behaviour patterns in financial markets
- ESG work this year by market practitioners on ESG Ratings led by NatWest's Caroline Haas and the Voluntary Carbon Markets by the FMSB Secretariat in collaboration with experts globally
- The Australian Securities and Investment Commission signed an agreement with FMSB in September 2022 to formalise their continuing cooperation.
- FMSB'S work in progress which includes Algo Model Risk, Post-Trade, and Three Lines of Defence. Please be in touch or visit our website.
- Chair Mark Yallop delivered a speech on trust in the markets on 12 July 2022, saying: *"Real, or what [Onora] O'Neill called "intelligent" accountability, is not delivered by ticking boxes or meeting arbitrary KPIs, but by ensuring good self-governance and informative reporting that enables others with knowledgeable independent judgement to verify performance."*

Digital Services Act: EU's landmark rules for online platforms enter into force

CFTC Commissioner Pham Encourages Self-reporting on Compliance Issues; *CFTC Commissioner Caroline D. Pham encouraged firms to establish a compliance program to "identify, escalate, and self-report material or potentially material non-compliance issues to the relevant authorities."*

- In remarks at the NYU Law Program on Corporate Compliance and Enforcement Fall Conference, Ms. Pham said that self-reporting potential compliance issues is not only required by law, but it helps to remediate misconduct prior to CFTC intervention. The result is generally more favorable settlement terms, and the degree of reduction in a penalty depends on the level of cooperation.
- Ms. Pham encouraged firms to report potential compliance issues to the proper authorities through a supervisor or compliance officer, legal counsel, HR office or

anonymous hotline and said that being proactive and transparent will help build good standing with the CFTC.
- CFTC Commissioner Caroline D. Pham: Remarks at the NYU Law Program on Corporate Compliance and Enforcement Fall Conference - "If You See Something, Say Something"

Rolling regulation forwards; Speech by Nikhil Rathi, FCA at the UK Finance annual dinner.

- The Consumer Duty will help us manage the entry of Big Tech firms into the UK retail financial service, ensuring a level playing field.
- Firms should take advantage of digitalisation but market developments must not leave groups of consumers behind, particularly those most vulnerable or the least digitally enabled.

- We want to work with industry to ensure that the UK remains the largest destination for fintech investment in Europe.
- Consumer Duty and the regulatory habitat
- Our role as regulators is to help us seize opportunities whilst also navigating the rules of sometimes dangerous terrain or as one commentator wrote recently, the jungle.
- Now, let me start by addressing the elephant in the jungle. The Consumer Duty. We know that you have concerns about it. How could we measure it? How could we quantify it? How would we monitor it? Parliament debated and explicitly mandated the Consumer Duty due to falling public confidence in retail financial services.
- The Duty puts the onus on firms to act to deliver good outcomes for consumers: To act in good faith, avoid causing foreseeable harm and support customers to pursue their financial objectives. We know that the Consumer Duty does not guarantee a good outcome: It leads firms to consider what that looks like and to take decisions in good faith.
- Firms must also give customers information that they can understand, point customers to products, services and post-sales support that meet their needs and offer fair value. These principles are not controversial.
- Thanks to co-operation and hard work from industry, we hope that we have overcome the biggest stumbling blocks in the design and implementation. After extensive feedback, we introduced a phased deadline to help firms embed what is undoubtedly a major cultural and operational shift. Many organisations are already doing much of what we are asking for.
- Firms seem to be on track so we see no need for those deadlines to move again. We will remain pragmatic in our oversight of implementation and ask for continued openness from firms on their implementation path.
- Listening to industry concerns, we also chose not to attach a Private Right of Action to the duty. Some parliamentarians and consumer groups wanted us to go further but we believe our reforms strike the right balance.
- We have been asked how we would measure impact.
- We have set ourselves measurable targets such as reducing the number of complaints going to the Financial Ombudsman Service. And we know how critical coordination with the Ombudsman Service will be for successful implementation. As the Ombudsman has made clear, the Duty does not have a retrospective effect. Conduct will be judged on the rules and standards in place at the time. Another quantifiable target is to see an increase

in the levels of trust for financial services in our regular survey levy. We want to bring the Financial Services Compensation Scheme down, reducing costs for you, particularly for small businesses.

- Ultimately, meeting these targets and embedding the consumer duty are in firms' interests too. And after some heavy lifting upfront, it should also mean fewer reactive rules created by us in the coming years. We will monitor how the duty is working and look forward to hearing from you about changes we can make to further simplify our rule book. Fundamentally it sets us up to regulate for the future, and this has never been so important.
- Regulation of the future and innovation
- And that is what I would like to turn to next. We want to work closely with industry so that the consumer duty can help shape a framework for use of Artificial Intelligence (AI) and other new technologies. AI can help solve some of the issues highlighted tonight, such as spotting the signs of vulnerability, tailoring products to individuals and receiving accurate customer feedback and data.
- The CEO of a Japanese insurance firm recently said that the data they use can predict the weather and foresee natural disasters, and for consumers spot early signs of dementia, a development which I am sure will be of interest to our fellow guest this evening from the Alzheimer's Society.
- The CEO suggested a future insurance policy would pay out on the first sign of dementia as well as use data to encourage customers to change their lifestyle to stave off its onset for several years.
- At a conference hosted by our Dutch colleagues in Amsterdam this year, I heard from a chief technology officer of a major bank who said their firm had piloted an AI tool that could predict with 99% accuracy a customer's bank balance in a year's time. When customers were presented with this innovation, they did not want the product integrated into their banking app. From masters of the universe to demi-gods of data, financial and Big Tech firms will wield huge power over the direction of our lives.
- And we believe the Consumer Duty alongside the Senior Managers' and Certification Regime will give us the framework to respond quickly to innovations such as this so that new products can be trialled, with informed consent and consumer interests front and centre. The Consumer Duty will also allow us to move more quickly to facilitate new developments, including AI, across sectors. It will help us manage the entry of Big Tech firms into the UK retail financial services industry, ensuring a level playing field.
- Another principle which we can work on under the framework of the Consumer Duty is that agency must not be attributed to AI systems or algorithms, as this risks removing accountability away from firms. And safe and responsible adoption of AI will always be underpinned by the quality of data. We can rage against the machine but ultimately, we must agree that the responsibility for algorithms and AI stops with the human leaders at the top of firms.
- So while AI needs governance for consumers to move from a place of fear to trust, many of the rules that cover financial services will already be in place, be that the Consumer Duty or the senior managers' regime.
- Financial inclusion
- And that brings me to the question of financial inclusion.

- I know some argue that the Consumer Duty may prompt risk aversion in firms and even withdrawal of products for difficult to reach groups. We will be monitoring closely to make sure this does not happen.
- And as we work to enable you to take full advantage of digitalisation, this must come hand in hand with making sure that market developments don't leave groups of consumers behind, particularly those most vulnerable or the least digitally enabled.
- That is why the Consumer Duty has a particular focus on vulnerable consumers and taking reasonable steps to ensure informed decision making.
- That is also why we have strengthened our guidance on cash provision asking banks to have alternative provisions in place if they wish to close branches or cash machines. This is in advance of any new powers that may be coming our way in the Financial Services and Markets Bill and accompanying Treasury policy statement.
- But we also recognise that the world of banking looks different today than it did in previous years. We welcome the innovative ways some banks have worked to tackle access to cash difficulties, including with banking hubs.
- We want to see banking hubs and alternative forms of provision accelerated and also for people and small businesses to be supported in moving to digital, where branches close in community.
- And while the Consumer Duty will help firms and consumers in future navigate the cost of living crisis, we remain focused on what is happening on the ground today including how consumers are being treated.
- We have seen lots of excellent and proactive work from industry and we thank you those involved for that. Where we have seen a minority of bad practice in dealing with vulnerable customers, we have demanded changes and used our powers to the full to affect them, an approach we will be continuing in the months ahead, as we know the coming period will be exceptionally challenging for millions of households throughout the country.
- How industry handles this period will determine the industry's reputation for decades ahead and I know that the leadership of the industry and UK Finance understand this more than most.
- It is more critical than ever that borrowers and savers are offered fair and competitive rates. We welcome lenders and deposit takers who are moving in this direction. For others, the Consumer Duty is designed to raise the question as to whether savings accounts for loyal customers paying close to zero offer fair value.
- Conclusion
- We know we expect from industry, but we are leading by example in tackling some of the concerns that hold your businesses back: Strengthening our operational efficiency, reducing by half authorisations caseload with greater rigour and supporting innovations.
- When the Government stated its intention to make the UK a global crypto hub, ministers were explicit the way to achieve this was to move fast while applying high standards of protection, citing our work around anti-money laundering (AML) registrations, sanctions and the push for greater powers over financial promotions.
- This plus our global leadership stance means we are in a position to act, not talk. We pioneered the Regulatory Sandbox with UK firms, now copied around the world. We are the first regulator to directly support early and high growth potential firms.
- And earlier this year we held our first CryptoSprints – getting industry, legal experts and academics together to work at pace on how future regulation could and should work.

- Through our chairmanship of the Global Financial Innovation Network (GFIN), we are about to launch a new sprint enabling firms to trial and scale new tech across multiple jurisdictions, focusing on environmental, social and governance (ESG), supporting global market access.
- Similarly in Singapore last week, we chaired an IOSCO forum seeking to establish international standards for regulation of crypto and digital assets.
- We also recently held an Authorised Push Payments Fraud Tech Sprint and have piloted use of synthetic datasets from both the communications and financial services sectors to identify fraud typologies to enable us all to tackle risks earlier and more proactively.
- But there is a lot more to do. We must move at pace wherever we can. Within months of leaving the EU, we significantly reformed our listing regime and stand ready to do more once the requisite legislative decisions are agreed.
- We are grateful for the industry's participation in our sandboxes and our latest sprint on Open Finance.
- UK Finance has been invaluable in helping communicate our events to members and we are grateful for its support. We want to work with industry to ensure that the UK remains the largest destination for fintech investment in Europe. And we want our firms to thrive in multiple markets.
- Together, we will make sure the UK is the best place in the world to do financial services business.
- Together, we will continue to build the UK as the gateway to global innovation.
- It may be a jungle out there, but we want to work together with you to navigate it.

Exonerated trader sues Deutsche Bank over Libor rigging allegations; *Scandal forced some of the world's largest financial institutions to pay billions in fines*

- A former Deutsche Bank trader whose conviction over the alleged rigging of the Libor interbank lending rate was overturned by a US appeals court has sued the German lender for $150mn, accusing it of deliberately framing him for the crimes of others. Matthew Connolly had been found guilty of fraud in 2018 in one of several high-profile cases brought by the US government over the Libor scandal that roiled the banking sector and forced some of the world's largest financial institutions to pay billions of dollars in fines.
- But he and Deutsche Bank colleague Gavin Black had their convictions quashed on appeal in January, in a ruling that concluded "the government failed to show that any of the trader-influenced submissions were false, fraudulent, or misleading". In a suit filed in the Southern District Court of New York on Thursday, Connolly alleges that senior executives at the German group set him up as a "perfect fall guy" and that the lender provided false information to the Department of Justice to shield its higher ranks.
- Deutsche Bank convinced the government to "pursue, indict, scapegoat and prosecute Connolly", who had not been employed by the lender for eight years prior to his indictment and "had virtually nothing to do with Libor", wrote lawyers for the former head of the lender's New York derivatives trading desk.
- The 27-page filing also cited remarks made by judge Colleen McMahon in Connolly's original sentencing, calling him "the least culpable person". "I'm always uncomfortable when I'm asked in any context — it usually happens in the drug context — to sentence the low man on the totem pole while the big guy goes free," McMahon had said while

handing down a sentence to Connolly of six months in home confinement and a $100,000 fine.

- Further remarks by McMahon were used by Connolly's lawyers to argue that "the government outsourced the important developmental stage of its investigation to Deutsche Bank", which had hired law firm Paul, Weiss, Rifkind, Wharton & Garrison to conduct an internal probe in the wake of the Libor allegations. That investigation led to a $2.5bn settlement in which "no member of Deutsche Bank's protected class of senior management was fined, prosecuted or deregistered", even though their "role in the alleged Libor-rigging scheme was well known to the government", the lawyers for Connolly allege.
- Connolly's suit comes just a few weeks after a New York court threw out the criminal charges brought against former UBS and Citi trader Tom Hayes, along with another former trader, Roger Darin. British-born Hayes had already served a five-year prison sentence following a Libor conviction in the UK.
- A fixture in global financial plumbing for almost half a century, Libor is in the process of being phased out and is largely being replaced with an alternative mechanism that is considered harder to manipulate. Deutsche Bank and the Department of Justice did not immediately respond to emailed requests for comment.

MAS revises guidelines to Notice SFA04-N16 on Execution of Customers' Orders; *The MAS has cancelled the previous version and issued a revised version of the guidelines to Notice SFA04-N16 on Execution of Customers' Orders.*

- Read in conjunction with Notice SFA04-N16, the guidelines set out guidance on the requirements to have policies and procedures to place and execute customers' orders on the best available terms to support fair outcomes for customers. In particular, the guidelines have been revised to add guidance on payment for order flow (at paragraph 6), which sets out the expectation for CMS Brokers (as defined in paragraph 6.1) not to receive payment for order flow in placing and/or executing customers' orders.
- The revised version of the guidelines is effective from 4 November 2022. However, the revisions introduced are effective from 1 April 2023

Guidelines to Notice SFA04-N16 on Execution of Customers' Orders (181.2 KB)

These guidelines apply to:

- Capital markets services (CMS) licensees; and
- Banks, merchant banks and finance companies which conduct the regulated activities of dealing in capital markets products, fund management or real estate investment trust management under the SFA.

They set out guidance on the requirements in Notice SFA04-N16 on Execution of Customers' Orders to have policies and procedures to place and execute customers' orders on the best available terms to support fair outcomes for customers. They should be read in conjunction with the Notice.

Amendment Notes

04 Nov 2022; Current version takes effect on 4 November 2022 (181.2 KB)

03 Sep 2020; Previous version dated 3 September 2020 (578.8 KB) [Cancelled]

Guideline No: SFA 04-G10
Issue Date: 03 September 2020 (Last revised on 04 November 2022)

GUIDELINES TO MAS NOTICE SFA 04-N16 ON EXECUTION OF CUSTOMERS' ORDERS

1 Purpose

1.1 These Guidelines are issued by the Monetary Authority of Singapore pursuant to Section 321 of the Securities and Futures Act (Cap. 289) ("SFA") and apply to all capital markets intermediaries as defined in Notice SFA 04-N16 on Execution of Customers' Orders (the "Notice").

1.2 These Guidelines provide guidance on the requirements relating to the placement and execution of customers' orders on the best available terms ("Best Execution") as set out in the Notice, and should be read in conjunction with the Notice.

1.3 The expressions used in these Guidelines have the same meanings as those found in the Notice, except where expressly defined in these Guidelines or where the context otherwise requires.

2 Overarching Requirement

2.1 A capital markets intermediary shall establish and implement Best Execution policies and procedures taking into account a range of factors. The factors may include price, costs[1], speed, likelihood of execution and settlement, size and nature of the order, or any other considerations relevant to the placement and/or execution of the order.

3 Order Placement and/or Execution Policy

3.1 A capital markets intermediary should establish and implement Best Execution policies and procedures which cover all capital markets products and all capacities in which it is acting in (i.e. whether as agent or principal).

3.2 The Best Execution policies and procedures have to be approved by the capital markets intermediary's Board of Directors or an appropriate management committee appointed by the Board of Directors, and periodically reviewed to ensure that they remain relevant.

3.3 Best Execution should apply when executing customers' orders directly on an execution venue or placing customers' orders with another capital markets intermediary or a person who is licensed, authorised, regulated or otherwise exempted in relation to dealing in capital markets products in a foreign jurisdiction, for execution.

3.4 Where there is more than one execution venue or broker available to place or execute the customer's order for a particular capital markets product, the capital markets intermediary should consider the respective merits of each venue or broker, and document[2] the basis for selecting the venue(s) or broker(s). A capital markets intermediary may indicate a preferred execution venue or broker in its Best Execution policies and procedures, if the time and costs incurred in considering more than one execution venue or broker outweigh any improvement in the quality of the execution of the customer's order (such as when the additional costs are borne by the customers).

3.5 A capital markets intermediary should consider its Best Execution obligation to achieve the best possible outcome on a consistent basis, regardless of whether customers' orders are executed on-exchange or off-exchange (such as for cross trades).

3.6 When executing orders as a principal, a capital markets intermediary should check the fairness of the price proposed to the customer, for example, by gathering market data used in the estimation of the price of such product and, where possible, by comparing with similar or comparable products.

3.7 A capital markets intermediary should place and/or execute a customer's order following the specific instruction, if any, from the customer. When the capital markets intermediary places and/or executes an order following specific instruction from the customer, it would be regarded as having satisfied its Best Execution obligations only in respect of the part or aspect of the order to which the customer's instruction relates.

3.8 In dealing with a customer who is an accredited investor or expert investor, a capital markets intermediary should assess, and document[3] its assessment to determine, the circumstances under which such a customer does not rely on the capital market intermediary to place or execute his order(s) on the best available terms. The capital markets intermediary may take into consideration circumstances such as whether the customer is the one who initiates the order or whether the customer specifies the venue and price at which the order should be executed, or relevant guidance[4] provided by other regulators that it has assessed to be appropriate in determining non-reliance.

3.9 A capital markets intermediary should include in the Best Execution policies and procedures the factors which it has taken into account, and the considerations for determining the relative importance of the various factors, when placing and/or executing customers' orders.

3.10 In determining the relative importance and/or the applicability of the factors, a capital markets intermediary should take into account the following considerations:

(a) the types of customers it serves, whether retail customers[5] or otherwise;
(b) the types of capital markets products for which it accepts, places or executes orders;
(c) the characteristics of the execution venues or brokers to which the order can be directed; and
(d) the characteristics of the customer's orders.

4 Monitoring

4.1 A capital markets intermediary should also establish adequate systems or arrangements to monitor, on a periodic basis: (i) compliance with its Best Execution policies and procedures; and (ii) the effectiveness of its Best Execution policies and procedures. In monitoring the effectiveness of its Best Execution policies and procedures, a capital markets intermediary should assess if its execution of transactions have delivered the best available terms to its customers on a consistent basis. The monitoring systems or arrangements, as well as the frequency of monitoring, should be commensurate with the nature, scale and complexity of the business of the capital markets intermediary.

4.2 Possible ways of monitoring include comparing prices and other relevant factors to ensure that the execution venues or brokers used by the capital markets intermediary do not give rise to significant or systematic deviations in the quality of execution provided to its customers vis-à-vis other execution venues or brokers, and triggering transactions for further review when an execution factor (such as price or execution cost) falls outside a given tolerance from a pre-determined benchmark. A capital markets intermediary may employ other forms of monitoring, for example by generating daily execution reports that compare executed trades against benchmarks such as Volume Weighted Average Price.

4.3 Where an automated order routing system is used, a capital markets intermediary should monitor to ensure that its infrastructure works as intended and does not result in unnecessary delays in the transmission of orders to the exchange.

5 Disclosure to Customers on Order Execution

5.1 Prior to the placement and execution of customers' orders, a capital markets intermediary should provide sufficient information to its customers on its Best Execution policies. The information must be provided to the customers in writing, including via electronic means[6], provided that customers are aware of the mode of communication.

5.2 A capital markets intermediary should ensure that the information provided to its customers is presented in a clear manner and should avoid the use of technical jargon that may not be easily understood.

6 Payment for Order Flow

6.1 This section applies to a holder of a capital markets services licence or a person exempt from the requirement to hold a capital markets services licence under section 99(1)(a), (b) or (c) of the Act to carry on business in dealing in capital markets products (collectively referred to as "CMS Broker").

[Amended on 04 November 2022]

6.2 For the purposes of this set of Guidelines, payment for order flow ("PFOF") refers to commission or other form of payment which a CMS Broker receives from another broker or counterparty in return for routing customers' orders to that broker or counterparty.

[Amended on 04 November 2022]

6.3 A CMS Broker should not receive PFOF in placing and/or executing customers' orders. PFOF introduces conflicts of interests and is likely to cause harm to customers as the CMS Broker may be incentivized to pursue commission or other form of payment from another broker or counterparty in return for routing customers' orders to that broker or counterparty for its own benefit. This is inconsistent with the CMS Broker's duty to provide Best Execution to customers. For instance, PFOF may lead to poorer outcomes for customers as additional costs may be passed to the CMS Broker's customers, such as through wider bid-ask spreads from the other broker or counterparty who agrees to pay PFOF in return for obtaining customers' order flow from the CMS Broker.

[Amended on 04 November 2022]

FINRA AWC: Credit Suisse Securities (USA) LLC settled **FINRA charges for misreporting the covered quantity of OTC short positions to the Large Options Position Report ("LOPR").**

- In a Letter of Acceptance, Waiver and Consent, FINRA said that the broker-dealer "failed to detect that it was misreporting the covered quantity of short positions over an 11-year period." FINRA found that the misreported short-covered quantities were due to coding errors in the broker-dealer's reporting logic.
- Further, FINRA said that the broker-dealers supervisory policies relating to LOPR reporting did not require that the short-covered quantity information be reviewed for completeness and accuracy.
- FINRA determined that the broker-dealer violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), Rule 2360(b)(5) ("Options") and Rule 3110 ("Supervision"). To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $375,000.

FINMA publishes revised Anti-Money Laundering Ordinance; *The Swiss Financial Market Supervisory Authority (FINMA) has partially revised the FINMA Anti-Money Laundering Ordinance.*

- The consultation confirmed that, as proposed by FINMA, the mandatory checking of the identity of the beneficial owner and periodic checking that client data is up to date do not need to be set out in detail at Ordinance level. However, the provision stating that financial intermediaries must regulate the modalities for updating and checking customer records in an internal directive will remain. Furthermore, the FINMA Anti-Money Laundering Ordinance is being extended to cover distributed ledger trading facilities.

- In view of the risks and recent instances of abuse, FINMA has confirmed its support for the rule that technical measures are needed to prevent the threshold of CHF 1,000 from being exceeded for linked transactions within thirty days (and not just per day). However, this duty only applies to exchange transactions of virtual currencies for cash or other anonymous means of payment.
- FINMA has also recognised the regulations issued by the Self-Regulatory Organisation of the Swiss Insurance Association (SRO-SIA), which have been adjusted to reflect the revised regulatory principles, as a minimum standard.

SEC Levied Record Enforcement Penalties for Misconduct in 2022 The US Securities and Exchange Commission's enforcement penalties surged to a record in the government's fiscal 2022, the agency said on Tuesday. The SEC's enforcement actions resulted in $6.4 billion in fines and money ordered to be reimbursed to investors, up from just $3.9 billion in 2021, according to an annual report.

- SEC Had a Record Year for Enforcement Actions; Whistle-blower award program received more than 12,300 tips reporting potential wrongdoing in fiscal 2022; The Securities and Exchange Commission ramped up its enforcement efforts in the last fiscal year, as the markets regulator focused its sights on prosecuting high-profile cases and imposing steep penalties for misconduct under the leadership of Chair Gary Gensler. The SEC filed 760 enforcement actions in the year ending Sept. 30, up 9% from the year before, according to the agency's annual enforcement report, which was made public Tuesday.
- The Securities and Exchange Commission today announced that it filed 760 total enforcement actions in fiscal year 2022, a 9 percent increase over the prior year. These included 462 new, or "stand alone," enforcement actions, a 6.5 percent increase over fiscal year 2021; 129 actions against issuers who were allegedly delinquent in making required filings with the SEC; and 169 "follow-on" administrative proceedings seeking to bar or suspend individuals from certain functions in the securities markets based on criminal convictions, civil injunctions, or other orders. The SEC's stand-alone enforcement actions in fiscal year 2022 ran the gamut of conduct, from "first-of-their-kind" actions to cases charging traditional securities law violations. /jlne.ws/3hOE7W8
- The SEC reported a total of $6.4 trillion in civil penalties, disgorgement and pre-judgment interest, which represents a 67 percent increase during the same period. In its press release, the SEC said that this was in part due to an agency initiative to (i) impose penalties designed to deter future violations, (ii) establish accountability from major institutions and (iii) order tailored undertakings that provide potential roadmaps for compliance by other firms.
- SEC Director of Enforcement Gurbir S. Grewal applauded the record-breaking year but said that encouraging compliance is still the agency's focus. "*We don't expect to break these records and set new ones each year because we expect behaviors to change,*" Mr. Grewal said.
- The combination of a hyper-complicated regulatory system, a remarkably expansive and aggressive rulemaking agenda and a penalty system that rejects proportionality ultimately serves as a tax on society, on businesses, on their owners and on consumers.

- The issue of proportionality as to penalties is serious. In one case (*see* SEC and CFTC Sweep Uncovers "Egregious Misconduct" Related to Off-Channel Business Communications), large fines were levied for using new messaging technology for which there were no developed recordkeeping methodologies. **Without any tie between those failures and specific acts of dishonesty, there was a clear lack of proportionality between the underlying violation and the penalty**. It is notable that the $1.8 billion penalty amount was not a disgorgement amount; it was simply money that went directly into the government's coffers.
- Judging by the SEC's statement, it does not seem that the agency shares the same view of proportionality. Asserting that any amount of penalty is defensible because it acts as a deterrent effectively rejects the concept of proportionality. Rather, the argument is that any penalty amount is OK, without regard to the underlying violation, because it increases fear.
- It is reasonable to ask whether the SEC's record-breaking enforcement amounts are cause for celebration or for recalibration.

J.FSA publishes English translation of frequently asked questions on guidelines for anti-money laundering and combating financing of terrorism; *The Financial Services Agency (FSA) has published an English translation of the frequently asked questions (FAQs) on the 'Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism', which were originally published in March 2021 and revised in August 2022.*

- In March 2021, the FSA formulated and published the FAQs to clarify contents concerning required actions for financial institutions, as specified in the guidelines. However, the FSA later noticed that its approach to the matters required to be dealt with in the guidelines was not sufficiently understood by the market. Consequently, the FSA made necessary revisions and published the revised FAQs in August 2022.

Guidance and practice around prospectus disclosure – what trends have emerged further to the publication of the ESMA guidance; *It has been three years since the Prospectus Regulation became fully effective across the EU and repealed and replaced the Prospectus Directive. The scope of the Prospectus Regulation is further shaped by, amongst others, the European Securities and Markets Authority (ESMA), who has published several guidelines, Q&A's and final reports with the aim to help market participants comply with the disclosure requirements set out in the Prospectus Regulation and to enhance consistency across the EU.*

- This briefing paper discusses certain key sections of prospectuses, setting out in each case an overview of the applicable Prospectus Regulation rules as well as ESMA's contribution to their development. The briefing also highlights certain practices developed by competent authorities, although the scope and scale of their involvement and comments during a prospectus review process differs per jurisdiction.

Remarks by Commissioner Caroline D. Pham at the NYU Law Program on Corporate Compliance and Enforcement Fall Conference; "If You See Something, Say Something" "If you see something, say something." These words were a maxim during the nearly seven-and-a-half years that I worked at a bank. It was something that was drilled into the sales and trading teams on the trading floors and in other lines of business, and it was something that Compliance officers repeated in so many trainings and so many refreshers. When in doubt, if you see something, say something. Escalate to your supervisor, your Compliance officer, your Legal coverage, HR, Ethics Office, the anonymous hotline, or other channels-there was no excuse to not escalate. /jlne.ws/3Gh8uOT

"Good Counsellors", Remarks Before the Investment Adviser/Investment Company National Seminar: Compliance Outreach Program; In thinking about compliance, my mind goes to two texts-not the off-channel communications that firms are required to document[1]-but rather two texts from long ago: one from nearly 400 years ago, and another from nearly 4,000 years ago. First, there's Shakespeare, who wrote in his 1623 comedy Measure for Measure: "Good counsellors lack no clients." /jlne.ws/3UZAQRW

FINRA AWC: Clearview Trading Advisors, Inc. and Gregg H. Ettin settled FINRA charges for failing to take reasonable steps to tailor its AML program to identify suspicious activities on low-priced securities. In addition, the firm's CCO settled simultaneous charges for related compliance supervisory failures.

- In a Letter of Acceptance, Waiver and Consent, FINRA found that the broker-dealers supervisory controls were ill-equipped to identify suspicious activity as to low-priced securities. FINRA said that the broker-dealers supervisory policies did not provide guidance to third parties that manually reviewed transactions to help identify possible threats. FINRA also found that the CCO failed to conduct sufficient due diligence into the relevant low-priced securities.
- FINRA determined that the broker-dealer and CCO violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), FINRA Rule 3110(a)-(b) ("Supervision") and FINRA Rule 3310(a) ("Anti-Money Laundering Compliance Program"). To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $100,000. The CCO agreed to (i) a nine-month suspension, (ii) a civil monetary penalty of $25,000 and (iii) a requirement to requalify as a general securities principal.

CFPB Establishes Standard Governing Public Release of Decisions and Orders; *The CFPB amended its procedures to clarify the situations in which the CFTC is likely to release publicly an enforcement decision or order, and to establish a process for respondents to object to the publication.*

- After considering feedback on its recently updated procedural rule on supervisory authority over certain nonbank covered persons based on risk, the CFPB determined that "the Director will not release information in a decision or order [regarding nonbank firms] to the extent it would be exempt from disclosure under [Freedom of Information Act] Exemptions 4 and 6 or the Director determines there is other good cause." The CFPB clarified that respondents will still be permitted to argue a case for "good cause," but said that it generally expects to only withhold information (i) about specific violations that are otherwise not made public and (ii) where the CFPB determines there is a risk of harm to the supervisory process that outweighs the public interest in transparency.

Firms that are the subject of decisions or orders will have 10 days from the issuance of the order to file a response.

- This action follows statements by CFPB Director Rohit Chopra that the agency will increase its oversight over nonbank companies engaged in financial services (*see* previous coverage).
- CFPB Final Rule: Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders
- CFPB Press Release: The CFPB finalizes rule to increase transparency regarding key nonbank supervision tool

FCA Regulation Roundup

Firms can help those customers who are struggling by learning lessons from the COVID-19 pandemic

Sheldon Mills, Executive Director of Consumers and Competition

Steep price rises for energy and consumer goods have had a major impact on the finances of many households and businesses.

Many people who are already struggling financially may find their situation worsen as winter continues. They will become more reliant on good financial services from firms.

Our recent Borrowers in Financial Difficulty (BiFD) report into how lenders served struggling customers during the pandemic, included examples of firms delivering good outcomes for these customers.

But we also found that some firms need to do a lot better. For example, lenders can do more to encourage customers in financial difficulty to engage earlier, help customers access money advice and free debt advice, and where appropriate reduce, waive or cancel customer fees and charges.

We have already acted where we have found poor practice. We have told 32 firms to make changes to improve the way they treat customers and so far, 7 of these firms have agreed to pay £12m in compensation to nearly 60,000 customers.

We'll be closely reviewing a further 40 firms in the coming months to make sure they are meeting our expectations.

Our upcoming consumer duty rules will set a higher standard of consumer protection, but all firms should be stepping up now to help people in these difficult times.

Together we can get through this period of uncertainty and help maintain a strong UK financial sector that is rightly seen as among the best in the world.

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Need to know

Appointed Representatives S165 request; We have published new rules to make authorised financial firms more responsible for their appointed representatives (ARs).

- As part of our enhanced reporting requirements, principal firms will receive a mandatory section 165 data request for information about their ARs. We will issue the request between 8 to 10 December.
- We first publicised the S165 via our website and Regulation Round-up (RRU) in August with further messaging in October.
- We will send the S165 request by email to the Principal User on Connect. Therefore, firms should ensure their details are up to date. If you are a principal firm and you do not receive the S165, please check your spam/junk folder in the first instance. If the request is not there, please email the FCA at firm.queries@fca.org.uk and a new email and corresponding link will be sent to you.
- The S165 request will be accompanied by detailed guidance explaining how to complete the request and will also include a link to FAQs that will be published on our website on 8 December.
- Firms will have until 28 February 2023 to respond to the request. Their information will inform our targeted supervisory work across sectors and portfolios See sections 2.44 and 2.81 of our policy statement for more information.
- We remind firms that our rule changes come into force from 8 December. Principals should read the updated rules and expectations and take any necessary steps to be ready to comply.

Credit Information Market Study Interim Report; We are seeking views on proposed improvements to the credit information market which could lead to higher quality and more comprehensive information for firms, and fairer lending decisions for consumers.

- Our market study has found the information in people's credit files can differ across credit reference agencies, which could affect consumer outcomes.
- It is sometimes difficult for consumers to access and dispute their credit information and many are unaware that they can do so for free.
- The market could be made more transparent, effective and accountable, through changes, such as lenders sharing information with more credit reference agencies, making it easier for consumers to access their credit files and dispute information, and a new industry organisation with a wider remit and representation.

- We want to make the credit information market fit for the future to better serve customers and lenders, while helping consumers through our wider cost of living measures.
- We want to see a higher quality of credit information, so that lending decisions better reflect people's underlying financial circumstances.

Consumer Duty

In July we confirmed our plans to introduce a Consumer Duty that will set higher and clearer standards of consumer protection across financial services and require firms to put their customers' needs first.

Nikhil Rathi, our Chief Executive, has given a speech covering our views on progress towards implementation, coordination with the Financial Ombudsman Service, and the impact on financial inclusion. He notes that we introduced a phased deadline to help firms embed what is undoubtedly a major cultural and operational shift. Firms seem to be on track and we see no need for implementation deadlines to move again.

Nikhil Rathi also sets out how we believe the Duty will help us manage the entry of Big Tech firms into the UK retail financial service, ensuring a level playing field.

Our Consumer Duty page for firms contains the latest publications and events on the Consumer Duty, alongside the option to sign-up for email alerts so you can stay up to date on our activity.

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All Sectors

The role of the FCA in a changing regulatory landscape

Nikhil Rathi gave a speech at the Lord Mayor's City Banquet at Mansion House on 27 October.

This speech provided a round-up of the regulatory progress we have made this year including on Consumer Duty. Nikhil Rathi warned about call-in powers undermining the agility we have shown and how UK's global appeal is based on high standards underpinned by independent regulators.

Transition Plan Taskforce disclosure framework

Our ESG strategy supports the role of finance in delivering a market-led transition to a more sustainable economy. On 8 November, the UK Transition Plan Taskforce (TPT) published its Disclosure Framework and accompanying Implementation Guidance for consultation alongside a Sandbox for companies and financial institutions to test implementation. We have been actively involved in the development and drafting of these initial stages. We will draw on the final outputs to strengthen our transition plan disclosure expectations of listed companies and regulated firms.

You can respond to the consultation survey until **28 February 2023** and find more about how to take part in the Sandbox here.

LIBOR transition: Consultation on US dollar and announcement on 3-month sterling LIBOR

We are consulting on requiring continued publication of the 1-, 3- and 6-month US dollar LIBOR settings under an unrepresentative synthetic methodology, based on CME Term SOFR and the ISDA fixed spread adjustment, until end-September 2024.

We strongly encourage market participants to respond to our consultation by **6 January 2023**.

For sterling LIBOR, we intend to require continued publication of the 3-month synthetic sterling LIBOR setting until end-March 2024, after which this setting will cease permanently.

Market participants who still have contracts referencing LIBOR should ensure they are prepared for publication to cease at the relevant date for each setting.

Pensions Dashboards rules for pension providers; Pensions dashboards are secure digital interfaces that enable consumers to find and view simple information about their pensions that are not yet in payment. Giving consumers this information may make it easier for them to plan for retirement, get advice or guidance, and ultimately make informed decisions.

We have confirmed rules that FCA regulated pension providers must follow to support pension dashboards, connecting to the dashboards and supplying information about personal and stakeholder pensions. Find out more about our requirements.

We will consult soon on our proposed regulatory framework for commercial parties offering a pensions dashboard service.

APM Q&As; Last week we published responses to unanswered questions asked at our annual public meeting.

The annual public meeting provides an opportunity to members of the public to question us on any aspect of our work and our Annual Report and Accounts 2021/22. This is a vital part of our commitment to transparency.

There were over 100 submitted questions that we didn't have time to answer in our APM, which we have now answered in full. Topics range from questions about the call-in power amendment to the FS Bill, our new Consumer Duty and Blackmore Bonds.

FCA seeks members for new Innovation Advisory Group; We have launched a new 'Innovation Advisory Group' (IAG) to deep our engagement with the industry and inform our forward-looking work programme. In addition to a number of trade associations, we are seeking public expressions of interest from non-regulated organisations to join the IAG.

More information can be found on our website.

Problem behaviours linked to trading app design; We have asked stock trading app operators to review design features that risk prompting consumers to act against their own interest. Features include sending frequent notifications with the latest market news and providing consumers with in-app points, badges and celebratory messages for making trades.

Research we've published raises concerns that customers are being exposed to high-risk investments, and that some appear to exhibit behaviours similar to problem-gambling.

Ahead of the Consumer Duty coming into force next year, firms should review their products now to ensure they are fit for purpose. Firms in this market should also be proactively considering potential vulnerabilities in their customer base.

FCA Smaller Business Practitioner Panel – Member Vacancies; We are looking to appoint two members to the SBPP: one financial adviser and one investment manager.

- This is an opportunity to help shape the FCA's strategy and policies at a time of significant change in UK financial services regulation.
- Please see our website for more information about our statutory panels.
- Please submit applications to SBPP@fca.org.uk by **8 January 2023**.
- See more about how the FCA is taking action to be a leading diverse and inclusive organisation.

Changes to Firm Reference Numbers (FRNs) and Product Reference Numbers (PRNs); We use 6-digit Firm Reference Numbers (FRNs) to uniquely identify firms, and 6-digit Product Reference Numbers (PRNs) to identify funds. We're likely to reach the 6-digit limit (999999) during Q2 2023, given the volume of applications and notifications we receive.

We are planning a move to 7-digit FRNs and PRNs for newly registered firms and funds. Firms previously allocated a 6-digit FRN or PRN will keep that number. We are on track to change our internal systems to start allocating 7-digit numbers when our 6-digit range is exhausted.

New modification by consent: GEN, SYSC, TC, MIPRU, ICOBS, PROD and SUP; On 28 October, we published a modification by consent disapplying certain requirements for EEA firms operating a branch in the United Kingdom with a Part 4A permission to carry out regulated activities for non-investment insurance contracts, meets the conditions set out in the directions.

Find out more about this modification by consent.

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Data

Data & Press release: Financial Promotions Q3 data

Our latest data, from 1 July 2022 to 30 September 2022, shows we reviewed 340 financial adverts involving authorised firms. Our engagement resulted in 4,151 promotions being amended or withdrawn. Retail lending (with 46%), retail investments and retail banking are the sectors with the highest amend/withdraw outcomes, amounting to 95% of our interventions with authorised firms.

View financial promotions quarterly data 2022 Q3

Sign up to receive updates about our published data

Open Consultations

Have your say - respond to our open consultations and discussions:

See all our open consultations

Portfolio Letters

See all our portfolio letters

Speeches & Events

FCA's key priorities for the financial advice industry

Therese Chambers spoke at the PFS Festival of Financial Planning on 1 November.

She spoke about how the FCA wants to see more consumers who can afford to do so investing their money safely which will only occur in a better consumer investment market. Financial advisers play a major role in helping or hindering this better market.

AI: Moving from fear to trust; Jessica Rusu spoke at the City and Financial Summit 2022 on 9 November.

- She outlined how AI offers opportunity for competition but also poses risks to consumers. Rules such as the Consumer Duty and SMCR cover much of the uncertainty over AI for financial services and quality data must be used so we move from a place of fear to trust.

Diversity and inclusion: Driving change in our industry; Sheldon Mills spoke at ABI Diversity, Equity & Inclusion Conference on 22 November.; He discussed the importance of D&I to the FCA as a regulator, and our key takeaways from D&I practices around data, strategies and culture that we are currently observing within the industry.

Join our upcoming events on Big Tech in Financial services; Join us as we host events to support our recently published Discussion Paper.

Webinar: 28 November Dr Liza Lovdahl-Gormsen, FCA Senior Advisor, will chair an expert panel focusing on how we can work to harness the benefits of Big Tech entry and expansion while minimising the harms to consumers and competition.

Sector-specific roundtable discussions: 6 and 7 December These sessions provide an opportunity for you to actively engage and help inform our future regulatory approach to Big Tech. The 4 sessions focus on:

- insurance
- consumer credit
- deposit taking
- payments

Please see how to respond to the Discussion Paper and to register for the events.

In a landmark ruling in October 2022, the FCA ("the Regulator") fined Sigma Broking Limited £530,000 and three of its directors a total of £200,000 for failing to report 56,000 contracts for difference (CFD) transactions accurately, failing to identify suspicious transactions or orders, and lacking adequate governance and oversight by senior directors. Two of the three directors were also prohibited from performing any senior management function and any significant influence function in relation to any regulated activity.

- This case should be a wake-up call for firms. It not only highlights the need for robust systems and controls for the surveillance and reporting of trades but also illustrates the importance of having adequate governance and oversight arrangements.
- One of the novel aspects of this fine is that the FCA has taken action under three separate regulatory regimes, namely the Markets in Financial Instruments Regulation (MiFIR), the Market Abuse Regulation (MAR) and the Senior Managers and Certification Regime (SMCR).
- Specific Regulatory Breaches
- The firm didn't accurately report an estimated 56,000 transactions to the FCA, as required by MiFIR. Errors included not reporting client-side legs, inaccurate price information and incorrect instrument data.
- The firm also breached MAR in that it had inadequate surveillance, failing to identify 97 suspicious transactions or orders, the FCA says should have resulted in 24 suspicious transactions and order reports (STORs).
- Major Governance Failings
- Senior managers need to be confident that within their organisation, the regulations are well-understood and effectively implemented, and they should ensure that there are robust controls and surveillance in place. In this case, the FCA found that the board failed to hold regular meetings, at which the directors should have been provided with adequate management information in order to govern the firm properly. In addition, there were significant shortcomings in the firm's risk assessment and its resourcing and oversight of the compliance function.
- Not monitoring your firm's and client's trading activities sufficiently and failing to ensure your transaction reporting data is accurate and complete exposes the firm and its senior management to significant regulatory risk. Under the SMCR, which came into force in 2019 for most firms, the Regulator can hold individuals with responsible roles to account if they do not have the skills, knowledge and capability to control their business effectively and ensure they observe proper standards of market conduct.
- Nick Bayley, Managing Director in Kroll's Financial Services Compliance and Regulation practice, said, "It's good to see the FCA taking robust action against senior managers for what could be otherwise seen as largely technical regulatory breaches. It should send a strong message to directors of firms about the importance of having proper control and governance over their market abuse surveillance and regulatory reporting."
- Achieving and maintaining compliance
- There are a number of steps firms can take to keep themselves out of trouble with the Regulator and avoid significant penalties.
- Clear roles and responsibilities: Firms should have clear roles and responsibilities across the various parts of the business to support the running of a well-organised firm. Stakeholders need to understand what they are accountable for, to ensure that important areas are not overlooked.
- Regular testing and monitoring: The Regulator expects firms to have effective internal controls that are regularly tested and remain up to date. There needs to be sufficient monitoring and surveillance of the firm's, employees' and clients' trading activity and

behaviour, as well as monitoring and testing of the accuracy and completeness of the transaction reports that are submitted to the Regulator.

- Firms should conduct a market abuse risk assessment (MARA) and ensure they fully understand both the inherent and residual risks associated with their business activity, both relating to the firm's activities and those of its clients. This has been the Regulator's expectation for a number of years now. If a firm cannot clearly identify and articulate the market abuse risks to which it is exposed, there is no effective way for the firm to ensure such risks are adequately detected, managed and reported.
- Finally, in order to provide visibility to senior managers and key stakeholders, meaningful and effective management information should be produced, to identify issues, trends, exceptions and anomalies.
- Periodic training: Effective training on MAR, MiFIR and SMCR should be provided to all relevant employees and stakeholders to ensure they have the right skills, knowledge and understanding to perform their roles. This is vital to ensure, for example, that regulatory changes and other developments affecting the business are identified, understood and implemented in a timely manner.
- Final thoughts
- The Regulator has been fairly quiet in the wholesale market enforcement arena in the last couple of years while firms grappled with the many challenges resulting from the global pandemic. However, this action shows that the FCA is willing to punish senior managers for serious failings at their firms where the Regulator views the firm's governance as having been inadequate.
- The Regulator has been using the tools at its disposal to detect and investigate potential instances of market abuse and to monitor the fair and orderly functioning of markets and investment firms' activities. This latest fine could be just the tip of the iceberg. Firms should take heed of this latest FCA ruling and set about assessing how well their own organisation is functioning. If you have any concerns or issues, we encourage you to have an open and constructive communication with the Regulator in order to highlight and address these issues and areas of concern as soon as possible.
- Co-authored by Nick Bayley and Tammy Li

1. FCA fines Sigma Broking Limited £530,000 and bans and fines its former directors following market abuse reporting failures
2. Final notice for Sigma Broking Limited.
3. Final notice for Simon Tyson.
4. Final notice for Stephen Tomlin.
5. Final notice for Matthew Kent.

FCA launches new web page on raising standards in new firms and financial promotions; *On 22 November 2022, the FCA launched a new webpage on raising standards in new firms and financial promotions.*

- The FCA's 'Early and High Growth Oversight' provides enhanced supervision for newly authorised firms. It provides enhanced supervision for firms as they get used to their regulatory status and supports them to understand their obligations so they can meet the standards the regulator expects as they grow.
- The new webpage covers a pilot that the FCA ran during 2021 to 2022 with 32 newly authorised firms to help them adapt to supervision. This pilot found one of the most

common themes was how well these firms understood the FCA's rules on promoting financial products to the public. The web page also describes cases where the FCA intervened in cases of financial promotions.

FCA announces Code of Conduct for ESG data and ratings providers; *On 22 November 2022, the FCA announced the formation of a group to develop a voluntary code of conduct for environmental, social and governance (***ESG***) data and ratings providers (the* **Code***).*

- In an earlier FCA Feedback Statement on ESG integration in UK capital markets, the FCA expressed their support for introducing regulatory oversight of certain ESG data and ratings providers. This would support greater transparency and trust in the market for ESG data and ratings providers.
- Whilst the government considers this proposal, and to maintain momentum, the FCA has worked to convene, support and encourage industry participants to develop and follow a voluntary code of conduct.
- The FCA welcomes the appointment of the International Capital Market Association (**ICMA**) and the International Regulatory Strategy Group (**IRSG**) as the Secretariat leading the work. The Code will seek to be internationally consistent, by taking into account not only recommendations from the International Organization of Securities Commissions but also developments in jurisdictions such as Japan and the EU. This will help encourage the development of consistent global standards.
- Going forward, the Secretariat will convene an independent group to develop the Code. Consistent with their respective objectives, the FCA, the Bank of England and other relevant financial regulators and government departments will sit as active observers to this group.

FINRA AWC: Barclays Capital Inc. settled FINRA charges for overstating its daily trading volume in advertisements provided by a third-party market data provider between January 2014 and February 2019.

- In a Letter of Acceptance, Waiver and Consent, FINRA found that the broker-dealer's proprietary system suffered from several technology errors that caused inflated trading volume calculations. These calculations were then automatically transferred to the third-party without review, leaving the broker-dealer unable to identify and respond to the issue prior to transmission. FINRA said that the overstated volume included (i) trades that were subsequently cancelled or modified, (ii) transactions between the broker-dealer's affiliate that were counted as transactions with outside entities and (iii) transactions where a subsequent transfer of the same security in a riskless principal transaction was counted twice.
- FINRA determined that the overstatement violated FINRA Rule 5210 ("Publication of Transactions and Quotations") and FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"). FINRA also found that the broker-dealer's supervisory system and written supervisory procedures were not reasonably designed to achieve compliance with FINRA Rule 5210, resulting in violations of FINRA Rule 3110 ("Supervision") and FINRA Rule 2010.
- To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a $175,000 fine.

FCA concerned about problem behaviours linked to trading app design; *On 21 November 2022, the FCA announced that it has warned stock trading app operators to review design features, including those with game-like elements, which risk promoting consumers to take actions against their own interests.*

- Features the FCA have warned operators to avoid include, sending frequent notifications with the latest market news and providing consumers with in-app points, badges and celebratory messages for making trades. The FCA has found that consumers using apps with these kind of features were more likely to invest in products beyond their risk appetite.
- Furthermore, the FCA has published research that raises concerns that customers using such trading apps are exposed to high-risk investments and that some appear to exhibit behaviours similar to problem-gambling. The FCA adds that it expects all firms that offer stock trading to consumers to review and, where appropriate, make improvements to their products based on these research findings. Such firms should also ensure that they are providing support to their customers, particularly those in vulnerable circumstances or those showing signs of problem gambling behaviour. To ensure customers are being treated fairly and ahead of the new Consumer Duty coming into force next year, all firms should be reviewing their products now to ensure they are fit for purpose.
- Sarah Pritchard, Executive Director of Markets at the FCA, said:
- 'Some product design features could be contributing to problematic, even gambling-like, investor behaviour. We expect all firms that offer stock trading to consumers to review and, where appropriate, make improvements to their products based on these findings. They should also ensure they are providing support to their customers, particularly those in vulnerable circumstances or those showing signs of problem gambling behaviour.'

On 2 December 2022, the FCA published Consultation Paper 22/26: Quarterly Consultation No 38 (CP22/26). *In CP22/26 the FCA consults on various miscellaneous amendments to the FCA Handbook which would:*

- Make changes to the Training and Competence sourcebook.
- Make changes to remove all derivative products referencing USD LIBOR from the derivatives trading obligation.
- Move the Finalised Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014 from its position as a static document on the website into the FCA Handbook
- Make changes to the Glossary of definitions, SYSC, COND, MIFIDPRU, IPRU-INV and SUP.
- Make consequential changes to chapter 19 of the Enforcement Guide which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022.
- Make changes to the rules in the Product Governance sourcebook to disapply certain requirements where products are available for distribution to customers resident outside the UK (where the state in which the risk is situated is outside the UK).
- Make changes to the Consumer Duty rules to provide further clarification. This includes proposed changes to the application provisions, how the Consumer Duty applies to

firms in the temporary marketing permissions regime, and how the Consumer Duty applies to non-retail financial instruments.

- The deadline for responses is 9 January 2023.

REMIT fines issued in Bulgaria - https://lnkd.in/ehGvbagY; EWRC, the National Regulatory Authority of Bulgaria, has announced that six market participants have been fined a total of 1.258m Levs (641k Euros) for breaches of REMIT Article 5, the market manipulation prohibition. The notice can be found here. More information will be posted as it becomes available.

To download the Free MiFID Transaction Reporting Guide: The Silent Errors in Your Transaction Reports please click here.

- We have compiled a quick guide to some of the "quieter" issues that often appear in transaction reports that have been accepted by regulators. These issues often go undetected by the firm. Many times, it is not until the regulators contact the firm that they notice that their reporting was faulty.

FCA Issues New Warning To Sellers Of CFD Derivatives; The Financial Conduct Authority on Thursday warned bosses of firms selling contract-for-difference derivatives to be aware of risks to retail customers and any suspicious activity in the market.

- On 1 December 2022, the FCA issued a Dear CEO letter regarding its contracts for difference (CFD) strategy.
- In the letter the FCA reminds firms offering CFDs that CFDs are highly leveraged derivatives and adverse price movements in relevant markets can lead to substantial losses for consumers.
- The letter outlines the FCA's expectations and highlights areas of poor practice which it has seen in firms. In terms of poor practice the FCA covers these under the following headings:
    - (i) scam/churn activities
    - (ii) circumvention of FCA rules
    - (iii) affiliate marketers / introducers.
- The letter also covers putting customers' needs first, including dealing with conflicts of interest and the new Consumer Duty, financial crime (including firms having due regard to Market Watch 69) and reducing harm from firm failure (financial resilience, protection of client assets, operational resilience).
- In terms of the new Consumer Duty the specific areas that the FCA believes will be most relevant to CFD firms include:
    - The cross-cutting rules on acting in good faith – relevant but not limited to conflict-of-interest issues.
    - The rules on price and value – relevant to ensuring the target market for CFD products is appropriate, particularly given the high levels of customer losses generally experienced by consumers investing in CFDs.
    - The rules on customer service – this will be relevant to how consumers engage with CFD firms when investing in CFDs, including whether there is an appropriate degree of friction to ensure consumers do not put money at risk that they cannot afford to lose.

    - The rules on communications – relevant to how CFD firms advertise and market their products to consumers, including the negative impacts of gamification highlighted in recent work on behaviours around high-risk investing.
- By the end-January 2023, the FCA expects all CEOs to have discussed the contents of the letter with their fellow directors and/or Board and to have agreed actions and/or next steps.
- 2/2/2016 Dear CEO letter: Client take-on review in firms offering contract for difference (CFD) products
- 29/6/2017 Publication: CFD firms fail to meet our expectations on appropriateness assessments
- 10/1/2018 Dear CEO letter: Providers and distributors of CFD products: resolving failings which may cause significant consumer harm
- 1/7/0219 Press release: FCA confirms permanent restrictions on the sale of CFDs and CFD-like options to retail consumers
- 1/6/2020 Press release: FCA bars Cypriot firms that used unauthorised celebrity endorsements
- 15/6/2020 Press release: Cyprus CFD firms Maxiflex Ltd, Maxigrid Limitd and Reliantco Ltd
- 16/4/2021 Press release: FCA stops FXVC offering CFDs to UK customers
- 26/5/2021 Press release: FCA stops EverFX offering CFDs to UK customers
- 2/7/2021 Second Supervisory Notice: FXBFI Broker Financial Invest Ltd
- 5/8/2021 Press release: FCA stops BDSwiss offering contracts for differences (CFDs) to UK customers
- 14/9/2022 Publication: Consumer Investments: Strategy and Feedback Statement
- 16/10/2022 Publication: Consumer investments data review April 2021 – March 2022

FCA Fines Julius Baer for FX Kickback Scheme; *The UK's Financial Conduct Authority (FCA) has fined Julius Baer International (JBI) GBP 18 million for a scheme under which the bank generated excessive returns from FX transactions and used a proportion of the proceeds to pay "improper" finder's fees to an employee of the counterparty for introducing the business.*

- The FCA has also issued three banning orders against former JBI employees – Gustavo Raitzin, former regional head for Bank Julius Baer (BJB); Thomas Seiler, former BJB sub-regional (market) head for Russia and Eastern Europe and JBI non-executive director; and Louise Whitestone, former relationship manager on JBI's Russian and Eastern European desk, however all three have appealed to a tribunal for a reversal.
- The three are alleged to have agreed to pay an employee of the Yukos Group of companies, Dimitri Merinson, a finder's fee for introducing the bank to group entities, who would then place large sums with Julius Baer. The FCA says Merinson received commission payments totalling nearly $3 million that were generated by FX transactions in 2010 and 2011 by Yukos Group companies that JBI executed at disadvantageous rates to the firm to enable it to pay the commission and retain sufficient profits for itself.
- Effectively, to make the required commission, the FX market (trades involving Cable and EUR/USD) were involved had to have a suitably wide range and then the trade with the Yukos entity was placed close to, but not at, the high or low of the day. The Cable trade was for GBP 275 million, the two EUR trades were for $68 million and EUR 7 million. "These fees were improper and together with the uncommercial FX transactions

showed a lack of integrity in the way in which JBI was undertaking this business," the FCA states.

- The Uk regulator adds that JBI failed to have adequate policies and procedures in place to identify and manage the risks arising from the relationships between itself and finders, including having no policies which defined the rules surrounding the use of finders within JBI until after June 2010. Policies introduced after that date were inadequate, it adds.
- Finally, the FCA says JBI became aware of the nature of these transactions – including the commission payments to Merinson – in 2012 and suspected that a potential fraud had been committed, but did not report these matters to the FCA until July 2014. "There were obvious signs that the relationships here were corrupt, which senior individuals saw and ignored," says Mark Seward, director of enforcement and market oversight at the FCA. "These weaknesses create the circumstances in which financial crime of the most serious kind can flourish."

French resolution may lead EU to adopt US-style rules for PFOF; German and Czech proposals would also put kibosh on commission's mooted ban on the practice

Acuiti: Trade surveillance becoming more complex Trade surveillance has become increasingly complex over the past three years, resulting in an uptick in automation investments, according to an Acuiti study commissioned by Eventus. An increase in market volatility and stricter regulatory requirements have "increased the overall amount of data to process as well as the number of potentially abnormal transactions that require further investigation," says Acuiti head of research Ross Lancaster. The Trade

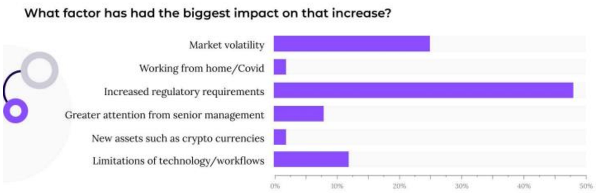
Bank of England transforming data collection communication; *On 28 November 2022, the Bank of England (*BoE*) published a communication providing an update to firms on the joint transformation programme that it is conducting with the FCA to transform data collection from the UK financial sector.*

In the communication the BoE covers the progress made with the joint transformation programme and the phase two use cases (involving commercial real estate data). It also provides an update on the Data Standards Review and provides information about a Town Hall event.

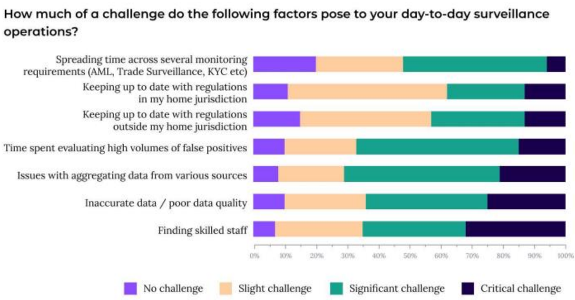
- Among other things the BoE states that the 'discovery' stage for the Incident, Outsourcing and Third-Party Reporting (IOREP) use case will begin in Q1 2023. By considering the design of IOREP reporting policy as part of the joint transformation programme, the BoE and FCA believe that it can help ensure that this critical data is delivered in a way that minimises the impact on firms. At the same time, the regulators feel that the use case will provide a chance to explore how best to deliver 'event' driven collections, where a new report is triggered when a given event occurs.

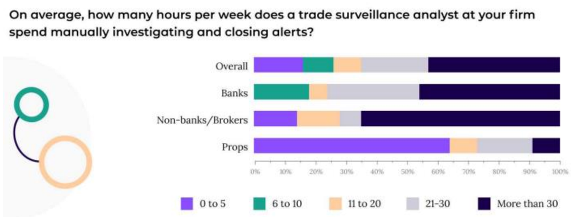
Complexity of trade surveillance has increased significantly over the past three years, finds report; *New study from Acuiti, commissioned by Eventus, found increased regulatory requirements and market volatility to be the main drivers of heightened complexity in trade surveillance.*

- Download the full report at https://www.acuiti.io/acuiti-eventus-getting-to-the-risk-quicker/.
- A new study from Acuiti has found increasing investment in automation to combat pressure on manual processes. This has been found to be resulting from the complexity of trade surveillance requirements driven by regulatory demands and heightened volatility.
- Among the key findings:
    - 94% of respondents said that the complexity of trade surveillance has increased over the past three years, with 64% saying it has increased significantly
    - Increased regulatory requirements and market volatility are the major drivers of heightened complexity in trade surveillance in the last three years
    - A majority of sell-side respondents said that their analysts are spending more than 30 hours a week manually closing and investigating alerts
    - High manual input is being exacerbated by a shortage of skilled compliance staff
    - Firms are increasingly looking to technology for efficiency, with a clear desire for more automated workflows (64% of banks referring to machine learning as either very important or critical)
    - Over 60% of respondents had either recently invested or were considering investing in trade surveillance within the next 12-18 months
    - Buy-and-build methodologies couple the advantages of both third-party and in-house solutions



However, there is a growing skills shortage to contend with. Compliance and surveillance teams are increasingly finding themselves spread too thinly to handle the quantity of alerts coming in and often struggling to retain talent.





- Commissioned by Eventus, the report collated views from 71 senior trade surveillance, risk, compliance, technology and trading executives at banks, brokerages and proprietary trading firms.
    - “Since the 2008 financial crisis, regulators have issued targeted regulations and improved surveillance methods to stamp out abusive behaviour in the markets. Through a combination of enforcement activity and effectiveness reviews, regulators around the world have made clear the need for compliance

teams to bulk up their staff and for firms to improve their surveillance tools and methodology," Joe Schifano, global head of regulatory affairs at Eventus, said
  - "Combined with increased volatility across asset classes, surveillance analysts endure the combined challenge of an ever-growing number of alerts and heightened regulatory scrutiny. As a result, firms are increasingly considering the efficiency of their trade surveillance programs."
  - Acuiti, added: "Trade surveillance departments are working with pressure on two fronts. First, the post-great financial crisis regulations introduced by major jurisdictions demand large amounts of transaction data as well as a proactive approach by firms to detect new and varying methods of market abuse. Second, the sustained market volatility of this year, which has led to large and sudden spikes in trading volumes. This has both increased the overall amount of data to process as well as the number of potentially abnormal transactions that require further investigation."
- Acuiti's latest report analyses the challenges trade surveillance teams face with the growing scope, detail and enforcement of regulations governing trading, as well as advancements in trading products and techniques.
- The study found that 94% of respondents noted increases in the complexity of trade surveillance in the past three years, with 64% stating that it had increased significantly.
- Over the last three years, increased regulatory requirements and market volatility were attributed to be the main drivers of heightened complexity in trade surveillance.
- The latest report found that the majority of sell-side analysts are spending over 30 hours a week manually closing and investigating alerts, with manual input being heightened by a lack of skilled compliance staff.
- Technology has been viewed as a solution to improve efficiency, with firms expressing a desire for increased automated workflows. 64% of banks were found to consider machine learning as very important or critical.
- Elsewhere, Acuiti's study found that more than 60% of respondents had already invested in trade surveillance or were considering doing so within the next 12 to 18 months.
- Among the key findings, buy-and-build methodologies were also found to couple the advantages of both third-party and inhouse solutions.
- Schifano said: "It should be no surprise to those who manage surveillance programs to see that 94% of surveyed participants believed that the complexity and challenges of trade surveillance had increased in the past three years. But the finding that 64% said that complexity and challenges 'increased significantly' should be a real impetus for change.
  - *"With the perennial pressure on compliance teams to do more with less, we expect that firms will spend a great deal of time considering how to best manage their enormous data challenges while refreshing surveillance technology with newer, automated methods that both reduce false positives and offer improved behavioural analytics."*
  - *"We anticipate that firms will increasingly take the route of buy and build trade surveillance systems, which combine the advantages of third-party platforms (such as their familiarity to regulators) with scope for customisation.*
  - *"We also expect that a significant part of this new breed of offerings will be automation, which is urgently needed to stem the high amount of hours that this study identified teams were spending on resolving alerts."*

The SEC's enforcement summary for 2022 reveals a continued aggressive approach, penalising firms falling short. These results urge firms to focus on improving public accountability and ensure their regulatory processes remain watertight. *This approach was further underscored by Director Gurbir Grewalt's remarks on November 15, 2022 before the Securities Enforcement Forum. He highlighted the Division of Enforcement's role in restoring the public's confidence in the SEC and financial institutions, noting three key efforts by his Division to do so:*

- Obtaining penalties and remedies that deter misconduct and meaningfully hold bad actors accountable, protect investors and, where possible, help harmed investors recover their losses.
- Proactively investigating and charging cases across a spectrum of market participants and harm.
- Continuing to incentivize proactive compliance and meaningful cooperation.

- During the 2022 fiscal year, the Division of Enforcement filed 760 total enforcement actions, representing a 9% increase over 2021. Additionally, the Division noted a record USD6.4 billion in recoveries, including fines and disgorgement, in those cases. The Commission stated that the penalties obtained should serve as a deterrent from future misconduct and enhance public accountability.
- The release highlighted recent settlements against 17 broker-dealers for recordkeeping violations for a total of USD1.2 billion in penalties. Together with penalties against Ernst & Young for failing to prevent its staff from cheating on ethic exams, Barclays PLC for the illegal issuance of securities and Allianz Global Investors for concealing risks associated with its complex options trading strategies, the Commission has shown that it will make examples through large disgorgement and penalties for failing to uphold the public trust of the financial system.
- The Commission is also focused on holding individual actors accountable by highlighting its continued reliance on data gathering and analytics in identifying and prosecuting cases of misconduct.
- Leniency was another focus area, particularly in cases where firms cooperated with investigations or self-reported significant violations. While cooperation and disclosure always carry risks, the Commission clearly intends for the industry to believe it will not punish good faith disclosure. However, the Commission's publication of its record-breaking fines and cases, along with Director Grenwalt's remarks, should have a chilling effect on any firm who wishes to disclose violations without reprisal.
- Chief Compliance Officers should continue to be vigilant in identifying weaknesses in their compliance programs. As the Commission routinely reminds, although disclosure can cure most conflicts of interest, it's not a retroactive solution. CCOs should take a note from the Commission's approach to low-hanging fruit with easily provable cases. For remedial action to be taken, you must first:
    - Look for broken windows in your organization and seal the leaks.
    - Disclose your conflicts and document your approach to compliance.
    - Encourage your staff to report breaches and good faith attempts of compliance, without reprisal.
- Finally, the best indicator of a healthy compliance culture is for a proactive message from the top as to the importance of compliance.

FINRA Proposes Faster Reporting to TRACE on Delayed Treasury Spot Trades; *FINRA requested comment on proposed amendments to FINRA Rule 6730 ("Transaction Reporting") on "delayed Treasury spot trades in corporate debt securities."*

- The proposed amendments would shorten the reporting timeframe for certain reporting elements for trades in corporate debt securities that are priced on a spread to a benchmark Treasury security that was agreed to earlier in the day. FINRA explained, by example, that the parties "may determine to trade a corporate bond at 10:00 a.m. based on a spread to a specified U.S. Treasury security later in the day (*e.g.*, at 3:00 p.m.); therefore, the dollar price subsequently is determined when the parties spot the spread against the benchmark U.S. Treasury security at the later time on the same day, *e.g.*, at 3:00 p.m."
- The proposed amendments would also implement a two-step reporting process requiring firms to report the agreed upon spread and identify the associated benchmark security to TRACE no later than 15 minutes after the spread is agreed upon. Firms would then need to report the remaining trade information no later than within 15 minutes after the trade dollar price can be determined.
- FINRA stated that the proposal would provide transparency "into the size and spread-based economics of delayed Treasury spot trades."
- Comments on the proposal will be accepted until January 30, 2023.
- FINRA Regulatory Notice 22-26: FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot Trades

Ex-JPMorgan gold trader Jordan faces spoofing trial; Former JPMorgan gold trader Christopher Jordan will face trial in a Chicago federal court for wire fraud, after his former co-workers Gregg Smith and Michael Nowak were convicted in August. A judge ruled in April that COVID-19 protocols prevented Jordan from being tried with Nowak, Smith and acquitted precious-metals salESMAn Jeffrey Ruffo, during the same court dates. BNN Bloomberg

FINRA AWC: UBS Securities LLC settled FINRA charges for mislabeling, over-reporting and failing to timely report securities transactions to the Trade Reporting and Compliance Engine ("TRACE").

- n a Letter of Acceptance, Waiver and Consent, FINRA found that the broker-dealer (i) reported corporate debt transactions to TRACE after the applicable deadline; (ii) incorrectly appended the "No Remuneration" indicator to corporate debt securities that included a commission; (iii) erroneously reported internal transfers to TRACE as corporate debt or Treasury transactions; (iv) inaccurately reported the size of corporate factor bond transactions due to a failure to adjust the bonds' principal value for previous partial redemptions; and (v) reported inter-dealer securitized products transactions that incorrectly identified the counterparty as a customer. Additionally, FINRA determined that the broker-dealers supervisory controls were insufficient and contributed to the errors.
- The broker-dealer was found to have violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), Rule 3110 ("Supervision") and Rule 6730 ("Transaction Reporting"). To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $675,000.

Broker-Dealer Settles Charges for Failure to Supervise Recommendations for Suitability; A broker-dealer settled FINRA charges for failing to supervise several registered representatives who recommended potentially high-risk securities to customers without assessing suitability.

Broker-Dealer Fined for Supervisory Failures Over Margin Use' A broker-dealer settled FINRA charges for failing to assess the suitability of margin use in customer accounts and to monitor for excessive margin trading.

NYSE American LLC AWC: JP Derivatives, LLC Fined for Failing to Execute Trade at Best Price; A brokerage firm settled charges with NYSE American LLC for failing to execute an options trade at the best available price

From Zeroes to Heroes: How culture in financial services can change for everyone's benefit

Speech by Emily Shepperd, Chief Operating Officer and Executive Director of Authorisations, delivered at City and Financial Global's 8th Annual Culture and Conduct Forum for the Financial Services Industry.

Highlights

- FCA cares about culture because this drives conduct: The Consumer Duty will encourage firms to analyse their culture and how that affects their conduct.
- Firms should offer the right environment for employees of all backgrounds to feel safe in challenging and speaking out.
- Just 5% of crypto firms who applied to the FCA for registration showed that they understood anti-money laundering rules but half of those who engaged seriously with us were registered.
- Facing up to our image problem; The culture of financial services organisations is often depicted in binary terms: it is either dull and Jurassic or reckless and scandalous.

- The world of film and television focuses on the reckless and scandalous trope as – frankly – it makes for more exciting viewing. Before I came to the City, I thought I was entering a mystical world where Porsches were delivered every February, there was no-expense spared technology, and that if you work hard, success was guaranteed.
- Even today, any aspiring banker watching the BBC's series Industry would be left with the impression that graduates spend more time partying and plotting than working.
- In the Wolf of Wall Street, the main protagonist is a hedonistic stockbroker in his 20s whose main purpose is to con wealthy clients with a 'pump and dump' strategy before he is eventually jailed.
- In The Big Short, an eccentric hedge fund manager discovers that the US housing market is based on sub-prime mortgages so he sets up a credit default swap market to allow himself to short the property market.
- All of these programmes and films depict that greed is the underlying motivation of financial services professionals. Sadly, as you know, the latter 2 films are actually based on true events and characters.

- In fact, the only positive depiction of a financial services professional I could find was that of George Bailey, the main character in It's A Wonderful Life. But that was released in 1946. It was a loss-making flop for many years before becoming a classic.
- So we can summarise that the culture of financial services is depicted in a negative light but what is culture anyway? I think of culture as being the personality, habits and ethos of the organisation.
- Mind your language
- It has been said that culture is what you do when no one is looking. But to be a leader means to shape your organisations' culture rather than hiding behind HR.
- I attended an event recently, where Rebecca Achieng Ajulu-Bushell, Chief Executive of 10,000 Black Interns, spoke about the importance of senior people not imposing an inherited culture that can create barriers to progress, even when they rose through the ranks in that culture. She's a very impressive 28-year-old and I would encourage you to look for her website.
- The FCA expects senior leaders to nurture healthy cultures in the firms they lead. Cultures that are purposeful. That have sound controls and good governance. Where employees feel psychologically safe to speak up and challenge. Where remuneration does not encourage irresponsible behaviour that can ultimately damage the business and wider markets.
- We recently took enforcement action against a former Chief Executive who failed to steer senior management towards ensuring there was a culture throughout the firm which valued robust adherence to its regulatory responsibilities. It ultimately meant that the firm didn't make its anti-money laundering (AML) controls a priority and the controls it did have were ineffective.
- One of the most direct ways managers and leaders can shape culture from the start – and spot when it needs changing – is through language. Have you noticed how if a boss uses a term, whether it is 'pivot', 'leverage' or 'wet fish', suddenly everyone in the workplace begins to use pivot, leverage and wet fish? That is because often the boss and those at C-suite level set the tone for culture.
- But even bosses can find themselves swimming against a tide.
- When I first came to the regulatory world 18 months ago, I was in for a culture shock. Aside from the Tolstoyesque-list of acronyms, there were language terms that seemed alien to me such as 'private secretary' and a 'private office' rather than an 'EA' and a 'team', or the term 'commissioning' work rather than 'asking for stuff to be done'.
- But I got some of my own terms adopted too. The name given to graphs to track the speeding up of authorisations decisions and reduce our backlog was called Glide Path. So I changed it to make it a Burn Down Plan.
- That change of language immediately brought in urgency and action. It kick-started a much more detailed process which has ultimately seen us halving our authorisations backlog. We have kept our standards high, rejecting 1 in 5 firms compared to 1 in 14 in the previous years.
- When I started at the FCA, I found the custom of asking a question and having to wait for the answer to be fact checked by several people too slow – although I appreciate that accuracy is crucial. I found that deploying the revolutionary technique of cutting down on emails and walking around and talking to people more effective and immediate.

- Our role as a regulator is to lead by example and we do care about culture as it informs conduct and that is what we regulate. So the final tool that I would urge you all to consider are our policies that I will touch on now.
- The Consumer Duty will focus minds on culture
- Perhaps one of the biggest policies we have unveiled in recent years is one that will do the most to address conduct – and therefore culture: the Consumer Duty. We have asked firms to think about what a good outcome would be for their customers and to apply that consideration at every stage of producing and delivering a product or service.
- We have also asked that the thinking starts at board level and have requested that there is a consumer duty champion on every board. The reason is simple: the Duty challenges you to ask significant questions about your purpose. The Duty pre-empted the cost of living challenges and we have always asked firms to pay particular attention to the most vulnerable. This becomes even more critical when many consumers are facing hardship. If you are a bank and spot that a customer has suddenly taken to losing money in gambling transactions late at night, what is your responsibility? There has been understandable resistance from some firms when we first started discussing the Consumer Duty – mainly because it requires enormous cultural and operational change. We do not set out to be prescriptive about culture but will step in when consumers are at risk of harm. That begins at the authorisations stage. We have spoken about raising standards to prevent harm before it occurs. We found evidence of poor culture when we assessed some funeral plan providers' applications.
- An example included diverting consumer funds which should have been invested via an independent trust for their future funeral plans, to investing in other short term business interests, in the hope those interests would produce profits for directors.
- A case of prioritising personal gain over the safety of customers' funds. This meant making some difficult decisions, which we knew would impact consumers. But we had to weigh our options against a high risk of more significant and widespread harm later on. While we cannot guard against all failures, and we don't always get it right, we want to set clear expectations in terms of what it means to be regulated by the FCA.
- Other tools to embed positive culture
- Another tool is our Early and High Growth Oversight support. This helps new firms to embed the right steps from the start, soon after they have gained authorisation and long after the consultants have abandoned them. It also provides support to those new firms that are looking to scale up. Diversity and inclusion is also critical to culture as it can prevent group think.
- Through our Firm and Portfolio Assessment Models, our supervisors look at purpose, leadership, governance and the approach to people. This includes diversity and inclusion (D&I) as well as psychological safety. We have recently completed a study into D&I across a range of organisations and found that firms were focused on improving representation at senior level but this dropped off at mid and junior level.
- We expect firms to collect data on the diversity of their staff, actively monitor it with interest and take bold action where needed, paying attention as to where it intersects. It can lead to better recruitment and retention – particularly in a challenging market for talent. And it can lead to unique insights that can fuel more innovative approaches, greater efficiency and reduced misconduct. And diversity of thought can foster innovation.
- Fostering an innovative culture

- Perhaps the biggest cultural shift we have seen inside the FCA since it was created has been its growing commitment to innovation. We want to support industry as it draws on new tools, like artificial intelligence (AI), to analyse the colossal amount of data they hold.
- With the Bank of England, therefore, we're talking to industry and consumer groups about how firms can use AI safely. Done well, it can mean better, more accurate pricing and products better suited to consumer needs. But there are risks, too.
- We know that many in industry are worried about how AI will be governed, and we agree that more guidance in this space will be needed. However, we also believe many of the rules to cover this are already in place or on the way, not least the Senior Managers and Certification Regime (SM&CR) and the upcoming Consumer Duty.
- SM&CR embeds and codifies good practices across a broader group of firms to support accountability and transparency. Likewise, there is a debate around crypto and its regulation – or lack of. At present, the FCA's role is largely limited to making sure that crypto firms that want to register in the UK are abiding by anti-money laundering rules. Few firms have been authorised because our standards are high. We make every effort to support innovation but not at the cost of consumers or market integrity.
- The Crypto Sprints we have held have been fascinating and have highlighted the potential cultural clashes between those entrepreneurs who think the best way of dealing with rules is to smash them and regulators, who are busy pointing out why they cannot skim over these steps.
- The collaborative approach has helped both sides: for us to understand how the crypto sector works and where the future opportunities lie and for the sector to see why we have regulations and what is expected of them.
- We found that only 5% of the applications we received were of high quality and could demonstrate that they had understood the regulations, and how they would meet these.
- A further 30% needed material extra work, and we engaged with the firms to address concerns about capability, business models and controls. Almost half were subsequently registered.
- The remaining 65% of applications were very poor, and none of the firms were registered.
- Many couldn't explain how the Money Laundering Regulations (MLRs) would be satisfied in the business model proposed – some of them even struggled to explain their business models.
- Doing the right thing leads to the right results
- Finally, one of the issues we get the most questions about is the future rules around environmental, social and governance (ESG) products and promotions.
- There is – rightly – always a major focus on the E and S part of ESG.
- But perhaps less so on the g – or governance.
- We are looking closely at what support firms offer to employees to improve their culture so that it boosts the conduct of their business or function.
- If more firms can get this right, we might see fewer films about rogue traders and more films about the plucky banker who saved the economy and consumers from harm by doing the right thing. It might be an initial box office flop, but I am confident in time it will become an enduring classic success.

What is the ICARA process and what is an ICARA document

- IFPR/IFR introduces an internal capital and risk assessment (ICARA) process for both small and non-interconnected investment firms (SNI firms) and non-SNI firms. The Financial Conduct Authority (FCA) has highlighted that the introduction of this new regime is an opportunity to re-establish the expectations for firms' internal governance and risk management that reflects and builds upon the framework previously established in FCA guidance.
- The intention is that the ICARA process will be the centrepiece of MIFID investment firms' risk management processes. The process will incorporate business model assessment, forecasting and stress testing, recovery planning and wind-down planning. The new regime also introduces the Overall Financial Adequacy Rule (OFAR), which establishes the standard the FCA will apply to determine if an FCA investment firm has adequate financial resources. As part of the ICARA process, firms will also be expected to identify whether they comply with the OFAR.

What is the ICARA process, and what is an ICARA document?

- The FCA has highlighted that the ICARA process is a continuing risk management process within the firm, although a formal ICARA review will usually only be required annually or immediately following a material change in the firm's business or operating model. It is an end-to-end assessment to make sure that the firm holds appropriate financial resources in accordance with the threshold conditions, and to meet the requirements under Principle 4 of the Principles for Business.
- The firm's ICARA process should be proportionate to the nature, scale and complexity of the business carried on by the firm. The overall purpose is to make sure that the firm has appropriate systems and controls in place to identify, monitor, and, where proportionate, reduce all potential material harms that may result from the ongoing operation of its business or the winding down of its business.
- It should also ensure that the firm holds financial resources adequate for the business it undertakes. All in scope firms must undertake an ICARA process in relation to their entire business, including their regulated and unregulated activities (MIFIDPRU 7.4.9(3)). There are no transitional provisions for the ICARA process on the basis that firms will need to use it to determine the amount of financial resources they need to hold to meet the OFAR (see PS21/9).
- Firms will not normally be required to operate an ICARA process on a consolidated basis, even in the event the group is subject to prudential consolidation. SNI and non-SNI firms may, however, conduct a group ICARA if they meet certain criteria.
- A firm will need to have in place an ICARA document in order to record all of its findings from the ICARA process. Importantly, the ICARA document does not need to be one central document, it can be made up of a number of different documents. For example, recovery planning may be provided in a separate document. However, all documents encompassing the ICARA process must be consistent with one another. For simplicity in this article we imagine it as one comprehensive document.

What does the ICARA document need to contain?

- The FCA has set out prescriptive rules in respect of what the ICARA process needs to encompass, and therefore by proxy what the ICARA document needs to contain.

- The steps that have to be taken to create this document are:
  - identify all of the harms that arise from the on-going operation of the business and the wind down of the business (including wind down planning and wind down triggers) (MIFIDPRU 7.4.13);
  - put in place appropriate systems and controls to identify, monitor and, if proportionate, reduce all material potential harms (MIFIDPRU 7.4.3(1)(a));
  - clearly articulate the business model and risk appetite, and identify any material risks that are misaligned between the firm's business model and the interests of its clients (MIFIDPRU 7.5.2(1));
  - consider own funds requirements and liquid assets on a forward-looking basis (MIFIDPRU 7.5.2(4));
  - consider plausible stresses that could affect the business (MIFIDPRU 7.5.2(5)); and
  - use stress testing to test stresses that could affect the business (MIFIDPRU 7.5.4(1)).
- The FCA has set out specific elements that the ICARA document must contain (MIFIDPRU 7.8.7(3)), which includes:
  - a clear description of the firm's business model and strategy and how it aligns with the firm's risk appetite (MIFIFPRU 7.8.7(3)(a));
  - an explanation of the activities carried on by the firm, with a focus on the most material activities (MIFIFPRU 7.8.7(3)(b));
  - an analysis of the effectiveness of the firm's risk management processes during the period covered by the review (MIFIFPRU 7.8.7(3) (f));
  - a summary of the material harms identified by the firm and any steps taken to mitigate them (MIFIFPRU 7.8.7(3)(g));
  - a clear explanation of how the firm is complying with the OFAR, including a clear breakdown of each component as at the review date (MIFIFPRU 7.8.7(3)(i));
  - a summary of any stress testing and reverse stress testing carried out by the firm (MIFIFPRU 7.8.7(3)(j));
  - the levels of own funds and liquid assets that, if reached, the firm has identified may indicate that there is a credible risk that the firm will breach its threshold requirements (MIFIFPRU 7.8.7(3)(k));
  - the potential recovery actions that the firm has identified (MIFIFPRU 7.8.7(3)(l)); and
  - an overview of the firm's wind-down planning (MIFIFPRU 7.8.7(3)(m)).

Senior manager responsibility

- One of the key points to note as part of the ICARA process is that the governing body is responsible for reviewing and approving the contents of this document. In particular it has to review and approve the key assumptions in the document.
- The FCA has made it clear through the drafting of the rules that senior managers are expected to make a meaningful contribution to the ICARA process.
- The FCA has highlighted that as part of the reasonable steps responsibility that senior managers have under the Senior Managers & Certification Regime, the senior managers will need to actively engage in the ICARA process and in embedding the requirements of the ICARA process into their respective business areas.
- In respect of practical issues that we have seen for firms, these difficulties include:

- how they go about undertaking the harm assessment and which harms are relevant to the business;
- how the harm assessment integrates into the firm's more general risk assessment;
- getting representatives from across the business to work toward making the ICARA process as comprehensive as possible, and ensuring that documentation is consistent; • planning a timeline so that the first submission of the ICARA return may be made within the regulator's deadline, which will be based on the data submitted in the MIFIDPRU questionnaire;
- ensure senior managers are appropriately briefed to understand the process so that they may provide challenge as necessary;
- address recovery planning in a comprehensive manner, and in some cases for the first time, due to the firm not historically being subject to recovery planning; and
- consider plausible and appropriate wind down scenarios and plan accordingly for such an event.

FCA issues Final Notice to former CEO for anti-money laundering failings; The Financial Conduct Authority has publicly censured Mohammad Ataur Rahman Prodhan, the former Chief Executive Officer of Sonali Bank Limited (SBUK) for anti-money laundering (AML) failings.

- Mr Prodhan was the senior manager at SBUK with responsibility for the establishment and maintenance of effective AML systems and controls.
- Between 7 June 2012 and 4 March 2014, Mr Prodhan failed to take reasonable steps to assess and mitigate the AML risks arising from a culture of non-compliance among SBUK's staff. He failed to ensure that there was a clear allocation of responsibilities to oversee SBUK's branches, and he also failed to properly oversee, manage, and resource SBUK's Money Laundering Reporting Officer (MLRO) function.
- As a result of these failings, SBUK's staff did not appreciate the need to comply with AML requirements, and the MLRO function was ineffective in monitoring their compliance. This led to systemic failures in SBUK's AML systems and controls throughout the business.
- The FCA initially decided to impose a financial penalty of £76,400 on Mr Prodhan in May 2018. Mr Prodhan referred the case to the Upper Tribunal, where proceedings have been delayed significantly as a result of the pandemic and limitations on Mr Prodhan's ability to travel to the UK from Bangladesh, where he now resides.
- While the FCA considers the financial penalty to be appropriate, there now exist exceptional circumstances for the case to be resolved by agreement, including the lack of any prospect of enforcing payment of a financial penalty.
- Mr Prodhan has withdrawn his referral to the Upper Tribunal and agreed to accept a public censure.
- Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said:

  - *'Mr Prodhan failed to maintain proper anti-money laundering systems and allowed a culture of non-compliance among the bank's staff.*
  - *'While a financial penalty was appropriate in this case, prolonged litigation to enforce a penalty that is unlikely to be paid against a person who may not be able to travel to the UK to explain himself in person to the Upper Tribunal is neither practical nor fair. In*

these exceptional circumstances, a public censure is an appropriate resolution of the case.'

- In line with its three-year strategy, the FCA continues its work to prevent the potential for harm to consumers and the market. The regulator has been clear that firms doing business in the UK must meet its high standards.
- Notes to editors

1. Read the Final Notice (PDF)
2. Sonali Bank UK Ltd Final Notice (PDF)
3. Steven Smith Final Notice (PDF)
4. The FCA has concluded that it is appropriate to replace the financial penalty with a public censure because of exceptional circumstances in this case. These include Mr Prodhan returning to Bangladesh and no longer having income or assets in the UK; the fact he is no longer in employment in Bangladesh; ongoing personal conditions which limit his ability to travel to the UK for the Upper Tribunal; and the length of time since his misconduct which has been impacted by Covid-delays to the litigation.
5. In August 2022, following regulatory action by the Prudential Regulation Authority, SBUK cancelled its authorisation and renamed itself Sonali Bangladesh Ltd

FCA publish statement on Liability Driven Investment; *On 30 November 2022, the FCA published a statement made by the Pensions Regulator, the Central Bank of Ireland and the Commission de Surveillance du Secteur Financier on the resilience of Liability Driven Investment (LDI) portfolios and the operational governance of pensions schemes using LDI strategies.*

- The statement sets forth that, the FCA expects asset managers to take necessary or appropriate action following the communication and that they operate their products and services in a way that will not create risks to market integrity or financial stability. Managers of LDI funds should learn lessons from these events to understand and reduce the consequences in tail events. These include operational lessons, the speed with which they are able to rebuild buffers or rebalance funds, client and stakeholder engagement, and reliance on third parties.
- All market participants should factor recent market conditions into their risk management, and should adopt a wider horizon of events that might be considered extreme but plausible. As in this event, participants should also consider the risk profile and systemic dynamics of events that could conceptually occur beyond this.
- The FCA are reviewing lessons learned and engaging with firms on their operational contingency planning and intend to publish a further statement on good practice towards the end of Q1.

Sanctions

OIL: 'Russian Oil Is Fueling American Cars Via Sanctions Loophole' (WSJ); An oil refinery in Sicily [Priolo], owned by Russia's second largest oil and gas giant Lukoil, acts as a pass-through for Russian crude, which ultimately makes its way to the U.S. as gasoline and other refined oil products.

U.S. Treasury Issues New Guidance on Russian Oil-Price Cap in Bid to Calm Markets; The department said it would exempt ships loaded with Russian oil before Dec. 5 from the price cap if they are unloaded by Jan. 19 The Treasury Department said that ships loaded with Russian oil before Dec. 5 won't be subjected to U.S.-led price cap on Russian oil, as Washington attempts to reassure anxious oil markets about its plan for new sanctions. Beginning on Dec. 5, the U.S. and its allies will ban companies in their countries from providing maritime services to shipments of Russian oil unless the oil is sold below a set price. /jlne.ws/3DwV1zQ

OFSI; Frozen Assets Reporting 2022; *Every year HM Treasury carries out a review of frozen assets to update its records and to capture any changes during the reporting period.*

- If you hold or control funds or economic resources belonging to, owned, held, or controlled by a designated person you are required to submit a report to OFSI by **Friday 11 November 2022**.
- This email is a reminder that you are required to report the value of all assets as they stand as of close of business on **Friday 30 September 2022.**
- If you have previously reported the value of frozen assets during the year, and separate to the annual frozen asset review, you are still required to report the values of assets as of 30 September 2022.

OFSI; 4 entries have been added to the Russia financial sanctions regime, and 3 entries have been amended.; *On 2 November 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.*

- The following entries have been added to the Consolidated List and are now subject to an asset freeze:
  - Alexander Grigoryevich Abramov (Group ID: 15610)
  - Alexander Vladimirovich Frolov (Group ID: 15611)
  - Airat Mintimerovich Shaimiev (Group ID: 15608)
  - Albert Kashafovich Shigabutdinov (Group ID: 15609)
- 3 entries have also been amended under the Russia regime and remain subject to an asset freeze. Further information can be found in the Notice.
- OFSI's consolidated list of asset freeze targets has been updated to reflect these changes.
- OFSI has also published General Licence INT/2022/2339452. This allows Truphone Limited to continue to make or receive payments for the purposes of continuing to provide telecommunication services. The licence is valid from 2 November 2022 and expires on 31 January 2023.
- More details about General Licences issued by OFSI can be found on our website

Glencore's African oil bribery case results in $311M fine A London judge has ordered Glencore to pay a $311 million fine after the firm pleaded guilty to bribing numerous African officials for oil cargo access. Glencore has previously paid corruption-related fines of $1.1 billion in the US and $40 million in Brazil, and is currently being probed by Swiss and Dutch investigators. Financial Times BBC Bloomberg

OFSI publishes Annual Review; *OFSI has published its Annual Review for 2021-22. In light of the role OFSI has played in the UK's response to the Russian invasion of Ukraine, we have included additional reporting on data from 24 February to 24 August 2022 (the first 6 months of the war) as well as reporting data from financial year 2021 to 2022. OFSI's Annual Review includes sections on*

- Engagement
- Changes to the Consolidated List
- Frozen Asset Review
- Licensing
- Counter-Terrorism sanctions
- Enforcement

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

IRS Has Opened 20 Russia Sanctions-Related Criminal Probes; The agency's criminal investigation division, part of Task Force KleptoCapture, said it had identified nearly 50 individuals and entities for possible enforcement actions The Internal Revenue Service has opened 20 criminal investigations in its crackdown on the evasion of sanctions that the U.S. imposed after Russia's invasion of Ukraine, an official said. The law-enforcement unit at the tax-collection agency opened the probes as part of its work with Task Force KleptoCapture and continues to develop new leads, Guy Ficco, the criminal investigation division's deputy chief, said at a press conference Thursday. /jlne.ws/3WJgazA

Sanctions on Russian Energy Loom Over Oil Market; The real impact, traders say, is showing up in prices for diesel Sanctions on Russia will redraw global oil flows over the next three months. Confusion over how the measures will work is making it hard for the energy industry to prepare. Ukraine's allies are gearing up to hit Russian oil with the toughest restrictions to date starting in early December, an attempt to stem President Vladimir Putin's influx of fossil-fuel revenue. /jlne.ws/3zUeDfY

US Treasury asks banks to allow some dealings with Russia The US Treasury and US State Department have reportedly made a tacit request to major US banks to allow some basic transactions, such as transfers and conversions into dollars, with Russian entities which are not directly sanctioned. The request, which is likely to face opposition from lawmakers, is aimed at maintaining pressure on Russia while avoiding global economic repercussions. Bloomberg

HM Treasury published updated advisory notice on money laundering and terrorist financing controls in high-risk third countries;

- *On 14 November 2022, HM Treasury published an updated advisory notice on money laundering and terrorist financing controls in high-risk third countries.*
- *The advisory notice identifies the following countries for which appropriate actions should be taken to minimise the associated risks and these actions may include enhanced due diligence in high-risk situations:*

Albania	Morocco
Barbados	Mozambique
Burkina Faso	Myanmar
Cambodia	Panama
The Cayman Islands	The Philippines
DPRK	Senegal
Democratic Republic of the Congo	South Sudan
Gibraltar	Syria
Haiti	Tanzania
Iran	Turkey
Jamaica	Uganda
Jordan	United Arab Emirates
Mali	Yemen

The following jurisdictions are subject to financial sanctions measures, which require firms to take additional measures:

- Democratic Republic of the Congo
- DPRK
- Iran
- Mali
- Myanmar
- South Sudan
- Syria
- Yemen

Nicaragua and Pakistan are no longer subject to the Financial Action Task Force's increased monitoring process due to their significant progress in improving their anti-money laundering / countering the financing of terrorism regime.

OFSI issues 1 GL, amends 1 GL *OFSI has issued General Licence INT/2022/2300292. OFSI issued General Licence INT/2022/2300292 on 17 November 2022 under all UK Autonomous Sanctions Regulations (see Annex 1 of the General Licence for the list of relevant Regulations) which allows* *for payment to utility companies for gas and electricity by UK designated persons who own or rent properties in the UK.*

- This licence took effect on 17 November 2022 and expires on 16 April 2023.
- OFSI has also amended General Licence INT/2022/2339452 for Truphone telecommunications services. Details of the amendments can be found in the publication notice.
- Any Persons intending to use these General Licences should consult the copy of the Licence and refer to OFSI's General Guidance.

EU Consolidated Sanctions List:

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

Oil Services Ban and Price Cap information; *The UK, in partnership with the G7 countries, Australia and the European Union, have agreed to set the price cap on Russian crude oil traded by firms shipping oil to third countries at USD$60. This price will be kept under review.*

- The UK and its coalition partners will only provide services facilitating the maritime transport of Russian oil if firms trade at or below this cap.
- In line with this agreement, the Oil Price Cap on Russian crude oil comes into effect on 5 December, and the Oil Price Cap on Russian refined oil products on 5 February. General Licences to facilitate the Oil Price Cap can be found below. This includes a wind-down General Licence which permits contracts to ship Russian oil traded at a point above the price cap where the Russian oil is loaded before 5 December 2022 and unloaded at the destination port by 19 January 2023.
- Following extensive industry engagement, OFSI has released updated guidance on the Oil Price Cap, which can be found below.
- Bespoke forms for required reporting, suspected breaches, and specific licence application forms are available below. Any reporting or queries should be directed to oilpricecap.OFSI@hmtreasury.gov.uk

Russian oil: EU agrees on level of price cap; *The Council decided today to set an oil price cap for* ***crude oil and petroleum oils and oils obtained from bituminous minerals*** *(CN code 2709 00) which originate in or are exported from Russia, at* ***USD 60 per barrel****.*

- The level of the cap was established in close cooperation with the Price Cap Coalition and will become applicable as of 5 December 2022.
- The price cap on Russian oil will limit price surges driven by extraordinary market conditions and drastically reduce the revenues Russia has earned from oil after it unleashed its illegal war of aggression against Ukraine. It will also serve to stabilise global energy prices while mitigating adverse consequences on energy supply to third countries.

- On 6 October 2022, the Council adopted a decision prohibiting the maritime transport of Russian crude oil (as of 5 December 2022) and petroleum products (as of 5 February 2023) to third countries, and the related provision of technical assistance, brokering services or financing or financial assistance.
- The Council decision also introduced an **exemption** from the above-mentioned prohibitions **for crude oil or petroleum products which** originate in or are exported from Russia, and **are purchased at or below a pre-established price cap** agreed by the Price Cap Coalition.
- Today's decision sets the level at which the exemption apply, and introduces a **transition period of 45 days** for vessels carrying crude oil originating in Russia, purchased and loaded onto the vessel prior to 5 December 2022 and unloaded at the final port of destination prior to 19 January 2023. As the price cap may be periodically reviewed to adapt to the market situation, today's decision also sets a **transition period of 90 days** after every change in the price cap, to ensure coherent implementation of the price cap by all operators.
- The functioning of the price cap mechanism will be reviewed every two months to respond to developments in the market, and will be set at least 5% below the average market price for Russian oil and petroleum products, calculated on the basis of data provided by the International Energy Agency.
- The Council also introduced an "**emergency clause**" which allows the transport of oil beyond the price cap or the provision of technical assistance, brokering services or financing or financial assistance related to the transport, when these are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on **human health and safety** or the **environment**, or as a response to **natural disasters**.
- In the face of Russia's war of aggression, the EU stands resolutely with Ukraine and its people, and is unwavering in its support of Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders.

- The relevant legal acts will soon be published in the Official Journal.
- EU adopts its latest package of sanctions against Russia over the illegal annexation of Ukraine's Donetsk, Luhansk, Zaporizhzhia and Kherson regions (press release, 6 October 2022)
- EU restrictive measures in response to the crisis in Ukraine (background information)

OFAC Expands Prohibitions on Russian Crude Oil Trade; OFAC determined that an Executive Order prohibiting new investment and services to the Russian Federation applies to the maritime transportation of Russian Federation-origin crude oil and petroleum products purchased under a certain price cap.

OFSI; 22 entries have been added to the Russia financial sanctions regime; *On 30 November 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.*

- 22 entries have been added to the Russia financial sanctions regime and are now subject to an asset freeze.

- OFSI’s consolidated list of asset freeze targets has been updated to reflect these changes.

EU tentatively agrees $60 price cap on Russian seaborne oil; *European Union governments tentatively agreed on Thursday (1 December) on a $60 a barrel price cap on Russian seaborne oil – an idea of the Group of Seven (G7) nations – with an adjustment mechanism to keep the cap at 5% below the market price, according to diplomats.*

- The agreement still needs approval from all EU governments in a written procedure by Friday. Poland, which had pushed for the cap to be as low as possible, had as of Thursday evening not confirmed if it would support the deal, an EU diplomat said.
- EU countries have wrangled for days over the details of the price cap, which aims to slash Russia’s income from selling oil, while preventing a spike in global oil prices after an EU embargo on Russian crude takes effect on 5 December.
- It will allow countries to continue importing Russian crude oil using Western insurance and maritime services as long as they do not pay more per barrel than the agreed limit.
- G7 deal ‘very, very close’ The initial G7 proposal last week was for a price cap of $65-$70 per barrel with no adjustment mechanism. A senior G7 official said a deal was “very, very close” and should be finalised in the coming days and by Monday at the latest. The official expressed confidence that the price cap would limit Russia’s ability to fight its war against Ukraine.
- G7 officials had been closely monitoring oil markets during the development of the price cap mechanism and seemed “pretty comfortable” with it, the official said. Earlier, US Deputy Treasury Secretary Wally Adeyemo told the Reuters NEXT conference in New York that the $60 cap was within the range of the bloc’s discussions and would limit Russian revenues.
- Since Russian Urals crude already traded lower, Poland, Lithuania and Estonia rejected the higher $65-70 per barrel price as not achieving the main objective of reducing Moscow’s ability to finance its war in Ukraine. “The price cap is set at $60 with a provision to keep it 5% below market price for Russian crude, based on IEA figures,” an EU diplomat said.
- Regular reviews An EU document seen by Reuters showed the price cap would be reviewed in mid-January and every two months after that, to assess how the scheme is functioning and respond to possible “turbulences” in the oil market that occur as a result.
- The document said a 45-day “transitional period” would apply to vessels carrying Russian-origin crude oil that was loaded before 5 December and unloaded at its final destination by 19 January 2023.
- Russian Urals crude had traded at around $70 a barrel on Thursday afternoon.
- The G7 price cap on Russian seaborne crude oil is to kick in on Dec. 5, replacing the harsher EU outright ban on buying Russian seaborne crude, as a way to safeguard global oil supply because Russia produces 10% of the world’s oil.
- The idea to enforce the G7 cap is to prohibit shipping, insurance and re-insurance companies from handling cargoes of Russian crude around the globe, unless it is sold for less than the price set by the G7 and its allies.
- Because the world’s key shipping and insurance firms are based in G7 countries, the price cap would make it very difficult for Moscow to sell its oil for a higher price.

- The G7 official expressed optimism that the bloc would also reach agreement on a price cap and exemptions for Russian refined oil products ahead of 5 February, when an EU ban barring such imports takes effect.

EU member states are running out of time to agree on a price cap for shipments of Russian crude oil after another round of last-ditch talks between the bloc's ambassadors on Monday evening (28 November) ended without a deal.

- The EU is set to ban almost all Russian oil imports into the bloc on 5 December, which is meant to be combined with an international price cap on shipments, but just days away from these coming into force, member states are struggling to agree on the potential cap. "There is no deal. The legal texts have now been agreed, but Poland still can't agree to the price," one EU diplomat said. Brussels has been working with G7 countries to implement the price ceiling on seaborne Russian oil, with them proposing to cap it at $65-70 a barrel.
- The goal is to allow oil to continue flowing while simultaneously pushing down Moscow's ability to fund its war in Ukraine. Under the plan, cargoes of Russian oil would have to sell at or below the cap or risk being banned from shipping insurance and reinsurance. Unlike the gas price cap currently being negotiated by EU countries, the price cap on oil would only be applied to Russian supplies, and it would come as another sanction in the wake of Russia's invasion of Ukraine.
- Polish insistence; In Monday's talks, EU ambassadors debated whether to set the cap as low as $62 per barrel on exports of Russian crude oil. However, several EU diplomats said consensus remains elusive, with some countries wanting to go much lower. "The Poles are completely uncompromising on the price without suggesting an acceptable alternative," one EU diplomat said.
- Hawkish member states led by Warsaw say this will be ineffective because it is too close to the price Russia already gets on the market, meaning the sanction would not punish the Kremlin enough to cripple its war economy. Poland, together with Lithuania and Estonia, is pushing for a significantly lower cap of around $30 and wants the implementation of the cap to be tied to the promise of the next ninth sanctions package against Russia.
- "There are three elements which still need to be discussed: criteria of the price cap adjusting, the inclusion of a mechanism to the new package of sanctions, and the level of cap price," a CEE diplomat told EURACTIV.
- Russia's oil and gas exports are forecast to account for 42% of the country's revenues this year at 11.7 trillion roubles, up from 36% or 9.1 trillion roubles in 2021, according to *Reuters*, citing the country's finance ministry. Ukraine's President Volodymyr Zelenskyy said on Saturday (26 November) the cost of Russian seaborne oil should be capped at $30-$40 a barrel, *Reuters* said.
- Mediterranean compromise; Other price cap sceptics, meanwhile, have already given ground.
- EU member states, including those with big shipping industries such as Greece, Malta, and Cyprus, had wanted to ensure the price is sufficiently high to keep trade in Russian oil flowing, a position likely to be supported by the US. These shipping countries' concerns were "squared off" in Monday's talks, EU diplomats said, adding that pressure is now expected to mount on the hawkish member states to compromise. "France,

Germany, and a few others are quite critical of Poland, they say: The Meds have come quite a way in compromising, now it's time to reciprocate," a second EU diplomat said.

- Deadline looming; A new date for talks is yet to be set, EU diplomats said, even though the price cap mechanism is due to enter into force on 5 December. Expectations in Brussels are that negotiations could be concluded by the end of this week.
- After several weeks of drawn-out negotiations in May, EU leaders agreed to a partial embargo on crude oil imports by sea, which will take full effect by the end of 2022. Hungary, Slovakia, and the Czech Republic then secured exemptions from the ban for the pipeline imports they rely on.
- If there is no agreement on the G7 price cap idea by next Monday, the bloc will need to implement the harsher measures agreed upon at the end of May, which would include a ban on all Russian crude oil imports from 5 December and on petroleum products from 5 February, some EU diplomats warned. It also remains unclear at this stage whether there would need to be additional adjustment talks at the G7 level if the EU agrees a cap outside of the group's proposed price range.
- How the cap would work; When implemented, the price would apply to any ship carrying Russian oil, no matter what flag it flies.
- Shipping companies would only be allowed to transport oil sold below or at the level of the agreed cap. If a ship is found to be carrying Russian oil and not adhering to the set cap, it will lose access to services like insurance. While the question about whether proper monitoring can be ensured remains, the EU aims to team up with key countries for maritime insurance, like the UK, to give the sanction teeth.

The Irish Data Protection Commissioner levied a €265 million fine on Monday (28 November) on Meta-owned Facebook and Instagram over their data scraping practices and ordered a set of remedial actions. *The inquiry spurs from massive data leaks of Facebook personal data dumped online in a hacker forum in April 2021, which included sensitive information such as full names, locations, birthdates, phone numbers and email addresses.*

- The data leak concerned 533 million people in 106 countries – in the EU, around 86 million people were affected. At the time, Facebook said that the leaked data was old since the mass data scraping occurred because of a vulnerability that the company had patched in August 2019.
- As most Big Tech companies have their European headquarters in Ireland, the Irish data protection authority is tasked with enforcing on them the General Data Protection Regulation (GDPR), the EU's privacy rulebook.
- Facebook-owned messaging platform WhatsApp will learn within a month the extent of a fine by Ireland's privacy watchdog over an alleged breach of the EU privacy framework following a binding decision by the bloc's data protection board.
- A few days after the leak, the Irish authority announced a probe into the matter to examine whether Facebook's data harvesting practices complied with the GDPR's principle of data protection by design and default.
- In particular, the investigation related to Facebook Search, Facebook Messenger Contact Importer and Instagram Contact Importer, although Instagram was not directly involved in the leaks. These tools are intended to help users to find friends and acquaintances on Facebook and Instagram based on their phone numbers.

- The decision, adopted last Friday, concluded that between 25 May 2018 and September 2019, the social networks violated the European privacy rules, and imposed a set of specific remedial actions as well as an administrative fine of €265 million.
- A Meta spokesperson told EURACTIV that the company had made "changes to our systems during the time in question, including removing the ability to scrape our features in this way using phone numbers".
- "Unauthorised data scraping is unacceptable and against our rules, and we will continue working with our peers on this industry challenge. We are reviewing this decision carefully."
- Meta can appeal the decision in court.
- The fine is the second largest against Meta so far, following a €405 million sanction against Instagram for breaching children's privacy and surpassing a €225 million penalty against WhatsApp for failing to comply with the EU's transparency requirements.
- These past decisions on Instagram and WhatsApp went through the so-called dispute resolution mechanism since the other European data protection authorities contested the Irish authority's conclusion and requested heftier fines. However, in this case, none objected to the decision.
- The Irish Data Protection Commission (DPC) issued a €405 million fine to the social media platform Instagram for breaching EU data protection rules concerning the privacy of minors.
- Meta's services have been sanctioned for around €1 billion for data protection breaches under EU law. The latest decision comes as further bad news for the company, which has seen a sharp decline in revenues in the past months and has had to lay off more than 11,000 staff members recently.

Only $8B Of $47B Of Russian Assets Frozen, Swiss Gov't Says Swiss authorities have frozen a total of just 7.5 billion Swiss francs ($8 billion) of the 46.1 billion francs in Russian assets held in the country, according to a sanctions update published by the country's government on Thursday.

- On 1 December 2022, the Wolfsberg Group published Principles for Using Artificial Intelligence and Machine Learning (AI/ML) in Financial Crime Compliance.
- The Principles are intended to guide financial institutions and their financial crime compliance leaders and risk management teams in identifying and managing the operational and reputational risks that may arise from the use of artificial intelligence and machine learning (AI/ML).
- The Principles should be operationalised by each financial institution according to a risk based approach dependant on the prevailing and evolving regulatory landscape, as well as on its use of AI/ML against financial crime, and governed accordingly.
- The Principles consist of five elements that support a financial institution's responsible use of AI/ML in financial crime compliance applications:
    - Legitimate purpose.
    - Proportionate use.
    - Design and technical expertise.
    - Accountability and oversight.
    - Openness and transparency.

MAR/MAD & Financial Crime

The Wolfsberg Group publishes Principles for Using Artificial Intelligence and Machine Learning in Financial Crime Compliance;

FATF Updates List of Jurisdictions with AML/CFT/CPF Deficiencies; *The Financial Action Task Force ("FATF") updated its list of jurisdictions with strategic AML/CFT and counter-proliferation deficiencies. FinCEN notified U.S. financial institutions that they "should consider the FATF's stance toward these jurisdictions when reviewing their obligations and risk-based policies, procedures, and practices."*

- Following an update to the list of jurisdictions in June 2022 (*see* previous coverage), the FATF provided country progress reports for: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, the Democratic Republic of the Congo, Gibraltar, Haiti, Jamaica, Jordan, Mali, Morocco, Mozambique, Panama, Philippines, Senegal, South Sudan, Syria, Tanzania, Turkey, United Arab Emirates and Uganda.

- Changes to the "Jurisdictions under Increased Monitoring" list include:
- adding the Democratic Republic of the Congo, Mozambique and Tanzania to the list of jurisdictions under increased monitoring; and
- removing Nicaragua and Pakistan from the same list.
- FinCEN also confirmed that the FATF's list of "High-Risk Jurisdictions subject to a Call for Action" - which calls for enhanced due diligence and countermeasures with respect to the Democratic People's Republic of Korea and Iran - remains in effect. FinCEN noted that the FATF added Burma to this list and called for enhanced due diligence, but not countermeasures.
- FinCEN reminded U.S. financial institutions of their due diligence obligations with regard to correspondent accounts at foreign financial institutions.
- FinCEN Press Release: Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering and Combating the Financing of Terrorism and Counter-Proliferation Deficiencies
- FATF Publication: Jurisdictions under Increased Monitoring - October 2022
- FATF Publication: High-Risk Jurisdictions subject to a Call for Action - October 2022

White House and allies hold second counter-ransomware summit; *The US, EU and 36 other countries held a two-day counter-ransomware summit this week, during which the participants agreed to a take a number of steps including*

(1) establishing an international counter-ransomware task force (ICRTF) to coordinate resilience, disruption, and counter ransomware activities;
(2) creating a fusion cell in Lithuania to test a smaller scale version of the ICRTF;
(3) developing a toolkit for proactively tackling ransomware actors and responding to incidents; and
(4) undertaking biannual counter-ransomware exercises.

- The participants also agreed to continue efforts from last year's ransomware summit, including by continuing information sharing and coordination efforts.
- Alongside the summit, Treasury's Financial Crimes Enforcement Network (FinCEN) released a report on ransomware trends in the second half of 2021. The report highlights that total monetary losses due to ransomware incidents increased from approximately $412 million to $1.2 billion from 2020 to 2021 and that approximately 75% of incidents had a nexus to Russia.

- *Countering ransomware has been a key focus area for the Biden Administration considering national security issues related to Russia and high-profile incidents.*
    - While US authorities have mounted an aggressive counter-ransomware campaign - from the *Cybersecurity and Infrastructure Agency's Stop Ransomware* efforts to the DOJ launching an enforcement team focused on disrupting ransom payments - the ongoing rise of ransomware incidents highlighted by FinCEN's report shows that there is still much work to be done.
    - The continued efforts from this week's summit is a clear sign that global coordination is a continued priority, but with certain jurisdictions that have had high instances of domestic ransomware actors notably excluded, focus will be on how participants coordinate pressure going forward.
    - In the meantime, financial institutions should be carefully considering how to better protect their customers against the ransomware threat and how to avoid inadvertently facilitating ransomware payments. For virtual currency exchanges, this includes stepping up know-your-customer programs, transaction monitoring and analytics capabilities to detect nested exchanges that support ransomware payments.
    - For other financial institutions, defense is key: developing a better understanding of where their data is located, maintaining offline backups, ensuring that patches are up to date and developing ransomware incident response plans will be essential.

AML/CFT: EU Commission publishes third supranational risk assessment; *The EU Commission has published its supranational risk assessment for 2022, comprising a report on the assessment of the risk of money laundering (ML) and terrorist financing (TF) affecting the EU's internal market and relating to cross-border activities, as well as an accompanying staff working document. This follows the Commission's two previous supranational risk assessments in 2017 and 2019.*

- The new report outlines areas in the EU financial system which continue to be vulnerable to money laundering and terrorist financing. It notes that, in the financial sector, a lack of clear and consistent rules, inconsistent anti-money laundering and countering the financing of terrorism (AML/CFT) supervision across the internal market, and insufficient coordination and exchange of information among Financial Intelligence Units (FIUs) continue affecting the EU's ability to address ML/TF risks.
- The Commission considers that credit and payment institutions, bureaux de change, e-money institutions and credit providers (other than credit institutions) appear to be most vulnerable to risks arising from weaknesses in AML/CFT systems and controls. The report also states that risks associated with cryptoassets call for ensuring not only a high level of consumer and investor protection and market integrity, but also for

measures against market manipulation and to prevent ML/TF activities. It adds that financial stability and monetary policy risks that could arise from a wide use of cryptoassets and distributed ledger technology (DLT) based solutions in financial markets must also be addressed.

- The report sets out a number of recommendations, including calling for:
  - `a higher level of transparency of beneficial ownership information;
  - more appropriate resources for AML/CFT supervisors and FIUs;
  - increased on-site inspections by supervisors; and
  - FIUs, supervisors and other AML/CFT competent authorities to carry out thematic inspections.
- The Commission has also published a separate staff working document on the use of public-private partnerships in the framework of preventing and fighting money laundering and terrorist financing.

Traders Lose Bid To Challenge FCA Subpoenas For US Probe; A London appeals court refused Wednesday to grant U.K.-based futures traders judicial review of a regulatory decision forcing them to cooperate with a U.S. probe of the trading that drove oil into negative territory early in the pandemic. Read full article »

Glencore to be fined for African oil bribes A UK judge is expected to announce today how much Glencore's London oil trading desk will be fined for paying more than $28 million in bribes to Nigeria, Cameroon and other African countries for oil cargo access. "The approving and offering of bribes was an acceptable way of doing business at the company," said UK Serious Fraud Office lawyer Alexandra Healy during a court hearing. Financial Times BNN Bloomberg

NRF; Market abuse: Key takeaways from recent FCA cases; Bitesize briefing; Watch now

NYDFS revises cyber regulation; *On Wednesday, the New York Department of Financial Services (NYDFS) published revised draft amendments to its "Part 500" cybersecurity regulation, which covers all financial services providers authorized by the department – including many large insurance companies, foreign banks, and digital asset firms -– as well as certain third parties that provide services to them. The draft amendments, which will be open for comment until January 9, 2023, retain many of the features in the NYDFS's earlier draft amendments released in July, with some small but notable differences:*

- Stricter requirements for larger firms. The original draft amendments would create a new category of "Class A companies," which are firms with 2,000 employees or an average of $1b in gross annual revenues over the past three years. These firms would be required to (1) undergo an independent annual audit of their cybersecurity programs; (2) use external experts to conduct a risk assessment at least once every three years; (3) implement an access management password solution and controls to prevent the usage of common passwords for privileged accounts; and (4) implement an endpoint detection and response system to monitor for anomalous activity and generate alerts. The revised draft amendments retain these requirements but narrow the scope to firms with at least $20 million in revenue from New York activities, specify that the audit must be conducted by an external party, remove a previous requirement that reviewing information systems occur "weekly" for large firms and add arequirement that all firms conduct such scanning at a frequency determined by the company's risk assessment.

- Prescriptive rules for data management and access controls. Under the original draft amendments, firms would be required to: keep an ongoing "complete asset inventory," limit access to privileged accounts, and maintain backups isolated from network connections. They also add new requirements around multi-factor authentication (MFA), eliminating text messages as an example of a form of authentication due to their vulnerability to SIM swap attacks, and requiring MFA for all access to privileged accounts. The new draft amendments reinstate the Chief Information Security Officer's (CISO's) ability to approve reasonably equivalent or more secure compensating controls in place of MFA requirements -– an ability that had been removed in the previous draft amendments -– but would require annual review of any such decision and associated controls.
- New notification requirements. Under the original draft amendments, firms would be required to notify NYDFS within 72 hours of any cybersecurity event in which an unauthorized user has gained access to a privileged account or in which ransomware has been deployed within a material part of the firm's systems. They would also be required to notify NYDFS within 24 hours of any extortion payment connected with a cybersecurity event. The current rule only requires reporting for cyber incidents that have a material likelihood of harming the firm's normal operations. The revised draft amendments now require notification of any cyber event at a third party that impacts the covered entity as well as updates to reported incidents within 90 days.
- Increased governance expectations. CISOs would be expected to have authority to manage cyber risks and report to the Board at least annually on plans for remediating inadequacies in the cyber program. Policies and procedures would require at least annual approval by the firm's senior governing body (board or board equivalent). Boards would also be expected to either have or be advised by persons with sufficient cyber expertise. In addition to the CISO, the highest-ranking executive would have to co-sign the annual certification.
- Operational resilience planning, testing, and training in focus. The original amendments would expand current expectations around incident response plans to require that they incorporate the possibility of ransomware incidents. Firms would also be required to implement business continuity and disaster recovery (BCDR) plans that are reasonably designed to ensure the availability and functionality of the covered entity's services. The revised draft amendment specifies that NYDFS would expect firms to test plans at least annually with all applicable staff,
- including senior management, and update them as necessary and conduct routine training of key stakeholders.
- The new draft amendments clarify that penetration testing can be conducted either by internal or external independent parties and that BCDR plans are required at least annually
- The NYDFS has made it clear that it intends to evolve its regulatory expectations to align with the increased risk in the cyber landscape over the five years since it released its original cybersecurity rule. *While many observers expected more significant changes, especially given the lengthy DFS review of public comment, the revised draft is most notable for what didn't change - the majority of the significant requirements remain intact. The relatively minor changes reflect that the originally proposed amendments were built*

on findings detailed in recent Part 500 enforcement actions and align with the Department's guidance on ransomware from June 2021 and on MFA from December 2021.

- Given the significant amount of time and resources required for some of these new expectations, firms should not wait until a final rule to act - especially considering the tight 180-day compliance deadline for most of the changes. Meeting the asset inventory requirement will be a significant undertaking for many firms even with the new two-year transition period.
- In addition, enhancing and testing incident response and business continuity plans with all applicable staff will also take careful thought, time and training. With board level cybersecurity expertise in high demand, ensuring that Boards have adequate cybersecurity expertise may be a challenge for some firms. Regulatory prescriptions aside, much of the proposed amendments represent industry leading practices, such as the thorough maintenance of asset inventories, MFA usage, BCDR testing, and ability to recover from backups, that help to protect both financial institutions and their customers.

Cyber experts warn of financial services cloud risk; Cybersecurity experts warn that the increased use of cloud systems is exposing financial services firms to higher risk of cyberattacks. Organizations including the Bank for International Settlements and the US Federal Reserve Bank of New York have issued similar warnings this year, and Prakash Pattni, managing director of digital transformation at IBM Cloud for Financial Services, notes that "[t]he financial services industry paid the second-highest price [behind healthcare] for data breaches last year, averaging $5.97 million. In today's fast-moving digital economy, it's one of, if not the, biggest threat for the industry." Financial Times

HM Treasury updated advisory notice on money laundering and terrorist financing controls in high-risk third countries; On 14 November 2022, HM Treasury published an updated advisory notice on money laundering and terrorist financing controls in high-risk third countries. The updated advisory notice follows the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No.3) Regulations 2022 which came into force on 7 November 2022 and substitutes the list of high-risk third countries specified in Schedule 3ZA of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 with a new list. This list mirrors both the Financial Action Task Force's 'Jurisdictions under increased monitoring' and 'High-risk jurisdictions subject to a call for action' documents.

AML challenges for fintechs: Insights for the future; A new white paper from Refinitiv, produced in collaboration with global consultancy, FINTRAIL, unpacks some of the key AML challenges facing fintechs today, and explores how companies in this evolving sector can best manage AML compliance.

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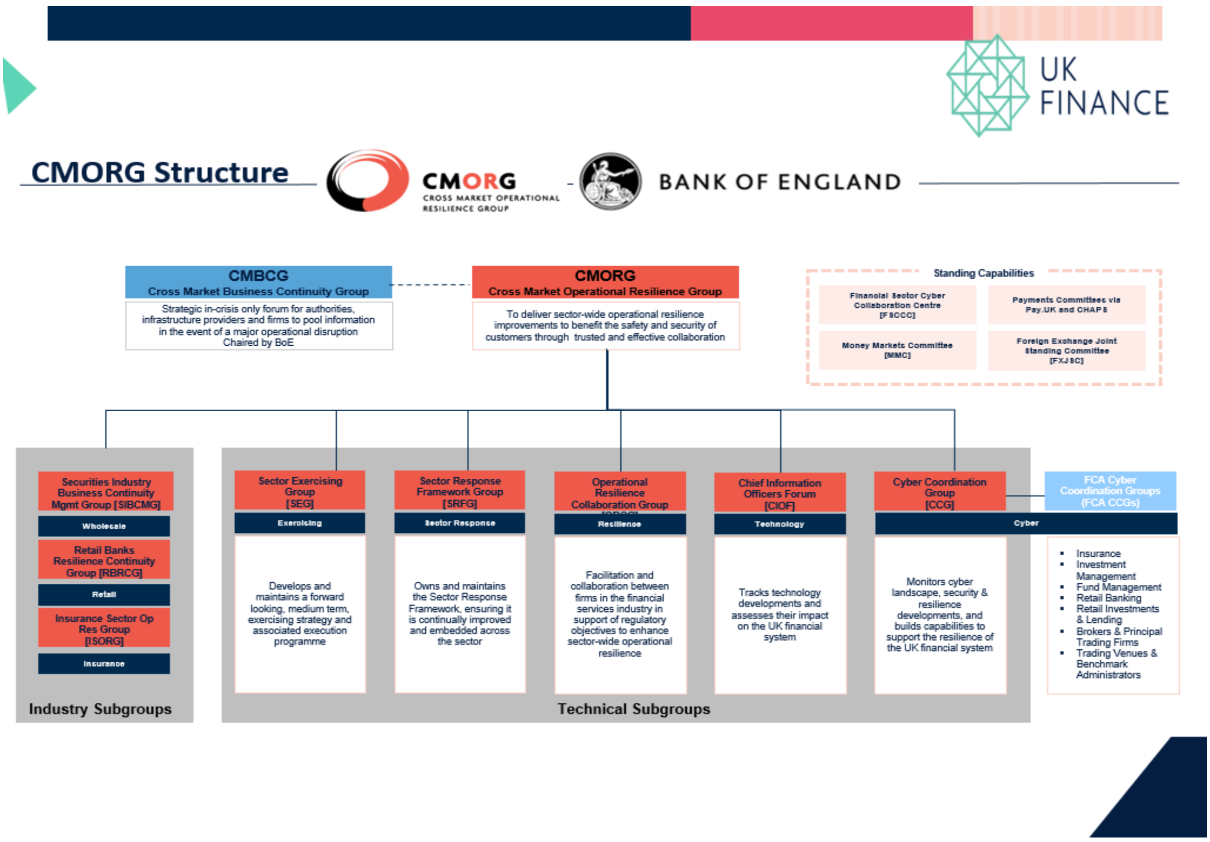

TACIG Q4 Minutes;

- Incident Reporting Update – As discussed in the meeting Firms are required to notify the FCA of material operational incidents as part of SUP15.3 and Principle 11. This includes technology failure and outages, cyber-attacks and non-technology incidents, such as a power outage or office closures. We track, analyse and respond to incidents that are reported to the FCA.

- The focus of our incident response work is to make sure firms take appropriate steps to mitigate harm, identify the root cause, and to prevent the incident reoccurring.
- Further details can be found at the links below
- https://www.fca.org.uk/firms/operational-resilience#reporting-operational-incident
- https://www.handbook.fca.org.uk/form/sup/SUP_15_ann_11_REP018_20180113.pdf - This is the link under FCA Chapter 15 (SUP 15) relating to Payments Service Directive incidents. Still useful to use as a guide though when reporting other non-payment incidents as similar information under the headings will be required. e.g. Nature of the Service incident, Impact, Mitigation and Communication plans.
- Co-Chair Rotation expressions of interest should be sent to Debbie Cassidy (debbie.cassidy@fca.org.uk) or Julie Ampadu (julie@chameleoncompliance.co.uk). If we can receive these by end of November that would be ideal so we can progress with a new co-chair ahead of the Q1 Forum or alternatively send to Julie for onward transmission.
- Once these are received members can vote for the new Co Chair and once process complete ToR will be updated with new process.
- CTP – https://www.fca.org.uk/publications/discussion-papers/dp22-3-operational-resilience-critical-third-parties-uk-financial-sector
- Roze Ahmad roze.ahmad@fca.org.uk for specific questions on presentation but feedback on Discussion Paper should be sent to DP3_22@bankofengland.co.uk
- We will provide further update on the Credit Union in due course.

ESMA report on the administrative and criminal sanctions and other administrative measures imposed under the Market Abuse Regulation in 2021; *On 18 November 2022, the ESMA (***ESMA***) published a report on the administrative and criminal sanctions and other administrative measures imposed under the Market Abuse Regulation (***MAR***) in 2021.*

- Article 33 of MAR obliges ESMA to publish an annual report with aggregated information of all penalties and measures imposed by Member State competent authorities (NCAs). This report contains aggregated information on the administrative and criminal sanctions and other administrative measures impose by NCAs in accordance with Article 30 of MAR from 1 January 2021 to 31 December 2021. The report also contains an overview of the applicable legal framework, including the penalties and measures foreseen.
- The information reported to ESMA in this report will inform ESMA's ongoing work aimed at fostering supervisory convergence in the application of MAR and contribute to ESMA's goal to develop an EU outcome-focused supervisory and enforcement culture.

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New Q&As available; https://www.esma.europa.eu/press-news/esma-news/new-qas-available-8

- Q&A on the Market Abuse Regulation https://www.esma.europa.eu/document/qa-market-abuse-regulation
  - Prevention 6.1 Persons professionally Article 16(2) of MAR 15/11/2022 and detection arranging or executing (revised) of market transactions abuse

Q6.1 Does the obligation to detect and report market abuse under Article 16(2) of MAR apply to investment firms under MiFID only or do UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation?

A6.1 The definition of "person professionally arranging or executing transactions" laid down in point (28) of Article 3(1) of MAR is activity based, does not cross refer to definitions under MiFID and is independent from the latter, leading thus to consider that the scope of Article 16(2) of MAR is not only limited to firms or entities providing investment services under MiFID. In the absence of any reference in the definition that would limit the scope and exclude particular categories of persons regulated by other financial European legislation, ESMA considers that the obligation to detect and identify market abuse or attempted market abuse under Article 16(2) of MAR applies broadly, and "persons professionally arranging or executing transactions" thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), as well as firms professionally engaged in trading on own account (proprietary traders) and investment firms providing direct electronic access (DEA providers) with respect to their DEA clients' trading activity. Non-financial firms that, in addition to the production of goods and/or services, trade on own account in financial instruments as part of their business activities (e.g. industrial companies for hedging purposes) can be considered firms professionally arranging or executing transactions in financial instruments under Article 16(2) of MAR. The fact that they have staff or a structure dedicated to systematically deal on own account, such as a trading desk, or that they execute their own orders directly on a trading venue as defined under MiFID II, are indicators to consider a non-financial firm as a person professionally arranging or executing transactions. It is reminded that detecting and reporting suspicious orders and transactions under Article 16(2) of MAR should be applied by "persons professionally arranging or executing transactions" through the implementation of arrangements, systems and 24 procedures that are appropriate and proportionate to the scale, size and nature of their business activity

[ECJ Rules Money-Laundering Law Infringes Right To Privacy](#) Europe's highest court ruled Tuesday that amendments to a European Union directive that requires member states to make information on the beneficial owners of corporate entities accessible to the public interfere with the right to privacy. [Read full article »](#)

[4 Firms Vie To Lead Suit Against Barclays Over $17.6B Error](#) Four firms have submitted competing bids to serve as lead counsel in a proposed shareholder class action in New York federal court over a financial reporting error that led to Barclays selling more than $17.6 billion in securities over its maximum registered amount. 4 documents attached | [Read full article »](#)

[German Authorities Raid 2 Frankfurt Banks In Cum-Ex Probe](#) German authorities searched the offices of two Frankfurt banks in a probe related to the tax scandal known as cum-ex, which broadly involves the fraudulent refunding of unpaid tax, prosecutors in the city of Cologne confirmed to Law360 on Wednesday. [Read full article »](#)

FTT, FATCA & Taxation

FATF consults on beneficial ownership of legal arrangements and legal persons; *The Financial Action Task Force (FATF) has launched two consultations on:*

- [an updated guidance paper to recommendation 24](#) (R.24) on the transparency and beneficial ownership of legal persons; and

- proposed amendments to recommendation 25 (R.25) and its interpretative note (INR.25) on the transparency and beneficial ownership of legal arrangements.
- At the March 2022 plenary, the FATF adopted amendments to R.24 and agreed to update the guidance on beneficial ownership, with a view to supporting the implementation of new requirements. The FATF are now consulting on its updated guidance paper to R.24.
- The FATF has also launched a consultation on proposed amendments to R.25 and INR.25. This follows a white paper consultation published in June 2022. In particular, the FATF is considering an amendment of the definition of beneficial ownership in the glossary to provide more clarity regarding legal arrangements.
- Comments on both consultations are due by 6 December 2022.
- The FATF intends to consider the submissions received and proposals for revisions at its February 2023 meetings.

Bankers Get Suspended Sentences In German Tax Fraud Case; Two bankers were convicted on charges of tax fraud in connection with the so-called cum-ex scandal and have been handed suspended prison sentences, the district court in the German city of Wiesbaden has said in a statement. 1 document attached | Read full article »

Op risk data: Dodgy tax practices cost Credit Suisse €240m Also: Binance blockchain hack; ING's Polish AML fail. Data by ORX News Credit Suisse fine: bank employees met clients in hotels and restaurants to help preserve anonymity

- October's largest operational risk loss is attributed to Credit Suisse. The bank announced it would pay €238 million ($246.2 million) to settle charges by French authorities that it had illegally solicited clients and helped them evade taxes and launder money.
- An investigation opened by the French prosecutor in 2016 found that around 5,000 French nationals had undeclared accounts with Credit Suisse hiding a total of €2 billion between 2005 and 2012. Bank employees often travelled to France to work.

FinCEN Corporate Transparency Final Rule: Beneficial Ownership Information Reporting Requirements and the Potential Impact on Financial Institutions and Pooled Investment Vehicles

- The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) on September 29, 2022 issued a final rule (Final Rule)1 defining and implementing the beneficial ownership reporting requirements of Section 6403 of the Corporate Transparency Act (Act).2 The Act, enacted on January 1, 2021, as part of the Anti-Money Laundering Act of 2020 within the National Defense Authorization Act of 2021, requires FinCEN to promulgate regulations mandating "reporting companies" to disclose to FinCEN the name, date of birth, residential or business address and an identifying number of such reporting companies' "beneficial owners" and "company applicants," among other requirements.3
- The Final Rule, which is the first of three rulemakings planned by FinCEN to implement the requirements of the Act, becomes effective January 1, 2024. Reporting companies created before January 1, 2024 must file an initial report by January 1, 2025. Reporting

companies created after January 1, 2024 must file a report within 30 calendar days of the earlier of: the date the company receives actual notice of its creation; or the date on which the secretary of state or similar office provides public notice of the reporting company's existence. Reporting companies have 30 days to report changes to their initial filing, and have 30 days to correct inaccurate information in a previous filing once the reporting company becomes aware, or has reason to know, of the inaccuracy of information in earlier reports.

- Definition of "Reporting Company"
- The Final Rule defines a "reporting company" as either a "domestic reporting company" or a "foreign reporting company." A "domestic reporting company" is defined as a corporation, limited liability company or other entity created by the filing of a document with a secretary of state or any similar office under the laws of a state or tribe. The Final Rule defines a "foreign reporting company" as an entity that is a corporation, limited liability company or other entity which is formed under the laws of a foreign country and registered to do business in any state or tribal jurisdiction by the filing of a document with the secretary of state or any similar office under the laws of the tribe or state. The Final Rule does not separately define "other entity."
- With respect to domestic entities, the preamble to the Final Rule acknowledges the concerns of several commenters regarding the status of certain entities under state law (e.g., general partnerships, other types of trusts, sole proprietorships) and clarifies that if such entities are not created through the filing of a document through the secretary of state or similar office, then those entities would not be considered a "domestic reporting company" under the Act.
- The Act specifically exempts 23 types of entities from the definition of "reporting company" and authorizes FinCEN to exempt additional types of entities. The Final Rule adopts the statutory language granting the 23 exemptions, with some clarifications. The exemptions include mostly types of regulated entities that already are required to report beneficial ownership information to the respective regulators, including:
    - All SEC reporting issuers;
    - Investment companies registered under the Investment Company Act of 1940;
    - Investment advisers registered with the SEC under the Investment Advisers Act of 1940 and venture capital fund advisers (as described in Section 203(l) of the Advisers Act);
    - "Pooled investment vehicles"4 advised by certain exempt entities;5
    - Brokers or dealers in securities registered with the SEC pursuant to Section 15(a) of the Securities Exchange Act of 1934;
    - Banks, credit unions and depository institution holding companies;
    - Money-transmitting businesses;
    - Governmental authorities;
    - Securities exchanges, clearing agencies or other Exchange Act-registered entities;
    - Insurance companies and state-licensed insurance producers;
    - Commodity Exchange Act registered entities;
    - Accounting firms, public utilities and financial market utilities;
    - Large operating companies;6
    - Tax-exempt entities and entities assisting tax-exempt entities;7 and
    - Subsidiaries of certain exempt entities and inactive entities

- Although the Act provides FinCEN with the authority to add to the list of types of exempt entities, FinCEN declined to add any other type of entity to the list of exemptions.8
- Notably, only federally registered investment advisers and exempt reporting advisers that rely on the venture capital fund adviser exemption from registration under the Advisers Act are exempted from reporting beneficial ownership information (BOI) reporting requirements. Investment advisers relying on the private fund adviser exemption and state-registered investment advisers are not exempted from reporting BOI.
- Beneficial Ownership
- Consistent with the Act and the initial rule proposal (Proposed Regulations), the Final Rule defines the term "beneficial owner" in terms of actual ownership (Actual Ownership Test) as well as substantial control (Substantial Control Test). An individual who satisfies one of these two tests with respect to a reporting company will be treated as a "beneficial owner" of such reporting company for purposes of the Act. The definition of "beneficial owner" excludes minors, nominees, employees (other than senior officers), inheritors and creditors.
- Substantial Control Test;. An individual has substantial control over a reporting company if such individual:
    - Serves as a senior officer of the reporting company;
    - Has authority over the appointment or removal of any senior officer or a majority of the board of directors;
    - Directs, determines or has substantial influence over, important decisions made by the reporting company; or
    - Has any other form of substantial control over the reporting company.
- Acknowledging that an individual may exercise substantial control directly or indirectly, the Final Rule largely incorporates the indicia of control as set forth in the Proposed Regulations (e.g., board representation, majority voting rights), including the non-exhaustive list of examples10 in the Proposed Regulations with respect to the financial, structural or organizational matters of a reporting company that would be considered important for purposes of the Substantial Control Test.
- Actual Ownership Test;. An individual who owns or controls at least 25% of the ownership interests of a reporting company is a "beneficial owner" of such reporting company.

UK court orders crypto exchanges to share transaction data; Six overseas crypto exchanges, including Binance and Coinbase, have been ordered by the UK High Court to disclose customer information in order to help a UK exchange trace $10.7 million in stolen funds "before the scent goes colder." Syed Rahman, a lawyer representing the UK exchange that requested the court's help, says the case "is a huge step forward for those who are trying to recover assets that have been taken fraudulently and moved across borders." Financial Times , Law360

Regulatory Outlook and Diary

Q4 2022	Australia	Expected finalization of APRA prudential standard for IRRBB (APS 117).
Q4 2022	Australia	Expected publication of the updated ASIC over-the-counter (OTC) derivatives reporting final rules.
Q4 2022	Australia	Expected ASIC Schedule 1 Technical Guidance for public consultation..
Q4 2022	Australia	Expected third consultation paper on over-the-counter (OTC) derivatives reporting and technical guidance by ASIC. Expected publication of final OTC derivatives reporting rules by ASIC.
Q4 2022 / Q1 2023	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
Q4 2022	UK	Expected consultation of the Basel 3.1 standards – see Sam Woods speech to the Lord Mayors Mansion House Dinner on 28 oct 2022
Q4 2022/Q1 2023	EU	The EC shall adopt Delegated Acts (DAs) to specify the technical screening criteria with respect to 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and 'the protection and restoration of biodiversity and ecosystem' (Article 9 (c) -(f)), with a view to ensuring its application from January 1, 2023
Q4 2022	EU	The EC shall publish a report describing the provisions that would be required to extend the scope of the EU Taxonomy regulation beyond environmentally sustainable economic activities and describing the provisions that would be required to cover economic activities that do not have a significant impact on environmental sustainability and economic activities that significantly harm environmental sustainability ('Brown Taxonomy') and whether other sustainability objectives such as social objectives should be added to the framework.
December 01, 2022	India	Variation margin requirements apply to domestic covered entities exceeding the AANA threshold of INR 250 billion (approximately USD 3.2 billion).
December 05, 2022	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45 and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023
December 05, 2022	US	Expiration of an extension of CFTC no-action relief to entities submitting swaps for clearing by derivatives clearing organizations (DCOs) operating under CFTC exemptive orders or CFTC staff no-action relief (Relief DCOs) (CFTC Letter No. 22-05).
December 07, 2022	EU	Following the European Commission consultation on the review of the EU clearing framework, the Commission is expected to propose amendments to EMIR 2.2 to incentivize clearing on EU CCPs. This is expected to cover a number of aspects of EMIR, including the scope of

		the clearing obligation, intra-group transaction and supervisory framework for EU CCPs.
December 27, 2022	US	Comments Due: SEC Proposed Rule for US Treasuries Clearing (See 87 Fed. Reg. 64610-64682 (October 25, 2022) available at: https://www.govinfo.gov/content/pkg/FR-2022-10-25/pdf/2022-20288.pdf).
December 30, 2022	EU	Requirements under EU Regulation 2019/2088 on sustainability-related disclosures in the financial sector (SFDR) with respect to the comply or explain product-level adverse impacts (Article 7) shall apply
December 31, 2022	US	Expiry of CFTC Letter No. 21-24, providing substituted compliance for the UK in connection with the withdrawal from the EU.
December 31, 2022	EU	The European Commission shall review the minimum standards of carbon benchmarks (climate transition and Paris-aligned benchmarks) in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investment as defined by the EU taxonomy.
December 31, 2022	EU	Before December 31, 2022, the European Commission shall present a report to the co-legislators on the impact of an 'ESG benchmark', taking into account the evolving nature of sustainability indicators and the methods used to measure them. The report shall be accompanied, where appropriate by a legislative proposal
December 31, 2022	EU	Before December 31, 2022, the European Commission shall propose minimum sustainability criteria, or a combination of criteria for financial products that fall under Art. 8 of the SFDR, in order to guarantee minimum sustainability performance of such products.
December 31, 2022	UK	The FCA direction under the temporary transitional powers allowing UK firms to execute certain trades with EU clients on EU venues (even though there is no UK equivalence decision in respect of those venues) expires at the end of 2022. December 31, 2022 UK As established by the Policy Statement PS14/21 published by the UK FC
December 31, 2022	UK	As established by the Policy Statement PS14/21 published by the UK FCA and the UK PRA in June 2021 (https://www.bankofengland.co.uk/policy-statement/ps1421.pdf), UK firms are able to continue to use EEA UCITS as eligible collateral under the UK non-cleared margin rules.
December 31, 2022	UK	Deadline for Chief Risk Officers to respond to the PRA's Review of the use of the SIMM Model: Conclusions
January 2023	Australia	Expected effective date of APRA banking standards relating to the overall approach to capital requirements, SA-CCR and the internal ratings-based approach to credit risk.
2023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
H1 2023	Australia	Expected ASIC Schedule 1 Technical Guidance for public consultation.

H1 2023	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
H1 2023	Singapore	Expected publication of the updated MAS reporting regime; delay from originally indicative Q2 2022 timeline.
January 1, 2023	Global	FRTB: Banks are required to report under the new market risk standards by January 1, 2023.
January 1, 2023	Global	Leverage Ratio: Banks are required to calculate leverage using the revised exposure definitions, including the G-SIB buffer from January 2023
January 1, 2023	Global	CVA: Banks are required to implement the revised CVA framework from January 2023.
January 1, 2023	EU	New application date for the leverage ratio surcharge for G-SIIs in the EU as agreed in the CRR quick fix legislation finalised in June 2020.
January 1, 2023	EU	Application of the Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation including disclosures for use of ESG-linked derivatives (except from first detailed reporting on the principal adverse impact indicators due by June 30, 2023).
January 1, 2023	EU	From 2023, the disclosure requirement under Regulation EU 2020/852 on the establishment of a framework to facilitate sustainable investment ('EU Taxonomy') with respect to the environmental objectives 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and 'the protection and restoration of biodiversity and ecosystem' (Article 9 (c) -(f)) have to be applied
January 1, 2023	EU	The European Commission (EC) has published the 3rd Capital Requirements Regulation (CRR III) proposal on October 27, 2021 which will implement the Basel 3 framework in Europe. The CRR III will transpose the market risk standards (FRTB) as a binding capital constraint, the output floor, the revised credit valuation adjustment framework, alongside operational and credit risk framework, amongst others. The proposal will also take into consideration the impact of the COVID-19 crisis on the EU banking sector. From the EC's original proposal, most of the requirements are set to apply from January 1, 2025. In terms of next steps, we expect now negotiations to take place among Member States and the European Parliament to work on the CRR 3 banking package in the coming months, with an expectation they will secure their respective position in the second half of 2022 and a finalization of the package in trilogue in the first half of 2023. As a result of these negotiations, the implementation date of January 1, 2025 will be subject to change
January 1, 2023	US	Regulatory initial margin requirements apply under US prudential regulations for covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion) based on the calculation period which ended August 30, 2022.

January 1, 2023	US	CFTC Position Limits second compliance date for economically equivalent swaps / risk management exemption.
January 1, 2023	Australia	Basel III: Expected implementation of revised leverage ratio requirements, including revised treatment for client clearing.
January 1, 2023	Singapore	Basel III: Expected implementation of FRTB framework for supervisory reporting purposes.
January 1, 2023	Singapore	Basel III: Expected implementation of revised credit risk, operational risk, output floor and leverage ratio frameworks.
January 1, 2023	Malaysia	Discontinuation of publication of 2-month and 12-month KLIBOR by BNM.
January 2, 2023	EU	In the context of EMIR 2.2, the European Commission shall produce a report assessing the effectiveness of: • ESMA's tasks, in particular the CCP Supervisory Committee's, in fostering the convergence and coherence of the application of EMIR2.2 among the competent authorities; • the framework for the recognition and supervision of third-country CCPs; • the framework for guaranteeing a level playing field among CCPs authorized in the EU and third-country CCPs; and • the division of responsibilities between ESMA, the competent authorities and the central banks of issue (EMIR article 85 (7)).
February 12, 2023	EU	CCP R&R (Article 37 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum elements that should be included in a business reorganisation plan. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph.
February 12, 2023	EU	CCP R&R (Article 38 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority.
March 01, 2023	US EU Australia Canada Hong Kong Korea Switzerland	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.

	Singapore Japan South Africa	(per amended rule pending finalization).
March 31, 2023	Japan	Basel III: Implementation of leverage buffer for G-SIBs (certain transitional arrangement will apply until March 31, 2024, and some change will become effective from April 1, 2024)
April 24, 2023	UK	Removal of clearing obligation for swaps referencing SOFR.
May 1, 2022)	India	Variation margin requirements apply to domestic covered entities exceeding the AANA threshold of INR 250 billion (approximately USD 3.2 billion)
June 2023	UK	Deadline for ending reliance on US dollar LIBOR.
June 1, 2023	US	Three-month calculation period begins under US prudential regulations to determine whether the material swaps exposure, or daily average aggregate notional amount, of swaps, security-based swaps, FX swaps and FX forwards for an entity and its affiliates that trade with a prudentially regulated swap dealer exceeds $8 billion for the application of initial margin requirements as of January 1, 2024
June 15, 2023	EU	The European Commission shall adopt a Delegated Acts (DA) to designate exempted FX spot rates from the scope of the EU BMR.
June 15, 2023	EU	The European Commission (EC) shall submit a report to the European Parliament and to the Council on the scope of the BMR, in particular with respect to the use of third country benchmarks. If appropriate, the EC shall accompany the report with a legislative proposal.
June 18, 2023	UK	End of the temporary exemption for pension scheme arrangements from clearing and margining under UK EMIR.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the calibration of the Standardised Approach for Counterparty Credit Risk (SA-CCR) which will potentially inform a future review by the European Commission.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the treatment of repos and reverse repos as well as securities hedging in the context of the Net Stable Funding Ratio (NSFR).
Q3 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.

		Member States reached their General Approach on November 8, 2022, and the European Parliament is expected to adopt its position on January 24, 2023. That means trilogues will likely start in February/March 2023 and it is expected the CRR 3 process will be finalized in Q3 2023. From the EC's original proposal, most of the requirements are set to apply from January 1, 2025. As a result of the ongoing negotiations, the implementation date of January 1, 2025, may still be subject to change
July 1, 2023	US	CFTC Effective Date for the Clearing Rules to Account for the Transition from LIBOR (See 87 Fed. Reg. 52182 (August 24, 2022)). The portion of the rule effective on this date removes the requirement to clear interest rate swaps referencing US dollar LIBOR and the Singapore Dollar Swap Offer Rate in each of the fixed-to-floating swap, basis swap and FRA classes, as applicable.
July 1, 2023	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
July 1, 2023	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
July 31, 2023	US	Expiration of a second extension of relief to Shanghai Clearing House permitting it to clear swaps subject to mandatory clearing in the People's Republic of China for the proprietary trades of clearing members that are US persons or affiliates of US persons (CFTC Letter No. 22-07).
Q3/ Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
September 1, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan	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: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion. Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion.
September 1, 2023	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion. South Africa; Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding either ZAR 15 trillion or ZAR 8 trillion.
October 1, 2023	Australia	Repeal the ASIC Derivative Transaction Rules (Reporting) 2013 and make the ASIC Derivative Transaction Rules (Reporting) 2022 ('ASIC TRRs 2022') in the very same form.
December 04, 2023	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45 and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023.
December 31, 2023	EU	The amended Benchmarks Regulation that entered into force on February 13, 2021 extends the BMR transition period for non-EU benchmark administrators until December 31, 2023 and empowers the European Commission (EC) to adopt a delegated act by June 15, 2023 to prolong this extension by maximum two years until December 31, 2025. It also enables the EC to adopt delegated acts by June 15, 2023 in order to create a list of spot foreign exchange benchmarks that will be excluded from the scope of Regulation (EU) 2016/1011.
January 1, 2024	US EU Switzerland UK	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: Initial margin requirements apply to counterparties whose aggregate month-end average position exceeds CHF 8 billion. UK: Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion.
January 1, 2024	Australia	Basel III: Expected implementation of FRTB framework.

January 2024	Australia	Expected effective date of APRA prudential standard for IRRBB (APS 117).
January 4, 2024	EU	The three-year derogation from margin rules in respect of non-centrally cleared over-the-counter derivatives, which are single-stock equity options or index option where no EMIR Article 13(2) equivalence determination is in place, was due to expire on January 4, 2021.
January 4, 2024	Hong Kong	Expiry of the SFC exemption from margin requirements for non-centrally cleared single stock options, equity basket options and equity index options.
February 12, 2024	EU	CCP R&R (Article 96): ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.
March 01, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2024 or January 1, 2025 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations.
March 01, 2024	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 8 trillion threshold for initial margin requirements as of September 1, 2024 (per amended rule pending finalization)..
March 31, 2024	Japan	Basel III: Implementation of revised credit risk, CVA, market risk (FRTB) for international active banks and domestic banks using IMM.
April 01, 2024	Japan	Expected implementation of transaction reporting requirements updated based on the technical guidance published by CPMI and IOSCO in February 2017, September 2017 and April 2018, The public consultation closed on May 30, 2022, and JFSA will publish the final rules
April 28, 2024	EU	Go-live of EMIR Refit reporting rules

June 28, 2024	EU	As part of the review clause inserted in CRR II, the European Commission taking into account the reports by the European Banking Authority is expected to review the treatment of repos and reverse repos as well as securities hedging transactions through a legislative proposal.
June 28, 2024	EU	As part of CRR II, the European Banking Authority is to monitor and report to the European Commission on Required Stable Funding (RSF) requirements for derivatives (including margin treatment and the 5% gross-derivative liabilities add-on).
September 1, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil South Africa	Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Australia: Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion. Hong Kong: Initial margin and risk mitigation requirements apply to HKMA AIs and SFC LCs with an aggregate notional amount exceeding HKD 60 billion. Korea: Initial margin requirements apply to financial institutions with derivatives exceeding more than KRW 10 trillion. Singapore: Initial margin requirements apply to MAS covered entities with an aggregate notional amount exceeding SGD 13 billion. Japan: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion. Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion. SA: Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
Q4 2024	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.
Q4 2024	Singapore	Expected go-live of the updated MAS reporting regime.

October 1, 2024	US	Expiration of temporary CFTC relief regarding capital and financial reporting for certain non-US nonbank swap dealers (See CFTC Staff Letter No. 22-10 and CFTC Staff Letter No. 21-20) *relief would also expire upon the Commission's issuance of comparability determinations for the jurisdictions in question.
December 31, 2024	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 2024
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).
November 15, 2025	EU	The CRR 2 IMA reporting requirements for market risk will be applicable from November 15, 2025, in the EU. As things stand currently in the CRR

		3 political process, these IMA reporting requirements may become obsolete as we are still looking at a January 1, 2025, start date for the capitalization of market risk in the EU. However, IMA Reporting could still become live if the European Commission decides to enact the two-year delay mentioned under the CRR3 Article 461a FRTB delegated act. As this may still evolve in the CRR 3 negotiations, ISDA will keep monitoring developments in this area.
December 1, 2025	US	Expiry of extension of relief concerning swap reporting requirements of Part 45 and 46 of the CFTC's regulations, applicable to certain non-US swap dealers (SD) and major swap participants (MSP) established in Australia, Canada, the European Union, Japan, Switzerland and the United Kingdom, that are not part of an affiliated group in which the ultimate parent entity is a US SD, US MSP, US bank, US financial holding company or US bank holding company. See CFTC Staff Letters No. 20-37 and No. 22-14.
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR have to comply with real capital/large exposures/liquidity regime under Investment Firms Regulation (IFR) provisions on liquidity and IFR disclosure provisions.
August 12, 2027	EU	CCP R&R (Article 96): The Commission shall review this Regulation and its implementation and shall assess the effectiveness of the governance arrangements for the recovery and resolution of CCPs in the Union and submit a report thereon to the European Parliament and to the Council, accompanied where appropriate by proposals for revision of this Regulation.

LiBOR Transition

BoE modifies DCO to reflect USD interest rate benchmark reform; The BoE published a Policy Statement on its proposal to modify the scope of contracts subject to the DCO under UK EMIR, which is relevant to all financial and non-financial counterparties subject to the DCO as well as to CCPs. Implemented through amendments to the onshored BTS 2015/2205, the BoE's final policy added SOFR overnight index swaps with an original maturity between 7 days and 50 years to the DCO from 31 October 2022. In order to align with the date of CCPs' contractual conversions of USD LIBOR contracts, contracts referencing USD LIBOR will be removed from the DCO on 24 April 2023. Several CCPs have already issued details of their plans for these contractual conversions, eg, LCH will convert contracts over 22-23 April and 20-21 May 2023. The specific dates on which each of the modifications to the DCO will come into force are set out in the final UK Technical Standards instrument.

1. The FCA don't propose to add in SOFR, pending both your SEF MAtT and the BOE Clearing Obligations.
2. Only 3 questions
3. I'd suppose that even if we firmly agree with these proposals we should respond and perhaps also open a conversation regarding the cross-border coordination aspects?

Amendment to the derivatives trading obligation: removal of USD LIBOR derivative products to reflect USD interest rate benchmark reform

1. *Q3.1: Do you agree with our proposal to remove all derivative products referencing USD LIBOR from the DTO? If not, please explain why.*
2. *Q3.2: Do you agree that the removal of USD LIBOR products from the DTO should take place on 24 April 2023? If not, please indicate what we should consider when selecting an alternate date.*
3. *Q3.3: Do you have any comments regarding which and when SOFR products should be brought within the scope of the DTO*

Table 1: timeline of events relating to derivative products referencing USD benchmarks	
01 May 2022	• CFTC introduces US swap clearing requirement on OIS referencing SOFR
31 October 2022	• Bank introduces DCO on OIS referencing SOFR
24 April 2023	• CCPs to commence removal of contracts referencing USD LIBOR as eligible for clearing • Bank removes contracts referencing USD LIBOR from DCO • Proposal: FCA removes contracts referencing USD LIBOR from DTO
01 July 2023	• Most widely used USD LIBOR benchmarks to cease publishing • CFTC removes contracts referencing USD LIBOR from US swap clearing requirement

Specification	Variables
Trade start type	Spot (T+2), IMM (next two IMM dates)
Tenor	2, 3, 4, 5, 6, 7, 10, 12, 15, 20, 30Y
Floating leg reference index	USD LIBOR 3M, USD LIBOR 6M

According to the Bank's trade repository data, trades in SOFR OIS products represented 65% of the market (~$940bn notional) in January 2022, relative to a 35% share for USD LIBOR contracts (~$500bn notional)

Removal of USD LIBOR derivatives from the scope of the DTO

The DTO currently includes, for derivative products denominated in USD, fixed-to[1]*float single currency interest rate swaps with the following product specifications.*

- 3.15 In line with the changes proposed by the Bank, we propose to remove from the scope of the DTO all derivative products referencing USD LIBOR.
- 3.16 We also propose to align the timelines for making our changes with those of the Bank's DCO. Namely, the removal of the relevant products would enter into force from 24 April 2023. We consider the impact of the proposed changes would ensure the least amount of disruption to the relevant products.
- 3.17 We intend to consider inclusion of SOFR OIS derivatives separately from this consultation in due course.

Inclusion of SOFR derivatives into the scope of the DTO

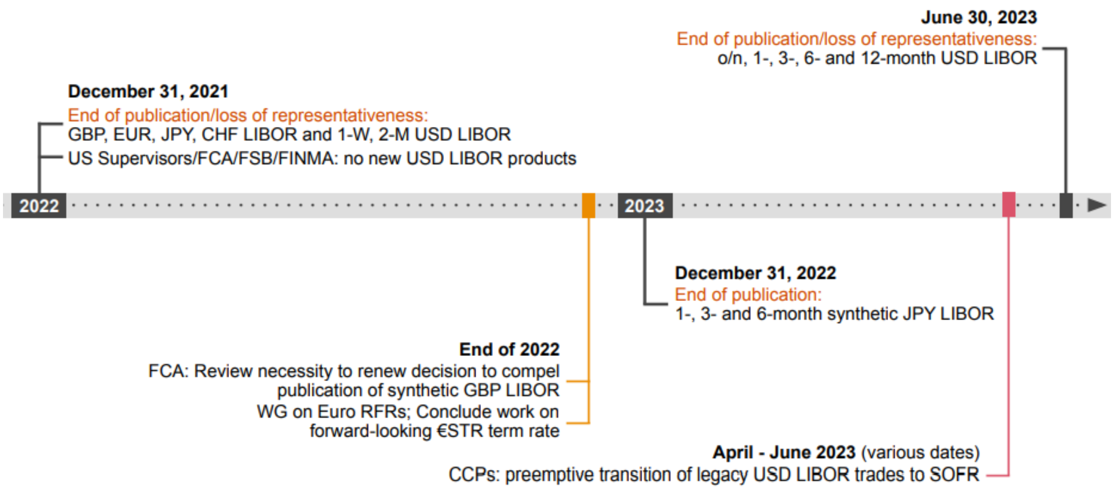
- 3.18 We don't propose including SOFR OIS in the DTO at present. Our approach is informed by that fact that we are currently not aware of any submission to the CFTC from swap execution facilities (SEF) or designated contract markets (DCM) for any SOFR derivative products to be classified as being made available to trade (MAT).
- 3.19 SEFs and DCMs are derivative trading venues that operate, when offering trading in the relevant contracts, under the regulatory oversight of the CFTC. They may apply for derivative products to be classified as MAT which, if accepted by the CFTC, makes that derivative product mandatory to only trade on a SEF, a DCM or on foreign swap trading facilities that are subject to comparable, comprehensive supervision and regulation on a consolidated basis.
- 3.20 We are therefore mindful that the largest market and jurisdiction for the trading of derivative products denominated in USD have not yet determined the appropriate scope of products for inclusion into a trading mandate.
- 3.21 When it is appropriate to introduce a trading mandate, we intend to coordinate with the CFTC on this matter.
- 3.22 There are also set procedures laid out for us to follow in its determination. In addition to being subject to the DCO, Article 32(2) of UK MiFIR sets out criteria that derivative products must meet for them to be considered within scope of the DTO:
  - Venue test: the product must be admitted to trading or traded on at least one relevant trading venue.
  - Liquidity test: there must be sufficient third-party buying and selling interest in the class of derivatives so that it is considered sufficiently liquid to trade only on the relevant trading venues. Articles 32(3) and 32(6) of UK MiFIR and UK RTS 4 list a set of criteria and provide further detail respectively for determining whether a class of derivatives or a relevant subset thereof is sufficiently liquid.
- 3.23 We will need to analyse the appropriate OIS products that reference SOFR that we should incorporate into the scope of the DTO.

Summary of proposals

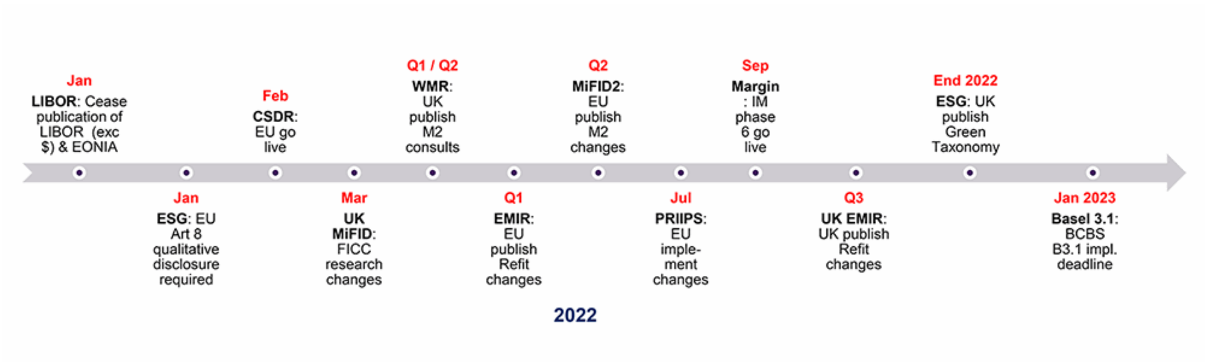
- 3.11 The exclusion of all USD LIBOR products from the DCO has important consequences for the DTO. Article 32 of UK MiFIR sets out the procedure for determining which classes of derivatives are subject to the DTO. Among a number of other conditions, it requires that the relevant derivatives are subject to the DCO.
- 3.12 In our view, retaining a DTO in absence of a corresponding DCO for the same class of derivatives is against the intention of UK MiFIR as it has a number of negative consequences including that:
  - there would be no risk-based justification for such a requirement
  - requiring such compliance with the DTO could incentivise participants to stop trading products subject to the DTO

- 3.13 Being subject to the DCO is a pre-condition for inclusion in the DTO in the first place. In the specific case of USD LIBOR, in absence of any action, the DTO would apply to classes of derivatives for which the underlying benchmark will be discontinued, that won't be cleared by any CCP and that will stop being traded from April 2023 onwards. Those are all important factors driving our approach to amending the DTO.

LIBOR transition target dates



Timeline...

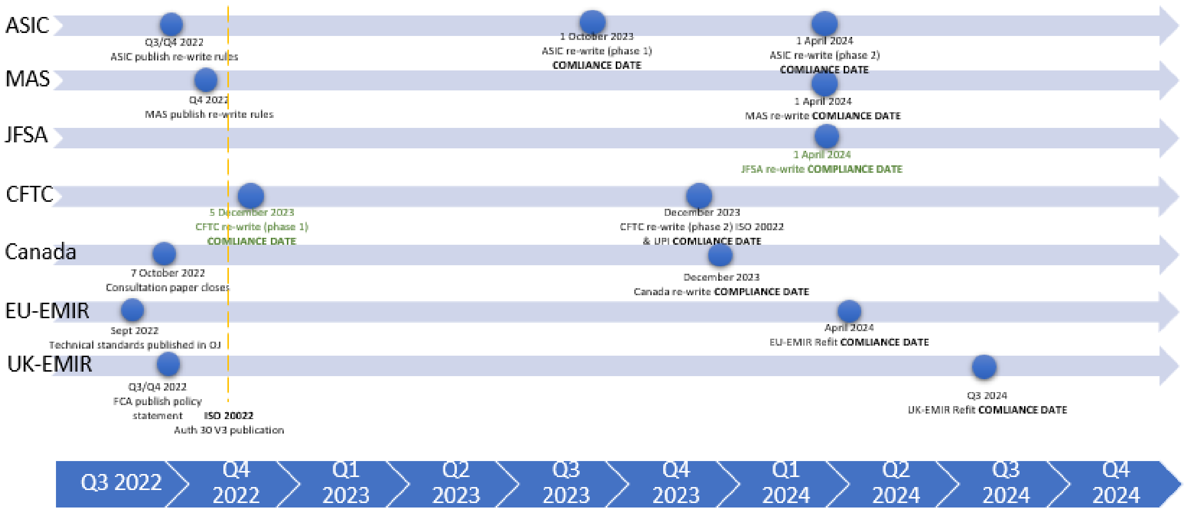


Markets Conduct Regulations

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

Regulatory Reporting Re-writes: reporting start dates



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

[Public Register for the Clearing Obligation under EMIR]

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

2.1. EU trading venues

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

Table 3: EU trading venues relevant for the trading obligation

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

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

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

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

Risk

RegTech & FinTech

Sam Bankman-Fried's FTX, one of the largest crypto exchanges in the world, went from being valued at USD32 billion back in January to filing for bankruptcy in early November 2022. This collapse, and the potential of billions lost for investors, will push crypto regulation across the globe to the forefront.

Bankman-Fried and FTX are currently being investigated by the US Justice Department, the Securities & Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). The UK and US regulators have already taken steps toward regulation and oversight, with the FTX incident most likely quickening the regulatory rule-making process. Some of the main factors leading to the collapse of FTX included:

- The allegations of transfers of approximately USD10 billion in assets from FTX to Bankman-Fried's hedge fund, Alameda Research, raising significant conflicts of interest.

Documents have been released stating that Alameda held a significant amount of FTT (FTX's exchange coin).

- The split on regulatory jurisdiction within the US regarding which regulating body should be responsible for oversight of the crypto market. To date, the crypto market has largely been unregulated and does not mandate specific controls on assets custodied on exchanges to prevent misappropriation.
- Binance, one of FTX's biggest corporate rivals, announcing plans to liquidate USD2.1 billion of FTT around this time. This is problematic because, unlike stocks, cryptocurrencies can be traded on many different exchanges at different prices, however Binance has more than 50% of the entire crypto market. As a result, it has a strong influence on the market price of cryptocurrencies.
- Soon after the Binance announcement, a frenzy of investors began to withdraw funds from FTX, causing a liquidity crisis. In the wake of the crisis, FTX agreed to an acquisition from Binance. However, after performing corporate due diligence on FTX, Binance backed out of the deal leaving FTX, FTX US and Alameda Research no choice but to file for chapter 11 bankruptcy. Current estimates show USD1.2 billion dollars as being unaccounted for in the FTX financials.
- The overall impact of the potential fraud will be felt by the crypto markets in the upcoming months as regulators unearth additional details. Many have likened the collapse to the likes of Enron, Lehman Brothers and Bernie Madoff, all of which resulted in significant rulemaking by regulators.

How will this impact the US legislation of cryptocurrencies?

- In the US regulatory environment, spot and derivatives markets are subject to different regulatory programs. Currently, the CFTC is the primary regulator of commodity derivatives marketplaces, while the SEC is the primary regulator of securities marketplaces. The two agencies share oversight responsibility for certain aspects of security derivatives marketplaces. However, to date, no legislation has been passed by the US Congress delegating enforcement or rulemaking authority around crypto assets to any specific regulator.
- While the Lumis-Gillibrand legislation continues to make its way through the Congressional approval process, both the SEC and the CFTC have engaged in extensive saber rattling over their prospective oversight roles of cryptocurrencies. However, until Congress, or the courts, take action, the regulatory outlook for cryptocurrencies remains murky.

FTX Meltdown; What happened, who got affected and what this means for the future of crypto

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

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10 Conclusion

Even by crypto market standards, the last two weeks have been crazy.

The dramatic collapse of FTX and the fall from grace of CEO and industry darling-turned-villain, Sam Bankman-Fried, (SBF) have sent shockwaves reverberating across the crypto world. This article details what went wrong, how it impacted other market players, and what this might mean for the future of the industry.

The FTX debacle - *what went wrong?*

SBF founded crypto exchange FTX in 2019. Within three years, FTX had reached a peak of **$21bn** in daily trading volume with a valuation of **$32bn**. If its rise was meteoric, then its crash was catastrophic – with FTX filing for bankruptcy just days after CoinDesk reported balance sheet irregularities within Alameda Research, a quantitative crypto trading company also owned by SBF.

Alameda Research began operating in 2017, two years before SBF formed FTX. In theory they were meant to be two entirely separate entities: Alameda Research seeking to gain alpha from trading whilst FTX operating as a retail exchange facilitating the buying and selling of digital assets. Under the hood, the pair were closer than many thought – with improper balance sheet management and misappropriation of customer funds sensationally imploding both entities in a matter of days.

The match: *Balance sheet woes exposed*

On 2nd November CoinDesk reported that a significant proportion of Alameda Research balance sheet consisted of FTT and SRM Token. FTT is the native token of FTX, whilst Serum (SRM) token is created and promoted by FTX for utility on a decentralized exchange protocol on the Solana blockchain. There were several things very wrong about this:

Far too much of FTX/Alameda's assets were in their own tokens:

It may be understandable to hold some FTT tokens, but certainly not ~40% of total liabilities that Alameda held. Remember that this is their own native token - a coin that is, for all intents and purposes, entirely made up by themselves. In the bankruptcy filing later sent by SBF, the picture painted is incredulously worse – the proportion of liabilities that FTX held in their own-distributed tokens FTT and SRM was close to two-thirds of total liabilities.

Disentangling the Crypto Crash of 2022 How does an investor or securities industry participant make sense of the current FTX scandal that involves both cryptocurrencies and the underlying technology? In this analysis, Canright Communications' Collin Canright provides an in-depth look at both aspects of the digital asset space. Here, Mr. Canright offers his view on the current state of the business of crypto, explaining that the new technology is too promising to ignore and will eventually yield efficiencies that current technologies cannot. More

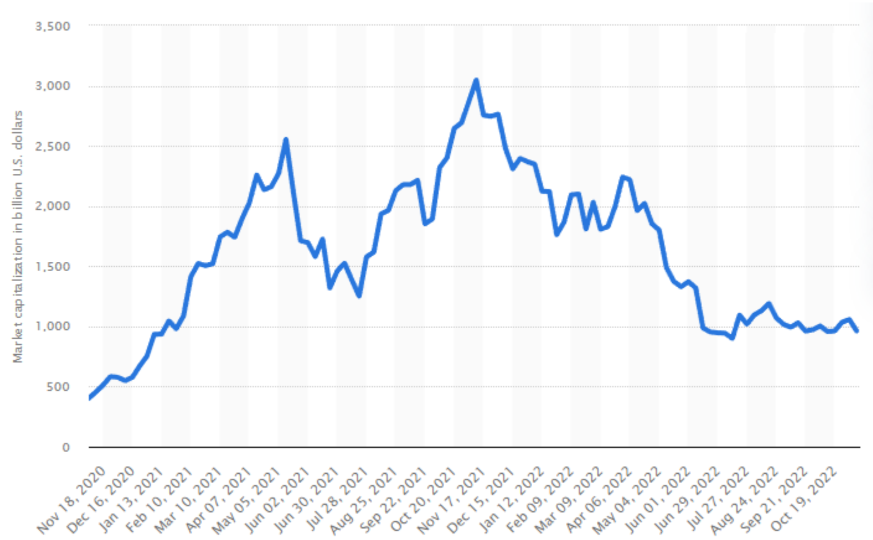
- A reckoning in the digital asset industry that started in June after the collapse of improperly collateralized investment assets gained new urgency in November. Following the professional and possibly legal improprieties that led to bankruptcy and chaos at the FTX cryptocurrency exchange, the industry is regrouping and putting distance between legitimate market participants and the grifters.
- In June, I attended Crypto Connection 2022 and in September Digital Asset Summit 2022 New York and the Trading Show 2022 Chicago. Speakers and exhibitors at these shows serve the needs of institutional investors, including hedge funds, private equity groups, family offices, pension funds, and endowments. Narratives that emerged over the summer:
    - differentiated cryptocurrency and blockchain technology,
    - indicated that the bad actors failed,
    - called for increased regulatory clarity,
    - focused on protocols that worked, and

   - pointed toward future innovation in digital assets.
- Industry leaders, especially those seeking institutional legitimacy, are calling on market participants and regulators to set and comply with principles of sound financial management. I expect that U.S. regulators and Congress will redouble their efforts. They also received their share of criticism over the summer for not providing the digital asset industry with the rules of the new road.
- Marketers face their own challenges. My technical communications firm will make the distinction between cryptocurrencies and digital-asset technologies clearer and more accurate. Meanwhile, digital asset innovation continues with a focus on blockchain technology, central bank digital currencies, and decentralized finance protocols.
- Blockchain is not crypto. It's commonly assumed that digital assets, blockchain technologies, and cryptocurrencies are one and the same. Marketers of systems, products, and investments that rely on blockchain technologies routinely explain that their products are not bitcoin, are not ether, are not meme coins, are not scams. Fairly or not, crypto has a dodgy reputation and has from the start.
- Simply put, cryptocurrencies exchange value and have grown into a tradable asset class. Blockchain technologies manage data about value and mark its changes in its ownership.
- The underlying blockchain technologies are expected to make it more timely, secure, and certain to record who owns what and show how ownership is transferred using public and private networks. One notable use case is the representation of physical assets and commodities by digital code or tokens so that the assets can more easily be traded in smaller amounts to a wider range of investors.
- "Blockchain will revolutionize trade settlement and payments reconciliation. It's here to stay and already proven as a means of transferring ownership for assets," said Chris Giancarlo, former chairman of the U.S. Commodities Futures Trading Commission (CFTC) and author of *CryptoDad: The Fight for the Future of Money*. He spoke at Crypto Connection.
- The primary idea here is to gain "operational efficiencies through a mutualized workflow," as Arijit Das put it. He heads digital asset technology at the Northern Trust Company and spoke at the Trading Show Chicago 2022. "It's the standardization of data and workflows that are the main problem we're solving, not the technology. That's where digital assets are reinventing part of the traditional financial world and workflow."
- Companies are pointing out their blockchain credentials over their crypto credentials. "Our focus is on blockchain, not crypto," said Neil Chopra, director of business solutions and strategy at Fireblocks, a provider of secure digital asset infrastructure for institutions, at Crypto Connection. "We are taking what people are doing today and mapping it to blockchain."
- Underscoring differentiation between crypto and blockchain since the summer, the digital-assets payments firm Circle started running the advertising campaign "Benjamin Meet Blockchain" in mid-October 2022. I love it and used photographs of its street ads in Chicago to illustrate this article, another in a series of posts I have published on payments and cryptocurrency advertising.
- Circle issues the USDC stablecoin, which "serves as a digital dollar currency" and is backed one-to-one by U.S. dollars. The firm is committed to "the tokenization of all things," a reference to the use case of digitally representing physical assets like real estate with digital asset tokens. Stablecoins like USDC provide an immediate means of exchange in trading digital assets, bringing increasing regulatory scrutiny.

- I've learned about other blockchain-based systems over the years, including BanQu. The platform tracks the provenance of all the materials that go into manufactured goods, whether industrial or agricultural. Brands can trade raw materials, and the farmers and laborers, many unbanked, that produce raw materials get credit.
- It seems ironic that it's covered in an article I wrote titled ICOs and BTC. The controversy of the week in December 2017 concerned the by-then dodgy reputation of initial coin offerings and the need for U.S. securities regulators to step in, which they did. The event was the launch of bitcoin futures on the Chicago Mercantile Exchange.
- The bad actors are getting weeded out. Financial markets go through crises. It's a familiar story involving illiquidity, insolvency, or both. Bloomberg's Matt Levin explains the mess in relation to the latest crisis in the cryptocurrency investment market—the FTX exchange run and bankruptcy—in one of several columns he's written on FTX.
- The 2022 crypto-investment crash started in mid-May when Terra Luna, a stablecoin that was not backed by national currencies on a one-to-one ratio, collapsed. So did Celsius, a lender of cryptocurrencies that promised high returns to investors. Others followed.
- These events were generally referred to as crypto's "dot-com moment," where the fluffy business cases, the cons, and the scams collapsed, leaving the real businesses to regroup and thrive. That happened with the initial build-out of today's tech giants, and now it's happening in the initial build-out of internet-native value-transfer businesses. Conference speakers used references like "the events of the last week," "what's been happening," and "what happened last week." In September, it was "the recent sequence of events," "3AC," a reference to the misdeeds of Three Arrows Capital.
- Like many people in the industry, I thought this would be it: just another seasonal downturn. Then in the first week of November, we saw the drama of FTX and Sam Bankman-Fried, one of the summer's heroes. As it turned out, FTX held $1 billion in liquid assets against $9 billion in liabilities, reports the Financial Times. Sam Bankman-Fried, his inner circle, or both authorized transfers of client money from the exchange into a "sister company" that made risky bets and invested in undercollateralized assets, namely the collapsed stablecoin Luna.
- Coindesk all but predicted the coming crash. A run on the exchange engendered a liquidity crisis that quickly showed itself as an insolvency. As with many financial excesses, the signs were there but ignored.
- The FTX chaos was initially referred to as the market's Lehman moment, the event that purportedly led to the Great Recession. By the end of the first week, it's more appropriately referred to as its Enron moment. As I was preparing to publish this article, the new FTX CEO, who supervised the Enron liquidation, called the mismanagement the worst he's seen in his 40-year career.
- "Crypto summer," an early term for the downturn, seems quaint now. The Crypto Crash of 2022 is more apt.
- Market participants who followed the rules are angry. Even in September, one Digital Asset Summit speaker gave a blunt assessment of the uncollateralized lending that led to failed firms in May and June. "It was a good thing to have them fail. What happened to them, they deserved."
- Let's pause for some perspective. To put it in perspective, however, this is not a systemic financial crisis, though it's tough for those institutions and traders that had significant exposure to FTX. The total market for crypto at the beginning of November 2022 was about $1 trillion, down $2 trillion from its November 2021 high. The U.S. stock market

alone was worth more than $46 trillion at the end of September 2022. Crypto is a rounding error, as people like to say.

Crypto Market Capitalization November 2020-22



- Estimates of the losses from FTX are hard to come by. Initial reports suggested that as much as $2 billion in client funds were at risk. Paper losses industry-wide will be much larger, especially if you start counting in May. *Bloomberg* put that figure at $96 billion for the crypto billionaires. Enron shareholders lost $74 billion.
- It's also an eventful time. Elon Musk's Twitter drama tops the most-read article list at *Bloomberg*, followed by the Republican party taking the House of Representatives and investigations into Taylor Swift ticket sales. FTX is second at the *Financial Times*, topped only by the worsening economic outlook in the UK.
- Regulatory certainty is critical. The FTX bankruptcy and its fallout is further evidence for the other theme of the summer digital asset conferences: the need for regulatory clarity for institutional investors to adopt digital assets as a serious alternative asset class.
- "When you start trading at scale, investors want to know the rules," Northern Trust's Das said at the Trading Show Chicago. "You have to have well-thought-out, effective regulations so real money can come into the market, and it can reach its potential."
- In that regard, the Global Digital Asset and Cryptocurrency Association is calling for industry leaders to agree on principles for compliance and governance. "The Global DCA believes that this dark moment presents an enormous opportunity for firms to come together and agree on a certain set of fundamental core principles," states the self-regulatory organization's open letter to the industry.
- After FTX, U.S. Treasury Secretary Janet Yellen stated that the debacle shows the need for crypto regulation, Bloomberg reported. *The Block* wrote that Senator Pat Toomey, Republican from Pennsylvania and ranking member of the Financial Institutions and Consumer Protections committee, slammed Congress for failure to produce crypto regulation in a timely fashion.
- A Digital Asset Summit panelist also pointed to Congress. "Congress has to step up," she said. A speaker at Crypto Connection told attendees to expect state and federal

agencies to start moving quickly on regulation in the industry. Then again, I wrote that more than four years ago in The State and Cryptocurrency.

- At Crypto Connection, CFTC Commissioner Kristen N. Johnson made the nuances of regulation interesting. She suggested an approach that described the legal and regulatory nuances required to produce thoughtful regulation and explained the "complementary jurisdiction" between the CFTC and SEC. She characterized the CFTC's approach as "responsible innovation combined with appropriate enforcement."
- At the same time, U.S. regulation alone is insufficient. As conference speakers often pointed out, digital asset trading markets are global and don't close at 5 p.m. like traditional markets. Cryptocurrency markets also settle trades immediately, rather than two days after the trade. That requires secure, global infrastructure and regulation designed for digital assets.
- Crypto investors, whether they trade for hedge funds, invest for venture capital firms or are individual retailer investors trying to get rich, need to know that regulators will not save them.
- "With digital assets, one hundred percent of your transaction is at risk. Every single time, every transaction or trade," said Chuck Lugay at Digital Asset Summit. He heads execution services at sFox, which provides a cryptocurrency trading platform. "There is no recourse. The usual investor protections do not exist."
- **Code is reliable, people are not.** The losses and bankruptcies in during the crisis stemmed largely from firms where executives acting on their own made decisions contrary to the practices of sound risk and financial management. Celsius, the digital asset lender that collapsed in June, and FTX are examples of such centralized finance (CeFi) firms.
- Decentralized finance (DeFi) protocols, where code rules, worked. CeFi exchanges and firms, where executives made the final calls did not, and they collapsed. That's another redemptive narrative for the digital asset industry and its developing technology. I heard it throughout the summer.
- DeFi protocols are built with code that limits risk by design. Positions in cryptocurrencies and other cryptotoken-based investments are automatically liquidated when risk thresholds are exceeded, whether by individual investors or borrowers or the platform as a whole. It's coded in, and the code executes the correcting transaction automatically.
- "DeFi performed as expected and avoided the losses," said Dan Morehead, CEO at Paterna Capital, creator of the first U.S. blockchain hedge and VC funds. "The centralized lenders shafted customers. The DeFi protocols did what they said they would do." He spoke at the Digital Asset Summit. Paterna's response to FTX focuses on the importance of DeFi.
- Even so, investors in DeFi protocols are betting on teams creating projects. You do need to know who those teams are, what their experience is, what they intend their projects to do, and what problems they are solving. In other words, investors need to perform due diligence before they invest funds. It seems pretty clear that due diligence got short shrift in the 2021 frenzy for high-yield crypto investments.
- The other difficulty, in the long run, is that regulated investors and financial institutions are unlikely to play an important role in DeFi. Institutional money—the big money that can grow markets—will not move into unregulated markets. The institutional investors that made crypto investments are likely to be held up as cautionary tales for some time.

- At the same time, regulation is not likely to catch up with the latest technologies soon. I heard one talking about the unfairness of automated liquidation for consumers, that the time frames were too short. That sounds like a good thing now.
- It's still early, early days! One thing I haven't heard is that phrase to avoid responsibility: "mistakes were made." During several presentations, speakers talked about how the industry got ahead of itself during the summer of 2021. Demand for "product" was high. Investors expected increasingly high yields, and one vendor or another was glad to offer it in any way they could.
- Several speakers and exhibitors at the Digital Asset Summit took a high degree of responsibility, essentially saying, "We had a hard time keeping pace with demand. We knew that if we didn't fill it, one of our competitors would. We took some shortcuts in our development."
- The best excuses are true. The best one I heard during the summer: "It's early days. Early, early days. We're in the early days."
- Now it's time to build. Despite the Crypto Crash of 2022, digital asset innovation shows little sign of stopping. Investment money is no longer gushing into crypto and blockchain firms as it did in 2021, but the spigot tightened for technology in general.
- Exhibitors at Digital Asset Summit told me that the downturn in crypto investments is providing a well-needed breather, conference exhibitors said. I heard things like, "We have time to go back and correct some of the problems we know our products have." Security and risk management topped their lists.
- In the middle of November, as the FTX situation unravels, digital asset innovation looks more robust than fixing existing systems. Companies are announcing new initiatives across digital asset market segments. Here are a few I saw posted on LinkedIn:
- Plug and Play Tech Center in San Francisco announced the launch of a new crypto and digital asset program along with Visa, AllianceBlock, INX, IGT, and Franklin Templeton. The focus is on stablecoin adoption, DeFi, crypto-economics, and enterprise blockchain.
- The Federal Reserve Bank of New York begins a 12-week digital dollar pilot with some of the largest national and regional banks.
- Northern Trust named a new head of digital asset innovation in Asia-Pacific.
- A Swiss gateway for crypto investment for institutional investors selected Lukka, a crypto software and data provider, to support its middle and back-office operations.
- To temper the optimism, the Australian Securities Exchange canceled its blockchain-based clearing system in mid-November. The exchange wrote off some $170 million USD.
- I still believe that it's a technological inevitability that a new financial system will be built using the technologies of cryptography, immutable and shared blockchains, and the public internet or private alternatives. The case for fractional ownership of hard assets and commodities is compelling. So is the ability to track asset ownership in more efficient and transparent ways. So is the opportunity to open investment asset classes to investors who could not afford the high price of entry while having knowledge of the risks they are taking and the rewards they can gain.
- "There certainly will be a new financial system built on the back of new technology," one Digital Asset Summit exhibitor said. "It takes time and money and effort. That's why we're all here."

Sanctions

Brexit Regulations

Redrawing the EU-UK border

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

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

justifying delegation based on objective reasons, minimum substance requirements and regular ESMA peer reviews. Asset managers will need to continue to monitor developments.

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

- Cross-border services; *In the absence of equivalence determinations, cross border access to professional clients remains largely the responsibility of national regulators. For the banking industry this may change under proposed amendments. More broadly, EU authorities continue to focus on reverse solicitation and 'substance' in EU entities. In the UK, regulators are working through applications from firms in the Temporary Permissions Regime (TPR). Looking ahead, the overseas market access framework in the UK is currently being reviewed by HMT.*
    - Proposals to reform the EU banking prudential framework (under CRR and CRD) could potentially impact non-EU firms doing business in the EU. More broadly, in the absence of equivalence, firms remain reliant on national regulators' individual cross border access regimes for professional clients.
    - This requires firms having a detailed understanding of arrangements in specific member states. Authorities are looking to better understand the role of certain practices (such as reverse solicitation in the EU), and EU supervisors continue to review whether EU entities have sufficient 'substance'.
- Reinforcing governance expectations
    - ***Are our existing governance arrangements keeping pace with regulators' evolving expectations and incoming requirements?***
- Supervisors continue to reinforce the need for good corporate governance. This is particularly heightened since the widespread move to hybrid and remote working which has changed firms' practices and introduced new challenges to both governance frameworks and operations.
- Good governance enables the clear identification of fit and proper senior managers, supports the performance of their roles and responsibilities and allows them to be held accountable. Regulators are therefore re-asserting the importance of robust governance arrangements in the interests of market stability and investor protection.
- Regulators are increasingly recognising that good diversity and inclusion (D&I) practices reduce risk for regulated firms by reducing "groupthink", and they are calling out pay gaps and lack of diversity among firms' boards and senior management.
- The significant volume of new ESG requirements and developments in digital finance will require boards to implement and oversee robust regulatory transformation programs with clear designation of accountability across all three lines of defence.
- Culture; *There is a growing recognition of the powerful roles that culture can play in a firm. Regulators are identifying that, in many instances of poor conduct, deep-set cultural issues have been present and that firms with healthy cultures are less prone to misconduct. An assessment of culture, coupled with other regulatory initiatives can give deeper insights into whether firms operate and are governed in line with regulatory and wider societal expectations.*
    - Although regulators don't prescribe what a firm's culture should be exactly, supervisors view poor culture as a driver of harm. In response, they are aiming to address poor conduct and culture through day to day supervision (as seen in some of the FCA's portfolio letters) as well as through newer, broader proposals. In the UK, the FCA's proposed Consumer Duty seeks to

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

discretionary peer review of depositary obligations, which was set out in ESMA's annual work programme.

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

Conduct / Enforcement

The SEC's enforcement summary for 2022 reveals a continued aggressive approach, penalising firms falling short. These results urge firms to focus on improving public accountability and ensure their regulatory processes remain watertight. *This approach was further underscored by Director Gurbir Grewalt's remarks on November 15, 2022 before the Securities Enforcement Forum. He highlighted the Division of Enforcement's role in restoring the public's confidence in the SEC and financial institutions, noting three key efforts by his Division to do so:*

- Obtaining penalties and remedies that deter misconduct and meaningfully hold bad actors accountable, protect investors and, where possible, help harmed investors recover their losses.
- Proactively investigating and charging cases across a spectrum of market participants and harm.
- Continuing to incentivize proactive compliance and meaningful cooperation.

- During the 2022 fiscal year, the Division of Enforcement filed 760 total enforcement actions, representing a 9% increase over 2021. Additionally, the Division noted a record USD6.4 billion in recoveries, including fines and disgorgement, in those cases. The Commission stated that the penalties obtained should serve as a deterrent from future misconduct and enhance public accountability.

- The release highlighted recent settlements against 17 broker-dealers for recordkeeping violations for a total of USD1.2 billion in penalties. Together with penalties against Ernst & Young for failing to prevent its staff from cheating on ethic exams, Barclays PLC for the illegal issuance of securities and Allianz Global Investors for concealing risks associated with its complex options trading strategies, the Commission has shown that it will make examples through large disgorgement and penalties for failing to uphold the public trust of the financial system.
- The Commission is also focused on holding individual actors accountable by highlighting its continued reliance on data gathering and analytics in identifying and prosecuting cases of misconduct.
- Leniency was another focus area, particularly in cases where firms cooperated with investigations or self-reported significant violations. While cooperation and disclosure always carry risks, the Commission clearly intends for the industry to believe it will not punish good faith disclosure. However, the Commission's publication of its record-breaking fines and cases, along with Director Grenwalt's remarks, should have a chilling effect on any firm who wishes to disclose violations without reprisal.
- Chief Compliance Officers should continue to be vigilant in identifying weaknesses in their compliance programs. As the Commission routinely reminds, although disclosure can cure most conflicts of interest, it's not a retroactive solution. CCOs should take a note from the Commission's approach to low-hanging fruit with easily provable cases. For remedial action to be taken, you must first:
  - Look for broken windows in your organization and seal the leaks.
  - Disclose your conflicts and document your approach to compliance.
  - Encourage your staff to report breaches and good faith attempts of compliance, without reprisal.
- Finally, the best indicator of a healthy compliance culture is for a proactive message from the top as to the importance of compliance.

Market Structure

Reviewing Capita Markets

  - Are our regulatory monitoring and change processes set up to deal with diverging UK and EU capital markets regulation?
  - Have we critically analysed our experience during the 2020 market stress and reassessed our liquidity risk management framework for each of the funds we manage?
- The capital markets in both the EU and the UK are undergoing a period of significant change. The UK leaving the EU has changed the structure and concentration of the market as firms have needed to move operations into the EU. The EU is now undertaking mandatory reviews of the mass of regulation that was implemented post-financial crisis, such as MiFID/MiFIR, and the UK is reviewing on-shored EU regulation to adapt it to the UK market. Both jurisdictions are looking to raise their attractiveness as

destinations to raise capital for new and growing companies, by reviewing listings and prospectus regulation.

- Concerns linger from the market events of March 2020 and regulators are determined that lessons should be learned. Work to analyse vulnerabilities in non-banks continues, with a particular international focus on liquidity management in open-ended funds. At the same time, the implications of the war in Ukraine have posed new regulatory challenges for market participants.
- The first hurdle in the transition away from LIBOR to risk-free rates has been cleared, with a relatively smooth switch in the non-USD markets at the end of 2021, but there is still more to do. Wholesale market participants are also looking ahead to see how technology can help assist the markets in moving towards T+1 settlement, tokenisation, digitisation of data, and greater retail participation.
- MiFID II/MiFIR review; *When MiFID II/MIFIR came into force in 2018, it represented a comprehensive and profound reshaping of how EU financial markets, products and services were regulated and necessitated large regulatory change management projects within firms. The EU review of the legislation and the UK Wholesale Markets review are unlikely to initiate such large-scale changes but firms working in both jurisdictions will need to carefully manage the likely divergence.*
    - HMT, following consultation, will be taking forward reforms to UK MiFID II. It has prioritised two areas: easing restrictions on where market participants can trade, with removal of the share trading obligation and the double volume cap, and reducing and simplifying the regulatory burden of the regime. Changes to take this forward include recalibrating the pre-and post-trade reporting regimes, changing the Systematic Internaliser calculation from a complex quantitative to a qualitative one and simplifying the commodities derivatives regime. HMT is also committed to supporting the emergence of a consolidated tape of prices and volumes which is consistent with the EC's proposals for the MiFIR review (see more in the Data regulation section in Redrawing the EU:UK border).
    - The European Commission's MiFIR review proposals include changing the double volume cap to a single volume cap, banning payment for order flow to try to improve best execution for investors and similar changes to the pre-and post-trade reporting regimes.
    - The EU and UK proposals will both require legislative changes and amendments to technical standards/the rule book. The Commission's proposals are now being debated and negotiated by the European Parliament and the Council. HMT has included the UK legislative changes in the Financial Services and Markets Bill. ESMA and the FCA will issue further consultations on the technical standards/rule book changes over the next few months. The timing of all these changes is likely to be spread over the next year.
    - A wider MiFID II review proposal is expected in the near future, and is likely to cover investor protection obligations.
    - The differences in the proposals may further complicate the operating environment for firms. To plan effectively for the probable change needed to systems (and possibly business models), firms working in both jurisdictions will need to keep track of developments as the proposals are finalised.
- Fund liquidity management; *The repercussions of the March 2020 "dash for cash" for open-ended funds in general, and money market funds (MMFs) in particular, are still being considered by policymakers. In the meantime, the financial market implications of the war*

in Ukraine have underlined the need for fund managers to have sufficient expertise, resources and plans to respond quickly to unexpected developments and meet regulators' expectations in a robust manner.

- Liquidity management approaches and tools remain in the regulatory spotlight. MMF reform has progressed most quickly and following finalisation of the FSB's proposals last autumn, consultation and discussion papers have now been published in the EU, UK and US. Open-ended funds more broadly have been subject to a longer debate – reviews by the FSB and IOSCO are due to conclude this year but outcomes are less certain. The regulation of exchange-traded funds (ETFs) has also been revisited by IOSCO, but no fundamental changes have been proposed (only good practices to address differences across jurisdictions). As well as tracking longer term regulatory developments, fund managers need to respond quickly to new and unexpected challenges. Russia's invasion of Ukraine impacted markets and funds with exposure to Russian, Belarussian and Ukrainian assets. UK and EU supervisors have therefore been reiterating their expectations and considering additional options and guidance in this context (for example, the use of side pockets).

- Primary Markets; Regulatory reforms in both the EU and the UK are looking to reduce the regulatory burden in the primary markets to encourage wider participation in the ownership of public companies as well and improve the quality of information investors receive.
  - The European Commission is consulting on a proposed Listing Act with the aim of simplifying listing requirements to make public capital markets more attractive for EU companies and facilitate access to capital for SMEs. The consultation also reviews the impact of other regulations such as MAR and MiFID II on the listing process and the appropriateness of the current listing regime when considering an IPO via a Special Purpose Acquisition Companies (SPACs). The Commission will also be undertaking post-implementation reviews of the Prospectus and Transparency Directives.
  - In the UK, HMT and the FCA are implementing the recommendations of Lord Hill's UK Listing Review and the Kalifa Review of UK Fintech.
  - The FCA has made changes to the listing regime to remove some of the barriers while still protecting market integrity. The FCA is still considering the feedback provided on the listing regime's purpose and structure and is expected to lay out next steps shortly. HMT will alter the UK Prospectus Regulation so that prospectuses are not always needed for securities to be admitted to trading on UK markets, for secondary listing and where they have been listed overseas. Once these reforms been implemented the UK prospectus and public offerings regime will significantly diverge from the current EU regime. The reforms should offer companies raising capital in the UK more flexibility. The results of the HMT commission Secondary Capital Raising Review are also likely to prompt further changes to the regulatory framework to make secondary capital raising easier, and more efficient and a Digitisation Taskforce has been established to drive forward the modernisation of the UK's shareholding framework.

ESMA also published an updated version of its Q&As in respect of market structures topics. Adding Q&A 35 to Section 2 on Direct Electronic Access (DEA) and algorithmic trading, ESMA clarifies that a trading venue may set instrument-level trading hours for a specific sub-set of financial instruments (or for a specific financial instrument), provided that details of the specific trading hours are made public and communicated by the venue to market participants.

Prudential

Update on UK implementation of the Basel 3.1 standards; On 30 November 2022, there was published: CP16/22 – Implementation of the Basel 3.1 standards; Published on 30 November 2022

- HM Treasury consultation 'Implementation of the Basel 3.1 standards'.
- PRA Consultation Paper 16/22 'Implementation of the Basel 3.1 standards'
- HM Treasury consultation; *HM Treasury is consulting on the legislative changes necessary to facilitate the PRA's implementation of the final set of Basel reforms, introduced following the financial crisis, known as Basel 3.1. The consultation closes on 30 January 2023.*

- In chapter 2 of the consultation the PRA outlines proposed revocations to the onshored Capital Requirements Regulation (CRR). The revocations are targeted at the areas required to implement Basel 3.1 and to provide as coherent a transition into the PRA Rulebook as possible.
- Chapter 3 of the consultation deals with consequential amendments to the CRR. Such consequential amendments include changes to exemptions from holding capital requirements against Credit Valuation Adjustment (CVA) risk, and how these exemptions link to the European Market Infrastructure Regulation. Other proposed amendments include updating definitions and the removal of CRR article 142(2), which contains an equivalence provision that would apply to large financial sector entities.
- In chapter 4, whilst not currently seeking to amend or revoke these rules, HM Treasury is interested in hearing views as to the operation of the equivalence regimes set out in Articles 107, 114, 115, 116, 142 and 391 CRR.
- Chapters 5 and 6 deal with credit rating coverage in the UK and other miscellaneous changes respectively. One such miscellaneous changes relates to the prudential treatment of overseas exchanges and the process by which they are "recognised exchanges" under the CRR.
- PRA consultation; *In its consultation the PRA sets out proposed rules with respect to the implementation of the Basel 3.1 standards. These proposed rules consist of:*
    - A revised standardised approach for credit risk.
    - Revisions to the internal ratings based (IRB) approach for credit risk.
    - Revisions to the use of credit risk mitigation (CRM) techniques.
    - Removal of the use of internal models for calculating operational risk capital requirements, and a new standardised approach to replace existing approaches.
    - A revised approach to market risk.
    - The removal of the use of internal models for CVA risk, replaced by new standardised and basic approaches.

  - The introduction of an aggregate 'output floor' to ensure total risk-weighted assets (RWAs) for firms using internal models and subject to the floor cannot fall below 72.5% of RWAs derived under standardised approaches, to be phased in over five years.
- The PRA's proposals also revise certain areas of the Basel III standards already implemented in the UK and would have consequential impacts on the UK implementation of the leverage ratio, and elements of the liquidity and large exposures frameworks. These consequential impacts are described in paragraphs 1.57 to 1.59 of the consultation paper.
- The deadline for comments on the consultation paper is 31 March 2023.

- Related links
  - PS17/21 | CP5/21 - Implementation of Basel standards
  - PS22/21 - Implementation of Basel standards: Final rules
  - Capital Requirements Directive
- Chapters
  - 1. Overview
  - 2. Scope and levels of application
  - Credit Risk – Standardised Approach (SA)
  - Credit Risk – Internal Rating Based (IRB)
  - Credit Risk Mitigation
  - Market Risk
  - Credit Valuation Adjustment (CVA)
  - Operational Risk
  - Output Floor
  - Pillar 2
  - Disclosure (Pillar 3)
  - Reporting
  - Currency redenomination

ESG & Disclosures

November ESG matters have been dominated by COP 27, but the path to reach net zero remains masked in a haze of confusion. *Key commitments like the complete phase out of fossil fuels or a follow-through on the phase down of coal were absent from the final text dampening the ambition to agree bold steps to mitigate warming to 1.5 °C. With reports estimating a need for $4-6tn a year for a global transformation to a low-carbon economy, there will need to be far greater momentum on the mitigation agenda to mobilise private markets to meet this ambition.*

- However, COP 27 did deliver a significant win for climate justice by announcing the creation of a Loss and Damage Fund to raise money in support of developing countries that are most vulnerable to climate impacts. The details of the Fund are yet to be finalised with the funding mechanics to be agreed over 2023 in the lead up to COP 28 - it will be interesting to observe what sources of 'innovative finance' will be deployed to support the Fund and what impact it will have on the market.

- Beyond the *formal* negotiations of COP 27, there was much dynamism on display with a flurry of announcements on global initiatives, some of which are highlighted below. We will be publishing a legal deep dive into the outcomes of COP 27 so do stay tuned for that update, which will come your way shortly: a pre-Christmas gift of sorts from us to you.
- Some Key Global Developments announced at COP 27

1. International Sustainability Standards Board and CDP Climate Disclosure updates (multi-sector)

- What: In its October meeting the International Sustainability Standards Board (ISSB) prioritised conversations about facilitating interoperability of its climate disclosure standards (the Standards) across jurisdictions. This included confirming use of the Task Force on Climate-Related Financial Disclosures (TCFD) architecture as the basis for its Standards; confirming that the Standards will require company disclosures on Scope 1, 2 and 3 greenhouse gas emissions (with relief provisions to help companies apply the Scope 3 requirements) and modifying some disclosures and language in relation to transition plans to facilitate alignment. Within a supplementary November meeting, the ISSB also confirmed that companies will be required to use climate-related scenario analysis to report on climate resilience and to identify climate-related risks and opportunities to support their disclosures.
- COP 27 also saw the announcement that ISSB Climate-related Disclosure Standards would be incorporated into the CDP global environmental disclosure platform, signalling a movement towards the delivery of a comprehensive global baseline for climate-related disclosures.

2. Climate Data Steering Committee: White Paper on Net-Zero Public Data Utility (multi-sector)

- What: The Climate Data Steering Committee was created in June of this year with the mandate to enhance private sector transparency around climate commitments and action. During COP 27 the Committee released a whitepaper on the development of the Net-Zero Data Public Utility (NZDPU), an open-data source of aggregated private sector net-zero transition data. The aim of the NZDPU is to give financial institutions as well as civil society and regulators access to the information they need from companies to make progress on global net-zero goals.
- The whitepaper speaks to key data challenges that need to be overcome and shares that the first steps for NZDPU are to collect 'foundational data' for companies, including; Scopes 1, 2 and 3 data for current and historical GHG emissions, company climate targets, the use of carbon credits and climate disclosure methodologies.
- Looking Ahead: The Committee has made a Request for Proposals to build out a beta pilot of the NZDPU. Submissions are due 15 February 2023, with the goal of technical providers being selected by the end of Q1 2023.

3. UN High- Level Expert Group Report on Integrity of Net Zero Pledges (multi-sector)

- What: During COP 27 the UN High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities published the report [Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions](#).
- The report is explicit in requiring non-state entities to commit to ambitious and all-inclusive net zero pledges that cover absolute emissions (Scope 1, 2 and 3) across the entire entity: across regions, business activities and the entire value chain. These pledges must then be followed up with consistent and transparent transition plans that are reported on annually and updated every five years. The report recommends that entities report on specific policies and regulations that they need from governments to cut emissions in line with a 1.5°C scenario.

EU Developments

i. Corporate Sustainability Reporting Directive approved – Time to get moving (multi-sector)

- What: Just in time for this month's publication, on the 28 November the Council of the EU gave its final approval to the Corporate Sustainability Reporting Directive (CSRD). CSRD extends and strengthens the rules introduced by the Non-Financial Reporting Directive and aims to ensure that companies report reliable and comparable sustainability information that investors and other stakeholders need.

- Impact: The new rules being introduced by CSRD will apply to:
  - large undertakings whether listed or not (being ones that exceed at least two out of: a balance sheet total of €20m; net turnover of €40m; average number of employees during the financial year of 250);
  - non-EU companies with substantial activity in the EU market (€150m in annual turnover in the EU) and which have at least one subsidiary or branch in the EU; and
  - SMEs with securities admitted to trading on an EU regulated market (other than micro undertakings).

- Timing: CSRD will be introduced in stages:
  - reporting in 2025 on the financial year 2024 for companies already subject to the NFRD;
  - reporting in 2026 on the financial year 2025 for large companies that are not currently subject to the NFRD;
  - reporting in 2027 on the financial year 2026 for listed SMEs except micro undertakings, small and non-complex credit institutions and captive insurance undertakings;
  - reporting in 2029 on the financial year 2028 for third-country undertakings.
- If not already done so, both EU companies and non-EU companies which operate in the EU should be carrying out scoping exercises and putting in place implementation plans if caught by the new requirements.

ii. New Gender Balance Targets for 2026 (multi-sector).

- What: *"A long-awaited moment, a moment to be celebrated as a breakthrough in gender equality"* said EC President von der Leyden when announcing that the European Parliament has finally adopted the Women's on Boards Directive. The European Commission first tabled this proposal on gender balance on company boards back in November 2021. Once published in the Official Journal, the Directive will enter into force 20 days after publication and Member States will have two years to transpose its provisions into national law. By July 2026, large publicly listed EU companies will need to have 40% of the under-represented sex among non-executive directors or 33% among all board directors. They will also need to ensure their recruitment processes and appointments to board positions are transparent and that candidates are assessed objectively based on their individual merits, irrespective of gender.
- Good news: The adoption of the Directive has been hailed a truly historic event and aims to shatter the glass ceiling that prevent women from accessing top positions. Today, women account for 30% of board members in the EU's largest listed companies, with vast variations across Member States. By the end of June 2026, that figure will no longer be acceptable and for those companies that do not meet the new objectives, they will be required to give detailed explanations on how they intend to achieve them. Member States will also be required to enforce sanctions on companies that fail to comply with open and transparent appointment procedures.

US Developments

i. US Department of Labor removes ESG investment barriers for workplace pensions (multi-sector).

- What: Last month we reported on the fractured landscape of ESG regulation in the US. This month, following another tense debate, the US Department of Labor (DOL) announced a final rule that allows plan fiduciaries to consider climate change and other ESG factors when they select retirement investments and exercise shareholder rights, such as proxy voting.
- Impact: This decision reverses rules which were enacted under the Trump presidency that restricted ESG offerings and required workplace pensions to solely consider financial factors in investments. It is hoped that the final rule, which now explicitly allows for ESG investing, will be a further step forward to removing the barriers and market sensitivity to ESG investments in the US. The rule, which the DOL said covers plans that collectively invest $12tn, will take effect 60 days after it is formally published in the federal register with a longer transition for provisions for proxy voting.

Asia Developments

i. New international carbon trading marketplace launched by Hong Kong Exchange (financial institutions)

- What: On 28 October, the Hong Kong Exchanges and Clearing Limited (HKEX) announced its launch of Core Climate, a new international carbon marketplace which seeks to connect capital with climate-related products and opportunities in Hong Kong, Mainland China and globally. Core Climate is designed to facilitate the trading of voluntary carbon credits and instruments, and participants will be able to source, hold, trade, settle and retire the carbon credits through the platform.

- Our view: Hong Kong's ability to facilitate two-way capital flows between Mainland China and international markets adds value to global carbon markets and Core Climate is strategically placed to provide a one-stop solution supporting the global transition to achieve net zero. The launch of Core Climate follows HKEX's formation of the Hong Kong International Carbon Market Council in July this year, which comprises a number of leading corporations and financial institutions focussed on the development of an international carbon marketplace. As different ESG initiatives roll out, we continue to observe a range of prominent efforts from regulators in support of Hong Kong's growth as an ESG hub in Asia and globally.

ii. Singapore Exchange: Identifying ESG fixed income securities (financial institutions)

- What: On 28 November the Singapore Exchange (SGX Group) launched a new initiative to identify green, social and sustainability fixed income securities that meet recognised standards. The SGX Sustainable Fixed Income initiative allows investors to more easily identify investments that meet certain criteria at issuance, and issuers of such securities may use an SGX Sustainable Fixed Income mark to identify the securities as having met such criteria.

iii. ISDA publications (financial institutions Japan and Singapore)

- On 22 November, ISDA published a paper on the legal nature of Voluntary Carbon Credits (VCC) under, amongst others, Japanese and Singapore laws. This follows from ISDA's initial paper (published on 1 December 2021) on the legal nature of VCCs under the laws of the United Kingdom, United States and Germany, where two possible approaches to the legal characterisation of a VCC were discussed: (1) VCCs as intangible property or (2) VCCs as a bundle of legal rights.
- On 14 November, ISDA published a paper on the Regulatory Framework for Sustainably-Linked Derivatives in Japan. The paper is the equivalent for Japan of ISDA's December 2021 whitepaper on Regulatory Considerations for Sustainability-linked Derivatives (SLDs). It considers whether sustainably-linked derivatives in Japan would be classified as over-the-counter derivatives transactions or another type of regulated product and considers how they are regulated and what the compliance issues are for market participants when executing SLDs.

Litigation and enforcement

i. ESG and Competition Law (multi-sector)

- What: Competition regulators across Europe have accelerated at pace in pushing climate change and sustainability issues to the top of their agenda. The European Commission, the UK Competition and Markets Authority (CMA) and other EU national competition authorities have issued consultations and guidance on sustainability agreements which aim to provide greater certainty to companies regarding the assessment of sustainability initiatives. Authorities are also showing increasing willingness to investigate and prosecute entities unable to substantiate green claims.

- Greater clarity: The interaction between competition law and sustainability treads a fine balance. On the one hand, regulators are confirming that where agreements between competitors lead to price rises, affected consumers must be fully compensated by receiving a "fair share" of the resulting benefits. On the other hand, where those benefits are intangible and long-term, it can be difficult to demonstrate that harmed consumers are being sufficiently compensated. Competition authorities have also highlighted the need to ensure that sustainability agreements are not a front for illegal cartel activity. Accordingly, regulators have diverged in approach. The Dutch competition authority has adopted a more expansive view of what amounts to a "fair share" of the resulting benefits of such agreements and has encouraged collaboration in the name of sustainability (even where there is no immediate/direct benefit to consumers). Other regulators, such as the CMA, have focussed their efforts more closely on investigating malpractice in the ESG space, and in particular on misleading environmental claims.
- Our view: Given the regulatory landscape is still developing without a clear consensus on when competition law principles may be suspended in favour of sustainable collaboration, businesses will remain cautious about the type of sustainability initiatives they embark on and must be able to substantiate any green claims they make. Businesses should also be concerned not only about action taken by enforcement authorities but also consumers: non-compliant companies may face direct customer claims for misleading actions, particularly given the rising availability of group consumer actions within the EU and UK.

ESG consultation round-up; *Some notable ESG policy consultations in flight across the globe that are currently open for comment. Such engagement is a great opportunity to influence the direction of travel for ESG matters.*

i. UK Transition Plan Taskforce Consultation on Climate Plans (multi-sector)

- What: On 8 November, the UK Transition Plan Taskforce (TPT) published for consultation its proposed disclosure framework for private sector climate transition plans (TP). The TPT's recommendations are intended to build on what was set out in Taskforce on Climate Related Financial Disclosures guidance and International Sustainability Standards Board exposure drafts.
- The accompanying draft implementation guidance recommends that entities publish standalone TPs at least every three years, and sooner if there are significant changes to the plan; that progress against the TP and material updates be reported annually in general financial reporting; and that if an entity produces a long-form TCFD or sustainability report, the TP be clearly separable.
- Timing: The consultation closes on 28 February 2023 and the TPT is expected to finalise the Disclosure Framework and Guidance shortly after.

ii. Publication of TNFD third version of beta framework (multi-sector)

- **What:** As promised ahead of COP 27, the Taskforce on Nature Related Financial Disclosures (TNFD) released a third version (V0.3) of its framework, building on market feedback on V0.1 and V0.2. Together with the previously released draft disclosures on risks and opportunities, V0.3 of the TNFD framework, now provides a full view of recommended disclosures to support the reporting preferences and compliance requirements.
- **Timing:** Following a final consultation process after the V0.4 release in March 2023, the TNFD's final recommendations will be published in September 2023. Companies should already be engaging and making plans to incorporate the framework and can pilot the current drafts and provide feedback on the beta version.

iii. ESA call for evidence on better understanding greenwashing (financial institutions)

- **What**: On 15 November, the European Supervisory Authorities (ESAs) (the EBA, EIOPA and ESMA) published a call for evidence (CfE) seeking input on potential greenwashing practices in the EU financial sector. The CfE is requesting views, examples, evidence and data on potential greenwashing practises across the EU financial sector relevant to various segments of the sustainable investment value chain and of the product lifecycle. For full details see our briefing here.
- **Timing**: The deadline for responses is 10 January 2023, after which a progress report is expected by the end of May 2023 and a final report by end of May 2024.

Where does all that carbon money go? - *The price of emitting carbon within the EU has increased roughly 12 times since 2013 but that doesn't mean piles of cash going towards green policies in member states. The EU's landmark emissions trading system allows companies to buy credits to cover their pollution output, with the majority of revenues to member states ostensibly destined for spending on climate action.*

- But research from the WWF published yesterday shows that of the €88.5bn that the scheme raised between 2013 and 2021, only 72 per cent was spent on green initiatives and infrastructure and, even within that, WWF estimates that "at least" €12.4bn went on projects that were counterproductive to environmental efforts such as modernising coal infrastructure or funding fossil-fuel based heating systems.
- The paper, which collates data from member states and the European Environment Agency, comes out at a crux in the negotiations to upgrade the existing ETS as part of the EU's "Fit for 55" climate law, through which the bloc aims to cut emissions by 55 per cent compared with 1990 levels by 2030.
- Last night, policymakers from the council, parliament and commission were gathered to thrash out key parts of the new proposal, such as where the money from the ETS goes and how the scheme should cover emissions from the heavily polluting shipping industry. "It is unfair to the car users if we have many limitations to cars but shipping emissions are not under control," said Peter Liese, lead negotiator for the parliament, who said the aim was to apply carbon charges to 50 per cent of emissions on trips to and from Europe as well as all emissions for those within the union.
- The inclusion of shipping would add a handy extra revenue stream to national governments, which have benefited from a 587 per cent increase in ETS money since the scheme was first introduced in 2013, according to WWF.

- But, the NGO warns, where this money goes should be better monitored from the start. At present it's "impossible" to know where the money is spent, despite the EU's requesting that at least 50 per cent of it be put towards green policies. "Lax rules mean that national reporting on how ETS revenue was spent is riddled with inconsistencies and mistakes," the report says.

The Legal Nature of Voluntary Carbon Credits: France, Japan and Singapore

EU carbon market reform 'progressing at snail's pace' ahead of final talks; *Negotiations to reform the EU's Emission Trading Scheme (ETS), which prices CO2 pollution from the power sector and industry, are currently stuck ahead of a final round of talks scheduled on 16 December.*

- The ETS, which requires large CO2-emitters like steelmakers and coal power plants to purchase emission certificates for each ton of CO2 they emit, is the EU's flagship climate policy tool. But negotiations are proving to be complex, which may imperil their planned conclusion in December. "We are dealing with the biggest environmental and climate law that has ever been in the EU institutions," explained Peter Liese, a German conservative MEP who is the European Parliament's chief negotiator on the ETS revision.
- The ETS puts a cap on emissions by limiting the number of certificates available on an annual basis. To achieve the EU's goal of reducing emissions by 55% by 2030, the number of certificates available must be reduced significantly. Simultaneously, the scope of the ETS – the sectors covered by an emissions cap – will be increased: Maritime shipping, road transport and buildings emissions are to be included in the current revision.
- While negotiators from the European Parliament, Council and Commission found a compromise on maritime emissions during talks on Tuesday evening (29 November), other aspects remain stuck. The agreement to put a carbon price on maritime shipping "is the only small negotiating success from this night," explained Michael Bloss, co-negotiator on behalf of the Greens in the European Parliament. "The negotiations on Europe's largest climate law are only progressing at a snail's pace," he warned.
- Fears of social unrest ; Thorny political questions remain ahead of a marathon negotiation session starting on Friday 16 December that is expected to stretch into the weekend. "Concluding the entire negotiations in a fortnight will be extremely difficult if the member states continue to act as brakemen in the process," Bloss cautioned. "The last Christmas trilogue will include overall ambition level, free allocation phase out, market stability reserve and ETS extension to buildings and transport," explained Emma Wiesner, co-negotiator on behalf of the liberal Renew Europe parliamentary faction.
- While technical issues, like the benchmark to calculate the number of free CO2 emissions granted to steelmakers, have been concluded, "unfortunately, more than 50% of political points are still open," Liese pointed out. The thorniest issue is perhaps the extension of the ETS to buildings and road transport – the so-called ETS2 – which critics say risks stoking social unrest by pushing up the price of petrol and heating fuels.

- This is seen as a red flag by many MEPs, including the liberal Renew Europe group who "are worried the last extension will not be dealt with in a timely manner," Wiesner said. The liberals had previously insisted on delaying the introduction of the ETS2 for regular consumers and applying it to businesses instead – a move that would effectively split prices at the pump.
- Connected to the talks on ETS2 is the introduction of a new Social Climate Fund (SCF), a separate law which should channel carbon trading revenues to help alleviate the impact of carbon pricing for the most vulnerable households. The main points of contention continue to be the funding source, the size of the fund – EU countries are seeking about €60 billion – and where the funding should go. "If there is no ETS2, there is no Social Climate Fund. And if there is no Social Climate Fund, there will be no ETS2," Liese warned.
- Countries like Poland are fiercely opposed to ETS2 but welcome the prospect of the climate fund, saying it should be extended to cover broader social aspects, not just transport and heating. In a letter addressed to the EU institutions, Poland warns against introducing any kind of carbon price for heating fuels, arguing that "a warm home in winter should not be a market commodity".
- Another key concern for EU member states is the planned termination of free CO2 credits handed out to industries like steelmaking and aluminium. In order to preserve Europe's competitiveness and prevent factories from relocating abroad, these industries currently receive the bulk of their emission allowances for free. The idea is to gradually replace those free credits with a carbon border charge to ensure importers pay the same price as EU industries.
- A recent study by the environmental NGO WWF found that since 2013, more than half of emissions certificates were given out for free.
- Swedish EU presidency looms; Should negotiations ahead of Christmas break down, the Czech EU presidency would be forced to hand the negotiations baton to the incoming Swedish presidency, a prospect that worries the Parliament's negotiators. "The Swedish [minority] government is depending on the [far-right] Sweden Democrats, and they are not pro-climate," Liese said. "Every delay will also create another problem with implementation." Others went further. "The failure of the entire project is also looming," Bloss said.
- With negotiators affirming red lines, the pressure is on Prague to deliver a compromise, the EU Parliament argues. "A large responsibility lies on the Czech presidency," Wiesner stressed.

Voluntary carbon market to hit $100B by 2050 Hong Kong Exchanges and Clearing CEO Nicolas Aguzin told an industry event that carbon offset credits demand "could rise from 0.1 gigatonnes per year in 2020 to as much as 13 gigatonnes by 2050, and voluntary carbon markets could be worth up to $100 billion by 2050, compared with $1 billion in 2021." Aguzin also noted that pricing still remains fragmented, with average prices in some regions less than half of the targeted average of $75 per tonne. Full Story: Futures & Options World (subscription required)

IOSCO consults on the development of sound carbon markets; *On 09 November 2022, coinciding with the COP27 meeting in Egypt, IOSCO published Consultation Report CR/07/22 with recommendations for establishing sound Compliance Carbon Markets (CCMs) and Discussion Paper CR/06/22 with key considerations for enhancing the resilience and integrity of Voluntary*

Carbon Markets (VCMs). Comments on each of the papers must be submitted by 10 February 2023. This will be of interest to current and future participants in the carbon markets.

- The **Compliance Carbon Market Consultation** draws on experience with established emissions trading schemes as well as commodities markets, to make 12 recommendations for the smooth functioning of both primary and secondary emissions allowances spot and derivatives markets.

- The Consultation helpfully touches on the **key features** of the main schemes in the EU, UK, California, the Regional Greenhouse Gas Initiative (**RGGI**) in the US and China. It also discusses past and current weaknesses in the design of these market, including:

  - concern that free allocation of emissions allowances can result in those operators having no incentive to participate in the Compliance Credit Market;
  - oversupply of emissions allowances – either by local overallocation or through allowing interoperability with offset markets - leading to low carbon prices;
  - lack of consistent and accurate calculation of emissions leading to failure of demand and supply dynamics; and
  - policy decisions on issuances and allocations impacting on price.

- IOSCO's **first 7 recommendations** focus on the primary market and on ways to improve price formation and transparency. So for instance, the second recommendation is that auctions should be preferred to free allocation and Recommendation 4 calls for predictable market intervention mechanisms.
- There has been much recent debate on the **participation of financial market participants** in the compliance markets. IOSCO presents data showing a marked increase in interest. It points to several positive features of the secondary market. For IOSCO, the secondary market:

  - provides the ability for non-compliance firms to access emission allowances.
  - provides a hedging mechanism for firms and energy generators against future price volatility
  - by allowing hedging of risks, aids in the deepening of market liquidity in such products
  - signals a price that allows for firms to make more informed investment decisions on their carbon output.

- In Recommendation 5, IOSCO proposed that non-compliance firms should participate in primary markets to facilitate market making, access to the markets, carbon financing, the provision of liquidity, and price formation mechanisms.
- There are **5 further recommendations** to strengthen the secondary markets. These cover position management controls, transaction reporting and regulation and supervision of trading venues.
- **The 8 questions for consultation** include questions on whether and how to link compliance carbon frameworks, given the Article 6 negotiations, and on whether certain IOSCO principles for secondary markets and for commodity derivatives markets, such as those on transparency, position limits, market abuse and market surveillance are

appropriate for, and should be extended to CCMs. Responses will be used to further refine IOSCO's 12 recommendations for CCMs.

- The Voluntary Carbon Markets Discussion Paper is the result of an IOSCO fact-finding exercise on voluntary carbon offsets. It puts forward considerations for the improvement of market integrity while acknowledging that its work is only one part of the overall change needed in voluntary carbon markets to ensure sound and well-functioning markets in which investors can trust. IOSCO also asks for comments on whether it should cooperate with private initiatives such as Integrity Council for the Voluntary Carbon Market (ICVCM) and Voluntary Carbon Credits Integrity Initiative (VCMI).
- Having consulted with many different market participants and commentators, IOSCO concludes that there are three obstacles to the scaling of voluntary carbon credit markets:

1. the environmental integrity of the carbon credits at project level;
2. the structure of the market, and certain market participants' behaviour; and
3. the risk of greenwashing

- As for environmental integrity, there is general concern about the lack of standardized methodologies to measure additionality of projects, to avoid double counting and leakage of carbon, to ensure the permanence of the reduction or removal of greenhouse gas emissions or manage non-permanent reductions or removals, to assess co-benefits (like community impacts) and generally to ensure adequate verification and transparency.
- IOSCO notes that there is no regulatory oversight of voluntary carbon credit markets and no clarity on the legal treatment of carbon offsets as of yet. This, together with the dearth of information on the market and lack of standardisation of carbon credits or documentation, affects market integrity.
- IOSCO puts forward the following key considerations:

1. Open access: broad access to a trading market promotes price efficiency and fairness, liquidity and efficiency so access criteria should not be too restrictive
2. Market integrity: To promote market integrity. IOSCO advocates the adoption of several features well known in regulated markets, such as the dissemination of rules, policies and procedures setting out criteria for issuing offsets, market admission criteria and dispute resolution mechanisms; market surveillance and trade monitoring, market participation criteria such as adequate resources and staffing.
3. Publicly available data to promote transparency: IOSCO calls for appropriate levels offundamental market data disclosure to promote price discovery. It also emphasizes accurate disclosure by companies who rely on carbon credits to offset their emissions to achieve net zero emissions.
4. Price discovery. Pre- and post-trade transparency should promote price discovery in the voluntary carbon markets.
5. Product standardization/Environmental integrity. To ensure a robust and liquid market for carbon credits, market participants must be confident that each carbon credit purchased in the VCM accurately represents such emissions reduction or avoidance to meaningfully reduce GHGs.

6. Interoperability. Interoperability of offset registries would be useful. A global registry akin to the Climate Warehouse Initiative under current development, would help address the fragmentation risks stemming from multiple offset issuers maintaining separate registries for their respective programs.
7. Financial integrity of transactions, including settlement and delivery certainty. IOSCO advocatestrade monitoring programmes which include the capacity to detect abnormal price movements, unusual trading volumes and impairments to market liquidity. In addition, it supports the imposition of minimum financial standards on financial intermediaries. It also requests an audit trail helps to detect and deter customer and market abuse.
8. Legal certainty. We agree with IOSCO's call for legal certainty as to the bankruptcy treatment for carbon credits, netting provisions between counterparties, conflicts of laws, and forms of legal documentation, among other aspects of these markets.
9. Governance. The call for appropriate governance of voluntary carbon markets makes perfect sense.
10. Conflicts of interest. IOSCO draws attention to (obvious) conflicts between issuing the carbon credits, operating the trading platform and participating in the market and calls for these to be addressed.
11. Enterprise risk management. And finally, IOSCO turns to the individual company level and calls for the implementation of effective risk management programs.

Commodities

Excessive volatility and increasing margin levels in EU energy derivatives markets; *Following a request from the European Commission, ESMA has set out its proposals for addressing excessive volatility and substantial margin increases in energy derivatives markets, which should be carefully considered by participants of these markets and CCPs who clear related trades.*

- Circuit breakers. To contain "excessive volatility" in the energy derivative markets, a new temporary type of trading halt mechanism is proposed that would apply in exceptional circumstances, eg, volatility spikes leading to disorderly trading conditions. The mechanism would be set at EU level and apply to all venues offering trading in energy derivatives. The intention is that pauses in trading would support a more orderly price discovery process during periods of stress. However, there is a risk that such a halt may affect market participants' ability to manage risk exposures, which ESMA is alive to. Given current levels of volatility reflect market fundamentals and lack of information rather than a failure of existing mechanisms, ESMA's desire and ability to intervene is limited.
- Margins and collateral. To help non-financial clearing members (NFCs) secure sufficient liquidity to meet increased margin requirements, but without undermining the stability of CCPs and the financial system, ESMA proposed a cautious easing of margin eligibility requirements, dismissing any significant relaxation of the rules. In its Final Report, ESMA proposes a draft RTS amending EMIR (i) making uncollateralised commercial bank guarantees eligible specifically to help NFCs acting as clearing members and subject to strict conditions, such as time and concentration risk, and (ii) enabling guarantees issued or backed by public entities to qualify as eligible collateral subject to a number of conditions, such as the type of public entity.
- Regulating commodity traders as investment firms. NFCs trading commodity derivatives currently benefit from the ancillary activities exemption from MiFID2. ESMA suggested revising

or replacing this exemption, particularly for the biggest entities, so that such firms would need to be licensed and supervised as investment firms. This change would have a major impact on the largest NFCs trading commodity derivatives, which would need to comply with the increased burdens of MiFID authorisation and satisfying the capital requirements of the EU investment firms' prudential regime under the IFR. Any changes, however, would likely take too long to implement to relieve the market pressures expected this winter.

- In addition, ESMA recommended measures to increase transparency in energy markets by improving NCAs' visibility of OTC transactions, so they can better assess exposures and risks, and by subjecting physically-settled wholesale energy products traded on OTFs to transaction and position reporting requirements (to NCAs and ESMA). None of these measures, nor the measures listed above, though, are likely to be a silver bullet for solving the immediate challenges facing European energy markets and their participants.

Updates to ESMA's MiFID2 and MiFIR Q&As on commodity derivatives and market structures topics; ESMA published an updated version of its Q&As on MiFID2 and MiFIR commodity derivatives topics mainly to reflect changes to the MiFID2 commodity framework introduced by the Capital Markets Recovery Package. The main changes to the EU commodities derivatives framework, include:

- Position limits—Limiting position limited to agricultural commodity derivatives and to significant or critical contracts and introducing new exemptions to the position limits regime.
- Ancillary activity—Amending the criteria to be met for the ancillary activity exemption and deleting the yearly notification of eligibility by market participants to relevant NCAs.
- Securitised derivatives—Excluding securitised derivatives based on commodities or commodity indices from position reporting and position limits.