EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

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

Wednesday 01st February 2023

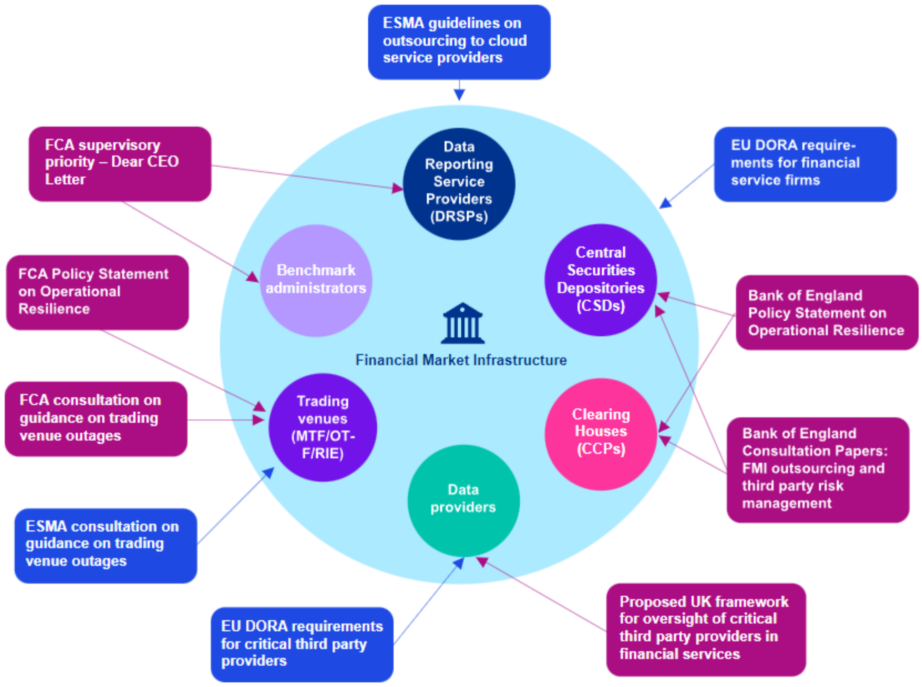
Full Grid and Outlook Below

1. Regulatory Barometer - Operational Resilience
2. EU Regulatory Plans: 2023
3. Rulemaking Diary
4. Highlights from the Regulatory Environment
5. Conduct News over January 2023
6. MAR News over January 2023
7. LiBOR Transition Update
8. ESG, Conduct, Fines & Enforcements

Regulatory Barometer

Operational Resilience and Financial Market Infrastructure Firms; A spider's web of requirements; *As regulatory focus on the operational resilience of financial sector firms has ramped up over the last few years, it is now directly impacting FMIs, reflecting their critical role in the resilience of the wider financial sector. As service providers, FMIs also face growing indirect operational resilience demands from their financial service clients as they seek to meet their operational resilience regulatory obligations. This is resulting in a spider's web of operational resilience requirements across FMIs.*

FMI — Operational Resilience



Specific operational resilience requirements for FMIs

In the EU, FMIs are currently subject to a patchwork of operational requirements under the specific regulations that apply to their sector. For example, EMIR includes a specific article on business continuity for CCPs, a regulated market (i.e. trading venue) under MiFID II is expected to have 'effective business continuity arrangements to ensure continuity of its services if there is any failure of its trading systems.' And under the EU Benchmarks Regulation, benchmark administrators are expected to have a control framework that includes 'adequate and effective business continuity and disaster recovery plans'.

The EU Digital Operational Resilience Act (DORA), recently agreed by the European Parliament and Council, and likely to apply from late 2024 or early 2025, will be a significant step in harmonising the existing patchwork and introducing new requirements for all EU-regulated financial entities across: information and communications technology (ICT) risk management and incident reporting; digital operational resilience testing; information and intelligence sharing and third-party provider management.

UK regulators have rolled out a raft of operational resilience requirements across the whole financial sector. Central securities depositories and CCPs are required to implement Bank of England policy. The FCA's policy applies to regulated investment exchanges (i.e. trading venues) and enhanced scope SMCR firms (dependent upon certain criteria, including prudential and CASS status). Both policies required FMIs to have identified their important business services, set impact tolerances for maximum tolerable disruption to these services, carried out resource mapping and initiated a programme of scenario testing by end-March 2022. By end-March 2025, FMIs must have performed scenario testing and taken all reasonable actions to remediate vulnerabilities identified and to demonstrate that they are able to remain within impact tolerances for each important business service.

The regulators' wider supervisory focus.

In the UK, although other types of FMIs are not formally subject to the above regulatory policies, the FCA is increasing and widening its supervisory focus on operational resilience — operational resilience is one of the five FCA supervisory priorities for Benchmark administrators and one of three key risks it identified in relation to data reporting services providers (DRSPs).

Growing regulatory perimeter — critical third-party providers.

In both the UK and the EU, there is increasing focus and new requirements for critical third-party providers in financial services. The identification of a critical third-party providers in the EU's DORA and in the UK Financial Services and Markets Bill are based on criteria such as the number and systemic nature of the services it provides to financial services entities.

Therefore, some FMIs — such as data providers — may be classified as critical third parties in either or both jurisdictions when the legislation comes into force — at the earliest 2024. Under DORA, critical third parties will be required to have comprehensive arrangements to manage the ICT risk they pose to financial entities. In the UK, critical third parties are likely to be required to meet minimum resilience standards (including developing and testing financial sector continuity playbooks) and take part in targeted forms of resilience testing.

Both jurisdictions will impose supervisory oversight on critical third parties by the financial regulators and will be able to impose penalties if there is a lack of compliance with obligations. DORA will also require third country (i.e. non-EU) critical third-party providers to subsidiarise in the EU within 12 months of being designated as critical — which may require review of entity and governance structures of FMIs.

The waterfall effect — requests from clients because of their regulatory requirements

As described above, UK operational resilience policy requires financial services firms to identify and enhance resilience of their important business services.

Increasingly FMI play a role in facilitating these important business services and so are now finding themselves subject to substantive information requests from their clients on their levels of operational resilience. They are also requested to participate in co-testing where they are third-party providers of the service, for example in order to validate the clients' impact tolerances set for the service and the ability to recover the service within impact tolerances. The requests often come in different formats from different firms, although the same underlying risks are being assessed, which places considerable challenges on FMIs to respond in a consistent, sustainable and cost-effective manner.

Focus on specific areas of resilience.

Regulators are also focusing on specific areas of FMI service resilience. For example, both ESMA and the FCA have recently issued consultations on trading venue outages. They propose specific requirements on how trading venues should communicate in the event of an outage and expectations around alternative arrangements to provide closing reference prices if the primary venue is unable to.

The spider's web of operational resilience requirements.

FMIs face operational resilience demands from many different parties even if they are not formally required to implement operational resilience policies in all areas of their business. This growing focus requires strong governance and coordination, especially given the complex conglomerated structures of larger FMI firms who often provide many different services into the market. Operational resilience is much wider than just business continuity and disaster recovery plans and it is becoming a driver of investment to achieve broader business benefits, competitive advantage and develop scalable and sustainable operating models.

Good practice emerging on managing these obligations.

While operational resilience regulations will continue to develop across the multiple jurisdictions, a focus on developing single consistent risks assessments of the key services and aligning strategic operational resilience capabilities will enable timely and cost-effective regulatory compliance across DORA, Bank of England requirements and the broader regulatory landscape. An integrated approach can help drive immediate and longer-term synergies and business benefits across programme and BAU activities.

Regulatory Outlook and Diary

Forward Planning 2023

The FCA was committed to publishing its regulatory planning landscape under the current 2-year plan in last November. It is yet to do so, and acknowledged that it remains a Q1 2023 deliverable.

The European Commission continues to add to the pipeline but progress is slow on agreeing existing proposals.

- So far, the 2019-24 Commission has proposed 37 legislative acts on financial services and cross-cutting issues particularly relevant to financial services, of which the European Parliament and the Council have only agreed the text of 11 acts. The Parliament and the Council continue to work to agree the remaining 26 proposals and the Commission has scheduled eight additional proposals for the first half of 2023.
- Work to agree proposals in the pipeline will intensify in the lead up to the Parliament elections in mid-2024 and the new Commission taking office in October 2024.

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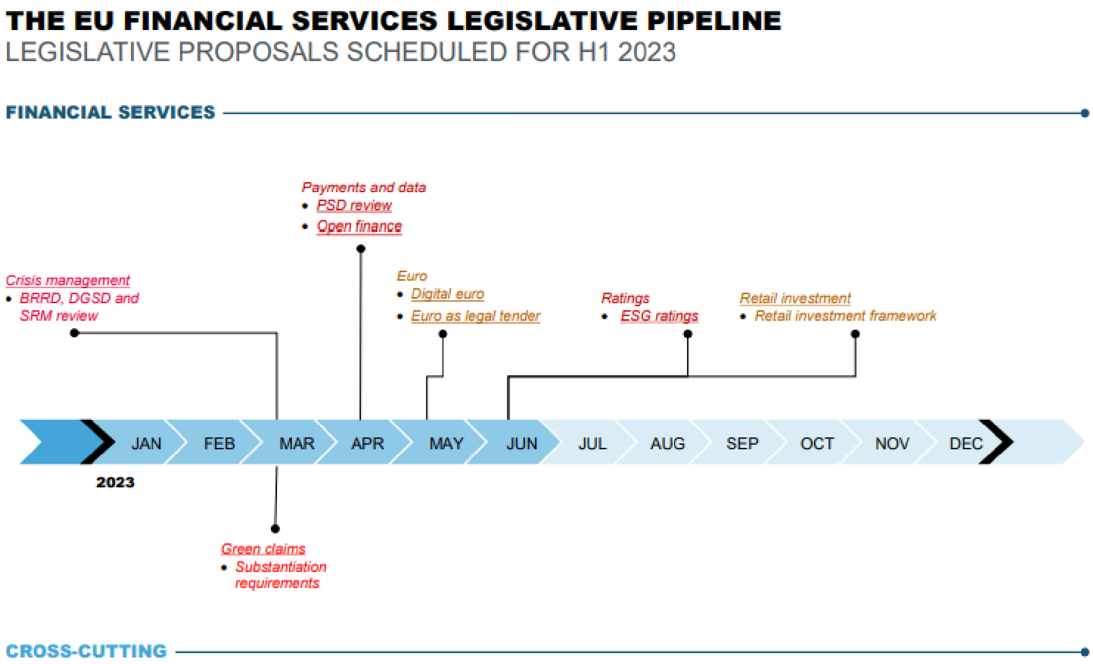
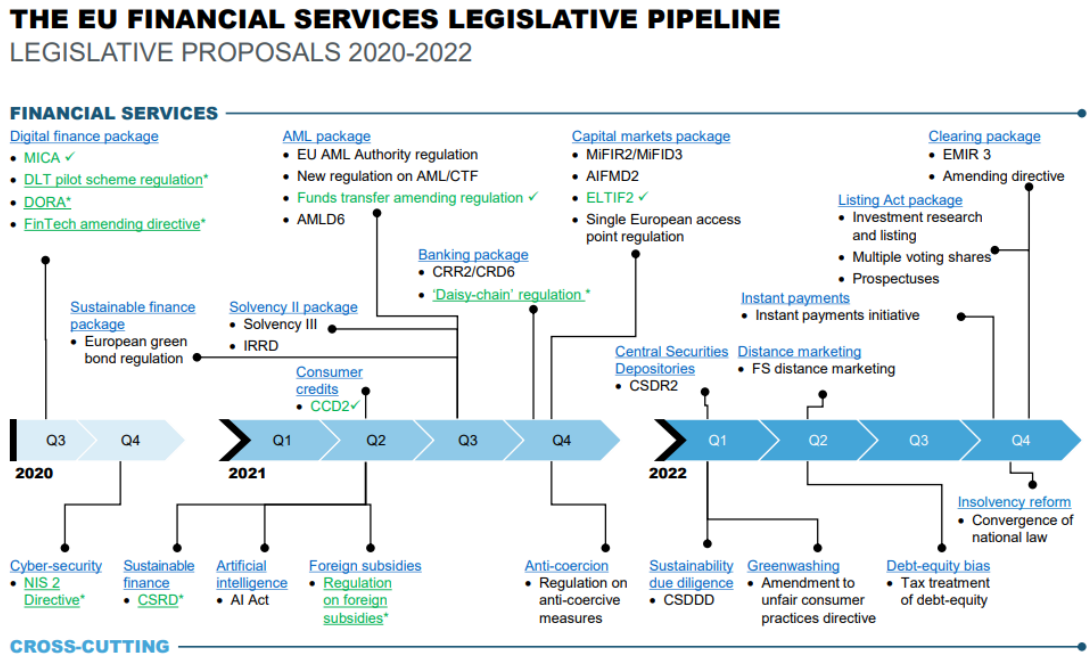




Legislative Proposals On Financial Services Scheduled For H1 2023

Financial services

- 08/03/2022 Banking Union – review of the bank crisis management & deposit insurance framework (BRRD, DGSD, SRMR review)
  - Public consultation 25/02/2021
  - Targeted consultation 26/01/2021
- 05/04/2022 Retail investment – new package of measures to increase consumer participation in capital markets Call for evidence 03/05/2022
- 24/05/2022 A digital euro for the EU
  - Targeted consultation 14/06/2022
  - Call for evidence 05/04/2022
- 24/05/2022 Clarifying the legal tender status of euro banknotes and coins None
- 13/06/2022 Regulation on environmental, social and governance ratings Call for evidence 04/04/2022
- 28/06/2022 Payment services – review of EU rules
  - Public consultation 10/05/2022
  - Targeted consultation 10/05/2022
- 28/06/2022 Open finance framework – enabling data sharing and third-party access in the financial sector Public consultation 10/05/2022

Delayed And Possible Future Legislative Proposals On Financial Services

- Financial services Review of the Market Abuse Regulation (MAR) ESMA report 24/09/2020
- Review of the Directive on settlement finality in payment and securities settlement systems Targeted consultation 12/02/2021
- Review of the Directive on financial collateral arrangements Targeted consultation 17/02/2021
- Improving transparency of the secondary markets for non-performing loans Targeted consultation 16/06/2021
- EU banking sector – review of macroprudential rules to limit systemic risk Call for evidence 01/12/2021 Targeted consultation 30/11/2021
- Review of the Money Markets Funds Regulation ESMA opinion 16/02/2022 Targeted consultation 08/02/2022
- Review of the Benchmarks Regulation Targeted consultation 20/05/2022
- Mortgage credit – review of EU rules EBA advice 24/06/2022 Public consultation 22/11/2021
- Review of implementation of the Shareholders Rights Directive 2 (SRD2) Call for evidence 11/10/2022
- Review of the Regulation on wholesale market integrity and transparency (REMIT) Public consultation 23/01/2023
- Cross-cutting
- Cross-border investment within the EU – clarifying and supplementing EU rules Public consultation 26/05/2020
- Unlawful extra-territorial sanctions – a stronger EU response (amendment of the Blocking Statute) Public consultation 09/09/2021

- Corporate reporting – improving its quality and enforcement Call for evidence 01/12/2021
- Withholding taxes – new EU system to avoid double taxation Public consultation 01/04/2022

Pending Legislative Proposals On Financial Services

Banking package

- Proposal for a Directive amending the Capital Requirements Directive as regards supervisory powers, sanctions, thirdcountry branches, and environmental, social and governance risks (CRD6) (2021) 663 2021/0341 27/10/2021
- Proposal for a Regulation amending the Capital Requirements Regulation as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR3) (2021) 664 2021/0342 27/10/2021
- Proposal for a Regulation amending the Capital Requirements Regulation and the Bank Recovery and Resolution Directive as regards the prudential treatment of G-SIIs with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting MREL (daisy-chain regulation) (adopted – see Annex 4)

Capital Markets Package

- Proposal for a Directive amending the Markets in Financial Instruments Directive (MiFID3) (2021) 726 2021/0384 25/11/2021
- Proposal for a Regulation amending the Markets in Financial Instruments Regulation as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders (MiFIR2) (2021) 727 2021/0385 25/11/2021
- Proposal for a Directive amending the Alternative Investment Fund Managers Directive and the UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds (AIFMD2) (2021) 721 2021/0376 25/11/2021
- Proposal for a Regulation amending the European Long-term Investment Funds Regulation as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European longterm investment funds (ELTIF2) ✓ (2021) 722 2021/0377 25/11/2021
- Proposal for a Regulation on establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (2021) 723 2021/0378 27/11/2021

Clearing package

- Proposal for a Regulation amending the Central Securities Depository Regulation (CSDR2) (2022) 120 2022/0074 16/3/2022
- Proposal for a Regulation amending EMIR, the Capital Requirements Regulation and the Money Markets Funds Regulation as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (2022) 697 2022/0403 07/12/2022

Forward Calendar: Updated 01 February 2024		
Q1 2023	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
2023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
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
Q1 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	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 1, 2023	Korea	Basel III: Expected implementation of FRTB and CVA frameworks.
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.
February 12, 2023	South Africa	Variation margin requirements commence for any provider belonging to a group with aggregate month-end gross notional amount of over-the-counter derivatives for March, April and May of 2020 exceeding R30 trillion
March 01, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2023 or January 1, 2024 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations. For RSA, Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds either the ZAR 15 trillion or ZAR 8 trillion threshold for initial margin requirements as of September 1, 2023. (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)

Q2 2023	EU	The European Commission (EC) to adopt a Delegated Act (DA) to further extend the suspension of the third-country benchmark regime until end of 2025 under the EU Benchmarks Regulation (BMR).
April 24, 2023	UK	Removal of clearing obligation for swaps referencing SOFR.
April 28, 2023	EU	The European Supervisory Authorities (ESAs) to submit a report to the European Commission (EC) on the broader SFDR RTS review (including on Principal Adverse Impact indicators)
May 1, 2023	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 18, 2023	EU	End of the temporary exemption for pension scheme arrangements from clearing and margining under EU 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 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.
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 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.
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 04, 2023	US	Compliance date for CFTC Block and Cap reporting amendments. Expiry of relief in CFTC Staff Letter No. 22-03.
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.
December 31, 2023	UK	Expiry of the temporary Intragroup Exemption Regime (TIGER) from clearing and margin requirements.
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 1, 2024	EU	Application of the Delegated Acts (DAs) with respect to the four remaining environmental objectives on 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.
January 1, 2024	EU	Disclosure of Article 8 Taxonomy reporting KPIs and accompanying information for financial undertakings.
January 1, 2024	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
January 1, 2024	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
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.
January 4, 2024	UK	Expiry of the derogation from margin rules in respect of non-centrally cleared over-thecounter derivatives, which are single-stock equity options or 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	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.

	Singapore Japan Brazil	
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	Go-live of revised JFSA reporting rules based on the CPMI-IOSCO Technical Guidance. JFSA finalized the Guidelines of the revised reporting rules on December 9, 2022.
April 29, 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).
June 30, 2024	EU	The EC to review the application of the Article 8 Taxonomy Regulation including the need for further amendments with regards to the inclusion of derivatives in the numerator of KPIs for financial undertakings.
September 1, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore	Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). 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.

	Japan Brazil South Africa	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.
October 21, 2024	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.
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

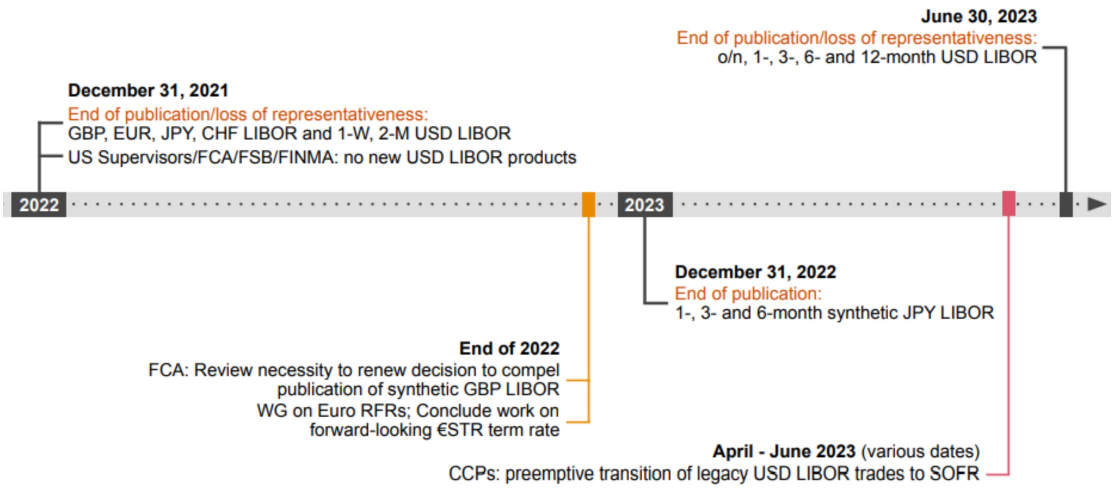
		• whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR 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

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



Conduct News over January 2023

The Financial Industry Regulatory Authority (FINRA)'s head of enforcement, Jessica Hopper, who has served with the US brokerage regulator for the past 18 years, is to step down on 3 February. *She will be replaced in the interim by deputy head of enforcement Christopher Kelly as acting head, during the process of selecting a permanent replacement.*

- FINRA is a private body, overseen by the SEC, which regulates brokerage firms and exchange markets. Self-regulatory for its members, it writes and enforces rules for the sector as well as examining for compliance with federal securities laws. The agency also provides surveillance and regulatory services for the equities and options markets and administers TRACE (the FINRA-developed Trade Reporting and Compliance Engine), which facilitates the mandatory reporting of over-the-counter transactions in eligible fixed income securities.
- Hopper has been executive vice president and head of enforcement since January 2020, after being named acting head of enforcement in September 2019. She joined FINRA in 2004 as an enforcement attorney, before being promoted to vice president in charge of the regional enforcement program in Washington DC and, in 2016, becoming deputy head of enforcement.
- During her tenure the department brought enforcement actions for a broad range of violations of both FINRA rules and federal securities laws and regulations: including excessive trading, supervision; anti-money laundering, Reg SHO, best execution of customer orders, customer protection rule, operational failures, reporting requirements, test cheating and failures to provide information in connection with an investigation. She also spearheaded the integration of two separate enforcement teams within the organization (one handling disciplinary actions related to trading-based matters found through Market Regulation's surveillance and examination programs, and the other

handling cases referred from other regulatory oversight divisions including Member Supervision) which contributed to both greater efficiency and enhanced transparency.

- The agency also issued record sanctions on member firms for systemic supervisory failures under her aegis: including a $57 million fine to Robinhood Financial in 2021 for its role in the meme stock saga, which saw the firm hit with $12.6 million in restitutions to its customers.
- In 2022, the enforcement department also fined Credit Suisse $9 million for numerous operational failures, as well as slapping Deutsche Bank Securities with a $2 million penalty for best execution violations. "Jessica has contributed immensely to FINRA's mission to protect investors and ensure market integrity," said FINRA president and CEO Robert W Cook. "With Jessica at the helm, the Department of Enforcement returned millions of dollars to wronged investors, vigorously pursued complex cases throughout significant market disruptions, and completed a reorganisation that has fostered an even more efficient and effective enforcement program. I thank Jessica for her steadfast commitment to our mission and her long, exceptional service to FINRA."

FINRA AWC: Herbert J. Sims & Co, Inc. settled FINRA charges for failing to implement an AML program "designed to detect and cause the reporting of suspicious cyber-events." *According to FINRA, the broker-dealer's cybersecurity policy had no requirement to review cyber-events for AML purposes and file suspicious activity reports accordingly.*

- As a result, FINRA said that the broker-dealer failed to investigate five cyberattacks, one of which resulted in a bad actor wiring funds to a third-party account. FINRA said that the broker-dealer failed to file any suspicious activity reports on the cyberattacks.
- FINRA determined that the broker-dealer violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade") and Rule 3310 ("Anti-Money Laundering Compliance Program"). To settle the alleged rule violations, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $100,000.

MiFID II Transaction Reporting Five Years On and What Happens Next; 28 January 2023.pdf

On 26 January 2023, the FCA published its latest Regulation Round-up. *Regulation Round-up is the FCA's monthly newsletter to firms on hot topics, events and sector news. Among other things in Regulation Round-up the FCA:*

- Draws attention to its recent review of Consumer Duty implementation plans. The review identifies key areas for firms to focus on over the next 6 months, gives examples of good practice, and areas where firms need to improve their approach.
- States that it is now asking firms applying for permission for the first time, and those applying to vary their permissions, to explain how they have incorporated the Consumer Duty into their businesses.
- Reminds firms that how they log into FCA systems is changing. The FCA is introducing multi-factor authentication to strengthen how firms log into its systems and to further protect and control access to data.
- Reminds principal firms with appointed representatives that they must respond to the mandatory Section 165 request by 28 February 2023.

- Reminds firms that from February 2023 it is hosting a series of live and local events across the UK on the Consumer Duty. The events are aimed at small and medium sized firms and will focus on the Retail Investment and Mortgage sectors.
- 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 Quarter two 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.
- How you log in to FCA systems is changing; We are introducing multi-factor authentication to strengthen how you log into our systems and to further protect and control access to our data.
- You will soon need to authenticate and enter a one-time passcode every time you log into Connect, Reg Data, Online Invoicing, the Shared Intelligence Service (SIS) and the Electronic Submission System (ESS).
- You will be prompted to turn on multi-factor authentication for the systems you access in the coming weeks. See our website for more information.
- High-frequency traders and dealer banks; *As part of our research agenda, we have published an Occasional Paper on the behaviour of high-frequency traders (HFTs) and dealers in the FX market. The paper characterises the liquidity provision and price discovery roles of these participants.*
- Our analysis finds that HFTs and dealers respond differently to adverse market conditions. HFT liquidity provision is less sensitive to spikes in volatility, while dealer liquidity is more robust ahead of scheduled macroeconomic announcements. Although in the only period of extreme volatility in our sample, the 'Swiss Franc de-peg' event, HFTs appear to withdraw almost all liquidity.
- Margin requirements for non-centrally cleared derivatives; *The PRA and FCA previously consulted on amendments to margin requirements for non-centrally cleared derivatives in FCA CP22/13 to address issues previously raised by industry.*
- In response to the comments made during the consultation, the PRA and FCA have made some minor changes to the proposals consulted on which are confirmed in FCA PS11/22. These are:
- Extending the eligibility of EEA UCITS as collateral to provide a transitional period for firms to become compliant with the new requirements on the treatment of third-country funds as eligible collateral.
- Increasing the fall-back transition period for circumstances where firms come into scope of the margin requirements for the first time, and the rules would otherwise apply immediately.
- Respond to our request for information about appointed representatives (ARs); *In December 2022 we sent a mandatory Section 165 (S165) request to principal firms. This request reflects new rules requiring principals to provide more information about their ARs and strengthens the responsibilities and expectations of principals.*
- Principal firms with ARs must respond to this request by 28 February 2023.
- If you plan to remove your ARs, you need to apply to do this by 30 January 2023 otherwise you are required to submit the S165 on your AR population.
- We have provided S165 guidance for principal firms to help you complete the request.

MAS financial institutions transactions platform goes live; *MAS-Tx, the MAS's FIs transactions platform, has gone live.*

- Earlier known as FITx, the MAS-Tx is a portal that consolidates FI regulatory transaction data across different MAS systems in a single place, thereby allowing FIs to view their upcoming tasks, retrieve past transactions, and navigate to submission channels from a single place.
- With the exception of an entity's initial licence application, the MAS-Tx will support navigation to all other capital market-related transactions listed in the MAS' compliance toolkits. The relevant compliance toolkits are the Securities and Futures Act compliance toolkits, compliance toolkit for financial advisers, compliance toolkit for insurance brokers, and the compliance toolkit for the trust industry.
- New submission channels have been created for all regulatory applications, notifications and submissions that were previously submitted to the MAS via email and FormSG. Only submissions made through the updated submission channels will be recorded in the MAS-Tx as past transactions. The MAS has encouraged FIs to navigate to the MAS-Tx submission channels so that they can be certain that they are using the latest forms and the correct submission channels for each transaction.
- To reflect correct submission channels, the MAS has revised its compliance toolkits for licensed fund management companies (LFMCs), registered fund management companies (RFMCs) and venture capital fund managers (VCFMs) relating to various MAS approval and reporting requirements and timelines.
- The MAS-Tx will replace the MASNet portal by end 2024.

This week CorpLon & CityUK launched our 'Improving regulatory efficiency on authorisations' report, *which finds that when financial regulatory authorisations processes are slow, inefficient and unpredictable they increase operating costs, and raise concerns about the long-term impact on UK competitiveness.*

- While the FCA (FCA) and Prudential Regulation Authority (PRA) continue to be a UK strength, our research shows that where firms perceive their authorisations processes as too complex or opaque, it discourages further growth and investment.
- While recognising and welcoming that both the FCA and PRA are already taking forward measures to improve their authorisation processes, the report sets out a series of recommendations for further action which, if delivered in conjunction with those measures already in train, would improve their speed, efficiency and effectiveness.

The regulators we refer to in this report are the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). We put forward recommendations for action that would transform the regulators' approach to authorisations processes by improving speed, efficiency and effectiveness. We focus on four of the regulators' authorisations processes: firm authorisations (Part 4A), variation of permission, change in control and approval of senior managers.

The industry recognises and appreciates that the regulators are taking steps to improve the speed and efficiency of authorisations. For example, the FCA is taking a number of steps to reduce the backlog of authorisation applications, which the industry welcomes. However, there remain concerns across the industry that the actions pledged by regulators will not address the underlying problems and deliver a step-change in culture and operational efficiency on authorisations that can be sustained over the long-term.

Financial services regulatory authorisations in the UK can be slow, inefficient and unpredictable. Regulators can often fail to meet their statutory deadlines for processing authorisation applications. Their current performance reporting is not sufficiently transparent about the delays. As a result, firms across the industry are incurring higher operating costs and losing confidence in the operational effectiveness of the regulators. There is also growing concern that if these problems persist they will negatively impact the UK's competitiveness in attracting global financial business and investment capital to the UK.

Since the reforms that followed the global financial crisis in 2008, the UK's regulatory framework – its architecture, operational independence, stability, and predictability – has been a source of strength, helping to maintain the UK as one of the most attractive places in the world for financial services firms to invest and grow their business. The UK has a reputation for balancing high standards with proportionate supervision, as well as developing rules in a predictable, consultative and transparent manner. Retaining this reputation is a fundamental component of the UK's bid to maintain and enhance its position as a world-leading international financial centre.

However, over recent years firms across the industry have increasingly raised concerns about delays and difficulties with regulatory authorisations, particularly at the FCA. This led us to conduct a review of firms' experiences of authorisations processes in the UK, the results of which form the basis for this report and our recommendations.

A shift towards a regulatory culture that is more commercially aware and efficiency-focused is urgently needed. The regulators are taking on considerable additional responsibilities, from extending the scope of the Senior Manager and Certification regime to the swathe of regulation on-shored from the EU in the Financial Services and Markets Bill. It is crucial to the UK's competitiveness that a high quality and efficient delivery of their core regulatory functions is maintained and enhanced. Our regulatory environment needs to remain competitive and attractive relative to financial centres across the world, and that has to include the efficiency and effectiveness of authorisations processes.

Delivery of the recommendations will help achieve the cultural shift needed and give firms the confidence that a step-change in regulators' operational quality and efficiency can be achieved.

Transparency is a major element of our recommendations – it is crucial to incentivising strong regulatory performance and efficiency. We welcome the government's proposals in the Financial Services and Markets Bill to enhance the accountability of the regulators, to sharpen their focus on international competitiveness and economic growth, and to give HM Treasury power to require regulators to publish information at any time on any matter. We urge HM Treasury to use this power to set performance metrics and require regulators to report against them regularly and publicly. This should include metrics on speed and efficiency of authorisations. This would both incentivise improvements and help Parliament in fulfilling its scrutiny function.

We urge the regulators and government to review our recommendations in the constructive spirit with which they are intended. The industry recognises that the regulators' task is not easy, and we are willing to engage and play their part in improving outcomes overall.

There is confidence that by working constructively together, the industry, FCA and PRA can deliver a high-quality, efficient and effective authorisations regime that contributes positively to the UK's international competitiveness in financial services.

We recognise and appreciate that both the FCA and PRA are taking forward measures to improve their authorisation processes. In chapter 4 of this report we set out in full our recommendations for further actions to help deliver meaningful improvements. Here is a high level summary.

A. Adopting a more commercially aware, efficiency-focused mindset

1. **Follow through on the ambitions and tone being set by regulators' senior leaders**
The regulators' senior leadership[1] has set a clear ambition for efficiency and commercial awareness in their firm-facing operations. The regulators should see these steps through and instill a long lasting cultural 'service mindset' in authorisations. That reflects the high standards of speed, efficiency and good communication that regulators expect firms to operate to.

2. **Better understand the impact on firms**
The regulators should develop a better understanding of the impact of the authorisations process on firms. The FCA should reinstate its quarterly firms feedback survey and invite firms to meetings to discuss their experiences. Firms should also be transparent about where there are pinch points in these processes, where information requests are not clear and where the process might be impacting the UK's attractiveness. This feedback in turn can be used by the FCA to report on their new secondary statutory objective.

B. Embracing transparency, accountability and external engagement

3. **Publish better performance data on authorisations**
The government should direct regulators to publish quarterly granular data on key aspects of their performance - including authorisations - against specific metrics set by HM Treasury. We are pleased to see that both the FCA and PRA have already committed to the publication of more detailed data more frequently on their operational performance.[2] We recommend that the regulators publish quarterly granular data on authorisations service standards, including cases that have exceeded service standard timings, and the length of time taken to allocate case officers to applications. The industry should also feedback examples of lack of clarity on where requests were not clear and might have been causing delay. The feedback should be used by regulators to make their authorisations processes more efficient for themselves and industry.

4. **Offer better guidance to firms**
The regulators should offer more comprehensive guidance to firms on their authorisation process requirements and enable delegation of access to the authorisations IT system for trusted third parties, allowing them to assist clients. Firms should ensure the quality and completeness of their applications.

5. **Enhance engagement and communications with firms**
The regulators should engage more closely and openly with firms and set a minimum frequency for updating firms on the status of their applications.

C. Enhancing internal coordination, capabilities and case management

6. **Improve internal coordination and information sharing**
The regulators should improve their internal information sharing and coordination, to ensure that information is accessible from a single digital source across the organisation. This is particularly necessary between their authorisation and supervisory functions.

7. **Adopt a digital-first approach to authorisations**
The regulators should invest further in a digital first approach to authorisations, automating forms and using AI to reduce administration. They should then focus staff on adding value through experience and judgment. The FCA should link its new applications portal to its Register, RegData and CRM systems. The industry should also feed back to the regulators examples of lack of clarity that contribute to delays. This feedback can be used by regulators to refine processes to be more efficient.

8. **Implement better training for authorisation staff**
The regulators should ensure that authorisation case officers have the knowledge, experience, and capability to process authorisations efficiently and effectively - for example, through more industry secondments. While we welcome the FCA recruiting a significant number of additional staff to work on authorisations, it is essential that all authorisations staff get the right training, including on emerging business models. The industry should be amenable to seconding in case officers from the regulators in the knowledge that the more exposure to firms these individuals have, the better the quality of service from regulators.

9. **Streamline processes to improve efficiency**
The regulators should explore more commonality in definitions across processes to enhance efficiency and engage with firms to streamline processes for less complex applications – for example, certain senior manager applications. Additionally, we suggest that the regulators undertake end-to-end mapping of all authorisations processes to identify areas for further improvement.

1 For the FCA, the FCA Board and Executive Committee; for the PRA, the Bank of England's Prudential Regulation Committee and the PRA's senior management team.
2 Letters between Economic Secretary to the Treasury and the CEOs of the FCA and PRA, December 2022, available at: https://www.gov.uk/government/publications/correspondence-on-regulatory-operational-effectiveness

British banking damaged by slow supervisors warns industry report : *Britain's regulators can be slow, inefficient and unpredictable, raising costs and slowly damaging the financial sector's global competitiveness, industry body TheCityUK said in a report.*

- It said The FCA (FCA), and the Bank of England's Prudential Regulation Authority (PRA) were taking steps to speed up authorisations, but further action was needed.
- The report was based on interviews with 20 industry leaders and a survey of 40 firms, with 83% of respondents saying Britain's international competitiveness was slowly being damaged by regulatory inefficiencies.
- It recommends that regulators are "commercially aware" of the challenges the firms they regulate are facing, publish better performance data on authorisations, enhance communication with firms, adopt a 'digital-first' approach and train authorisation staff better.

- "The UK is one of the world's leading international financial centres, but our competitors are biting at our heels. Complacency is not an option," TheCityUK Chief Executive Miles Celic said.
- Britain is pushing through many reforms to financial rules to help the City of London remain globally competitive after being largely cut off from the European Union by Brexit, ushering in new competition from centres like Amsterdam and Paris.
- TheCityUK said it welcomes the so-called Edinburgh reforms to boost London as a global financial centre.
- "Successfully updating the rules also depends on the referee implementing them in the same spirit and with the same energy," Celic said.
- The Bank of England said it recognised the need to improve the timeliness of approving senior managers in particular and was taking steps in line with many of the recommendations.
- "This report supports our decision to invest heavily last year heavily in staff and technology, resulting in our pending caseload falling by 50 per cent, even as our workload and level of scrutiny of firms increases," the FCA said.
- "We have already announced that we will publish more metrics about our performance soon and will shortly be testing automated application forms to make applications quicker to assess."
- Britain's finance ministry is due to launch in coming weeks a public consultation on rules for vetting senior managers at banks and insurers, with a focus on streamlining the process.
- TheCityUK's recommendations to the regulators are to:
- Adopt a more commercially aware, efficiency-focused mindset by
    - Following through on the ambitions set by regulators' senior leaders to be more commercially aware in firm-facing operations.
    - Developing a better understanding of the impact of the authorisations process on firms.
- Embrace transparency, accountability, and external engagement by
    - Publishing better performance data on authorisations.
    - Offering more comprehensive guidance to firms on the authorisations process.
    - Enhancing engagement and communications with firms.
- Enhance internal coordination, capabilities and case management by
    - Improving internal coordination and information sharing.
    - Adopting a digital-first approach to authorisations.
    - Implementing better training for authorisation staff.
    - Streamlining processes to improve efficiency.

European Venues & Intermediaries Association

London Energy Brokers' Association

Contents

Foreword ... 5

Executive summary ... 6

Recommendations summary ... 8
- A. Adopting a more commercially aware, efficiency-focused mindset ... 8
- B. Embracing transparency, accountability and external engagement ... 8
- C. Enhancing internal coordination, capabilities and case management ... 9

Introduction ... 10

1: The state of play ... 13
- Regulatory authorisations ... 13
- The complexity inherent in the processes' design ... 14
- The regulators' performance data ... 15
- Conclusion ... 16

2: What firms told us about the authorisation process ... 17
- What firms want from authorisations ... 17
- i Speed ... 18
- ii Certainty ... 20
- iii Transparency and communication ... 21
- iv Quality ... 24
  - IT systems ... 24
  - Engagement with staff at the regulators ... 25
  - Internal coordination and communication ... 26
  - Commercial awareness and mindset ... 26
  - Conclusion ... 28

Recommendations summary

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Figure 1: Comparison of the Global Financial Centre Indices for London, New York, Singapore and Ho
(2015-2022)
Source: Global Financial Centres Indices, Z/Yen, Indices 17-32. TheCityUK analysis

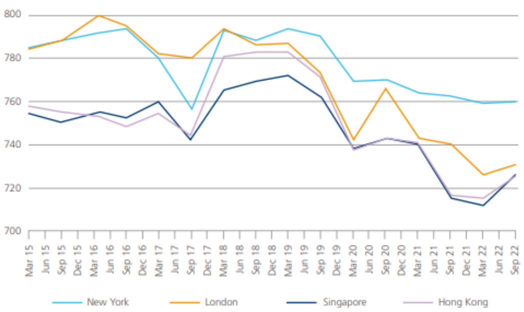
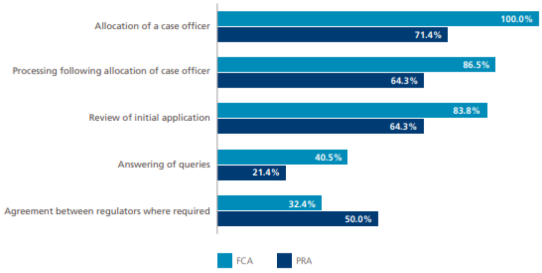


Figure 3: Proportion of survey respondents that reported delays in the last 24 months
Source: Industry participants



Type of authorisation	Purpose of authorisation	Statutory deadline for regulators' decision
Firm authorisation (new authorisation)	Firms need to demonstrate that they are ready, willing, and organised to meet the standards of the regulatory system.	• within six months of receipt of a 'completed application', or • within 12 months of receipt of an 'incomplete application'.
Variation of permission	If an authorised firm wishes to change or add to its regulated activities, it must apply to the regulator for a 'variation of permission' to do so.	• within six months of determining an application to be 'complete', or • within 12 months of receipt of an 'incomplete application'.
Change in control	Individuals or companies wishing to acquire or increase control in a regulated firm (e.g., because of M&A activity) must seek pre-approval of the change from the regulator.	• within 60 working days from acknowledgement of the receipt of an application.[5] • the regulator may request additional information from the applicant. The first time it does so, the 60-day assessment period may be interrupted until the requested information is received, by up to 30 working days.
Senior Manager Functions	Firms wishing to make appointments to specified senior management functions must gain regulatory approval that the employee in question is 'fit and proper' to perform the function.	• within three months from the date of receipt (unless the application is attached to a firm authorisation request). • if the regulator requests additional information, the three-month assessment period pauses on the day on which the request is made and restarts on the day the information is received.

Table 3: The FCA

Source: FCA Operating Service Metrics, 2021/22; FCA Service Standards, various years

PRA	Initial Authorisations (Part 4A)		Approved persons (Part V)		Variations of Permission		Change in control	
	% Compliance	# of cases outside statutory standard	% Compliance	# of cases outside statutory standard	% Compliance	# of cases outside statutory standard	% Compliance	# of cases outside statutory standard
2018/19	99.4	27	99.9	13	99.9	3	100	N/A
2019/20	99.7	3	96.9	715	100	N/A	100	N/A
2020/21	98.7	7	85.7	1,812	99.6	7	99.9	1
2021/22	97.8	18	85.9	1,740	99.8	3	98.9	12

Australian foreign firm transactions rules to start Oct. 2024 The Australian Securities and Investments Commission plans to introduce new derivatives transactions rules in October 2024 targeting foreign financial services firms that have Australian clients. Legal firm Sophie Grace principle Sophie Gerber says that as ASIC moves to enforce the rules, "we anticipate that over time it will lead to a shift in how foreign brokers onboard and deal with Australian clients." Finance Magnates

The UK FCA today published useful feedback on what good and poor looks like when it comes to applications under the Cryptoasset AML/CFT regime. *Clearly extremely important to UK based providers, but there are many pearls of wisdom in there which could be considered by crypto firms generally. Most of the points resonate with my time at the regulator in Gibraltar and are also picked up by AML/CFT regulators globally*. Before preparing an application:

1. Make sure you are actually in scope before pursuing a regulatory authorisation or registration!
2. 2) Consider engaging experts, particularly where the products and services that you offer could trigger other regulatory requirements, this happens a lot with crypto products potentially falling within e-money, payments or securities regimes.

3. 3) Read the guidance that the regulator has provided on its website!
4. 4) Make sure the MLRO has knowledge of crypto-assets, particularly the AML/CFT risks.
   - When preparing the application:
5. 1) Include sufficient information on the business plan, ensuring that the business model is clear. For AML/CFT purposes in particular make sure that the risks are explained, include information on the flow of funds and the compliance framework.
6. 2) Make sure that forecasts are realistic, and not too optimistic, you are not pitching for funding here!
7. 3) Describe the business model including the products and services accurately and focus on the AML/CFT risks of each particular product/service.
8. 4) Have a well drafted business-wide risk assessment, ensure that it is relevant and addresses cryptoasset risk and product related risk in detail, don't go with something off the shelf and generic.
9. 5) Make sure there is a link from your policies, systems and controls to the risk assessment!
10. 6) Ensure you have effective transaction monitoring and blockchain analytics. With sufficient resources that know how to use the tools effectively too.
11. 7) Don't just rely on group policies and procedures without demonstrating how these comply, this is particularly important for firms which are part of large groups.
12. 8) When outsourcing, you need to show how you still comply, in particular how the outsourced providers comply.
13. 9) Training is a key part of AML/CFT and again, it is important to show that the training is tailored and relevant to the company and the industry it operates in.
14. 10) SAR/STR policies need to be applicable to the crypto-related activities.
15. 11) Include relevant disclosures in communications.
16. 12) If already regulated, this will likely be considered. A history of compliance failings won't help when applying for a new registration or licence... nor will ongoing investigations or sanctions from other authorities.

IFPR implementation and SM&CR/IFPRU: Noting yesterday's FCA addendum concerning the identification of a 'significant SYSC firm'

- FCA handbook-notice-106.pdf
- Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2023
- Background
- 3.2 When introducing the Investment Firm Prudential Regime (IFPR) in January 2022, we renamed and moved the definition of a 'significant IFPRU firm' within our Handbook. This definition had been used as one of the criteria for identifying Enhanced firms under the Senior Managers & Certification Regime (SM&CR). We renamed and moved the definition to retain it in our Handbook, following the deletion of the IFPRU sourcebook as part of implementation of the IFPR.
- 3.3 Since then, a number of firms and trade bodies brought to our attention that the newly named definition of a 'significant SYSC firm' in the Senior Management Arrangements, Systems and Controls (SYSC) sourcebook could result in more firms being brought into scope as Enhanced firms than under the previous definition as it had been understood and applied.

- 3.4 Under the SM&CR, the highest tier of requirements is reserved for Enhanced firms. Representations were made to us by these firms and trade bodies, that the Enhanced status certain firms had newly acquired was not commensurate with the risk they posed to the market.
- 3.5 Our data indicated that while around 105 firms were 'significant' firms under the previous IFPRU definition and subject to the SM&CR Enhanced Regime, that number could have climbed to around 830 under the 'significant SYSC firm' definition.
- 3.6 Our policy intent had been for the scope of application of the SM&CR Enhanced regime to be maintained as it was prior to the implementation of the IFPR. We therefore proposed in Consultation Paper (CP) 22/17 to amend the definition of a 'significant SYSC firm' to make sure that this outcome is delivered.
- Summary of proposals
- 3.7 We proposed to make clear that only a firm that would have been both a significant IFPRU firm and an IFPRU investment firm under the pre-IFPR arrangements fell within the definition of a 'significant SYSC firm' for the purpose of the Enhanced scope SM&CR regime. 6 FCA Handbook Notice No 106 January 2023
- 3.8 We proposed to make this change by amending the criterion for being an Enhanced firm that is based on being a significant SYSC firm in the FCA Handbook.
- 3.9 Following feedback, we have made this change to our rules, subject to minor amendments to make clear that a firm that only holds client assets and monies for unregulated business or for non-MiFID activities would not be a significant SYSC firm, consistent with the pre-IFPR approach. Feedback We received 4 responses to our chapter in CP22/17. There were 2 responses from representative bodies and the other responses were from individual firms. They were all broadly supportive of our proposals.
- Our response Application of non-SM&CR requirements
- 3.10 Two respondents highlighted that, while the proposed amendment would remedy the SM&CR related issues described in the QCP, the new SYSC definitions still had impacts beyond SM&CR that could usefully be addressed. They made the point that under the proposed regime, some firms would face restrictions on the number of directorships they can hold and would be subject to additional risk and nomination committee requirements.
- 3.11 We considered the non-SM&CR impacts prior to consulting and concluded that it is right that the other rules apply beyond IFPRU firms. In these cases, there was no shared understanding that the rules were limited to those firms and in our view reflect existing standards of good governance for larger firms.
- 3.12 We periodically review the effectiveness of our rules, and we are open to examining the way in which other requirements apply to significant firms in the future. In the meantime, we note that, where appropriate, firms can already apply for waivers from the governance requirements mentioned by the respondent.
- 3.13 One respondent stated that the proposed Handbook amendment did not appear to accurately exclude all former BIPRU firms.
- 3.14 We would like to reassure former BIPRU firms that having looked again closely at the legal text we consulted on; we are confident that it does exclude them.
- 3.15 Another respondent proposed that in order to maintain the original scope, we would also need to exclude firms that were previously exempt IFPRU commodities firms from the 'significant SYSC firm' classification in SYSC 1.5 or alternatively add them to the list of excluded firms set out in the proposed rule SYSC 23 Annex 1 9.3R.

- 3.16 We do not agree with the interpretation offered by this respondent and, after reviewing the rules, we do not consider it appropriate to exclude firms that were previously 'exempt IFPRU commodities firms'. IFPRU provisions listed 7 No 106 January 2023 FCA Handbook Notice the main rules to which the 'significant SYSC firm' definition was relevant and exempt IFPRU commodity firms were not excluded from them all. Further, other IFPRU provisions stated that an IFPRU exempt commodities firm was subject to provisions that only applied to IFPRU investment firms.
- 3.17 A respondent submitted alternative drafting suggestions to reflect their view that a firm that only holds client assets and monies for non-MiFID purposes should be excluded from the Enhanced firm regime as it would not have been an IFPRU investment firm.
- 3.18 We agree with the point that under the old IFPRU definitions, a firm that could hold client money or assets, could still be excluded from the IFPRU investment firm definition as long as those monies or assets related to unregulated business or non-MiFID activities. We have therefore made an amendment to the final rules that makes that point explicit.

FCA Consumer Duty implementation plans; Multi firm review - Consumer Duty implementation plans

- Following on from my email yesterday, we've now published our multi-firm review of firms' implementation plans. This identifies examples of good practice, and areas where firms may need to improve their implementation approach to deliver the Duty's standards on good consumer outcomes.
- We welcome the work many firms are undertaking to understand and embrace the spirit of the Duty. We'd encourage all firms to use the time available, the resources on our website, and the findings and examples in our review, to ensure they are on track for implementation.
- We will be arranging a roundtable on Thursday 23 February, 14:00-15:30 for trade associations and professional bodies, to discuss the findings of the review and next steps on implementation. An invitation will follow next week.
- Consumer Duty podcasts; In the second episode in a series of Inside FCA Podcast interviews on the Consumer Duty, the FCA's Manager of Consumer Policy, Richard Wilson, discusses the detail behind the products and services outcome, which is designed to ensure all products and services for consumers are fit for purpose.
- This follows on from the opening episode where the FCA's Head of Competition Policy, Ed Smith, discusses the price and value outcome.
- Application forms and the Consumer Duty; We're now asking firms applying for permission for the first time, and those applying to vary their permissions, to explain how they've incorporated the Consumer Duty into their businesses. The 'requirements for firms seeking authorisation' section on our information for firms gives an idea of the types of supporting information we will need firms to provide.

FINRA AWC: Wedbush Securities Inc. settled FINRA charges for failing to supervise the trading activity of its proprietary traders and customers for potentially manipulative trading.

- FINRA found that the broker-dealer provided certain customers with access to third-party electronic trading platforms from which the orders were routed to various exchanges for execution. FINRA found that the broker-dealer did not conduct any supervisory reviews of the orders, instead relying on the third-party broker-dealers. FINRA concluded that the broker-dealer did not take any steps to prevent its customers from engaging in potentially manipulative trading, "including layering, spoofing, wash sales, or marking the close or open," even after one of the executing broker-dealers had flagged potentially suspicious activity. FINRA also said that the broker-dealer did not have any supervisory systems in place to monitor its proprietary traders.
- FINRA determined that the broker-dealer violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade") and Rule 3110 ("Supervision"). To settle the charges, the broker-dealer agreed to (i) a censure, (ii) undertakings to correct the supervisory deficiencies and (iii) a civil monetary penalty of $975,000, of which $82,142 was to be paid to FINRA and the remaining amount to settle charges brought by various exchanges.
- FINRA Rule 2010: Standards of Commercial Honor and Principles of Trade
- FINRA Rule 3110: Supervision
- FINRA Enforcement Release - 2017054491001 - Wedbush Securities Inc. - 01/19/2023
- Broker-Dealer Supervision
- Manipulative Trading: Spoofing, Wash Sales, Marking the Close

Brussels looks at EU-wide ban on inducements for financial advisers; Commissioner Mairead McGuinness says investors are being steered away from low-cost ETFs; The EU's financial services chief has said an EU-wide ban on inducements could enable greater retail investment in exchange traded funds, leading to better returns for consumers. Mairead McGuinness, European commissioner for financial stability, financial services and the capital markets union, said inducements paid to financial advisers by product manufacturers are leading to poor outcomes for retail investors in the EU. /jlne.ws/3RaeVqq

WhatsApp lesson reaches Wall Street by snail mail; *Morgan Stanley (MS.N) is embracing the Pottery Barn rule: You break it, you pay for it. The Wall Street firm has docked the pay of employees who flouted rules on using personal messaging apps – a collective misdeed that cost the investment bank $200 million in fines. The original breach was one revelation in what makes Wall Street tick; Morgan Stanley's response, or the idea that it's an outlier, is another.*

- The real shocker, when regulators slapped $2 billion in penalties on 11 big financial firms last September, wasn't that employees were conducting off-channel chats, leaving firms unable to produce a proper paper trail when asked. It was how blithely and pervasively they were doing so. The number of messages sent through platforms like WhatsApp was "voluminous" according to the U.S. Securities & Exchange Commission. Desk heads, dealmakers, and division bosses were all communing in the shadows. At Morgan Stanley, a sample of 30 broker-dealer staff found "substantially all" of them were at it.
- James Gorman's firm, for its part, is fining employees who crossed the line, using a points system that takes into account seniority, what they did, and how often. The SEC noted back in September that Morgan Stanley had already terminated employees and imposed financial penalties, as had Deutsche Bank (DBKGn.DE).

JPMorgan (JPM.N), fined a year earlier, had previously fired staff too. And all of the offending banks will be factoring employee conduct into bonus decisions for last year to some degree, especially given the pressure to cut their wage bills.

- But just like the idea of following the rules shouldn't be unusual, nor should linking penalties directly to employees' financial awards, especially when their behavior leaves their employer nursing a measurable loss. The likes of Citigroup (C.N) and Bank of America (BAC.N) now regularly reiterate that using personal channels is taboo and punishable by firing. But ad-hoc levies have more immediate impact, and are easier to impose widely. What's good for the pottery store sounds good for Wall Street too.
- Morgan Stanley has hit employees with financial penalties for breaking its rules over the use of messaging platforms like WhatsApp for official business, the Financial Times reported on Jan. 26. The penalties used a points system based on factors like frequency and seniority, and ranged in size up to more than $1 million. Morgan Stanley was one of 11 banks fined by the U.S. Securities & Exchange Commission and the CFTC in September 2022. At the time, the SEC noted that Morgan Stanley had financially penalized and terminated some staff for violating its policies.

The U.S. SEC is probing registered investment advisers over whether they are meeting rules around custody of client crypto assets, three sources with knowledge of the inquiry told Reuters. The SEC has been questioning advisers' efforts to follow the agency's rules around custody of clients' digital assets for several months, but the probe has gathered pace in the wake of the blow-up of crypto exchange FTX, the sources said. They spoke on condition of anonymity as the inquiries are not public. /jlne.ws/3janPb2

Bloomberg to Pay $5 Million for Misleading Disclosures About Its Valuation Methodologies for Fixed Income Securities – SEC; The SEC's order finds that from at least 2016 through October 2022, Bloomberg failed to disclose to its BVAL customers that the valuations for certain fixed-income securities could be based on a single data input, such as a broker quote, which did not adhere to methodologies it had previously disclosed.

- Statement In the Matter of Bloomberg Finance LP – SEC; In describing to customers how it arrived at prices for fixed income securities, Bloomberg disclosed that it used one of two algorithms—the direct observation algorithm or the observed comparable algorithm. According to Bloomberg's disclosures, the direct observation algorithm used market data about the target security. The observed comparable algorithm, used when market data about the target security either was unavailable or could not be corroborated, priced the target security using market data regarding comparable securities.

UK Eyes Investment Consultant Regulation After Bond Crisis; The FCA has said that it wants to extend supervision to the investment consultant market to prevent a repeat of the September 2022 government bond crisis that spilled over into the country's pension funds. Read full article »

Crypto Giant Coinbase Fined €3.3M By Dutch Regulator; The central bank of the Netherlands said on Thursday that it has handed a fine of €3.3 million ($3.6 million) to Coinbase Europe, a cryptocurrency exchange, for operating in the country without the correct registration. Read full article »

Tradition Brokerage Disputes Liability In Carbon Credit Fraud; A major brokerage firm argued on appeal Thursday that it was not close enough to the management and control of companies used as a vehicle for a U.K. carbon credits tax fraud to be liable to liquidators for millions of pounds. Read full article »

Attys Seek $4.5M Award In Yen-Libor Benchmark-Rigging Suit; Lowey Dannenberg PC has asked a Manhattan federal judge to approve a $4.5 million award for its work representing investors in a sprawling benchmark-rigging action on the heels of a $22.5 million settlement resolving claims against certain major financial institutions, including Barclays PLC and broker ICAP Europe Ltd. Memorandum attached | Read full article »

Corlytics Buys ING's Regulatory Platform In €5M Deal; Irish regulatory risk business Corlytics Ltd. said it has purchased ING Group's regulatory monitoring tool SparQ in a €5 million ($5.4 million) deal it believes could boost its compliance technology business. Read full article »

EVIA; Guidance for Transaction Reporting Matched Principal transactions; January 2023.pdf

ASIC updates OTC derivatives transactions reporting webpages; *On January 16, the Australian Securities & Investments Commission (ASIC) updated its over-the-counter (OTC) derivatives transaction reporting webpages.*

- Derivatives transaction reporting | ASIC remains the key landing page, with a focus on the current prevailing ASIC 2022 Rules. It also has links to the future 2024 rules and the past 2013 rules.

- The 2024 rules from October 21, 2024, | ASIC provides an implementation support focus for the 2024 rules with:

    - A comparison document of the 2024 rules vs the 2022 rules;
    - Information about the ISO 20022 base messages and a preliminary mapping of the 2024 rules data elements to the ISO 20022 data elements; and
    - Information about its planned further rules-matters consultation in 2023.

<table>
<tr><th></th><th>Broking Model</th><th>Use Case</th><th>Client Chain</th></tr>
<tr><td>1</td><td rowspan="3">Name Give Up</td><td>External Client onboarded as Principal</td><td>No client chain transaction reporting</td></tr>
<tr><td>2</td><td>Internal Desk as Client</td><td>NGU c/p on boarding details and KYC</td></tr>
<tr><td>3</td><td>External Client onboarded as DMA Provider</td><td>Requires complex on boarding or direct details from the DMAP Client</td></tr>
</table>

4	Matched Principal	Internal Desk as Client	MPT c/p on boarding details and KYC
5	Agency Execution	External Client onboarded as Principal	Pass through of transaction chain for relevant reporting to exchange
6		External Client onboarded as DMA Provider or a PB	

Market Participants Focus on Data; *There has been a lot of proposals from the SEC around holding disclosures, swap disclosures, short sell disclosures and a lot quicker, more frequent transparency around the holdings, said Doug Clark, Managing Director, TMX Group.*

- Speaking on the Wall Street Horizon webinar “Data Minds: Navigating 2023’s Bear Traps Using Data-Driven Signals”, he said that’s going to be an opportunity for trading desks to understand what flows are going through the market.
- “It’s a bit of a challenge for asset managers that are trying to either accumulate or unwind a large position over a number of days or weeks, as information around their trading intense starts to slip into the market. So they’re going to have to be aware of that,” he said.
- Virginie O’Shea, Founder & CEO, Firebrand Research, added that most market participants are concerned with market risk at the top of their list of risks, followed by credit and liquidity risks.
- Latency is obviously an issue with regards to trading activities as well as risk, so we’re all going to be challenged this year, she said.
- Peter Hafez, Chief Data Scientist, RavenPack, said that it’s important to have data that can capture the changes in the market environment. Another theme that is important is the speed of change, he added. “It’s becoming important to look at datasets that can both give you the necessary coverage on a global scale since we are dealing with geopolitical issues,” he said. “And secondly, also looking at datasets that are fast and that points towards alternative data,” he added. If you start to look at alternative datasets, you can get a much better and more timely read off what’s really happening in the economy, said Hafez. “You can’t just simply rely on your traditional data sources, your economic data release,” he said.
- Chris Petrescu, Founder of CP Capital, Formerly at ExodusPoint and WorldQuant, said that when markets are volatile, anyone who “makes markets in those markets” tends to do well because there’s more trading. “So trade revenue from those markets drives a lot of the profits as well as them being extremely smart and calculated,” he said.
- Asha Mehta, Managing Partner & CIO, Global Delta Capital, added that there’s been significant dispersion across managers. But one common thread is those that had more exposure to the value theme. were winners in the past year. “Coming into 2023 I really see this as much more of an active stock pickers market. As margin compression comes in, we really want to understand the governance structures of companies, we want to understand management practices, their history and managing situations.”
- Corporate event data is always going to be important, added Hafez, but generally “we are seeing that that interpretation of corporate events is changing,” he said. Meanwhile, Mehta emphasized the need for a breadth of data across the cap spectrum and across markets.

Digital asset enforcement continues. On January 19th, the SEC announced that a digital asset firm has agreed to pay $45m in penalties for offering an unregistered investment product that offered interest on "staked" digital assets. It also agreed to cease offering the product. This week's action follows similar charges by the SEC against another digital asset firm last week. On the same day as the SEC's announcement, the Department of Justice announced that it has charged the owner of a digital asset exchange with unlicensed money transmitting, noting that the exchange has processed over $700m in illicit funds that include ransomware payments.

How to Best Address Rising Regulatory Risk in 2023 Financial firms have plenty on their plate on the regulatory front across the globe, and this year the regulatory burden will only intensify, explains Brock Arnason, founder, and CEO of Droit. In this article, Mr. Arnason highlights what's in store regulation-wise for firms and explains that they need to step up their compliance infrastructure to achieve transparency and responsiveness in the new regulatory environment. More

FINRA AWC: Electronic Transaction Clearing, Inc. settled FINRA charges for reporting inaccurate short interest position data. FINRA found that the broker-dealer reported short interest positions that were custodied with, and already reported by, its clearing firm. *Additionally, FINRA found that the broker-dealer generated its automated short interest data reports before certain same day trades settled, which caused the firm to misreport or fail to report certain short positions. FINRA stated that failures occurred in part due to inadequate supervisory policies.*

- FINRA determined that the firm violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), Rule 3110 ("Supervision") and Rule 4560 ("Short-Interest Reporting"). To settle the charges, the broker agreed to (i) a censure and (ii) a civil monetary penalty of $150,000.
- FINRA AWC: Corinthian Partners, LLC settled FINRA charges for failing to implement policies prohibiting firm principals from supervising their own trading activity. *FINRA found that the firm's written supervisory procedures failed to identify supervisors with responsibility for trade reviews and did not assign one principal's trading activity to a different principal for review, thereby enabling firm principals to approve their own trading activity for customer accounts.*
- FINRA also found that the broker-dealer's policies contained outdated references to manual reviews of trade blotters despite the firm having transitioned to an automated review system.
- FINRA determined that the supervisory failure constituted a violation of FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade") and Rule 3110(a)-(b) ("Supervision"). To settle the charges, the broker-dealer agreed to (i) a censure, (ii) a civil monetary penalty of $10,000 and (iii) undertakings to revise its supervisory controls to achieve compliance with Rule 3110.

FINRA AWC: Nomura Securities International, Inc. settled FINRA charges for overstating its net capital, which caused several additional reporting and recordkeeping violations. *In a Letter of Acceptance, Waiver, and Consent, FINRA found that the broker-dealer misclassified the underlying securities in certain reverse repo transactions as "allowable," even though the counterparty, which was an affiliate of the broker-dealer, custodied the securities.*

- Because the broker-dealer was not in possession or control of the underlying securities, they were "non-allowable assets" that should have been deducted from the broker-dealer's net capital and excess net capital calculations. As a result of that mischaracterization, the broker-dealer also (i) miscalculated its customer reserves, (ii) filed inaccurate FOCUS reports and (iii) maintained inaccurate books and records.
- This settlement follows a 2018 censure and fine where FINRA found that the broker-dealer inaccurately calculated its Proprietary Account of Broker-Dealers reserve computations and failed to establish, maintain and enforce a supervisory system reasonably designed to ensure it properly calculated such account.
- FINRA determined that the broker-dealer violated Exchange Act Section 15(c) ("Registration and regulation of brokers and dealers"), Section 17(a) ("Records and reports"), Exchange Act Rule 15c3-1 ("Net capital requirements for brokers or dealers"), Rule 15c3-3 ("Customer protection-reserves and custody of securities"), Rule 17a-3 ("Records to be made by certain exchange members, brokers and dealers") and Rule 17a-5 ("Reports to be made by certain brokers and dealers"). The broker-dealer was also found to have violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), Rule 3110 ("Supervision") and Rule 4511 ("General Requirements").
- To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $125,000.
- One mistake that broker-dealers repeatedly make is failing to document and execute transactions with their affiliates as they would transactions with unaffiliated third parties. If anything, firms should impose a higher standard of control on affiliate transactions, not only because of the potential conflicts, but because of the tendency to be overly relaxed or trusting when transacting with affiliates.

AMF sets out action and supervisory priorities for 2023; *The Autorité des marchés financiers (AMF) has published its priorities for action for 2023, including promoting finance that meets investors' expectations, taking up European and international challenges, the improvement of the regulatory framework for sustainable finance and the fight against greenwashing, and ensuring robust and efficient supervision.*

- The AMF has also set out its supervisory priorities for 2023 around the three following themes: asset management, market intermediaries and infrastructures, and the distribution of financial instruments.

Commentary: Why ESMA should eliminate pre-hedging; The ESMA has acknowledged the need for clarifying the rules surrounding pre-hedging, but Susquehanna International Securities managing director John Keogh says the practice should be banned. "The term 'pre-hedging' can also be misleading, as some market participants use this expression to justify a behavior that might more accurately be characterized as front-running," Keogh writes. The Trade (UK)

FCA Financial Resilience Survey (formerly "Covid-19 Impact Survey"); Dear Trade Associations, We're asking a number of firms to complete this survey to help us understand how the current financial climate is impacting FCA solo-regulated firms. We're planning to send this survey to the relevant firms in Tranche 1, some of which may be members of your associations, on one of the following dates:

- Batch 1: to be sent on 7 February 2023 - response due by **28 February 2023**
- Batch 2: to be sent on 8 February 2023 - response due by **1 March 2023**
- Batch 3: to be sent on 9 February 2023 - response due by **2 March 2023**
- Batch 4: to be sent on 10 February 2023 - response due by **3 March 2023**

And firms in Tranche 2 on the following dates:

Batch 1: to be sent on 14 February 2023 - response due by **7 March 2023**

- Batch 2: to be sent on 15 February 2023 - response due by **8 March 2023**
- Batch 3: to be sent on 16 February 2023 - response due by **9 March 2023**
- Batch 4: to be sent on 17 February 2023 - response due by **10 March 2023**

Firms in the Temporary Permissions Regime and Supervisory Run-off Regime can expect to receive this same survey, based on the same timeline above.

CP22/19

On 3 October 2022 we published a Consultation Paper with proposals to replace the FCA Financial Resilience Survey with a new regulatory return during 2023. In doing so, we aim to:

- reduce the administrative and financial burden that an ad hoc survey places on firms.
- increase the quality and consistency of financial resilience data received from our solo-regulated firms

This consultation has now closed. We will consider all feedback and publish a policy statement and final rules by Summer 2023.

We still require firms to complete the Financial Resilience Survey when requested to do so by us, until such a time that the new return comes into force.

This latest survey follows on from Phase 8, issued in October 2022:

Phase	Date(s) of launch
	Covid-19 Impact Survey
1	June to August 2020
2	September to November 2020
3	January to February 2021
4	April to May 2021
5	August 2021
6	January to February 2022
	FCA Financial Resilience Survey*
7	June 2022
8	October 2022

We will send a warmup/introduction e-mail to all the firms at least one week prior to them receiving the survey.

This survey will include 9 questions in total, designed to give us information about the following important areas:

- Liquidity/cash availability and needs.
- Recent financial performance
- Scale of business activity

The survey will be sent to all firms in the following Tranche 1 portfolios unless they satisfy specific exclusion criteria:

- E-Money Issuer
- High-Cost Lenders
- Payment Services Firm
- Peer-to-Peer lending platforms
- SIPP Operators
- Advisers and intermediaries
- Contracts for Differences (CFD) Providers
- Credit reference agencies and providers of credit information services
- Crowd funders
- Custody Services
- Debt purchasers, debt collectors and debt administrators
- Mainstream Consumer Credit Lenders
- Personal and Commercial Lines Insurance Intermediaries
- Platforms
- Wealth Management

And Tranche 2:

- Exchanges
- Asset management
- Wholesale brokers
- Wholesale banks
- Principal trading firms
- Wholesale (other)
- Life third party administrators
- Multilateral Trading Facilities and Organised Trading Facilities
- Alternatives
- Benchmarks
- Claims management.
- Lloyd’s & London market intermediaries
- Retail mortgage lenders
- Mortgage third party administrators
- Lifetime mortgage providers
- Debt advice firms (excl. not-for-profit)

- Non-bank lenders
- Mortgage intermediaries
- Motor finance providers
- Retail finance providers
- Price comparison websites
- Corporate finance firms

Firms will be emailed a link to complete the survey online (not through RegData). It is designed to be easy to complete even via a mobile phone and we expect that most firms will not need more than an hour to complete it. The link that we will send will be unique to each firm. If firms need a different individual within their organisation (or a consultant) to answer and submit the survey, the link can be forwarded to the required person.

Completion of the survey is mandatory under section 165 of the Financial Services & Markets Act (FSMA) 2000. We may exercise our powers under FSMA for firms who do not respond. We have designed this survey so that it is quick and simple to complete. However, if due to exceptional circumstances a firm cannot access its financial information, they will need to ensure that they complete the questions where the relevant information is available.

At the FCA, our core responsibilities include protecting consumers and enhancing the integrity of the UK financial markets. We know that financial stresses can put additional pressure on firms and so we are seeking to understand the effect the current financial climate is having on the finances of the firms we regulate and to better guide our supervisory actions.

PRA publishes 2023 priority letters for insurance supervision, international banks, and UK deposit takers; The PRA has published Dear CEO letters setting out its 2023 priorities for:

- insurance supervision, where the PRA's main focus will be on financial resilience, risk management, implementing financial reforms, reinsurance risk, operational resilience, and ease of exit for insurers;
- international banks active in the UK, where the PRA will focus on financial resilience, operational risk and resilience, data, and financial risks arising from climate change; and
- UK deposit takers, where the focus will be on credit risk, financial resilience, operational risk and resilience, model risk, data, and financial risks arising from climate change.

Takeaways from the FCA's latest Skilled Person data; *On 11 January 2023, the FCA published its latest quarterly Skilled Person data for the period July to October 2022 (Q2 2022/23). There were 11 reports commissioned during this time (following nine in the first quarter of the year).*

- This is broadly in line with the number of reports commissioned last year (when 38 reports were commissioned for the full year), which at the time had represented a general reduction in the overall number of reports from recent previous years – for example, for 2020/21, 68 reports were commissioned. In terms of areas of focus:
    - there is a continuing trend of high numbers of reports in the retail sector (around two thirds in this quarter).
    - so far for 2022/23, there appears to be a drop in the relative number of investment management reports with these making up 10% of cases so far in

2022/23, having represented over 25% of the reports commissioned last year; and
    - looking at the Skilled Person lots, overall, for 2022/23 so far most of the reports are in Lot C, Controls and Risk Management Frameworks (8 out of 20 reports).
- The latest data does not contain any costs information (which we anticipate will be provided in the annual report), but of note the average cost of a Skilled Person report rose last year. The average report cost figure for 2021/22 was approximately £992,000, as compared to around £579,000 for 2020/21 and around £534,000 for 2019/20.
- The FCA's latest data can be found here.

Key points from the FCA's most recent whistleblowing data; *On 12 January 2023, the FCA published its whistleblowing data for the period July to September 2022 (Q3 2022). During this period, it received 291 new whistleblowing reports, containing 734 allegations. Most of the new reports were received via the online reporting form and the majority of whistleblowers provided their contact details, rather than seeking to remain anonymous.*

- In line with earlier data, the top four allegations reported by whistleblowers during the period were: (i) fitness and propriety; (ii) compliance; (iii) treating customers fairly; and (iv) culture. The number of allegations involving consumer detriment also remained relatively high with 30 allegations for this period following 51 for the previous quarter.
- Historically, only a small proportion of reports have led to significant action to mitigate harm (for example, enforcement action or a Skilled Person review). Indeed, the FCA confirmed in a Freedom of Information request response published in May 2022, that as at that date only approximately 5% of 2019 reports and around 4% of 2020 reports had led to significant action to mitigate harm. However, the FCA did state at that time that a number of disclosures for these periods remained under assessment and that those under assessment may still result in significant action being taken.
- The FCA's latest data can be found here.

UK says brokers unprepared for market shocks The UK FCA says last year's energy, metals, and government bond markets turmoil illustrated how some City of London brokers are so unprepared that there is a risk that some firms will not survive future sudden market shocks. FCA director of wholesale sell-side Simon Walls told firms in a letter that underestimating future liquidity risks could result in "disorderly wind downs and raise the risk of contagion and potential systemic defaults." Bloomberg

- The FCA has told wholesale brokers that they continue to lag behind other sectors in stamping out poor conduct and improving culture, as the regulator sets out a new supervisory strategy. Read full article »
- On 11 January 2023, the FCA published a portfolio letter setting out its new strategy for supervising wholesale brokers. The letter details what the FCA believes are the most important risks arising from wholesale brokers, what it thinks drives those risks and the supervisory focus for the next two years.
- Given the current economic climate, the FCA has drawn on recent supervisory work to identify the following four key areas of focus for wholesale broking firms:

- Financial resilience – Where firms have adequate capital and liquidity, they are far less likely to cause market disruption if they fail, and in the event, they do, a prudent approach will mean that the risk of clients suffering losses is greatly reduced. However, the FCA is concerned by weaknesses in clearing brokers' liquidity risk management, observing that firms fail either to develop their own competence on liquidity risk management sufficiently, or to recruit expertise externally to intraday liquidity risks from their own business as well as from key clients and counterparties. In order to improve financial resilience, firms should review the level of liquidity that they hold under the new Investment Firm Prudential Regime (IFPR) and ensure that their assessment is commensurate with the risks they face. Furthermore, firms should look beyond recent historical precedent when modelling stresses, noting that the past twelve months have produced a series of events that were previously considered implausible based on historic modelling. Henceforth, firms should seek to model stress events in more extreme, or reverse stress scenarios, and consider what they might need, or need to provide in these circumstances, and test what can be done to reduce vulnerability in those events.
- Remuneration structures – The FCA continues to see brokers receiving lower salaries with large cash bonuses based on the value and volume of trades they conclude for clients, which may lead them to focus on achieving short-term financial targets at the expense of client interests. Firms need to ensure that their remuneration structures match the risks associated with their business model and higher risk firms must identify Material Risk Takers (MRTs) whose professional activities have a material impact on the risk profile of the firm or the assets it manages. The FCA expects wholesale brokers and CEOs to ensure that their remuneration structures comply with the new IFPR remuneration requirements. In 2023 the FCA will focus on ensuring that firms are appropriately applying deferrals, malus and clawback when remunerating relevant staff. Where firms have failed to evidence that they have taken appropriate steps to implement the required IFPR remuneration requirements, the FCA will consider using a range of regulatory tools, including routinely imposing additional capital requirements to account for the increased risk that weak incentives can drive.
- Governance and culture – Wholesale broker firms that are governed by boards with a suitable mix of skills and experience for the firm to draw on and that provide effective challenge to management are more likely to make better decisions, manage risks and succeed. The FCA has observed that, poor decision making and failures in oversight played a key role in exacerbating the extent of any underlying issues or preventing them from being resolved earlier. Therefore, firms should continue to embrace the Senior Managers and Certification Regime (SMCR) to promote good decision making and individual accountability, and with an understanding that the nature of their business means that relatively junior employees (in terms of traditional hierarchy) can expose broking firms to significant risk of harm to the firm, their clients, and the market broadly. Firms can also help themselves to avoid conduct risk by properly taking into account regulatory references when hiring new certified staff and considering appropriate risk mitigations with any individuals where adverse information comes to light in the hiring process.
- Control functions – To achieve effective compliance, firms should stay abreast of the risks posed by their business models, design clear policies and processes around those risks and promote a culture where adherence to their rules is actively encouraged. Financial crime and market abuse mitigation are areas where the FCA commonly find

brokers have weak systems and controls, and firms should continue to develop safeguards to mitigate these risks. The FCA's recent work highlighted widespread deficiencies in wholesale brokers' client onboarding processes to control financial crime and money laundering.
- By the end of February 2023, the FCA expects all CEOs to have discussed this letter with their fellow directors and/or board and to have agreed actions and/or next steps.

False starts and laggards. The FCA set the tone in their latest "Dear CEO" letter to wholesale broking firms; *Let me start by saying "false starts" and "laggards" are the words that the FCA used, these words set the tone well for what the FCA go on to say in their latest Dear CEO letter sent to the wholesale broking sector. This letter has a sting in the tail.*

- The FCA take the time to remind CEOs about their responsibilities under the Senior Managers and Certification Regime (SMCR), and then give them just shy of 7 weeks to discuss the contents of this letter with "their fellow directors and/or Board" and "agree next steps".
- What are next steps?
- Next steps in this case being quite obviously: identify where your firm is falling short of expectations and put a plan in place to meet those expectations. Be careful though. In the previous sentence, the one before they ask that by end-February 2023 firms must have agreed next steps, they leave some room for discretion (i.e., for a firm to make its own decision as to telling the FCA what they found "immediately"); and at the same time reserve the right to criticise a firm for not telling them about something should it come to their attention further down the road.
- What are the key areas of concern (this time)?
- Don't mistake the title for sarcasm, it's not. There is nothing new in this letter, the frustration is tangible.
- Financial Resilience
- This is a subject that comes up frequently. It always surprises me, that for something so important – to stay in business – why so many firms, in the FCA's words "*fail to either develop their own competence on liquidity risk management sufficiently, or to recruit expertise externally to help address this issue…*" The FCA go on to say that they will be carrying out targeted work on this and, again in their words "…where we identify material weaknesses or firms underestimating their liquidity needs, we will take action…". What Action will the FCA say they will take? Business restrictions and Board effectiveness reviews.
- The FCA have been telegraphing their concerns in this area for over 2 years. With the introduction of the new prudential regime for investment firms in the UK (IFPR) last year and the intervention in June 2019 that started with CP 19/20 and led to FG20/1 "Our framework: assessing adequate financial resources", is there really anywhere to hide? There are also numerous references in other areas of the handbook. Let's not forget a good old fashioned ICAAP either. An ICAAP was supposed to describe how liquidity risks arose and were managed too.
- It's been our experience, based on actual engagements, that the reason for a firm underestimating their liquidity needs in the wholesale broking sector may be the absence of a comprehensive risk management programme that adequately explores the nexus of credit risks and mitigation techniques, client money rules, the use of funds

held under a TTCA agreement, scenario analysis, stress testing, and one that does not appreciate the complexities of how cash and collateral is managed on a day-to-day basis. It doesn't take very long to explain this (feel free to get in touch with me and have a quick call). Implementing something that delivers the requirements and is commercially sensible will take a little longer, and we'd be happy to help you do it.

- Remuneration Structures
- I'm not going to dwell on this. I've spent enough time in the non-banking environment, especially the broking environment to understand why this is challenging. Maybe the FCA could help the sector by doing more to level the playing field. At the risk of oversimplifying: in this sector whoever moves first loses. If you understand how the high earners in this sector get paid you will also know what's at risk. Nonetheless you have to comply.
- Governance and Culture
- These subjects have been batted back and forth between firm and regulator for many years too. I spent a lot of time in the banking environment as well and I would assert that the issues that the FCA highlight here are related, if not directly proportional, to the struggle with remuneration structures.
- The FCA assert that "*a relatively junior employee (in terms of a traditional hierarchy) can expose broking firms to significant risk of harm to the firm, their clients and the market more broadl*y". I'd be interested in hearing what others think this means.
- One way to interpret this could be that someone of similar age and experience (at a bank) would have less responsibility and more supervision, earn less, be less valuable to the bank, know they are less valuable and therefore behave themselves. Another way to interpret this (and is this an uncomfortable truth?), the wholesale broking sector has the potential to do more harm to clients and markets than the banks. I think that's a stretch. As I said, I would really like to hear other people's views on what they think the FCA meant.
- The FCA go on to discuss the importance of regulatory references and paying attention to any adverse information that arises during the hiring process. I suspect there may still be firms out there that don't run criminal background checks and credit checks. I suspect the FCA think so too. They may have found some examples as part of the fieldwork for this letter.
- What is your risk appetite for bringing on staff that have criminal convictions, poor credit and/or disciplinary challenges? It depends on the details of course. Who ultimately makes the decision, and would they make the same decision if they had to put their personal reputation on the line with the FCA? I think this letter is suggesting that they are.
- And finally…
- Control Functions
- I don't think this will come as a surprise either. In the FCA's words:
- "*We expect firms to comply with all relevant FCA rules, to consider relevant guidance, and to have adequately resourced risk management and control functions, with influence at board level…*"
- They want to see evidence that a firm's culture actively encourages adherence to the rules. They want to see firms being proactive rather than doing the minimum to get by, or worse, only making investments when forced to by the FCA themselves. They have said that their work has highlighted "***widespread deficiencies***" in wholesale brokers' client

onboarding processes and will be doing further work in that area during 2023. We have supported several firms over the last 2 years to improve their overall anti-financial crime frameworks including comprehensive money laundering and terrorist financing risk assessments and independent reviews of their client onboarding processes. One such engagement was to support the registration of a crypto broker, read the client story at this link. We have direct experience of what the FCA are expecting in this area. We have similar experiences with market surveillance and market abuse risk assessments. The approach we designed and implemented for clients has, on numerous occasions, stood up to audit and regulatory scrutiny over the last 2 years.

- What else is there to say?
- I think the tone of this letter is different to letters of the past, it also leaves little to the imagination. The FCA are putting the wholesale broking sector on notice. My interpretation is as follows: We [FCA] are going to engage with some more firms directly after this letter and we expect to see evidence that firms have taken action.
- What are next steps after reading this post?

1. Read the letter, you can find a copy of it here
2. Discuss it in the context of your ICARA process with the CEO and Board - evidence that discussion
3. Commission a comprehensive gap analysis that includes traceability back to the appropriate rules and guidance
4. Create and have your CEO and Board approve the action plan
5. Execute your plan

FCA Market Watch 72; findings on the quality of service provided by APAs and ARMs; *FCA outlines their recent findings on the quality of service provided by Approved Publication Arrangements (APAs) and Approved Reporting Mechanisms (ARMs), collectively known as Data Reporting Services Providers (DRSPs). Investment Firms may use a DRSP to meet their MiFID II regulatory reporting obligations.*

ARMs report details of transactions to the FCA on behalf of investment firms. APAs publish post-trade transparency reports on behalf of investment firms, facilitating market transparency and enabling both the FCA and investors to get accurate and comprehensive trading data. #

- The FCA grouped their findings into 6 main topics:
  - connectivity
  - data quality
  - fees
  - unregulated services
  - barriers to switching
  - overall customer experience
  - Reporting validations set according to firms' business rules and requirements will help in addition to the many validations in place to meet the requirements set by the ARM or NCA.

FCA Findings

Data Quality; "With specific reference to ARMs, Article 11(1) of onshored RTS 13 requires ARMs to have arrangements to identify transaction reports that are incomplete or contain obvious errors caused by clients. As per the FCA's transaction reporting webpage, ARMs are encouraged to implement other checks and validations beyond those set out in our validation rules where they have assessed this will improve the data quality of their submissions."

Barriers to switching; "Surveyed clients consistently cited the cost of implementing a project to onboard with a new provider as the main barrier to switching DRSP. We also observed that client onboarding timeframes can vary significantly. Timeframes ranging from 48 hours to 4 months were cited. This is largely driven by differences in testing timelines depending on the complexity of client systems and expected reporting volumes."

- In May 2022, we published our DRSP portfolio letter. This outlined our view on the key risks of harm in the portfolio, the action we expect firms to take and what we will be doing to reduce the level of harm in the sector. One of the key risks of harm we identified was the concentration of the DRSP market among a small number of DRSPs. This could limit clients' opportunity to switch provider and may weaken incentives to provide high quality services.
- To assess the quality-of-service DRSPs provide, we sent a survey to all DRSPs and a representative sample of DRSPs' clients – investment firms who use DRSPs to send transaction reports to the FCA and publish trade reports. This work to assess the quality of service provided by DRSPs is separate from our wholesale trade data review following our Feedback Statement on access and use of wholesale data, when we issued information requests to a sample of trade data suppliers and users.
- Overall, feedback from clients on their DRSP customer experience was positive. However, we saw some common themes in the responses. This Market Watch summarises these responses and our observations on the quality-of-service DRSPs provide to their clients. We have grouped these observations into 6 topics: connectivity, data quality, fees, unregulated services, barriers to switching and overall customer experience.
- Where we say DRSPs, we are referring to observations common to both ARMs and APAs. Otherwise, we specifically refer to ARMs or APAs.

Connectivity

Our observations; DRSPs typically offer at least 2 ways of connecting to their service which are common across all providers. For APAs for example, clients can connect to any APA via Graphical User Interface (GUI) or Application Programming Interface (API). Surveyed clients did not indicate that the different connection types offered by DRSPs were an inherent barrier to switching. DRSP clients surveyed also rarely reported problems when connecting to their DRSP. However, for respondents who had experienced connectivity issues, some had difficulties in accessing the right support at DRSPs to identify and resolve the issue promptly.

Our view; In line with onshored RTS 13, DRSPs are required to have robust systems and facilities to ensure continuity and regularity of the services they provide. DRSPs should keep clients affected by connectivity issues appropriately informed throughout the identification and remediation process. Where clients had connectivity issues, we saw good practice where DRSPs were easily contactable through multiple media, with clearly signposted and available support staff with the right knowledge and technical expertise to promptly investigate and resolve issues.

Data Quality

Our observations; DRSPs are required to have systems and controls in place to prevent errors or omissions being introduced by the DRSP itself. The majority of DRSP clients surveyed stated they had not experienced systematic data quality-related issues from their chosen DRSP.

- With specific reference to APAs, under Article 10(5) of onshored RTS 13 APAs are required to have arrangements to identify trade reports that are incomplete or contain information that is likely to be erroneous. We have observed differences in how APAs have interpreted a trade report 'that is likely to be erroneous.
- With specific reference to ARMs, we observed that the ARMs have typically implemented either the FCA or ESMA transaction reporting validation rules. As stressed in Market Watch 59, these validation rules are not intended to identify all errors and omissions in transaction reports.

Our view; We note that Article 10(5) of onshored RTS 13 has a list of some of the factors APAs should consider when identifying information that is likely to be erroneous. However, this is not a complete list. We found several instances of good practice where APAs have other checks for report content that is likely to be erroneous. For example, we saw checks on whether a trade report is populated with a currency code in the ISO 4217 list, format checks on International Securities Identification Numbers (ISINs), and checks on whether an ISIN relates to an instrument that can be traded on a UK trading venue. We observed good practice to be where APAs tailor price and volume validations by instrument type and/or asset class. We also found good practice where APAs regularly review and re-calibrate their controls over time, based on their experience and client feedback.

- With specific reference to ARMs, Article 11(1) of onshored RTS 13 requires ARMs to have arrangements to identify transaction reports that are incomplete or contain obvious errors caused by clients. As per the FCA's transaction reporting webpage, ARMs are encouraged to implement other checks and validations beyond those set out in our validation rules where they have assessed this will improve the data quality of their submissions. We observed good practice where ARMs conduct retrospective checks on submissions and/or thematic reviews to identify data quality issues.

Fees

Our observations; Over three quarters of DRSP clients surveyed rated the value for money that they receive for their fees as 3/5 or above (we asked DRSP clients to rate the value for money they receive between 1 (poor value for money) and 5 (excellent value for money)). Clients who rated value for money less favourably were predominantly firms with infrequent reporting obligations.

Our view; In line with the DRSP portfolio letter, we expect DRSPs to set fees to ensure clients are getting good value for money. Based on the feedback we received, we have found good practice to be where DRSPs have an active and ongoing dialogue with all client types to get feedback on value for money and fee levels, for example through an active client user group. While we note that DRSP fees are not required to be public, DRSP clients are encouraged to request fee models from other DRSPs should they wish to compare these with the fees they pay.

Unregulated services

Our observations; Many DRSP clients make use of unregulated services which are ancillary to the Data Reporting Services offered by their DRSP to help them meet their trade and transaction reporting obligations.

- We found several instances where it was not always clear to clients that they were also using unregulated ancillary services offered by their DRSP or its wider corporate group. For example, where clients had reported experiencing data quality issues in their trade and transaction reports, these issues were often related to unregulated ancillary DRSP services.

Our view; Where clients use unregulated services that are ancillary to the DRSP, these services are not covered by systems and controls requirements under the DRSP regulatory framework. These include, for example, requirements on DRSPs to have arrangements to prevent errors or omissions introduced by the DRSP itself. As such, DRSP clients are exposed to the regulatory risk of and bear responsibility for any errors or omissions introduced by these unregulated services. DRSP clients should perform due diligence on unregulated services their DRSP offers to ensure their own compliance with accuracy and completeness requirements for their MiFID II post-trade regulatory reporting.

- Where DRSPs or their wider group offer unregulated ancillary services, DRSPs should distinguish these services clearly to clients. We also saw good practice where DRSPs either publish or make it clear to clients the fees they pay for both core versus ancillary DRSP services.
- Where DRSPs offer unregulated services to their clients, accuracy and completeness obligations are the responsibility of the client using these services. In these cases, we observed good practice where DRSPs have taken steps to prevent these unregulated services affecting the data quality of trade and transaction reports, for example by introducing checks and controls on the quality of reference data upon which these unregulated services rely.

Barriers to switching.

Our observations; Surveyed clients consistently cited the cost of implementing a project to onboard with a new provider as the main barrier to switching DRSP. We also observed that client onboarding timeframes can vary significantly. Timeframes ranging from 48 hours to 4 months were cited. This is largely driven by differences in testing timelines depending on the complexity of client systems and expected reporting volumes.

- The use of wider DRSP group services was another commonly cited barrier to switching. Clients surveyed explained that the 'one-stop-shop' arrangements offered by DRSPs that form part of wider groups are both an incentive to stay and therefore a potential barrier to switching DRSP.

Our view; Responses from clients surveyed on projects to switch DRSP primarily focused on technical infrastructure and complex interactions between IT systems as being the primary barrier to switching. To make switching DRSP more accessible, we would encourage DRSPs to review onboarding and offboarding procedures to ensure they do not cause any unnecessary friction. In the interest of promoting transparency, we would also encourage DRSPs to disclose information about their onboarding and offboarding procedures, such as the overall process, timelines, and any costs.

Overall customer experience

- Our observations; Most clients surveyed were happy with the customer support they receive, although some highlighted that their DRSP could do more to help them prepare for upcoming regulatory changes. In terms of good practice, for example, some respondents highlighted the benefits of webinars hosted by their DRSP on upcoming regulatory changes. A minority of clients surveyed had had a poor customer experience, suggesting that high quality customer support may not be completely consistent across clients. Formal complaints are rare, but where clients raise issues, they are not always resolved in a timely way.
- Our view; Where clients raise issues, DRSPs should resolve these as soon as possible, keeping clients informed throughout the remediation process. Overall, we expect DRSPs to have the right staff, systems, policies, and procedures to ensure they provide high quality Data Reporting Services to all clients.
- You can send questions about this Market Watch, or DRSPs more generally, to the Market Data Infrastructure Supervision team at MDIS@fca.org.uk.

The additional data captured by MiFIR transaction reporting has improved regulators' ability to monitor and detect for market abuse whilst firms have made significant efforts to get their reporting correct and remediate mistakes of the past. *On the flip side, whilst the regulation may have harmonised reporting requirements which was positive for the industry, differences of interpretation still arise which could potentially be resolved more quickly. In addition, the changes and centralisation have resulted in a loss of flexibility and responsiveness to change.*

- There is no doubt that the industry has congratulated regulators for their efforts in producing the reporting guidelines however, as experience has shown, you can never quite find a guideline that matches the exact scenario that you are trying to report.
- Why transaction reports? For UK and EU regulators transaction reports are essential to allow them to monitor for market abuse and maintain orderly financial markets. Without reports regulators would be blind to any market abuse that might occur.
- *"Accurate and timely reporting of transactions is crucial for us to perform effective surveillance for insider trading and market manipulation in support of our objective to ensure that markets work well and with integrity." – FCA, April 2015*

- Transaction reporting within the European Economic Area (EEA) can trace its history back to 1993. Since then, the obligation on firms has steadily increased with MiFID I introduced in November 2007 and MiFID II/MiFIR in January 2018.
- How was MiFIR different to previous reporting obligations? The obligation to report and the details to be reported were incorporated into a regulation not a directive, limiting the ability of member states to implement different rules. Some interpretation differences arise although these are subtler than historically.
- The data to be reported increased from 24 fields to a maximum 65 fields
- The scope of reportable instruments was broadened to include 'over the counter' derivatives and certain derivatives over FX, commodity, and interest rates.
- Data quality checking and reconciliations became legally mandated in RTS 22, Article 15.
- ESMA produced guidelines and Q&As to assist firms with implementation of the regulation.
- What's changed since January 2018?
- *ESMA Q&A on MiFIR data reporting;* The document predates MiFIR go-live with the first question answered April 3, 2017. A further 13 questions have been answered with the latest in September 2020.
- *ESMA validation rules – valid but wrong;* The validation rules are designed to improve the quality of the data received. There have been five versions with incremental changes made over the course of the five years. All until version 1.5 were applicable to both UK and EU regulated firms. Versions 1.6 and 1.7 have been optional for UK regulated firms and UK ARMs alike.
- However, validation rules can only go so far in improving data quality. The validation rules capture approximately 400 data quality issues. Regulators have stressed that passing validation is not the only way a firm should validate its data quality. Our comprehensive quality testing demonstrates that there are many more ways of reporting valid but incorrect data.
- *"Firms should not assume that a report was accurate because it was accepted by the Market Data Processor, as business validation rules are not intended to identify all errors and omissions."* – *FCA Market Watch 59 (April 2019)*
- *"The CSSF continuously monitors the quality of the transaction reporting data. During the last year, the CSSF not only carried out the standardised quality tests developed together with the other competent authorities and ESMA, but also conducted a series of data completeness and quality enhancement campaigns." CSSF, February 2022*
- *Data Reporting Services Providers (DRSP) regime;* Immediately post MiFIR go-live, Approved Reporting Mechanisms (ARMs) were supervised by their National Competent Authority (NCA). On 1 January 2022, ESMA took on its new mandate as direct supervisor and now supervises firms that represent almost 99% of the transactions reported by an ARM.
- This is unlikely to have an immediate effect on firms – although there have been some concerns raised about the additional costs of this supervision. But in time this should further harmonise the implementation of the regime across member states in the EU. UK ARMs are still supervised by FCA.
- *Brexit – limited impact so far;* So far, the impact of Brexit on reporting firms has been limited. For example, UK nationals must now be identified using their passport numbers when a report is made to an EU competent authority – yet should still be identified using the National Insurance number when a report is made to the FCA. Other alterations have

had to be made as the status of UK venues has changed, when reporting to the EU and that has impacted the way in which certain fields should be populated, TVTIC, Pre-Trade Waiver and Country of Branch Membership. A more significant change has been to the 'in-scope instruments' with the introduction of UK FIRDS, and the most recent change that came into effect on 30 December 2022 are the changes to the exempt securities under the UK short selling regulation.

- *Supervisory priority:* The only significant supervisory change was made by the FCA on 13 January 2022 when the regulator announced it was in the early stages of considering policy options for the UK reporting regime which included the future of the short selling indicator.
- *"Until the future of the short selling indicator field…has been determined, we will not take action against firms who do not meet these requirements. We do not expect firms to notify us about issues affecting the short selling indicator field through an errors and omissions notification form. We will keep this position under review."* – *FCA, January 2022*
- *Validation rule – January 2023;* This month's five-year anniversary is marked by the awakening of validation rule – 269 which states the trade date cannot be earlier than five years before the submission date. Where this is the case, reports will not be accepted by the NCA, and the firm will receive a CON-281 rejection. Hence, firms will no longer be able to correct some mistakes of the past.
- What hasn't changed at all? - ESMA's table thumping Guidelines – Transaction reporting, order record keeping and clock synchronisation under MiFID – has been the go-to place for firms seeking guidance for their implementations. It is somewhat surprising that there hasn't been a single revision to any one of its 291 pages since it was last corrected on 7 August 2017.
- *Some final thoughts:* Fields like TVTIC and the short sell indicator have been difficult to implement, and we expect some of these issues to be addressed in the next iteration of the regulation.

FTC Proposes Ban on Non-Compete Clauses; *FTC proposed the "Non-Compete Clause Rule," which would prohibit employers from (i) entering into, or attempting to enter into a non-compete clause and (ii) representing to employees that they are subject to a non-compete clause.*

- The proposed rulemaking would prevent employers from implementing noncompete clauses going forward, and would require employers to terminate any currently active noncompete clauses and inform those employees that their contract is no longer valid. FTC asserted that noncompete clauses harm workers and reduce competition by preventing workers from pursuing better opportunities and preventing employers from hiring qualified candidates.
- FTC argued that limiting workers' ability to move freely within a given industry empowers employers to suppress wages and avoid having to compete to attract workers. The proposed rule defines the term "worker" to include any "employee, individual classified as an independent contractor, extern, intern, volunteer, apprentice, or sole proprietor who provides a service to a client 12 or customer."
- Further, FTC asserted that noncompete clauses hinder innovation. The agency encouraged employers to consider alternative methods for protecting trade secrets and

other valuable investments that are significantly less harmful to workers and consumers.

- FTC Chair Lina M. Kahn, Commissioner Rebecca K. Slaughter and Commissioner Alvaro M. Bedoya called the proposal necessary, given the magnitude and scope of the economic impacts caused by noncompete clauses. Dissenting, FTC Commissioner Christine S. Wilson argued that the proposal (i) deviates from FTC's fact-specific approach as to whether noncompete clauses are unreasonable and (ii) that FTC lacks the experience and the expertise to address the issues raised.
- FTC Notice of Proposed Rulemaking: Non-Compete Clause Rule
- FTC Fact Sheet: FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition
- FTC Press Release: FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition
- Joint Statement of FTC Chair Lina M. Kahn, Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya Regarding the Notice of Proposed Rulemaking to Restrict Employers' Use of Noncompete Clauses
- Dissenting Statement of FTC Commissioner Christine S. Wilson Regarding the Notice of Proposed Rulemaking for the Non-Compete Clause Rule
- Joint Statement of FTC Commissioner Slaughter and Commissioner Alvaro M. Bedoya On the Notice of Proposed Rulemaking on Non-Compete Clauses

The UK Money Markets Code Sub-Committee meets regularly to review and update the UK Money Markets Code.

- Minutes
    - Item 1 – Presentation on the ELAC Online Portal
    - Item 2. Introduction
    - Item 3. Minutes of last meeting
    - Item 4. Failed Trades
    - Item 5: Diversity and Inclusion (D&I).
    - Item 6. Agreeing the text of the Statement of Commitment Letter
    - Item 7. AOB
- Committee attendees
    - Bank of England
- Date: 12 October 2022 / Time: 3pm – 4.15pm | Location: Virtual
- Minutes
- Item 1 – Presentation on the ELAC Online Portal
- The ACI Financial Market Association gave a presentation to the Committee on their ELAC online portal. The ELAC online portal is seven years old and has assess to three codes: the FX Global Code, Global Precious Market Code, and the UK Money Market Code. The presentation focused on how the ELAC Portal gives market participants the framework to demonstrate and communicate that all staff are up to date with the latest codes, global standards, and best practice guidelines applicable to their industry and role.
- Item 2. Introduction
- The Co-Chairs welcomed everyone to the virtual meeting of the UK Money Market Code sub-Committee.

- Item 3. Minutes of last meeting
- The Co-Chairs noted that the minutes of the last meeting had been published on the Bank's website.
- Item 4. Failed Trades
- Repo Fails
- It was noted that there had been an increase in settlement efficiencies (97%) in the period between May and early September. Over the last two weeks of September and early October, there had been a significant increase in gilt repo volumes and the increase in the level of fails was commensurate with the increased volumes. Since the date of the last meeting Euroclear have made some changes to support the market and these include a permanent extension to the CREST diary, extending the DVP settlement window. Furthermore, auto splitting is to go live on 21 November 2022. There have been no further issues with the CREST system.
- Securities lending fails
- Results from an informal monthly survey (covering the period 2019 to the present) of some of the big institutions with regards to 'fails' for securities lending transactions were highlighted. This indicated a high level of settlement rates for open leg trades, settlement rates of between 95% and 97%. On the other hand, the settlement rates for closing leg trades are quite poor, generally in the 85% range for both equities and fixed income.
- The introduction of the Central Securities Depositories Regulation (CSDR) has led to an improvement, to 90%, in settlement rates for return leg trades in equities. Settlement rates for fixed income, on the other hand, have been falling steadily this year and are currently at 79% (based on aggregated figures for government and corporate bonds).
- The biggest reason for return leg fails is due to brokers not having the stock available to return (in equities space) and in fixed income due to illiquidity in the corporate bonds market. Data obtained from the ECB website showed settlement rates for TARGET2-Securities (T2S) over the period January to June 2022, both in value and volume, of around 93%-95%.
- The Committee agreed to monitor settlement rates and also noted that it is open to setting up a small working group to investigate the issue further. It was generally agreed that such poor settlement discipline was not acceptable.
- Item 5: Diversity and Inclusion (D&I).
- D&I at ISLA
- The Committee was given an overview of the work that ISLA is doing in the area of diversity and inclusion, noting that at the moment the Association's D&I activities have focused on working with partnership associations, such as the work being done with Women in Finance Group. ISLA is looking to step up its activities in the area of diversity and inclusion and is thus looking into broadening its approach to D&I and evaluating engagement with relevant groups. It was also noted that ISLA is at the early stage of this broader D&I strategy which will be driven by the Board and by members and so there will be more to report back at a future meeting.
- Impact of the return to office
- It was suggested that it was very early, given that various working from home models is in flux and also due to lack of data, to assess the impact of working from home on D&I. Data on gender metrics over a 5-year period showed slower than expected change in D&I which could be due to the pandemic. Perhaps a more intentional approach which provides support, sponsorship, and advocates for more diverse candidates to move

through the pipeline into middle and senior levels, where numbers are significantly dropping off, is required. There will be further work by external bodies to develop data to unearth some of the issues in this area. It was noted that it will be difficult to achieve change without data and targets.

- It was suggested that perhaps the Committee should commission a working group to examine D&I in Money Markets and come up with recommendations to help drive change in Money Markets and to ensure momentum was maintained. It was also noted that the 2022 McKinsey report on 'Women in the workplace' highlights the recent increase in attrition rate for women in middle and senior levels.
- Item 6. Agreeing the text of the Statement of Commitment Letter
- In light of a recent breach of the Money Market Code, continuing fails in the money market, and the need to maintain momentum on Diversity & Inclusion amongst market participants' trading teams, the Committee agreed at the meeting in May 2022 to send a letter to all signatories of the Code to remind them of their obligations. The Co-Chairs and the Bank now wished to ensure that there was full agreement to the suggested text of the letter. One Committee member suggested splitting paragraph 3 (which covers diversity and inclusion and working from home), into two distinct paragraphs. Another Committee member suggested further drafting changes which would be shared with the Secretariat of the Committee. When the letter is finalised, it would be sent out to signatories of the Money Market Code.

FINRA releases priorities for 2023; The Financial Industry Regulatory Authority has released a report that details concerns and exam priorities for 2023, focusing on issues such as cybersecurity, Regulation Best Interest and fractional-share trading. "The report addresses topics that remain perennially important, with updates to reflect evolving risks, industry trends and findings from FINRA's recent oversight activities," FINRA's Greg Ruppert says in an accompanying statement. Think Advisor (free registration) Investment News Bloomberg

FINRA AWC: Deloitte Corporate Finance, LLC; Settles Charges for Failing to Preserve iMessage Communications; *A broker-dealer settled FINRA charges for failing to preserve business-related text messages sent by its registered representatives on firm-issued iPhones using Apple's iPhone-to-iPhone messaging system.*

- *FINRA stated that the broker-dealer established controls to block the use by representatives of Apple's iMessage system after learning that the third-party record archiving system was not able to retain messages sent via iMessage.*

- FINRA found that due to technological and personnel issues, the controls were not implemented on the majority of firm-issued phones. FINRA said that the broker-dealer self-remediated the issue by uploading the prior communications manually, then implementing controls that format the communications as text messages, which would be captured by the archiving service.
- FINRA determined that the initial preservation failure violated Exchange Act Section 17(a) ("Records and reports"), Exchange Act Rule 17a-4 ("Records to be preserved by certain exchange members, brokers and dealers"), FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade") and FINRA Rule 4511 ("General Requirements").

- To settle the charges, the broker-dealer agreed to (i) a censure, (ii) a civil monetary penalty of $200,000 and (iii) certify that its recordkeeping practices have been remediated within 60 days. FINRA recognized the broker-dealers self-remediation efforts and cooperation in determining the penalty.
- Given the extraordinary penalties that the SEC has been imposing for recordkeeping failures, $200,000 certainly looks like a loose-change penalty that both the firm and its lawyers should feel good about.
- On the other hand, it's not really clear why any money penalty should be imposed. All across the street, firms are struggling to keep up with new communications technologies and the recordkeeping problems that they create. Here, the firm thought it had a solution to the problem. Unfortunately, it failed to implement that solution successfully. But it discovered the failure, reported it to the regulator, corrected the problem, did nothing wrong intentionally, did not profit by the failure and did not injure any customer.

So why the money penalty? - Rather than spending time going through the enforcement process, wouldn't it have been better for FINRA to promptly publish a notice warning firm of problems with

FINRA releases 2023 examination and risk report; *On January 10th, the Financial Industry Regulatory Authority. (FINRA) released its annual examination and risk monitoring report, which covers 24 topics, including four new topics and a new financial crimes section. Highlights include:*

- Financial crimes. The new financial crimes section consists of three subtopics: (1) cybersecurity; (2) anti-money laundering (AML), sanctions and fraud; and (3) manipulative trading. For cybersecurity, the report outlines expectations that firms have programs to prevent ransomware attacks; plans to identify, recover, and restore compromised sensitive data; third-party risk management practices; incident response plans for common cybersecurity incidents, and access controls.
- For AML and sanctions, the report emphasizes the importance of having a reasonably designed customer due diligence program; procedures to detect red flags of identity theft and sanctions evasion; regular reviews of automated transaction monitoring and screening systems; and regularly conducting independent testing of the AML program. For manipulative trading, FINRA outlines expectations for surveillance systems that detect suspicious trading activity; programs that monitor for collusion among customers; reviews of data to detect typologies of manipulative schemes; and compliance with its algorithmic trading rule.
- Mobile apps. The report states that FINRA will be examining mobile apps to determine whether they encourage retail investors to engage in trading activities and strategies that are inconsistent with their investment goals or risk tolerance and whether the apps are designed in a way, such as through gamification, to influence customer behavior. It also notes that FINRA has observed that some mobile apps do not adequately distinguish between products and services of the broker-dealer and those of affiliates in areas such as digital asset transactions.
- Regulation Best Interest (Reg BI) and complex products. The report notes that Reg BI and Form CRS remain areas of focus for FINRA with examiners observing weaknesses

including inadequately identifying and mitigating conflicts of interest, recommending high-risk or complex products to retail customers, insufficient disclosures, and lack of staff training. The report further states that examiners will evaluate recommendations of complex products by comparing them with customer account activity and investment profiles. The report cites a March 2022 Regulatory Notice on sales practice obligations for complex products, its November 2022 announcement of a targeted exam of crypto asset retail communications, and a December 2022 update on a targeted exam of practices and controls related to options accounts. It also reminds firms that communications promoting products that consider ESG factors should be supported by and consistent with disclosures.

- Trade surveillance and execution. The report notes that FINRA has observed high rates of compliance with reporting to the Consolidated Audit Trail, enabling it to monitor trade information across products and markets. It outlines expectations for firms to have their own surveillance systems that monitor for patterns of suspicious orders and activity. It also describes continued assessments against best execution and order handling requirements, with firms expected to execute marketable orders, conduct "regular and rigorous reviews" of execution quality and disclose any profit-sharing arrangements such as payment fully and promptly for order flow.
- New topics. Aside from manipulative trading in the new financial crimes section, the report adds three topics relative to last year in its market integrity section: fixed income - fair pricing, fractional shares, and Regulation SHO. The fixed income - fair pricing section includes findings around incorrect determination of the prevailing market price, outdated mark-up/mark-down grids, and failure to consider the impact of mark-up on yield to maturity. For fractional shares the report discusses inadequate supervisory systems and procedures while Regulation SHO issues include non-bona fide market making and impermissible reuse of locates.

- With its annual examination and risk monitoring report, FINRA continues to provide a wealth of up-to-date information and resources for supervised firms and other market participants. By closely reviewing the report's areas of focus and findings, firms can bolster their risk assessments, avoid prevalent pitfalls, and prepare their compliance programs for upcoming examinations. Although previous reports highlighted AML and cybersecurity as risk areas under operational risk, the new inclusion of a standalone financial crimes category portends a heightened focus on this area in 2023. The inclusion of sanctions as an entirely new subject highlights the dramatic increase in sanctions evasion following Russia's war in Ukraine, and firms should be carefully reviewing the red flags recently provided by FinCEN, incorporating them into their transaction monitoring programs, and implementing or enhancing other relevant controls such as geolocation tools.
- While topics such as Reg BI, trade surveillance and order execution are familiar features of FINRA supervision and reports, they contain useful reminders considering recent market trends. For example, the discussion of communications concerning ESG factors and crypto assets indicates that FINRA is closely monitoring for misleading claims or inappropriate recommendations across new offerings. In addition, the report's sections on mobile apps and complex products suggest that FINRA's ongoing analysis of these topics could result in future requirements or guidance. Firms engaging with any of these

areas should closely review findings and questions in this report to prepare for further scrutiny.

Governance – lessons for 2023 from regulatory enforcement; *It is widely recognised that poor culture has been a major root cause of past conduct failures. To assist firms in this area, we have analysed some of the key FCA enforcement cases from the past year to draw out some learning points on governance, focusing on the following themes: roles and responsibilities; oversight; policies and procedures; and investment and resourcing. You can view our new briefing note here.*

- Part of establishing a healthy culture is embedding sound controls and good governance throughout an organisation and recent developments have shown that effective governance is fundamental to a wide range of regulatory focus areas such as ESG, financial crime and crypto.

- To assist firms in this area as we move into 2023, we have analysed some of the key FCA enforcement cases from the past year to draw out some learning points on governance, focusing on the following themes: roles and responsibilities; oversight; policies and procedures; and investment and resourcing.
- Roles and responsibilities
- Cases from the past year illustrate the importance of ensuring that all relevant roles and responsibilities have been assigned effectively and that this is properly documented. For example, one firm was criticised for failing to formally assign responsibility for analysing new consultation papers or regulations to assess their relevance to the firm and how any changes should be implemented. Going into the New Year, firms may wish to carry out an assessment for any responsibility gaps, including giving consideration as to any new matters which may require allocation.
- Oversight
- There are also a number of takeaways relating to oversight from recent cases. For example, firms need to ensure that there are no gaps in the control framework, including by regularly checking that committee Terms of Reference cover all relevant matters. In addition, senior management has to have adequate understanding of policies and procedures and adequate management information to be able to challenge sufficiently and hold others to account. To achieve this firms should, amongst other things, implement regular training. Lastly, relevant bodies - such as the Audit Committee – need to meet sufficiently regularly, with minutes of key decisions and follow up actions, and adequate escalation mechanisms.
- Policies and Procedures
- In terms of policies and procedures, firms should have clearly documented policies that are accessible and comprehensible. Examples of regulatory failures from the cases in this regard include not effectively disseminating policies, inconsistencies between different policies and failing to properly update policies to reflect changes in a firm's business.
- Investment and resourcing
- Finally, the recent cases act as a reminder that firms that have seen significant expansion, or which are planning for growth in 2023, need to make sure this is matched by investment in adequate resources - both in terms of number of relevant people with the right skillsets and in terms of effective systems and controls commensurate with

the firm's business. Lack of such investment is a false economy, as it creates risks to the business of regulatory intervention and remediation.

- We have seen a number of examples of poor resourcing highlighted in recent cases. These include a lack of SMF experience amongst the management team; an over reliance on manual processes and dependencies on key individuals and/or processes which were not scalable; and inadequate systems not capturing all relevant information. The cases demonstrate that when planning for expansion, firms should conduct an assessment of the skills and level of resource required for growth, including in support functions such as Compliance, and have a clear plan to address any resourcing gaps.
- There is a real opportunity now for firms to proactively review their governance arrangements so that they can improve their own systems and controls and provide assurance to senior management. Such steps may prove timely given that we expect governance to remain a key regulatory priority in 2023, and for the FCA and PRA to continue to take enforcement action against firms and individuals in connection with governance failings.

CFPB proposes terms and conditions registry; *On January 11th, the CFPB proposed a rule that would require nonbanks subject to CFPB jurisdiction to report certain terms and conditions in non-negotiable "take it or leave it" contracts, which the agency would then publish in a public registry.*

- With some limited exceptions, nonbanks covered by the proposal include payday lenders, private student loan originators and servicers, mortgage lenders and servicers, and international remittance providers. The proposal would require that these nonbanks submit information around clauses that include (1) waivers of claims a consumer can bring in a legal action; (2) limits on the company's liability to a consumer; (3) limits on the consumer's ability to bring a legal action by dictating the time frame, forum, or venue for a consumer to bring a legal action; (4) limits on the ability of a consumer to bring or participate in collective legal actions such as class actions; (5) limits on the ability of the consumer to complain or post reviews; and (6) mandatory arbitration agreements.
- In the accompanying press release, the CFPB explains that the registry will be used by federal and state regulators for the purposes of taking action against contract clauses that are unfair, deceptive, abusive, or otherwise in violation of relevant law. It will also assist the CFPB in understanding the contractual terms being used by nonbanks and inform its future rulemaking, enforcement, and consumer education initiatives. The proposal is open for comment until March 13, 2023.
- This week's proposal reflects several key themes of Director Rohit Chopra's leadership of the CFPB: expansion of nonbank oversight, scrutiny of contractual provisions; and the creation of new public registries intended to discourage certain behavior. Many of the provisions outlined in the proposal, such as limitations on consumers' ability to complain or post reviews, have already been highlighted by the agency as likely to violate consumer protection law, and others that limit or frustrate consumers' abilities to seek relief may be on shaky legal ground.
- However, considering that Congress reversed the CFPB's ban on mandatory arbitration clauses under the Congressional Review Act, the agency is prohibited from creating a substantially similar rule. While requiring public disclosures of such provisions is unlikely to receive scrutiny in this regard, potential future enforcement or rulemaking could result in significant legal challenges. With additional public scrutiny and regulatory

coordination ahead, nonbanks should be carefully reviewing their contracts for any clauses that could be considered unfair, deceptive, or abusive and determining their risk tolerance for potential enforcement and reputational harm from presence in the public registry.

The FCA has updated its general information page on Consumer Duty compliance processes. The updates were made in response to queries from firms and are intended to assist them in implementing the Consumer Duty PS22/9 final rules and guidance, which were published last July 2022 and aim to set higher standards of consumer protection across financial services

FINRA Adds New Topic Areas in Annual Report on Exam and Risk Monitoring Program; In its 2023 Examination and Risk Monitoring Program Report, FINRA added four topics not included in last year's report: (i) manipulative trading, (ii) fair pricing of fixed income securities, (iii) fractional shares and (iv) Regulation SHO

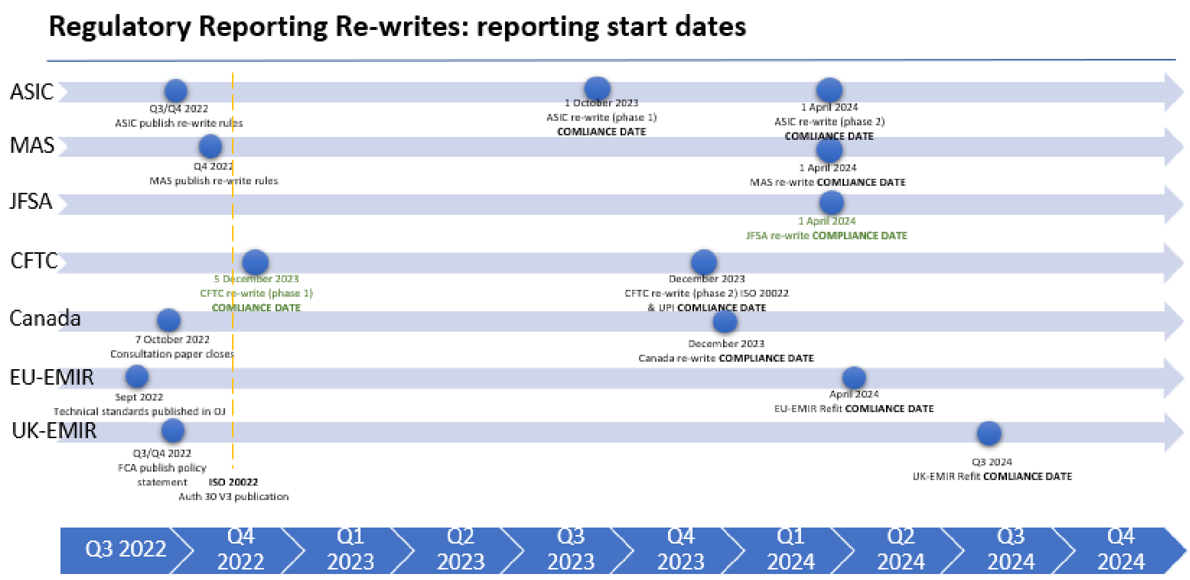
SFC issues circular on thematic review of data standards for order life cycles;*The Securities and Futures Commission (SFC) has issued a circular on its thematic review of data standards for order life cycles. On 31 July 2019 the SFC issued its circular on 'Data Standards for Order Life Cycles' (DS-OL). Since 30 April 2021, licensed securities brokers whose trading turnover in equities listed on the Stock Exchange of Hong Kong Limited in a calendar year (in 2018 or beyond) reaches or exceeds 2% of that year's total market trading volume (in-scope brokers) are required to comply with the DS-OL when submitting trading-related data to the SFC upon request.*

- Among other things, the thematic review was intended to assess whether the trading-related data processed, maintained and submitted by selected in-scope brokers was in compliance with the minimum content and presentation format prescribed in the DS-OL. The thematic review revealed that some in-scope brokers were still unprepared and a variety of data quality issues related to the implementation of the data standards were identified for the following types of orders:
  - short sell orders;
  - multi-day orders;
  - client facilitation orders; and
  - alternative liquidity pool orders.
- The SFC observed that some in-scope brokers also did not devote sufficient resources or assign personnel with the necessary knowledge and authority to oversee the implementation of the data standards and/or misinterpreted the data standards and did not conduct sufficient checking and testing prior to their implementation.
- Against this background, the SFC has reminded in-scope brokers of its expected standards of conduct. In particular, in-scope brokers are expected to:
  - assign one or more managers-in-charge, who have sufficient expertise and authority to make decisions and allocate resources, to oversee the implementation of the data standards;#
  - conduct proper testing and reviews prior to the implementation of the data standards; and
  - review their current systems having regard to the reporting issues identified and implement necessary system changes and other arrangements to ensure compliance with the data standards.

- Taking into consideration the feedback provided by in-scope brokers, the SFC has amended data standards regarding reporting of account ID, tradebook ID and execution events. In-scope brokers are expected to update their systems, where required, and make such data available no later than six months from 22 December 2022

Tribunal Won't Revisit Barclays Trader's Discrimination Ruling; A London tribunal has thrown out a bid from a former Barclays Execution Services Ltd. analyst to reconsider a judgment that backed her claim that she was sexually discriminated against by her manager but dismissed her claim she had been unfairly dismissed.

Switzerland's Exchange Fines Banking Group For Late Report; The sanctions commission of SIX Swiss Exchange AG said on Friday it has hit banking group Swissquote Group Holding SA with a 75,000 Swiss francs ($80,000) penalty for violating strict financial reporting rules.



Public Register for the Trading Obligation for derivatives under MiFIR

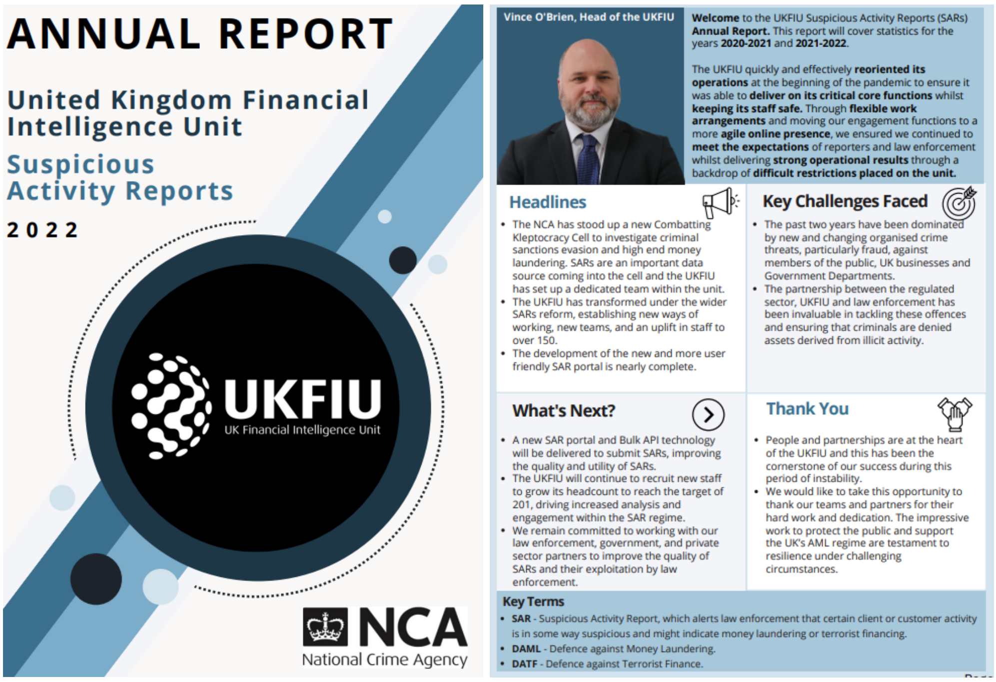
Public Register for the Clearing Obligation under EMIR

MAR News over January 2023

SARs Annual Report 2022; *On 24 January 2023, the National Crime Agency (*NCA*) published its latest Suspicious Activity Report (*SARs*) Annual Report. Among other things the report notes:*

- The last financial year saw 901,255 SARs received and processed – a 21% increase on the previous year.

- £305.7M denied to suspected criminals as a result of Defence Against Money Laundering (DAML) requests – a 120.6% increase on the £138.6M denied in 2020-21.
- In 2022, the NCA set up the new Combatting Kleptocracy Cell, with a remit that includes the investigation of criminal sanctions evasion and high-end money laundering.
- The financial and predicate crimes intelligence provided by SARs has proved to be invaluable as criminals sought to take advantage of the pandemic to advance their illicit enterprises. More recently, as a result of Russia's invasion of Ukraine, SARs have provided increasingly important information on money laundering linked to sanctioned individuals and their associated entities.


ANNUAL REPORT

United Kingdom Financial Intelligence Unit

Suspicious Activity Reports

2022

UKFIU UK Financial Intelligence Unit

NCA National Crime Agency

Vince O'Brien, Head of the UKFIU

Welcome to the UKFIU Suspicious Activity Reports (SARs) **Annual Report.** This report will cover statistics for the years **2020-2021** and **2021-2022**.

The UKFIU quickly and effectively **reoriented its operations** at the beginning of the pandemic to ensure it was able to **deliver on its critical core functions** whilst **keeping its staff safe.** Through **flexible work arrangements** and moving our engagement functions to a more **agile online presence**, we ensured we continued to **meet the expectations** of reporters and law enforcement whilst delivering **strong operational results** through a backdrop of **difficult restrictions placed on the unit.**

Headlines

- The NCA has stood up a new Combatting Kleptocracy Cell to investigate criminal sanctions evasion and high end money laundering. SARs are an important data source coming into the cell and the UKFIU has set up a dedicated team within the unit.
- The UKFIU has transformed under the wider SARs reform, establishing new ways of working, new teams, and an uplift in staff to over 150.
- The development of the new and more user friendly SAR portal is nearly complete.

Key Challenges Faced

- The past two years have been dominated by new and changing organised crime threats, particularly fraud, against members of the public, UK businesses and Government Departments.
- The partnership between the regulated sector, UKFIU and law enforcement has been invaluable in tackling these offences and ensuring that criminals are denied assets derived from illicit activity.

What's Next?

- A new SAR portal and Bulk API technology will be delivered to submit SARs, improving the quality and utility of SARs.
- The UKFIU will continue to recruit new staff to grow its headcount to reach the target of 201, driving increased analysis and engagement within the SAR regime.
- We remain committed to working with our law enforcement, government, and private sector partners to improve the quality of SARs and their exploitation by law enforcement.

Thank You

- People and partnerships are at the heart of the UKFIU and this has been the cornerstone of our success during this period of instability.
- We would like to take this opportunity to thank our teams and partners for their hard work and dedication. The impressive work to protect the public and support the UK's AML regime are testament to resilience under challenging circumstances.

Key Terms

- **SAR** - Suspicious Activity Report, which alerts law enforcement that certain client or customer activity is in some way suspicious and might indicate money laundering or terrorist financing.
- **DAML** - Defence against Money Laundering.
- **DATF** - Defence against Terrorist Finance.

FCA; Five individuals face conspiracy to insider deal and money laundering charges; *The FCA has started criminal proceedings against five individuals for conspiracy to commit insider dealing and money laundering.*

- The FCA alleges that Redinel Korfuzi, Oerta Korfuzi, Iva Spahiu, Rogerio de Aquino and Dema Almeziad conspired to commit offences of insider dealing between 17 December 2019 and 25 March 2021. Specifically, the FCA alleges that Mr Korfuzi used confidential inside information he accessed as an Analyst in his former role at Janus Henderson to enable timely and profitable trading in 49 companies through accounts held by his co-conspirators.
- In each case, the defendants used a derivative product called Contracts for Difference in relation to each of these companies, betting that the value of shares would go down after the announcements. In doing so, they were able to realise profits of approximately £1.5 million.

- All five are also charged with money laundering offences relating to over 170 cash deposits totalling approximately £200,000.
- In March 2021, a multi-site search and arrest operation was conducted by the FCA with the assistance the Metropolitan Police, and four of the defendants were on police bail until they appeared before Westminster Magistrates' Court today.
- The case was formally sent to Southwark Crown Court, where the defendants will appear on 22 February 2023 for a Plea and Case Management Hearing. All the defendants have indicated Not Guilty pleas.
- Janus Henderson has co-operated fully with the FCA's investigation.
- The FCA cannot provide any further comment at this time.

5.4. The AML framework; *On 20 July 2021, the Commission presented a package of legislative proposals to amend and complement the EU's anti-money laundering and countering the financing of terrorism (AML/CFT) rules.*

- It aims to improve the detection of suspicious transactions and activities, and close loopholes used by criminals to launder illicit proceeds or finance terrorist activities through the financial system. It entailed four legislative proposals:
    - A regulation to set up a new authority for AML/CFT supervision in the EU, coordinating national authorities to ensure the private sector correctly and consistently applies EU rules. That authority shall enhance cooperation among financial intelligence units (FIUs).
    - A further new regulation contains directly applicable rules in the areas of customer due diligence and beneficial ownership, and intends to set a EU-wide limit for cash payments of €10,000.
    - A proposed directive would replace the existing Directive 2015/849/EU, containing provisions that still would have to be transposed into national law, such as rules on national supervisors and financial intelligence units in Member States.
    - Finally, the Commission proposed to revise the regulation on transfers of funds to ensure crypto-asset transfers can be traced.
- On this last proposal, a provisional political agreement has been reached in Summer 2022 in view of applying swiftly those rules together with the MiCA regulation. On the proposal for a new authority, a partial mandate carving out the seat of the authority has been approved on the Council side.
- The Council also reached a mandate on the other proposals in December 2022.

UK FCA: Most crypto firms fail to meet AML standards; The UK FCA says some 85% of cryptoasset firms that sought a license with the regulator failed to meet its registration standards. The FCA said the firms failed to demonstrate compliance with its anti-money laundering and counter-terrorism standards. CoinDesk , Financial News , Regulation Asia

FT: Anti-money laundering fines surge 50% : New data fuels doubts over effectiveness of crackdown on financial crime since 2008 crisis View Article

Ex-Agritrade CFO sentenced to 20 years for fraud Commodities firm Agritrade International's former chief financial officer Lim Beng Kim has been given a 20-year jail sentence for her role in defrauding 16 financial institutions that led to losses of $469.1 million. The deception involved forged financial statements at a time when the commodities sector was facing a liquidity crunch. The Straits Times (Singapore) Bloomberg Global Trade Review online (U.K.)

MEPs adopt rules to smoothen investigations into financial crime; *On 12 January 2023, the European Parliament announced that MEPs have adopted rules to smoothen investigations into financial crime. The new rules will facilitate access to centralised bank registries.*

- The new rules mandate EU Member States to ensure that the information from centralised registries is available through a single access point to be developed and operated by the European Commission. Henceforth, competent authorities can quickly establish if an individual holds accounts in several EU countries without multiple time-consuming queries.
- Going forward, the full house of the European Parliament will be asked to endorse the mandate for negotiations.

Nigerian Bank Fined £7.7M For 'Serious' AML Failings The FCA said on Tuesday that it has fined the U.K. subsidiary of a multinational Nigerian financial services company £7.67 million ($9.34 million) for inadequate anti-money laundering controls, despite repeated warnings and an earlier penalty for similar infringements. Read full article »

Corrigendum to Commission Delegated Regulation (EU) 2022/1288; On 12 January 2023, there was published in the Official Journal of the EU, a Corrigendum to Commission Delegated Regulation (EU) 2022/1288 supplementing Regulation (EU) 2019/2088 with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports. The Corrigendum amends the title of Commission Delegated Regulation (EU) 2022/1288.

Corrigenda to Commission Delegated Regulation (EU) 2022/2580 and Commission Implementing Regulation (EU) 2022/2581; On 12 January 2023, there was published in the Official Journal of the EU:

- Corrigendum to Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities. The Corrigendum amends recital 14 and Article 13 of Commission Delegated Regulation (EU) 2022/2580.
- Corrigendum to Commission Implementing Regulation (EU) 2022/2581 of 20 June 2022 laying down implementing technical standards for the application of Directive 2013/36/EU of the European Parliament and of the Council with regard to provision of information in applications for authorisation of a credit institution. The Corrigendum

amends certain footnotes and Articles 3 and 4 of Commission Implementing Regulation (EU) 2022/2581.

Corrigendum to Commission Delegated Regulation (EU) 2021/2268; On 12 January 2023, there was published in the Official Journal of the EU, a Corrigendum to Commission Delegated Regulation (EU) 2021/2268 of 6 September 2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by packaged retail and insurance-based investment products (PRIIPs) offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged transitional arrangement laid down in that. The Corrigendum amends the title to Commission Delegated Regulation (EU) 2021/2268.

Revised cybersecurity directive published in OJ; *The directive repealing and replacing the Directive (EU) 2016/1148 on security of network and information systems (NIS2) been published in the Official Journal.*

- NIS2 is intended to remove divergences among Member States' cybersecurity requirements by:
    - setting out minimum rules regarding the functioning of a coordinated regulatory framework.
    - laying down mechanism for effective cooperation among national authorities.
    - extending the list of sectors and activities subject to cybersecurity obligations; and
    - providing remedies and enforcement measures.
- NIS2 will enter into force on 16 January 2023 and the transposition deadline is 17 October 2024.

Crypto, RegTech & FinTech

Crypto regulatory round up; *Recent bankruptcies leading to increased regulatory focus;*

In the wake of several prominent scandals and bankruptcies, global regulators are ramping up efforts to finalise regulatory frameworks for the crypto sector. 2022 has already seen the completion of Europe's Markets in Cryptoassets (MiCA) rulebook and the Basel Committee's prudential proposals. Looking towards 2023, we expect increased focus around the development of central bank digital currencies (CBDCs), Distributed Ledger Technology (DLT) sandbox initiatives and Decentralised Finance (DeFi). As a result, the expected impact on firms' business models is becoming clearer.

MiCA

In June, European regulators reached provisional agreement on MiCA — which aims to clarify the application of existing EU rules to cryptoassets and introduces a new legal framework for any asset falling outside the remit of these rules. The regulation was initially proposed in September 2020 as part of the Digital Finance package and has now worked its way through several rounds of drafting and trilogues. Due to the `borderless' nature of the crypto sector and the consequent need for frameworks to operate globally, European representatives are touting MiCA as a potential blue-print for other jurisdictions. It's worth noting however, that MiCA in its current form does not substantially address DeFi or Non Fungible Token (NFT) regulation.

As MiCA will not begin applying to in-scope firms until Q1 2024, the European Central Bank (ECB) has announced it will develop crypto supervision standards aimed at functioning as a `stop gap' until then. These standards will focus specifically on harmonising the licensing of crypto activities across the block — with a horizontal analysis expected before the end of 2022.

International proposals

In December, after two rounds of consultation, the Basel Committee for Banking Supervision's (BCBS) oversight body finalised proposals for the prudential treatment of cryptoassets and stablecoins. Despite push-back from industry, the BCBS doubled down on its conservative approach, requiring "unbacked cryptoassets and stablecoins with ineffective stabilisation mechanisms" to be subject to the highest possible one-for-one capital charges. This would make it highly unappealing for financial institutions to hold these assets on their balance sheets.

The Committee noted that, while the banking system's direct exposures to cryptoassets remains relatively low, recent developments have emphasised the importance of having a strong prudential framework. Nonetheless, it did grant some concessions to industry, including softening the overall limit on banks' exposures from 1% of Tier 1 capital to 2% and increasing flexibility in the capital add-on to cover the uncertainties of the novel infrastructure.

The implementation deadline for these proposals — 1 January 2025 — aligns with the start of implementation of the wider Basel 4 package in the UK and EU.

The Financial Stability Board (FSB) also recently published a consultation examining the regulatory and supervisory issues raised by cryptoasset activities. The consultation shows a growing understanding of the nascent ecosystem and clearly sets out expectations that these assets should be regulated in a similar way to traditional finance — "same activity, same risk, same regulation". However, for now, the FSB does not offer practical proposals to address key challenges including the sector's cross-border nature and DeFi applications.

Financial Services and Markets Bill (FSMB)

In the UK, the FSMB was introduced in July 2022 — formally proposing to bring "digital settlement assets" used for payments (i.e. stablecoins) within existing e-money regulations. The Payment Services Regulations (PSRs) and e-Money Regulations (EMRs) impose capital, safeguarding, outsourcing, accounting and audit requirements on intermediaries and require firms to be authorised by the FCA.

The FSMB is set to be finalised in spring 2023 and, once stablecoins have been addressed, HM Treasury (HMT) will look to consult on wider cryptoassets.

It's worth noting that, following discussions in the House of Commons, the FSMB was pre-emptively amended to introduce an (intentionally broad) definition of cryptoassets that will bring them within the scope of the regulatory perimeter in the Financial Services and Markets Act 2000. This will account for the evolving nature of the ecosystem and will allow HMT to apply different parts of the regulatory framework (e.g., the financial promotions regime) based on responses to their consultations without the need for further primary legislation.

Central Bank Digital Currencies (CBDCs)

Both the ECB and the Bank of England (BoE), along with at least 50 other central banks, are in the process of researching and / or developing their own CBDC.

The ECB's 24-month investigation phase into a digital euro is set to conclude in October 2023, with the development of a prototype. As part of this phase, the ECB has been collaborating with private sector companies and intermediaries on potential user interfaces. Once the prototype is complete, the decision will be made on whether to go ahead with actually developing a digital euro.

The UK has followed a slightly more cautious timeline in the hope of gaining a second-mover advantage. As part of the recent Edinburgh Reforms, HMT and the BoE re-confirmed the launch of their first consultation into a CBDC "in the coming weeks".

The two jurisdictions are also diverging on design. The EU is looking into both a wholesale and retail CBDC, whereas the UK has made it clear that, at least in the short term, it will focus exclusively on a potential retail CBDC. This is because most of the benefits of a wholesale option are already being provided by the BoE's Real-Time Gross Settlement (RTGS) omnibus account, which facilitates wholesale payments settlement in central bank money.

More specifically, the EU is looking to use an intermediated model for its retail CBDC — where the ECB creates its own digital currency that is distributed via private sector companies and commercial banks. The UK, on the other hand, is looking to use a synthetic model — which is essentially a private sector stablecoin backed by central bank reserves in their standard form.

Regulatory sandboxes

Both the UK and EU are in the process of establishing regulatory sandboxes to experiment with the use of DLT in financial market infrastructures.

In June, Europe reached agreement on final regulation for the pilot regime for market infrastructures based on DLT (which ESMA has now dubbed DLTR) — which sets out a legal framework for the trading and settlement of transactions in crypto-assets that qualify as financial instruments (under MiFID II). Similar to a sandbox approach, the pilot allows for `safe experimentation' and will provide evidence for a potential subsequent permanent regime. The pilot is set to go live in March 2023 with a formal review scheduled for 2026. In the meantime, ESMA continues to consult on draft guidelines to establish standard formats and templates for application to the DLTR and has started to issue Q&As to assist with implementation.

In the UK, July's FSMB gave HMT the power to establish FMI regulatory sandboxes. These are set to launch by the end of 2023 (following formal assent of the Bill) — but still need to go through several legislative layers, where each sandbox is created by a specific statutory instrument. Within the sandboxes, HMT will be able to temporarily disapply or modify relevant legislation, to allow participating FMIs to "test and adopt new technologies and practices". This aligns with the EU's DLTR and is a step away from the FCA's original regulatory sandbox (launched in 2016). However, unlike the EU equivalent, the scope of the UK sandboxes is intentionally not limited to DLT, in order to maintain technology neutrality.

DeFi

The ongoing market chaos has reignited criticism of `centralised' crypto platforms — with some crypto advocates seeing this as proof of the need to move towards DeFi applications where self-executing smart contracts allow everything to be handled amongst peers.

However, regulators are more wary and emphasise the need for significantly more analysis and assurance before these applications can be deployed at scale. Jon Cunliffe (Deputy Governor of the BoE) recently stressed that neither the robustness nor the actual degree of decentralisation of these solutions is proven.

A recent BIS staff paper also noted that DeFi provides "the opportunity for market participants to circumvent controls in the financial system and create externalities for the rest of society" — e.g., "through facilitating tax evasion or skirting AML laws".

What does this mean for clients?

Increasing calls for cryptoassets to be brought within the regulatory perimeter have led supervisory bodies to focus on finalising their frameworks. Moreover, the recent failures of several prominent crypto platforms have led supervisors to err, even further, on the side of caution.

Now, these frameworks (especially for `centralised' firms), are looking increasingly likely to include `traditional' pillars of existing financial regulation such as separation of client assets, financial and operational resilience requirements and audit/assurance requirements. Firms should continue to monitor developments closely and consider the implications for their business model.

In the interim, the UK Financial Policy Committee has warned that "financial institutions and investors should take an especially cautious and prudent approach to any adoption of (cryptoassets) until the necessary regulatory regimes are in place".

Sanctions

Brexit Regulations

Conduct / Enforcement

Market Structure

Prudential

ESG & Disclosures

Diversity & Inclusion (D&I) in financial services (FS) — The FCA has published the results of a multi-firm D&I review across multiple FS sectors. 12 firms were involved, eight of which reported large gender pay gaps and four of which reported small pay gaps. The results give an indication of the current state of D&I in UK financial services and aim to encourage further industry action and inform future supervisory approaches.

This month held an important deadline for the UK FCA consultation on CP22/20: Sustainability Disclosure Requirements (SDR) and investment labels, which closed earlier this week. Given the critical importance of SDR in shaping the UK's ESG disclosure landscape, we decided to submit our own response to the consultation and address some key issues to ensure alignment and clarity. You can find KPMG response here

- 1. Everyone's talking about biodiversity (multi-sector)
    - What: Whilst the focus on climate has dominated the discussions under the 'E' banner of ESG in recent years, biodiversity is slowly but surely beginning to

receive its fair share of attention. The success of COP15 in Montreal last December propelled the topic further up the global policy agenda with the announcement of the Kunming-Montreal Global biodiversity framework commitments. The historic framework contains 4 goals and 23 action targets to halt and reverse the decline in biodiversity globally by 2030. This includes the headline target of "30×30" ambition to conserve 30% of the world's land and 30% of the ocean by 2030. Currently, only around 17% of land and 10% of marine areas receive some form of protection.

- Whilst not legally binding (unlike the Paris Agreement), the framework contains clear obligations including to ensure measures are implemented to require all large companies to monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity, along their operations, supply and value chains and portfolios. This was seen as a disappointing outcome for many stakeholders who were actively calling for mandatory reporting, which had seemed a possibility in the run up to COP15.
- COP15 also saw the launch of the U.N.-supported Biodiversity Credit Alliance which intends to establish Global Biodiversity Credit Principles and the release of a consultation from the World Economic Forum (WEF) on fundamental considerations for the emerging biodiversity credit markets. In December 2022, the U.N. Development Programme and the WEF endorsed biodiversity credits as a critical tool for driving investment in nature, and we are likely to see an emerging market, similar to that of its carbon counterpart in the years to come.
- **Looking ahead:** Unlike climate change, biodiversity has been hampered with a lack of consensus of how to measure and calculate biodiversity impact and loss. 2023 will hopefully provide a clearer picture with the final disclosure framework being developed by the Task Force on Nature-related Financial Disclosures (TNFD). The International Sustainability Standards Board has also announced it will be making incremental enhancements to its soon-to-be-released Climate-related Disclosure Standard, relating to the connection between climate, natural ecosystems and a just transition. A number of member bodies are also leading the way in setting data and impact standards such as the Science Based Targets Network and Accounting for Sustainability.
- **What should you be doing:** Whilst not mandatory as yet, businesses should be looking at ways to reduce their negative and increase their positive impacts on biodiversity across their value chains. They should be looking to assess the business' current links to nature, set targets, engage senior management and consider including nature capital disclosures in annual reports and accounts in line with the recommendations of the latest draft of the TNFD framework. The Global Reporting Initiative exposure draft revised biodiversity standard, which is open for comment until 28 February, is also a good opportunity to actively engage in this area. See below in our consultation round-up for more information.

- 2. First 'Orange Bond' (financial institutions)
  - **What:** December saw the launch of the Impact Investment Exchange's (IIX) Women's Livelihood Bond 5 (WLB5), the world's first Orange Bond. The bond is named after the orange colourings of Sustainable Development Goal 5 for gender equality and is the world's first asset class created by '*both the Global*

South and Global North with a mission to build a gender-empowered financial system'. It adopts gender-lens investing that will fund small businesses that empower approximately 300,000 women and girls in emerging markets across Asia and Africa. This unique financial structure has demonstrated how innovative financial solutions can effectively balance risk, returns and impact. The WLB5 is intended to create a "gold standard" for the market and it complies with existing standards including the ICMA Sustainability Bond Guidelines and the ASEAN Social Bond Standards.

- UK Developments
- 1. Mission Zero: UK Net Zero Strategy Review (multi-sector)
    - What: MP Chris Skidmore's mammoth Mission Zero report was published this month. The 340-page report is an outcome of more 1800 submissions making it one of the largest engagements on net zero in the UK. The report was commissioned by the UK Government last year to assess the UK's net zero strategy with a focus on ensuring a pathway that aligns with economic growth and energy security. The report strongly backs the UK's commitment to net zero by 2050 and finds that significant government action is needed to ensure it's achieved in the best way possible for the economy and the public. The report is critical of the government's current approach, with many respondents calling for greater '*clarity, certainty, consistency, and continuity*'.
    - The report frames net zero as '*the growth opportunity of the 21st century'* and it offers up 129 policy recommendations for the government to consider to '*turbocharge*' the path to net zero. To offer a snapshot, some of the themes covered are: greener and more energy efficient homes, stable environment for business to plan and invest, accelerating renewables, reforms relating to the circular economy, transport, hydrogen, nuclear, oil and gas and more.
    - Looking ahead: We will be keeping an eye out for the UK Government's response to this report, which we anticipate will be embedded within the Government's revised net zero strategy expected for release before the end of March.
- 2. New UK antitrust sustainability guidelines coming soon (multi-sector)
    - What: The CEO of the Competition and Markets Authority (CMA) has confirmed that draft antitrust guidance on sustainability agreements will be published for consultation 'in the coming weeks'. All the smoke signals are that the guidance will provide some helpful comfort for companies who wish to collaborate to achieve genuine green goals. Last year, the CMA told the government that there was 'some flexibility under the current legal framework' to create an exemption for climate-focused agreements between businesses.
    - Crucially, the guidance therefore seems likely to align sustainability goals with consumer benefit, including to the UK society as a whole. Under the new proposal, the CMA would consider climate change mitigation a benefit to society that would fit within the "fair share" exemption, and would not punish companies cooperating on policies that would have a substantial and demonstrable impact on climate change. This would be an important step and one which aligns with guidance of the Dutch Authority, but goes further than guidance issued by the European Commission.
    - Looking ahead: It will be fascinating to see how far the CMA is prepared to go in enabling the private sector to collaborate towards achieving the UK's net zero ambitions – watch this space.

- 3. Ban on some single-use plastics in England (multi-sector)
  - What: Environment Secretary Thérèse Coffey announced this month that a range of single-use plastics will be banned in England from October 2023. The ban will target items such as: single-use plastic plates, trays, cutlery and certain types of polystyrene cups and food containers. The decision comes after a government consultation showed that over 95% of respondents were in favour of the bans and that the bans are likely to make a material impact in reducing plastic pollution. The EU introduced a similar ban back in 2019 through a Directive on single-use plastics and announced in November 2022 a proposal on Packaging and Packaging Waste, that includes further bans on single-use plastic, including for example single-use packaging for fruits and vegetables and miniature shampoo bottles and other miniature packaging in hotels.
  - Looking ahead: While the ban in England is limited in scope, it shows that the issue of single-use plastics is continuing to be a topic that regulators are willing to address. The UK government has expressed that it will be considering further measures around other plastic items, including wet wipes, tobacco filters and sachets, which could mean further bans or mandatory labelling requirements in the future.
- 4. Challenge to UK decision to invest in overseas fossil fuel project rejected (multi-sector)
  - What: Use of the English Courts, in particular the judicial review process, has long been a route by which environmental campaigners seek to hold the UK Government to account for its decisions. The Court of Appeal has recently dismissed a judicial review application by which Friends of the Earth sought to challenge a decision by UKEF (The Secretary of State for International Trade/UK Export Finance) to approve UKEF's $1.15b investment in a liquified gas project in Mozambique (*R (on the application of Friends of The Earth Ltd) v UKEF and others* [2023] EWCA Civ 14).
  - The essence of Friends of the Earth's challenge was that the UK Government had erred in law in concluding that their decision was aligned with the UK's obligations under the Paris Agreement. The crux of the case rested on Article 2(1)(c) of the Agreement, which includes requirements that signatories aim to '*strengthen the global response to the threat of climate change*' by '*making financial flows consistent with a pathway towards low greenhouse gas emissions*'. The court concluded that Article 2 of the Agreement should be treated as defining the purpose of the treaty, and that the specific obligations on the signatories could be found elsewhere (primarily in Articles 4, 7, 9, 10, 11 and 13).
  - To determine whether the UKEP made an 'error in law' by financing the project, the court asked whether it was tenable to decide that funding the project would be aligned with the UK's obligations under the Paris Agreement. It came to the conclusion that it was tenable, finding that the Agreement (as an unincorporated treaty) was one of only a range of factors to be considered in reaching a decision on the project. The court also looked at UKEF's Climate Change Report, which concluded (among other things) that the project was in overall alignment with Mozambique's stated energy transition policies and that the project may reduce emissions (unquantified) to the extent that it displaced coal use in China, India and Indonesia.

  - The court did note that no attempt was made to argue that the decision was irrational on the basis that 6 months later it would have contravened the UK Government's own policy; following a December 2020 announcement by the then Prime Minister, the UK Government issued its "*Guidance: Aligning UK International Support for the clean energy sector*", stating that the UK would "*no longer provide …support*" for the overseas fossil fuel energy sector.
  - Looking ahead: Although Friends of the Earth were unsuccessful in this instance, we do not believe this will deter further similar claims against the Government in the future.
- EU and Europe Developments
- 1. Update on the EU carbon border adjustment mechanism (multi-sector)
  - What: From October 2023, the EU's Carbon Border Adjustment Mechanism ("CBAM") will come into effect. CBAM will apply to imports of certain products into the EU from non-EU countries. Importers will be required to purchase CBAM certificates at a price based on the difference between carbon pricing in the country of production (if any) and the price of carbon allowances under the EU Emissions Trading Scheme (ETS).
  - Timing: CBAM is arguably off to a slow start, being phased in from October 2023 when the reporting system will apply, but with no requirement to start paying a carbon adjustment until 2026. Even then, full implementation is dependent on the phasing out of allowances provided to EU businesses under the ETS, meaning it will be phased in gradually between 2026 and 2034. It will initially only apply to iron and steel (including some downstream products such as screws and bolts), cement, fertiliser, aluminium, electricity and hydrogen.
  - Next Steps: The Council and the European Parliament have reached political agreement on the implementation of CBAM but we now await the formal Regulation. When this is published there will be detailed compliance requirements to get to grips with including authorisation processes, the scope of CBAM, compliance deadlines, and the mechanism by which importers will have to report.
  - Our View: Given the urgent need to address climate change, it may seem that it is too little, too late. This is down to the multi-national and multi-disciplinary nature of the proposals, as well as the need to tie implementation to the phasing out of ETS allowances. However, the sense we get is that once the challenges of legislating and implementing a complex multilateral process have been overcome, there will be quick momentum. The legislation is being drafted deliberately to allow flexibility and future extensions.
  - What should you be doing: All businesses should watch this space. Typically, when the EU successfully implements a new initiative, others will follow. It would therefore not be at all surprising if many other countries look to implement similar rules over the next five years. The UK has already indicated that it will consult on the possible introduction of a UK CBAM during 2023 as one of a number of possible measures to address carbon leakage. For further information please see our briefings here and here.
- 2. Alleged breach of Due Vigilance in France (multi-sector)
  - What: French bottled water and dairy group Danone is facing legal action from three environmental groups (Surfrider, ClientEarth and Zero Waste France) for an alleged breach of the duty of vigilance for its plastic use established under

the Corporate Duty of Vigilance Law (2017). The law requires large French companies to publish a vigilance plan and to guard against environmental and social violations in their value chains.

- The environmental groups claim that the company's current vigilance plan is silent on plastics and have called on the company to:
- Map the impacts its use of plastics has on the environment, climate, health and human rights from production to end-of-life;
- Provide a complete assessment of its plastic footprint, including plastics used in producing the products it sells, plastics used in logistics and promotions and plastic packaging; and
- On the basis of this assessment, issue a new vigilance plan, including a credible 'deplastification' path for all their activities.
- They have requested the Court order Danone to pay € 100,000 per day if they delay the issuance of a new plan beyond six months. Danone has denied the claim, stating that it has already implemented a decrease of 12% of its global plastic use between 2018 and 2021. The company states that its goal is for every piece of its packaging to be reusable, recyclable or compostable by 2025.
- This claim follows a formal notice sent by the activists to nine food and retail companies (Auchan, Casino, Carrefour, Danone, Lactalis, McDonald's France, Les Mousquetaires, Nestlé France and Picard Surgelés) in September 2022, in relation to their plastic use throughout their value chains. Four of the companies have not yet published a vigilance plan, and the rest, the activists allege, do not present a credible deplastification path for all their activities in their vigilance plan. The nine companies have three months from the notice to meet their obligations to respond and at the end of this period, the activists may launch legal proceedings.
- **Looking ahead:** These proceedings, as well as the others brought under the French Duty of Vigilance law, shows the trend in France for NGOs to act against companies, requiring them to be transparent and to take into account their entire value chain. This claim is one of several recent legal claims filed against plastic pollution and reinforces the continuing trend of ESG litigation.
- Middle East Developments

- 1. Standardising ESG disclosures for listed companies across the GCC (multi-sector)
    - **What:** On 9 January 2023, the GCC Exchanges Committee, chaired by the Saudi Exchange, published a unified set of voluntary ESG disclosure metrics. These metrics align with the UN Sustainable Development Goals and include 29 standards which are aligned with the World Federation of Exchanges and Sustainable Stock Exchanges Initiative, across categories including energy and water usage, gender diversity, greenhouse gas emissions and data privacy. Whilst the metrics do not replace existing ESG disclosure guidelines for GCC stock exchanges, some view this development as an initial step by the GCC Exchanges Committee - comprising Bahrain Bourse, Boursa Kuwait, QSE, Muscat Stock Exchange, Saudi Exchange, Abu Dhabi Securities Exchange and Dubai Financial Market – towards obligatory standardised ESG disclosure metrics.
- 2. UAE Ministry of Human Resources and Emiratisation sets out guidelines on reporting workplace injuries and illnesses (multi-sector)

- What: Ministerial Resolution No. 657 (Resolution) of 2022 issued by the Ministry of Human Resources and Emiratisation (MoHRE) outlines procedures for maintaining records and reporting workplace accidents and occupational diseases through MoHRE approved channels, adopting a system for monitoring work injuries and occupational diseases, and complying with the requirement to pay compensation. The intention of the Resolution is to make the identification of risks and other problems easier to distinguish hence strengthening the safety system in the private sector. The employer has a duty to record information about the injured employee, severity of the injury, circumstances of the accident and treatment procedures. In addition to keeping track of all work-related illnesses and injuries, the Resolution also requires companies to record any preventive measures and rehabilitation programmes implemented for employees involved in hazardous activities, as well as defining all activities that pose a threat to health and safety of workers.

- 3. Luxembourg Stock Exchange becomes the first European Exchange to sign Abu Dhabi Sustainable Finance Declaration
  - What: On 20 January 2023 in Abu Dhabi, the Luxembourg Stock Exchange (LuxSE) became the first European Exchange to sign the Abu Dhabi Sustainable Finance Declaration, which was launched in 2019 by the Abu Dhabi Global Market and is sponsored by the Ministry of Climate Change and Environment, the Central Bank and the Securities & Commodities Authority in Abu Dhabi. The LuxSE is joined as a signatory by 116 leading banks, asset managers, financial services providers and other institutions globally.
  - 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.
- 1. Global Reporting Initiative exposure draft of its revised Biodiversity Standard (multi-sector)
  - What: On 5 December 2022, the Global Reporting Initiative (GRI) published an exposure draft for its revised biodiversity standard 'GRI 304: Biodiversity'. The exposure draft proposes changes that:
  - Reflect reporting throughout the supply chain, given many biodiversity impacts are found beyond the scope of a company's own operations;
  - Help organisations prioritise attention on their most significant impacts, recognising the challenge of scale in addressing biodiversity impacts;
  - Add new disclosures to connect with the drivers of biodiversity loss, including climate change, pollution, and overexploitation of resources. Introduce requirements for biodiversity-related human rights impacts, such as those on indigenous peoples, local communities and workers; and
  - Emphasise location-specific data, to ensure businesses are transparent about the sites where their biodiversity impacts take place.
  - Timing: The exposure draft is open for public comment until 28 February 2023.
- 2. US Federal Supplier Climate Risks and Resilience Proposed Rule (US federal suppliers)
  - What: On 10 November 2022, the Biden-Harris Administration proposed the Federal Supplier Climate Risks and Resilience Rule to protect the federal

government's supply chains from significant climate-related financial risks. The proposed rule would require major Federal contractors to:
- Publicly disclose their greenhouse gas emissions and climate-related financial risks;
- Assess climate risks in alignment with the TCFD; and
- Set emissions reduction targets validated by the SBTi.
- Timing: The 60-day public comment period for this proposed rule has been extended by 30 days to now close on 13 February 2023.

- 3. Australia's Climate-related financial disclosure (multi-sector)
  - What: On 12 December 2022 the Australian Government published a consultation seeking views on key considerations for the design and implementation of the Government's commitment to standardised, internationally-aligned requirements for disclosure of climate-related financial risks and opportunities in Australia. It also asks stakeholders to supply information on how they are currently managing climate risks including what transition plans they have in place, and whether particular disclosure requirements and/or assurance of those requirements commence in different phases.
  - Timing: The consultation closes 17 February 2023. Responses will be used to inform a specific design proposal for further consultation in 2023.

Recent publications:

- ESG: UK SDR - Simmons responds to the FCA's consultation paper (25 January 2023)
- European energy regulation overview (24 January 2023)
- Oversight: FAQs on disclosure and reporting guidelines for ESG funds (10 January 2023)
- Kittel principle: quantum of disallowance (6 January 2023)
- ESG – client note on new Commission Taxonomy FAQs (3 January 2023)
- ESG – New Taxonomy FAQs Published by the Commission (23 December 2022)

AFME has today responded to the Financial Conduct Authority's consultation paper on Sustainability Disclosure Requirements SDR and investment labels.; *AFME broadly welcomes the proposed SDR and investment labels and supports the focus on establishing credible, effective product labels for sustainable investments*.

- We put forward recommendations on how the FCA can offer clarity and precision to facilitate the future implementation of the new rules, promote legal certainty, and mitigate greenwashing risks.
- We recommend that the FCA clarifies the sequencing for the application of the SDR requirements, considering them alongside the work on the UK Green Taxonomy, transition plans, and international sustainability reporting standards.
- We also suggest that the FCA looks ahead to potential challenges in the distribution of products with some sustainability characteristics, but which do not meet the criteria to obtain a label, including the use of ESG-related terms for the marketing of products subject to SFDR disclosures.

Consultation Response

Sustainability Disclosure Requirements (SDR) and investment labels

25 January 2023

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to respond to the FCA's consultation paper (CP22/20) on Sustainability Disclosure Requirements (SDR) and investment labels (the "Consultation Paper").

AFME broadly welcomes the proposed SDR and investment labels and supports the focus on establishing credible, effective product labels for sustainable investments. We have focused our response on the perspective of our members as wholesale banks which, while not directly subject to many of the proposed requirements, will be impacted for example as manufacturers and distributors of sustainable investments and through the provision of data that will be needed by investment managers to comply with the requirements. Our members will also be directly subject to the proposed anti-greenwashing rule and strongly support the aim of establishing an effective regulatory framework for sustainable finance in the UK.

AFME has contributed to the development of the European sustainable finance legislative framework from its early stages. Throughout this ongoing process, we have drawn some lessons as to how firms have interpreted and implemented new transparency rules, including principle-based measures as well as the more prescriptive requirements. We welcome that the FCA has also sought to reflect on the experience of firms and is seeking to establish a labelling regime. We put forward recommendations on how the FCA can offer clarity and precision to facilitate the future implementation of the new rules, promote legal certainty, and mitigate greenwashing risks.

AFME welcomed HM Government's "Greening Finance: A Roadmap to Sustainable Investing" published in October 2021. We strongly support the government's proposals to establish an integrated framework for sustainability disclosures across the economy including the elements of corporate disclosures, asset manager and asset owner disclosures and investment product disclosures. We welcome the progress made by the FCA in the areas within its mandate and wish to highlight the importance of ensuring that an integrated framework is achieved in practice. While we welcome the announcement by the government that it will publish its updated Green Finance Strategy in Q1 2023, AFME members would welcome additional clarity on how the proposed SDR and investment labels will be integrated into the broader SDR framework, including with respect to the timing of corporate disclosures and how this will fit with the timing of the introduction of the proposed investment labels. The availability of sustainability data is an important prerequisite to the disclosures proposed under the SDR and investment labels framework. There also remains uncertainty regarding the approach to a UK Green Taxonomy and the timing of further work on this. While we appreciate that this is not all within the FCA's remit, we encourage the FCA to continue to reflect upon how the proposals in the Consultation Paper will fit within the broader UK regulatory and disclosure framework for sustainable finance and to clarify this where possible.

Addressing these questions at this early stage in the design of the new disclosure and labelling rules will greatly facilitate their design, delivery and implementation. Most importantly, clear and understandable definitions and criteria underpinning the requirements should provide adequate levels of legal certainty for financial market participants, enhancing the tools for sustainable investment decision-making and mitigating reputational risks, and retail investors, building trust in the market and preventing greenwashing.

AFME, the European Payment Institutions Federation (EPIF), FIA, Inc. and ISDA, in reaction to the vote in the ECON committee on its draft opinion on the Corporate Sustainability Due Diligence Directive CSDD, have put out a short paper.

- This paper highlights the importance of ensuring that the CSDD takes a proportionate, risk-based approach and provides a clear, practical and legally certain framework. The paper highlights the challenges faced by financial institutions if due diligence obligations are extended beyond their supply chain to their relationships with corporate clients or trading counterparties.

Corporate Sustainability Due Diligence

An effective approach for financial institutions

23 January 2023

AFME, ISDA, FIA and EPIF (the "Associations") highlight the importance of ensuring that the proposed EU Corporate Sustainability Due Diligence Directive ("CSDDD" or the "Directive") takes a proportionate, risk-based and workable approach and provides a clear, practical and legally certain framework[1].

As has been highlighted by associations representing businesses[2] and in the discussions in the Council and the European Parliament, all companies (including financial institutions) will face significant challenges with applying the proposed due diligence obligations to their downstream value chains.

This paper highlights the serious challenges faced by financial institutions if the obligations are applied beyond their upstream supply chain to their relationships with corporate clients or trading counterparties in their downstream value chain. We have significant concerns with proposals to extend the scope of downstream financial services that would be included in the scope of the Directive.

To the extent that the co-legislators decide that the scope of the Directive should include downstream business relationships, it would be essential to take account of the distinguishing features of financial institutions' downstream value chains, and ensure a risk-based and proportionate approach. As we outline in detail below, financial institutions cannot effectively influence the behaviour of their corporate clients and trading counterparties through the provision of financial services such as trading, derivatives, custody, clearing and payments. The inclusion of these services in the scope of the value chain thus will creates undue burdens and obstacles in financial markets, without any contribution to the objectives of the Directive.

We strongly propose that any inclusion of downstream business relationships should be focused on the provision of financing where the inclusion of the services within the legislation is expected to have the greatest impact on safeguarding human rights and the environment. It follows that, for financial institutions, due diligence obligations on their downstream value chain should not cover a scope going beyond the activities of large corporate clients receiving loan or credit services and it should be clear in any event that it does not extend to other services including (but not limited to) trading and investment activities, derivatives, custody, clearing or payment services.

indicators

; *The European Central Bank (ECB) has published a first set of climate-related statistical indicators today to better assess the impact of climate-related risks on the financial sector and to monitor the development of sustainable and green finance, fulfilling another of the commitments of its climate action plan.*

- "We need a better understanding of how climate change will affect the financial sector, and vice versa. For this, the development of high-quality data is key," says Executive Board member Isabel Schnabel. "The indicators are a first step to help narrow the climate data gap, which is crucial to make further progress towards a climate-neutral economy."
- The new indicators are either experimental or analytical. The indicators are, therefore, a work in progress and should be used with caution. They are intended to start a broader conversation within the statistical and research community and with other key stakeholders on how to better capture data on climate-related risks and the green transition.
- Specifically, the indicators cover three areas:
- *Experimental indicators on sustainable finance provide an overview of debt instruments labelled as "green", "social", "sustainability" or "sustainability-linked" by the issuer that are issued or held in the euro area. The data show that the volume of sustainable and green bonds has more than doubled over the last two years and grew

much faster than the overall euro area bond market. Besides boosting transparency, these indicators also help track progress on the transition to a net-zero economy. That said, the lack of internationally accepted and harmonised standards on what defines a green or sustainable bond makes the data less reliable overall.

- *Analytical indicators on carbon emissions financed by financial institutions provide information on the carbon intensity of the securities and loan portfolios of financial institutions, and on the financial sector's exposure to counterparties with carbon-intensive business models. Preliminary results show that in the euro area, most of the emissions financed via equity or bonds are held by investment funds. However, the data suggest that the most carbon-intensive activities are financed via the banking sector, as the companies they finance produce relatively more emissions in their business operations to achieve a given level of revenue.
- *Analytical indicators on climate-related physical risks analyse the impact of natural hazards, such as floods, wildfires or storms, on the performance of loans, bonds and equities portfolios. While the risk of windstorms broadly affects financial portfolios in the euro area, the risk of this hazard causing severe damage is rather low. In contrast, floods are limited to coastal and river areas but are estimated to have a higher level of damages and losses.
- Today's publication of new climate-related indicators is a key step towards delivering on the ECB's climate commitments.

Prudential

PRA 2023 supervisory priority letters — The PRA has written to insurers, international banks and UK Deposit Takers outlining its supervisory priorities for 2023. Some of the priorities are common to each sector: financial and operational resilience, financial risks arising from climate change, governance and risk management, and diversity, equity and inclusion. The PRA will prioritise readiness for ISO 20022 messaging in CHAPS as part of the Real-Time Gross Settlement (RTGS) Renewal programme and data quality and accuracy for all banks. UK Deposit Takers should expect continued focus on credit and model risk. For insurers, exit and resolution planning and non-natural catastrophe risk such as large-scale cyber attacks will be on the agenda.

Bank of England (BoE) Financial Policy Summary — The December 2022 Financial Stability Report set out the Financial Policy Committee's (FPC's) latest views on financial stability risks and policy actions. While it found that UK banks are well positioned to manage the worsening economic outlook, the FPC noted that urgent work is needed to ensure the non-bank sector is equally robust. For the first time, the BoE will run an exploratory scenario exercise for Non-Bank Financial Institutions (NBFIs), with further details to follow in H1 2023. On Liability-Driven Investment (LDI), the FPC was explicit that regulators should set steady-state minimum levels of resilience in the LDI market — see more in our article above. Cryptoassets also featured prominently — although the FPC is not yet concerned about financial stability impacts, it sees the need for enhanced regulatory oversight of crypto markets and activity given the speed of market developments.

Independent review on ring-fencing and proprietary trading — The government has responded to the recommendations (published in March 2022) of the Independent Panel on Ring-fencing and Proprietary Trading which aimed to reduce the rigidity of the ring-fencing regime and address its unintended consequences. The government plans to consult in mid-2023 on a series of near-term reforms to improve the functionality of the regime and benefit customers, the FS industry, and the economy, while maintaining appropriate financial stability safeguards. The government also intends to issue a public call for evidence in Q1 2023 to review the practicalities of aligning the ring-fencing and resolution regimes.

FCA approach to implementing the Future Regulatory Framework (FRF) — The FCA has set out its approach to implementing the draft FRF measures contained in the FSMB. The plan includes steps to: implement the new secondary objective on growth and international competitiveness; increase accountability, scrutiny of activities and stakeholder engagement; and transfer the rules contained in retained EU legislation into the Handbook.

Bonus cap removal — The joint FCA & PRA consultation proposes to remove the current limits on the ratio between fixed and variable components of total remuneration i.e. the bonus cap. The regulators' view that this would strengthen the effectiveness of the remuneration regime by increasing the proportion of compensation at risk that can be subject to the incentive setting tools within the remuneration framework — including deferral, payments in instruments, and risk adjustment.

Regulatory operational effectiveness — The CEO's of the FCA and PRA have both responded to requests from the Chancellor on their plans to increase operational effectiveness. The FCA outlined it plans to improve transparency in the area of firm authorisations. The PRA is focusing on enhancing the metrics it publishes on the handling of regulatory transactions.

Capital Markets

FCA update on 10% depreciation notifications to investors – The FCA has provided an update regarding the permanent end of 10% depreciation notifications to investors, required under MiFID II. Since March 2020 and the onset of the pandemic, the FCA has allowed for some flexibility with the notifications. The UK Treasury has now laid before Parliament a statutory instrument revoking the 10% notification requirement – this legislative amendment is expected to come into force this month. In the meantime, the FCA statement has extended its existing temporary measures with certain conduct expectations.

Margin requirements for non-centrally cleared derivatives – Following consultation, the PRA and FCA will update BTS 2016/2251 'Margin requirements for non-centrally cleared derivatives' (under UK EMIR) to address issues previously raised by industry.

BoE annual report on supervision of financial market infrastructures – The BoE's annual report on supervision of financial market infrastructure (payment systems, central securities depositories (CSDs), and central counterparties (CCPs)) shows its increasing supervisory powers and focus as the UK regulatory framework is updated, through the Financial Services & Markets Bill (FSMB), to reflect financial innovation and the impact of the UK leaving the EU.

HM Treasury (HMT) – Call for Evidence on the Short Selling Regulation (SSR) – This is the first step in the government's programme to repeal retained EU law and replace it with a regulatory framework tailored for the UK. The call for evidence seeks views on the whole framework as well as views on specific areas of the existing regulation but it does not lay out any proposals. HMT will consider which aspects of the regime should remain in legislation, and which should be delegated to the FCA to set in its rules.

Liability-driven investment; Next steps for firms and regulators; *For several years, central banks' interest in the non-bank sector has been increasing, due to its growth and the significant role it now plays in the funding of the real economy. The high market volatility in spring 2020 put in train a series of international regulatory workstreams looking closely at the sector, led by the FSB. The fall-out from these workstreams is still ongoing, including supervisory focus on liquidity risk management and tools (such as swing pricing).*

- Volatility in the UK gilt market in September 2022 and associated challenges for Liability-Driven Investment (LDI) managers have further added to scrutiny of the non-bank sector. In their responses to events, regulators have set new expectations and laid out follow-up supervisory and policy work. All market participants should take this opportunity to reassess their risk management practices considering recent events.
- What is LDI?
- LDI strategies are sometimes used in the management of defined benefit (DB) pension schemes where the present value of long-term pension scheme liabilities (payments due to retiring beneficiaries) exceeds the value of the assets. The strategy involves using

leverage to mitigate interest rate and inflation risk, for example by using interest rate swaps. Asset managers manage LDI strategies in segregated accounts for single clients or in pooled funds on behalf of multiple clients.

- As gilt yields rose and their prices fell in September 2022, the value of LDI portfolios also fell and their levels of leverage increased. This resulted in increased margin calls from their counterparties (banks). LDI portfolios needed to sell gilts quickly to raise cash to meet the resulting liquidity demands, leading to a `feedback loop' as the value of gilts fell further. The scale of selling forced the Bank of England (BoE) to intervene by purchasing gilts in order to restore market functioning.
- Regulators' actions
- In the wake of these events, UK and EU regulators have reiterated their expectations around LDI for asset managers, fund managers, pension fund trustees and banks.

- UK LDI managers need to consider the expectations of various regulators:
    - The Pensions Regulator regulates DB pension schemes
    - The Financial Conduct Authority (FCA) regulates asset managers that manage those schemes
    - The Prudential Regulation Authority (PRA) regulates banks (including where they act as counterparties to derivative transactions arranged by asset managers)
    - Some pooled LDI funds are managed from the UK but are domiciled in the EU and regulated by the relevant national regulator
- The BoE view, as set out in a speech by Sarah Breeden, was that the root cause of the recent LDI event was poorly managed leverage. The BoE indicated that it will work with other international regulators to improve banks' and non-banks' stress testing, supervise to limit risks from leverage, and build greater transparency around leverage through regulatory disclosures from non-banks and supervisory monitoring.
- In December's Financial Stability Report, the UK's Financial Policy Committee (FPC) went further, stating that regulators should set out "appropriate steady-state minimum levels of resilience for LDI funds." In practice this may translate into regulators setting out expectations regarding minimum liquidity buffers to be held by LDI portfolios, as well as ensuring that good governance is in place and operational processes are robust.
- More broadly, the FPC remains concerned about risks arising from the non-bank sector and it reiterated strong support for urgent international and domestic policy responses. The FPC noted that banks "...should apply a prudent approach when providing finance to LDI funds."
- The FCA also published a statement regarding the resilience of LDI portfolios. It expects asset managers to take appropriate action to "learn lessons" from recent events and all market participants to factor recent market conditions into their risk management practices. The FCA will "maintain a supervisory focus" to ensure that vulnerabilities are addressed and will publish a statement on good practice towards the end of Q1 2023.
- In parallel, The Pensions Regulator published a statement calling on scheme trustees who use LDI to maintain an appropriate level of resilience in leveraged arrangements to better withstand a fast and significant rise in bond yields. The statement also called on trustees investing in leveraged LDI to improve their scheme's operational governance.
- As regulators of key fund jurisdictions, the Central Bank of Ireland and Luxembourg's Commission de Surveillance du Secteur Financier published and sent identical letters to local LDI fund managers, asking them to maintain the current level of resilience and the reduced risk profile of GBP-denominated LDI funds. The letters stated

that LDI fund managers wanting to reduce GBP LDI funds' yield buffers below the current levels should notify the regulators in advance and provide a justification. ESMA welcomed these letters.

- Implications and next steps
- LDI managers and pension scheme trustees should read the relevant regulators' statements and take appropriate action, including factoring recent market conditions into risk management processes and adopting a wider horizon of extreme but plausible events.
- There are also implications for market counterparties. Banks can expect scrutiny of their own risk management practices to increase again.
- For the broader non-bank sector, the BoE will run a stress test exercise in 2023 for the first time — part of an enhanced focus that shows no sign of letting up. At the international level, the FSB will continue to lead work to enhance the resilience of the sector, including on improving transparency and the processes around margining practices.

ESG

Diversity & Inclusion (D&I) in financial services (FS) — The FCA has published the results of a multi-firm D&I review across multiple FS sectors. 12 firms were involved, eight of which reported large gender pay gaps and four of which reported small pay gaps. The results give an indication of the current state of D&I in UK financial services and aim to encourage further industry action and inform future supervisory approaches.

In the last few months, we have seen considerable activity in the ESG regulatory space. Combined with recent political commentary from COP27 in Sharm el Sheik, there is much for firms to digest.

Reporting and disclosure requirements continue to expand. The Corporate Sustainability Reporting Directive (CSRD) has cleared the final legislative hurdles and will enter into force in the next few weeks with implementation by Member States 18 months later. The European Sustainability Reporting Standards (ESRS) supporting the CSRD have been finalised and submitted to the European Commission. In the UK, the Transition Plan Taskforce (TPT) has published its consultation on a framework for firms to disclose their net-zero transition plans. Once finalised, this will inform the Financial Conduct Authority's (FCA's) approach to setting formal rules. In the meantime, the FCA has launched its long-awaited consultation on Sustainability Disclosure Requirements (SDR). Whilst the majority of the initial SDR proposals will affect asset managers, all FCA-regulated firms will be in scope of a new anti-greenwashing rule.

Concerns around greenwashing are escalating rapidly. In response, the European Supervisory Authorities (ESAs) — the EBA, EIOPA and ESMA — have launched a call for evidence on the main risks and drivers of greenwashing. As well as consulting on the SDR, the FCA is convening a working group to develop a voluntary Code of Conduct for ESG data and ratings providers. And ESMA is consulting on the use of ESG or sustainability terms in fund names.

The TCFD's 2022 status report, which reviewed the disclosures of 1,400 large companies across the globe, found encouraging signs of progress. However, in future, financial disclosures will go beyond climate, and November saw the publication of the TNFD's third iteration of the framework for nature-related disclosures. Further regulatory developments on nature and biodiversity may follow the UN's COP15 Biodiversity Conference in Montreal.

Taxonomies remain in focus. As we approach the end of 2022, it is clear that the UK government's initial timeline for developing a Green Taxonomy, set out in October 2021's Greening Finance Roadmap, is no longer feasible. The Green Technical Advisory Group (GTAG) released a report advising the UK government on the development of the UK Taxonomy, and we await confirmation of revised timings. Looking to the EU Taxonomy, the Platform on Sustainable Finance (PSF) has released its recommendations on how to achieve compliance with the 'minimum safeguards' criteria, crucially noting that compliance with certain S-related criteria can be achieved through existing regulations without the need for a Social Taxonomy.

Climate-related financial risk also dominates the regulatory landscape. The ECB's 2022 thematic review of climate-related and environmental (C&E) risks found that, although most banks now have in place basic practices to manage C&E risks, they lack sophisticated methodologies and granular data. To accelerate progress, the ECB has set out clear deadlines for alignment with supervisory expectations. The Bank of England (BoE) hosted a Climate and Capital Conference to gather views on whether and how climate-related risk should be reflected in prudential frameworks, and the Prudential Regulation Authority (PRA) issued a Dear CEO letter providing thematic feedback on how banks and insurers are delivering against the expectations of Supervisory Statement 3/19. At a global level, the International Sustainability Standards Board (ISSB) has mandated the use of climate scenario analysis in resilience assessments, and the Financial Stability Board (FSB) has asked regulators to enhance their scenario analysis toolkit.

On broader sustainability matters, the EU Parliament has put forward amendments to the proposed Corporate Sustainability Due Diligence Directive (CSDDD), widening the scope of firms captured under the directive. The European Council, on the other hand, has proposed a phase-in approach and included only very large companies in its scope.

The EU Parliament has also adopted new legislation on gender balance on corporate boards to take effect from 2026. In the UK, we await the publication of the FCA, BoE and PRA joint consultation on diversity and inclusion in financial services firms.

Overview of the FCA's proposals

The consultation, originally planned for Q2 2022, follows on from the FCA's 2021 Discussion Paper (PDF 485KB) and proposes:

- **Sustainable investment labels** for investment products based on the nature of the product's investment objective and how it purports to promote positive sustainability outcomes.
- **Consumer-facing product-level disclosures** that summarise the sustainability characteristics of products with a focus on retail investors.

- **More detailed sustainability disclosures** aimed at a broader range of stakeholders, including pre-contractual and ongoing performance disclosures at product level, and entity-level disclosures.
- **Product naming and marketing rules** to prevent firms using sustainability-related terms in product names and retail-facing marketing materials unless the product in question qualifies for one of the sustainable labels.
- **A general "anti-greenwashing rule"** for all regulated firms.
- **Rules to ensure distributors** provide sustainability information to consumers.

The wider UK context

The proposals build on the FCA's existing requirements (PDF 825KB) implementing the recommendations of the Task Force on Climate-Relate Financial Disclosures (TCFD) and codify aspects of the FCA's guiding principles. In future, the FCA intends to revisit the requirements to incorporate the work of the International Sustainability Standards Board (ISSB) once adopted. Similarly, the UK Green Taxonomy is still to be developed, but the proposed SDR could be enhanced in future to incorporate its definitions. There are also links to broader regulatory initiatives, including the FCA's incoming Consumer Duty.

The proposals open the door for wider consultations to take place. The FCA specifically sets out intentions to consult further regarding requirements for overseas funds marketing in the UK, financial advisers and investors' sustainability preferences, and asset owners.

Firms and products captured by the requirements

- **Firms that manage investment products for retail investors** and their products will be captured by the product labelling and disclosure rules. These include wealth, fund and asset managers (specifically, firms providing portfolio management services such as UK MiFID firms, as well as UK UCITS Man Cos and UK AIFMs).
- There are limited exclusions, including feeder funds or funds in the process of winding up. Some of the product level disclosures apply in a modified way for portfolio management services and UK AIFMs which manage unauthorised AIFs — for example, firms will not be required to produce product level disclosures in connection with portfolio management services but will be required to provide access to the relevant disclosures for the underlying products. Overseas funds are not yet in scope but may be in the future.
- **Distributors** of in-scope investment products, including platforms and financial advisers, will be subject to more limited requirements. These centre around displaying labels prominently and making the labels and consumer facing disclosures available to investors. Although overseas products are currently out of scope, distributors of such products to retail investors will need to display a warning that the products are not subject to the UK requirements.
- **All FCA-regulated firms** will be impacted by a new anti-greenwashing rule, which will reaffirm existing requirements, that information provided to consumers is clear, fair and not misleading, and link them directly to sustainability claims. The rule will also capture the approval of financial promotions.

Product labels

Compared with the Discussion Paper, the FCA has reduced the proposed categories of mutually exclusive and non-hierarchical labels from five to three:

- 'Sustainable focus': Products with an objective to maintain a high standard of sustainability in the profile of assets by ensuring 70% of the portfolio meets a “credible standard of environmental and/or social sustainability” or aligns with a specified environmental and/or social sustainability theme.
- 'Sustainable improvers': Products with an objective to deliver measurable improvements in the sustainability profile of assets over time.
- 'Sustainable impact': Products with an explicit objective to achieve a positive, measurable contribution to sustainable outcomes.

In-scope firms will be able to voluntarily label their products if they meet the relevant criteria for each category. However, to do so the firm and product must meet the “qualifying criteria” that underpin the labels. The criteria include five overarching principles, “cross-cutting” considerations associated with the principles and category-specific considerations relevant to each label.

Importantly, although it may challenge firms' selection of labels, the FCA will not approve them, and firms will be responsible for ensuring they have chosen an appropriate label and for conducting and documenting a review on the appropriateness of the label on an annual basis.

All other products will have no sustainability label. If a product does not have one of the three sustainability labels, but has environmental, social or governance characteristics as an integral part of its strategy, the product name and its marketing and associated communications will need to comply with the naming rules and firms will need to produce a truncated pre-contractual disclosure as well as the consumer facing disclosures required for all other products.

Having considered requirements around independent verification of labels in its discussion paper, the FCA has decided not to proceed with a mandatory requirement. However, it will encourage firms to seek verification if they think it will benefit their clients.

Product level — consumer-facing disclosures

Consumer-facing disclosures are intended to help retail investors understand a product's features and its objectives, and will need to be presented alongside existing disclosures. Even if firms choose not to adopt a label for a product, the disclosures will still be required.

The information presented will need to include information about a product's sustainability objective and how much progress has been made against the objective. The investment policy and approach to stewardship should be disclosed, alongside ongoing Key Performance Indicators (KPIs) to measure progress to the sustainability objective. If unexpected investments have been made (i.e. those a consumer may not typically associate with the sustainability objective), this should be disclosed. Although the FCA has not proposed a disclosure template, it will encourage industry to develop one.

Firms will need to be mindful of the new Consumer Duty rules, effective from July 2023, and consider how they will test, monitor and adapt their communications and disclosures to enhance consumer understanding. The FCA has signalled that it expects firms to undertake consumer testing in connection with the disclosures, and has undertaken its own research (PDF 1.6MB) which could serve as a minimum benchmark for firms to use when undertaking consumer duty testing.

Product level — more detailed disclosures for a broader audience

Two types of disclosures are proposed to deliver more granular information:

Pre-contractual ("Part A") disclosures will need to be made in a dedicated section of the fund prospectus and published in a prominent place for products that use a label, and for products that don't use a label but adopt integral sustainability-related features. The disclosures would cover details of the product's sustainability objective, investment policy and approach to stewardship, as well as disclosing whether any unexpected investments have been made.

Ongoing "sustainability product reports" ("Part B") disclosures will follow on from the pre-contractual disclosures and inform stakeholders of the ongoing performance of the product. They will only be required for products that use a label and will build on existing TCFD product reports. Where the UK requirements ramp up in the future (e.g. through future adoption of ISSB standards) the reporting requirements for these disclosures may also increase.

As part of an ongoing product report, the sustainability objective and progress towards it should be disclosed. KPIs which allow stakeholders to assess the stewardship and progress towards the sustainability objective should be provided.

For UK AIFMs managing unauthorised AIFs, or firms providing portfolio management services, modified reporting requirements apply.

Entity-level disclosures

Entity-level disclosures also build on the FCA's requirements for TCFD-aligned reporting and will roll out gradually depending on the value of firms' assets under management (AUM). These disclosures must be made prominently on the firm's website. In a similar fashion to TCFD implementation, cross-referencing to other firms' reports will be allowed under certain circumstances.

Four core disclosure requirements will be based on the TCFD's recommendations relating to governance arrangements, actual and potential impacts of sustainability-related risks and opportunities, the risk management process and metrics and targets used by the firm to manage sustainability risks.

Firms may find it helpful to refer to the ISSB's standards to consider the types of disclosures to be made in relation to sustainability-related risks and opportunities more broadly.

Naming and marketing rules

In addition to the new, general “anti-greenwashing” rule, requirements around product naming and marketing will apply to all investment products available to retail customers which do not qualify for or use a label. The requirements will restrict the naming of these products and their communications and marketing — including prohibiting the use of terms such as 'green', 'sustainable' or 'ESG' in retail-facing marketing materials. However, the prohibition will not apply for the purposes of disclosing factual information in required SDR disclosures or other disclosure requirements, for example to disclose that an unlabelled product follows an ESG-tilted benchmark. Products only offered to institutional investors will be exempt from this requirement.

Interaction with EU requirements

Although the proposed SDR is not incompatible with EU Sustainable Finance Disclosure Regulation (SFDR), it is not aligned. There is a large gap between the defining criteria of the SDR labels and SFDR Article 8 and 9 products. As such, SFDR Article 8 and 9 products may or may not meet the SDR product label criteria and cannot be translated across without interpretation. Where an SFDR Article 8 or 9 product is largely aligned to an SDR label, it is likely that some uplifts will be required to meet the SDR label requirements in full.

At entity-level, SDR builds on existing TCFD framework disclosures and the intention is to update the requirements to incorporate ISSB disclosures as they are adopted in the UK. As such, no principle adverse indicators statement is required, unlike SFDR.

At product level, SFDR and SDR both require pre-contractual, ongoing and entity-level disclosures. But unlike the SFDR where the EU authorities have mandated reporting templates, the FCA is not mandating reporting templates to meet SDR requirements. The format and content of disclosures will be left up to firms to determine, and the FCA will encourage industry-led innovation. Additionally, the 'do no significant harm' disclosures required under the SFDR will not be required under the SDR proposals. In the future, the FCA may consider disclosure of a baseline of sustainability metrics.

Considerations for firms

The scale of the challenge for the industry is clear. The FCA estimates that 450 funds and over 1,500 asset managers with £10.6 trillion of AUM could be impacted by aspects of these proposals. Although some requirements would be implemented on a phased basis, others are more imminent. Firms should act now to understand the nature of their investment products in the context of the new rules and their exposure to various disclosure requirements. This means carrying out a detailed scoping and product classification exercise to determine the extent of alignment of existing products with the proposed labels and any uplifts required to attain the most appropriate label.

Firms should consider the findings of the FCA's recent mapping exercise and consider the areas where existing products with sustainability-related features do not currently meet its criteria. For products which have an existing sustainability objective, firms should ensure that it is sufficiently specific and measurable, and that the outcomes of the objective are well-defined. And where the investment policy and strategy are aligned to sustainability outcomes, the disclosures which accompany this strategy should be detailed, including how they are measured — this includes disclosing appropriate KPIs.

For products that are not likely to attain a label, firms should assess the extent to which they are exposed to the proposed ban on sustainability related-terms in marketing literature.

Given the busy regulatory agenda, SDR should not be implemented in isolation, but in parallel and with consideration to wider initiatives. In particular, there are clear links to the Consumer Duty requirements that the industry is currently busy implementing.

Provisional implementation timeline

- 25 January **2023**: Consultation period ends.
- By 30 June **2023**: Policy statement confirming SDR rules to be published. Anti-greenwashing rule for all FCA-regulated firms comes into force.
- From 30 June **2024**: Rules on product labels, initial disclosures, product naming and marketing come into force.
- From 30 June **2025**: First ongoing product-level disclosures required, including part B reports.
- From 30 June **2025**: Largest in-scope firms with more than £50 billion AUM make their entity-level disclosures.
- From 30 June **2026**: All other in-scope firms with more than £5 billion AUM make their entity-level disclosures.

Managing regulatory expectations - PRA and ECB feedback on the supervision of climate-related risk

A comparison of findings

Prudential regulators focusing on the financial risks of climate change have had a busy year. In May, the UK's Prudential Regulation Authority (PRA) released the results of its Climate Biennial Exploratory Scenario (CBES), followed in October by thematic feedback for banks and insurers on the expectations set out in Supervisory Statement 3/19, the 2020 Dear CEO letter and the 2021 Climate Adaptation Report. This feedback provides the first indication of how well banks and insurers are meeting regulatory expectations.

Similarly, having published its final Guide on Climate and Environmental (C&E) Risk in 2020, 2022 has seen the European Central Bank (ECB) ramping up its activity. In March it published a review of banks' climate-related and environmental (C&E) disclosures, the results of a stress test on banks' preparedness for managing climate risks in July, and in November it shared the results of its thematic review on the supervision of C&E risks.

Both regulators are now actively supervising climate-related financial risk and the two most recent sets of feedback represent a call to action for firms. While there are some similarities in the findings, with all institutions needing to do more, there are notable differences in approach when it comes to the overall regulatory view and remediation plans. Our 'compare and contrast' analysis below helps identify material divergences.

Scope

In terms of scope, the PRA's feedback covers both banks and insurers, whilst the ECB's findings are banking-specific. Although the European Insurance and Occupational Pensions Authority (EIOPA) has issued supervisory guidance for insurers and has assessed their exposure to physical risks, it has not yet released equivalent thematic findings to the ECB.

Additionally, the PRA's review covers climate-related risk only. The ECB, on the other hand, also considers environmental risks, encompassing 'water stress, biodiversity loss and resource scarcity'.

Key messages

The overarching message from the PRA is that banks and insurers have taken "concrete and positive steps" to implement supervisory expectations. It finds that governance of climate risks has advanced in most firms and that there is a general improvement in risk management practices. Firms have invested in improvements and, even where they still need to refine their approach, the actions taken have advanced their ability to address the risks and opportunities from climate change. However, the levels of embedding of overall practices vary and further progress is needed by all firms.

The ECB takes a more critical stance, noting that "banks are still far from adequately managing climate and environmental risks" and "continue to significantly underestimate the breadth and magnitude of such risks". It notes that, although 85% of banks now have in place at least basic practices in most areas, they continue to lack more sophisticated methodologies and granular information on climate and environmental risks. It also expresses concern around the execution capabilities of most banks, with effective implementation of their practices still lagging.

The comparison below includes the most significant elements of the PRA and ECB reports. To note, the ECB has provided more quantitative data on how firms are performing in each area, whereas the PRA provides high-level commentary only.

What next?

It appears that the PRA and ECB differ in their assessment of the extent to which firms are currently meeting supervisory expectations. Where the PRA recognises overall progress, though acknowledging the need to do more, the ECB is more critical.

What does this mean for banks and insurers operating in the UK and the EU? The PRA has been clear that every firm in scope of SS3/19 should by now be able to demonstrate how it is responding to supervisory expectations. It will continue to engage on this issue through BAU supervision and, where firms are not making sufficient progress, they will be asked to provide a roadmap to articulate how any gaps will be overcome. The PRA has also warned that supervisors will have recourse to the wider supervisory toolkit if firms do not adequately address climate risk.

For EU banks, the implications are more concrete. The ECB has sent feedback letters to individual banks. For significant institutions, these contained an average of 25 shortcomings, and more than 30 firms included in the review have been issued with binding requirements as part of the Supervisory Review and Evaluation Process (SREP) to address severe weaknesses. Full alignment with supervisory expectations is required by the end of 2024:

- By March 2023 - banks are expected to adequately categorise C&E risks and conduct a full assessment of their impact on activities
- By the end of 2023 at the latest - banks are expected to include C&E risks in their governance, strategy and risk management
- By the end of 2024 - banks must meet all the remaining supervisory expectations first set out in 2020 in the Guide on Climate-Related and Environmental Risks, including full integration into the ICAAP and stress testing

The ECB has made clear that it will monitor the deadlines and may use enforcement action to ensure compliance.

UK and EU firms should continue to monitor the PRA and ECB's expectations as they evolve.

	PRA: Banks and Insurers	ECB: Banks
Institutional Architecture (overall approach and capabilities, mapping of responsibilities, mitigation strategy etc)	• The PRA does not reference overall institutional architecture, but comments on firms' levels of embeddedness and effective practices. • Firms have advanced their capabilities but further progress is needed to embed them.	• Over 85% of banks now have at least basic practices in place for most of the ECB's expectations, including: initial mapping of risk exposures, allocated responsibilities, setting initial KPIs and KRIs, and developing a qualitative mitigation strategy for part of their risk exposures. • However, 10% of banks are lagging, with no C&E-related governance in place, and no material progress shown since 2021.
Risk Management	• Firms have generally made progress on risk management processes, though the maturity of those processes varies, and all firms have more work to do. • In many cases, climate risk considerations still need to be embedded fully into overall risk management frameworks (RMF), risk appetite statements (RAS), committee structures and all three lines of defence, using both	• Nearly all banks need more forward-looking approaches to manage C&E risks. • There are significant weaknesses in banks' ability to manage C&E risks. 96% of banks have blind spots in the identification of C&E risks and their drivers in key sectors and geographies – and 60% of firms were deemed to have major gaps by the ECB. For example, only certain risk drivers, such as flood

	quantitative and qualitative measures. Effective practice will include: • Having a well-defined quantitative RAS that is aligned with the overarching RMF for climate and tailored to the business strategy, business model and balance sheet. • Having effective RMFs and/or quantitative risk appetite metrics for climate risk. • Appropriately factoring climate risk (including prudent assumptions and proxies) into modelling capabilities. • For insurers, this will include climate risk management for underwriting purposes. • Banks will have clear timelines for including climate factors in credit processes and a complete picture of counterparty exposures and transition plans. • Carrying out methodical analysis on whether to hold capital for climate change risk. • Including sufficient contextual information in capital methodologies to explain the analysis.	risk, are considered in some portfolios instead of the full range of risk drivers. Good practice - some banks have developed advanced approaches to embedding C&E risks into client due diligence and lending policies including: • Establishing lending criteria for sectors and activities, including exclusion criteria. • Applying acceptance criteria based on portfolio thresholds. • Repeating the due diligence process on a regular basis.
Data	• All firms need more “robust, standardised climate-related data of sufficient coverage”. • Most rely on third party data. Where data gaps are still identified, interim approaches using proxies are required. • The most effective practices were observed where firms have identified their significant data gaps and are developing a strategic approach to close them,	• Fewer than 10% of banks use sufficiently granular and forward-looking information in their risk management and governance practices. • Banks need to develop their data frameworks and then actively collect granular data from their counterparties. Additionally, C&E risks should be integrated into ratings systems, pricing, and collateral valuations. • An example of good practice is firms using client questionnaires to collect

	including balancing the use of third-party providers with developing short-, medium- and longer-term in-house capabilities. • Use of appropriately conservative assumptions and proxies, internal documentation of estimates and disclosure of relevant material to users was also observed to be effective practice.	qualitative and quantitative data about the client and specific assets.
Scenario Analysis	• Limitations in data mean that firms' use of scenario analysis is not yet sophisticated enough to be useful in decision-making. Where firms are using climate risk models, these are at an early stage of development. It is good practice for firms to recognise the uncertainty of scenario analysis, and reflect this in prudent assumptions, manual adjustments or sensitivity analysis. The following areas require further work: • Incorporating contextual information into scenario analysis. • Integrating scenario analysis output into ICAAPs and ORSAs. • Providing clarity on how the selected data and assumptions are appropriate to firms' own business vulnerabilities.	• Only a subset of firms use scenario analysis to test the adequacy of their strategic responses to climate change risk (e.g. by quantifying the impact of climate-related risks on profits and losses, risk-weighted asset and regulatory capital). • Additionally, where some firms were using scenario analysis, they used third-party proxies rather than relying on actual client information held within the business (e.g. for energy performance certificate (EPC) data).
Governance	• Firms have made 'significant progress' in embedding supervisory expectations around governance. • They have generally implemented an effective level of climate governance, trained appropriate key personnel to both understand	• Most institutions have defined roles and responsibilities for the Executive team, as well as the first and second lines of defence. • Management teams frequently receive some information on C&E risks that are monitored using an initial set of KRIs. However, this does not always enable

	and manage this risk, and are producing management information that allows Executive teams and Boards to lead and challenge in this area. • The most effective firms demonstrate strong Board and Executive oversight through a coherent approach to business strategy, planning, governance and risk management processes. This is supported by appropriate metrics and risk appetites. • Most firms have given overall responsibility of climate-related financial risk to a Senior Management Function (SMF) holder. The PRA regards this as positive step but cautions that all SMFs should be able to speak to and take appropriate ownership of the broad institutional strategy for climate risks.	management to effectively manage these risks, as monitoring and reporting is mostly done without granular and forward-looking data. • Additionally, internal audit activities and remuneration policies do not currently support banks' efforts to manage C&E risks. • The inclusion of C&E related KPIs in remuneration policies for the executive team and senior managers is an example of good practice. Some banks have gone further and adjusted remuneration policies for all staff (e.g. including environmental targets in their variable remuneration component).
Disclosures	• Although progress has been promising, reflecting other work relating to SS3/19 as described above, firms need to continue to develop their disclosures. • Firms are generally making disclosures via their annual reports or through a standalone climate report, rather than through Pillar 3 reporting or Solvency and Financial Condition Reports (SFCRs). • Effective practice would include disclosures in these "mainstream filings" and provide consistent messaging and cross referencing across all reporting and disclosures. • Where there is no mention of climate risk in Pillar 3 reporting or SFCRs, firms should be able to	• This was excluded from the scope of the ECB's review. However, an ECB report published in March 2022 revealed that "virtually none of the banks disclose all the basic information on climate-related and environmental risk that would align with all of the ECB's expectations."

	explain why the risk is considered immaterial.	

The UK Green Taxonomy; Are we nearly there yet; What to expect in 2023; As we start the new year, there is considerable uncertainty around the future of the UK Green Taxonomy. *Previously published deadlines have passed with neither consultation nor legislation, and financial services firms, particularly those familiar with the already operational EU Taxonomy, have been questioning what is going on. Information has been scarce, but the UK Government has now formally confirmed that the Taxonomy has been delayed and that the expected approach may ultimately be subject to change. So, what has happened so far and what can we expect going forward?*

- Background; The UK onshored the EU Taxonomy Regulation at the point of Brexit. The Government then appointed an independent expert group, the Green Technical Advisory Group (GTAG) to provide non-binding advice on the design and implementation of a UK Green Taxonomy for financial and non-financial firms. The October 2021 Greening Finance Roadmap set out the ambition to "make the UK the best place in the world for green and sustainable investment". It also devoted a chapter to the importance of defining what counts as green and setting clear definitions and criteria for economic activities to be considered sustainable or "taxonomy-aligned". The Government intended the Taxonomy to be "implemented and built to deliver for the needs of UK business and investors" and "robust enough to support the UK's net-zero commitment".
- The aims of the Taxonomy were to:
- Create clarity and consistency for investors so that they could easily compare the environmental performance and impact of companies and investment funds to inform their financial decisions.
- Improve understanding of companies' environmental impacts through taxonomy-aligned disclosures — for example through the proposed Sustainability Disclosure Requirements (SDR).
- Provide a reference point for companies in terms of clear performance targets.
- Structure
- It was widely expected that the UK Taxonomy would, to a significant extent, mirror the structure of the EU Taxonomy, which the UK had helped to design when it was still a Member State. As in the EU, which by 2021 was already pushing ahead with its Taxonomy implementation, the UK envisaged an approach centred on six environmental objectives underpinned by a set of detailed standards known as Technical Screening Criteria (TSC). In addition, to be considered Taxonomy-aligned, an activity would need to meet three tests:
- Make a substantial contribution to one of the six environmental objectives.
- Do no significant harm to the other objectives.
- Meet a set of minimum safeguards (essentially minimum standards for doing business).
- Proposed timeline
- So far, so good. However, with the benefit of hindsight, the timeline put forward in the Roadmap, to legislate for the first two environmental objectives by the end of 2022 and

for the remaining four by the end of 2023, has proved optimistic, not helped by increasing pressure on the economy and multiple changes in Government.

- A statement by Andrew Griffith, Economic Secretary to the Treasury, on 14 December 2022, clarified somewhat unsurprisingly, that the Government would *not* make secondary legislation under the onshored Taxonomy Regulation in 2022. More interestingly, the statement explained that the Financial Services and Markets Bill (FSMB) currently before Parliament would repeal retained EU law relating to financial services — including the Taxonomy Regulation — effectively removing the obligation to make and adopt the TSC by 1 January 2023. Once repealed, HM Treasury will consider how to use the powers in the FSMB to "restate and modify retained EU law and decide whether to change the UK's approach". This paves the way for the Government to change the substance and form of the Taxonomy in line with its sustainability priorities and agenda.
- What next?
- The Government has said that it will "proceed carefully" from this point, in order to maximise the effectiveness of the UK's sustainable finance agenda.
- The 14 December statement did not specify a clear timeline. However, the Government is expected to respond to the Independent Review of Net Zero, "Mission Zero" (the "Skidmore Report"), in March. Publication of its Green Finance Strategy is expected to follow, including an update on the UK Taxonomy.
- The Skidmore report was published on 13 January 2023 and found that standard setting, including taxonomy, was a key component in the UK delivering on its net zero aims, saying: "It is important for the UK Government to provide clarity and implement a coherent green taxonomy at the earliest possibility, delivering on its previous commitment." In addition to the proposed Green Taxonomy, the report urged the Government to consider the appropriateness of a "simple and proportionate" Transition Taxonomy and to work with international partners to ensure that the UK approach is interoperable and harmonised with other approaches. The Government is expected to respond to the review in March, before it issues its Green Finance Strategy.
- The GTAG has noted that it will continue to advise the Government on developing and implementing a Green Taxonomy, and anticipates that a final implementation decision will be made later in 2023.
- While discussions continue, firms will have to continue to operate without clear guidance and standards on what can be defined as sustainable and the UK's sustainability regime may be perceived as less advanced and transparent than that of the EU. However, the UK will have an opportunity to reflect on the best way forward, in particular learnings from the development and implementation of the EU Taxonomy.
- The GTAG's October 2022 advice set out clear areas where the UK could benefit from the EU's experience. Key areas include navigating the complexity of the Do No Significant Harm (DNSH) requirements and ensuring international interoperability between taxonomies and related policies.
- The GTAG also published recommendations for addressing trade-offs between the future UK and existing EU taxonomies. For example, the UK Green Taxonomy should:
    - Strive to always be at least as ambitious in TSC and coverage as the EU or other significant international taxonomies.
    - Remain committed to being science-based and maintain a clear record of how TSC are derived.

  - Not only consider deviations from the EU Taxonomy but any significant deviations from other taxonomies in major jurisdictions - the UK criteria should be internationally comparable i.e. threshold- or process-based and measurable.
  - Strive to give certainty — where there is necessarily a degree of future uncertainty, the UK should commit to a strategy that gives a clear indication of the direction of travel.
  - Minimise deviations which require materially different IT systems unless the reasons are well justified.
- Widespread or large deviations from the EU Taxonomy which would make the UK Green Taxonomy substantially different should be avoided or be supported by substantial benefits. The larger the deviation being considered, the more thought should go into its design to maximise benefits and mitigate costs where possible. Additionally, the complete portfolio of divergences should be assessed in order to gauge its significance.
- Industry bodies continue to champion further consultation on the approach to the UK Taxonomy and its future role in the Green Finance strategy. There are differing opinions — some would still like to follow the EU model closely — others would like a more flexible approach, based on transition or voluntary market-led taxonomies. It remains to be seen which will win out — but the clock is ticking.