EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

*EVIA & LEBA Compliance reference sheet*

# Regulatory Diary & Forward Outlook Grid plus Last Month Regulatory Activities & Conduct Initiatives

*Wednesday 01st November 2023*



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EU and UK regulatory frameworks - alignment or divergence?

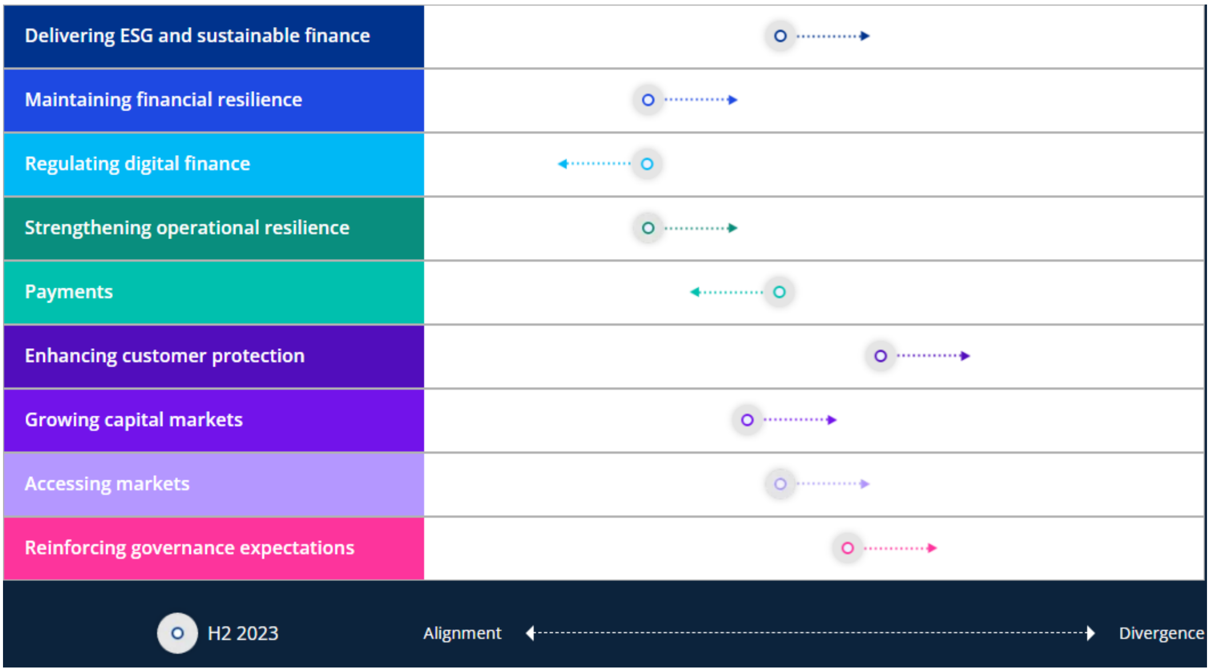
Post-Brexit, the EU and UK are now following their own policymaking agendas. However, fundamental regulatory concerns continue to be shared and the newly agreed Memorandum of

Understanding on Financial Services Cooperation, including the establishment of a Regulatory Forum, sets the stage for ongoing EU/UK collaboration.

Nevertheless, the detail and timing of policy solutions are starting to diverge, increasing complexity for cross-border firms. The UK has begun to tailor rules to a more UK-centric and principles-based style of rulemaking, while the EU has its own complex legislative agenda for financial services. Both jurisdictions are considering the impact of regulation on competitiveness.

As part of the Edinburgh Reforms, HMT is moving forward with the repealing and reforming of 43 'core files' of retained EU law in a way that is 'thoughtfully planned and sequenced to minimise unnecessary disruption while taking the opportunity to maximise the potential for the greatest economic impact'. Significant progress on the first two tranches of work is expected by the end of 2023 – a progress report was provided in the Mansion House Reforms.

EU and UK regulatory requirements align to different extents across the nine Barometer themes – in some cases reflecting different starting points due to previous UK and EU Member State 'gold-plating' and national rules.

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Diversity and inclusion in regulated firms; *PRA and FCA propose new requirements*

The long-awaited PRA and FCA (PDF 1.25 MB) consultations on diversity and inclusion (D&I) have been published, following on from the 2021 joint Bank of England (BoE), PRA and FCA Discussion Paper (PDF 777 KB) on diversity and inclusion in the financial sector.

*The consultations overlap significantly as the regulators worked closely to develop their parallel proposals. While specific requirements will be proportionate, based on a firm's size and type, the overarching messages are clear: the PRA and FCA expect firms to develop D&I strategies and targets, consider D&I in their board and firm-wide governance, and make relevant disclosures both externally and via regulatory returns.*

## Scope

FCA CP23/20 is relevant for firms with a Part 4A FSMA permission who are subject to the FIT, COCON and COND parts of the FCA Handbook. The requirements vary by firm type, for example some exclude Limited Scope SM&CR firms[1] and smaller firms (those that employ under 251 people). CP23/20 does not apply to non-Part 4A FSMA firms such as credit rating agencies, payment services and e-money firms.

PRA CP18/23 applies to banks and insurers in scope of CRR and Solvency II — non CRR e.g. credit unions and non-directive firms are excluded. On 11 October, the PRA clarified that CP18/23 applies to all CRR and Solvency II firms, including third party branches in the UK, and friendly societies that are subject to Solvency II. The original publication mistakenly stated that friendly societies were out of scope.

## Firm-wide diversity and inclusion strategies

**What**: Both the FCA and PRA propose that firms should develop a D&I strategy that outlines:

- The firm's core values, the culture that it is trying to create and its commitment to D&I;
- Objectives and goals for improving diversity and inclusion, as well as a plan for achieving them;
- Ways of measuring progress against the objectives and goals; and
- The firm's role in fostering an open and inclusive environment where staff are able to express their views.

The regulators have been clear that they would expect a firm's senior leadership and board to own the strategy, with its development and review to be supported by the appropriate risk and control functions.

**The firm-wide D&I strategy should be published in an accessible format on the firm's website.**

**Who**: All dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, **regardless of size**. The requirement would also apply to **large** FSMA firms with a Part 4A permission that are required to follow the FIT, COCON and COND parts of the FCA Handbook (excluding Limited Scope SM&CR firms).

## Targets

**What**: The PRA and FCA propose that the largest firms set targets for underrepresented demographic groups, as well as a strategy on how to meet these targets. The targets would apply at all levels of the firm: board, senior leadership and throughout the employee pipeline. The regulators have deliberately not been prescriptive about what the targets should be, recognising that a one-sizefits-all approach would be unworkable. While firms would be expected to set targets for women and ethnicity at a minimum, they would decide what underrepresentation looks like for their own circumstances and set targets for those characteristics accordingly. The targets, progress towards them and the accompanying strategy would need to be disclosed annually.

Firms should note that the PRA would not consider it appropriate for them to use these proposals as the sole reason to expand the size of their board. The PRA has also stressed that the proposed requirement to set targets would not breach the Equality Act 2010 or any other relevant legislation.

**Who**: All **large** dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, and all **large** FSMA firms with a Part 4A permission that are required to follow the FIT, COCON and COND parts of the FCA Handbook (excluding Limited Scope SM&CR firms).

**Regulatory reporting**

**What**: The PRA and FCA both propose that firms report their total UK employee numbers to help regulators monitor which firms should be in the scope of their additional requirements.

**Who**: All dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, **regardless of size,** and all FSMA firms with a Part 4A permission that are required to follow the FIT, COCON and COND parts of the FCA Handbook (excluding Limited Scope SM&CR firms) **regardless of size.**

**What**: Larger firms would need to report mandatory data on the following metrics to the regulators via a single template: age, sexual orientation, sex or gender, long term health condition, ethnicity, and religion.

Firms would also be able to report the following metrics on a voluntary basis: gender identity, parental responsibilities, carer responsibilities, and socio-economic background.

The regulators have included categories that go beyond legislated protected characteristics, seeking to gain data on other factors that can affect employees' work experiences. They have also been clear that they are not creating a new requirement for employees to disclose sensitive information to their employers — a `prefer not to say' category is applicable to all the above characteristics.

**Who**: All **large** dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, and all **large** FSMA firms with a Part 4A permission that are required to follow the FIT, COCON and COND parts of the FCA Handbook (excluding Limited Scope SM&CR firms).

**Public disclosure**

**What**: In addition to the external disclosures already referenced (D&I strategies and targets), both the FCA and PRA propose that all large firms should disclose data on the percentage of employees in the different demographic characteristics, following the same mandatory/voluntary grouping described above.

The regulators propose that specific disclosures on sex, gender and ethnicity should be split into three categories to cover differing levels of seniority within firms: board, senior leadership and employee population. Firms are not expected to make disclosures that would breach data protection legislation or privacy laws. Where disclosures run the risk of identifying individual employees, firms may group the employee categories together (e.g. board and senior leadership as one category).

Who: All large dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, and all large FSMA firms with a Part 4A permission that are required to follow the FIT, COCON and COND parts of the FCA Handbook (excluding Limited Scope SM&CR firms).

Board governance

What: The PRA proposes that firms disclose their board D&I strategy alongside the firm-wide strategy (as described above). The PRA rejects the argument that there is a limited talent pool for diverse board-level appointments. It recognises the short-term difficulties in achieving diversity at executive level but notes that firms should focus on the employee pipeline and succession planning and use alternative recruitment methods for wider board appointments.

Who: All dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, regardless of size.

Non-financial misconduct

What: Changes are proposed to the FCA Handbook to reflect non-financial misconduct as 'misconduct', not an additional principle. Firms will be expected to consider bullying, sexually or racially motivated offences (including in an individual's private life), harassment or other similar behaviour when assessing conduct and fitness and propriety. Non-financial misconduct would be included explicitly in:

- The Conduct Rules.
- Fit and Proper assessments.
- Suitability guidance on the Threshold Conditions.

Who: Non-financial misconduct requirements will apply to all FSMA firms with a Part 4A permission that are subject to the FIT, COCON and COND parts of the FCA Handbook, regardless of size.

Individual accountability

What: the PRA proposes to assign D&I accountability to a Senior Management Function (SMF), but states that ‘SMFs would not be held to account for a failure to meet diversity targets.’ Instead, it proposes that SMFs should ‘be able to discuss with the PRA the reasons that firms set certain targets and, if they are not going to be met, the reasons why.’

Who: all dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, regardless of size.

What: for firms in scope of its Prescribed Responsibilities (PRs) on culture, the PRA proposes that the PRs be clarified to include responsibility for the development and implementation of diversity and inclusion strategies. PR I, usually held by the Chair, sets out responsibility for leading the board's development of a firm's culture. PR H, usually held by the CEO, includes responsibility for overseeing the adoption of a firm's culture in its day-to-day management.

Who: all dual-regulated firms to which the CRR applies and with assets greater than £250 million, and all dual-regulated firms to which the Solvency II parts of the PRA Rulebook apply (excluding third country branches).

Risk and governance

What: The FCA proposes to introduce new guidance for large firms to make clear that matters relating to D&I are to be considered as a non-financial risk and treated appropriately within the firm's governance structures. The PRA expects development and review of the D&I strategy to be supported by appropriate risk and control functions at the firm, and for these functions to play a role in ensuring the risks involved in having poor D&I are managed alongside other business risks. Neither regulator is being prescriptive on how firms should achieve this.

Who: All large dual-regulated firms to which the CRR and Solvency II parts of the PRA Rulebook apply, and all large FSMA firms with a Part 4A permission (excluding Limited Scope SM&CR firms).

What next?

Firms have until 18 December to submit responses to both consultations, with the final policy expected in 2024.

The proposed timelines for reporting and disclosure are:

- Regulatory reporting: submitted to regulators annually, with the first round due within three months of the rules coming into effect. The first returns would be on a 'comply or explain' basis. Submissions from the second year onwards would include all mandatory datasets.
- Public disclosures: required in the second year after the rules come into effect, alongside firms' annual reports.

These consultations will be closely considered by firms and will no doubt lead to many suggestions and requested clarification from impacted firms. While firms are likely to have some time following the end of the consultation period in December before final rules are published (likely early next year), it appears clear that proposals of this nature will soon be a reality as regulators continue their focus on culture and conduct across the sector as a priority. These proposals require thoughtful consideration from several, multi-disciplinary angles, including, at the very least, legal (employment and data protection in particular), HR/ER, governance, risk and compliance, regulatory practices, reward, and data perspectives. It is important that firms start engaging with these proposals now, educating stakeholders and relevant functions, and getting ready sooner rather than later in an interconnected way across their legal, people, data, risk and compliance and reward functions.

# SMCR Topics

## 1. Treasury Committee Inquiry - Sexism in the City

- This summer we flagged the Treasury Committee's Inquiry into "*Sexism in the City*", which aimed to explore the role of firms, the Government and regulators in combatting sexual harassment and misogyny. The Treasury have now published all written submissions.
- Of particular interest is the Equalities & Human Rights Commission (EHRC) response which suggests that the complexity of the FCA's regulatory remit and finite resources may limit its ability to regulate non-financial misconduct (NFM). The EHRC states that it cannot solely be the role of the regulator to drive improvements and the government (and industry) need to take further action. The FCA also responded – nothing particularly novel - but they do focus on their desire for firms to be building 'pipelines' of diversity at more junior levels and (given this was submitted before their D&I paper was published) they trail a lot of their D&I proposals in the paper.
- These messages were reinforced in a recent speech by Nikhil Rathi where he stated that skills and talent are essential ingredients for delivering on the FCA's secondary objective of supporting international competitiveness. In the speech he highlighted the recent D&I consultation paper and stated that there is no place for "*egregious*" NFM. In the Transcript of the FCA's Annual Public Meeting 2023, Nikhil Rathi specifically stated that NFM is a "*sensitive and difficult issue*" and that the FCA "*don't have the choice to not take a view*" as to whether to take action when serious allegations emerge or indeed serious criminal convictions. He fully acknowledged that it's "*difficult terrain*" involving "*other parties including the courts*."
- Perhaps of most interest was the oral evidence given by witnesses, including Baroness Helena Morrissey in October (after the FCA and PRA's D&I papers and their guidance on NFM were published). There is a discussion about CEOs not loving (or understanding) hybrid working and being keen to "switch it off" which would have implications for women in the workplace.
- The discussion around NFM is also interesting and notably there is a suggestion that the FCA should ask firms to disclose their use of settlement agreements or NDAs. Dame Angela Eagle was damning of the recent FCA NFM guidance in CP23/20 calling it "*pretty pathetic*" and there has been criticism from the witnesses that the proposals suggest that bullying is fine and only "*serious*" bullying is not acceptable ("serious" being undefined).
- All in all, there was a call from those involved for the regulatory regime to have "more teeth" (or a "*really toothy intervention*" ?!) , indicating a need for a stronger and more assertive intervention.

## 2. FCA – Dear Remuneration Chair letter

- Hot off the press, today the FCA published its Dear Remuneration Chair letter which was sent to Level 1 banks, building societies and PRA designated investment firms. The letter outlines important things for the SMF 12 to consider including:
    (1) the recent bonus cap policy statement (see more on this below)
    (2) the Consumer Duty and how SMF 12s can use relevant risk metrics and performance criteria to help inform both individual and firm-wide remuneration decisions, including making remuneration adjustments if progress in embedding the Duty falls short
    (3) ensuring that there is a clear, strong and evidenced link between behaviours and remuneration outcomes, including appropriate, timely and transparent adjustments, all

in the context of promoting healthy cultures and ensuring robust and prompt action is taken in non-financial misconduct

(4) the D&I consultation papers and the FCA highlight their expectation of firms to maintain gender neutral pay policies and make sure that awards of variable remuneration do not discriminate on the basis of any protected characteristic, and (finally)

(5) sustainable finance and specifically referencing the Transition Plan Taskforce (TPT) which recommends that firms disclose how they plan to align their remuneration and incentive structures with the strategic ambition of their transition plans. Although the TPT's disclosure framework was developed in the context of the climate transition, the FCA suggests that firms may find its conceptual underpinning and key considerations relevant more widely.

- This is the last letter to SMF 12s for the next two years, but in the meantime SMF 12s need to consider this letter and the FCA welcome their response on how they will be adopting the principles outlined above.

## 3. FCA - changes to SMF application forms

- As previewed in the last SMCR+ View, and following feedback from user testing, the FCA has confirmed that it has begun to roll out new Form As (they've said they get 15,000 applications a year!). The forms have been amended to "*make it quicker and easier for firms and individuals to apply for authorisations*"… only time will tell if this has been successful! The FCA has also confirmed that it plans to reduce the overall number of forms required from firms, and that it has invested in new technology to enable quicker implementation of any future changes to the forms. The FCA has also updated the Form A webpage to include a number of FAQs – i.e. why are they changing the forms, what are the benefits, who does it impact etc.
- The PRA is also proposing, in Occasional Consultation Paper CP 22/23, minor amendments to its Form C and Form D to reflect the new Consumer Duty and allow firms to notify the PRA if there has been a breach of the new Individual Conduct Rule 6 (*deliver good outcomes to retail customers*). The deadline for feedback is 13 November 2023 with the new forms expected to be in place by December 2023.
- We note that in Nikhil Rathi's speech he confirmed that the median processing time for Senior Manager applications is 40 days (50 days ahead of the statutory deadline). This is reinforced in the FCA's 2023 Annual Public Meeting transcript which stated that in Q1 of the relevant year, 94% of Senior Manager applications were approved within the statutory period.

## 4. New Corporate Criminal Law

- The Economic Crime and Corporate Transparency Act recently received royal assent bringing with it two major reforms to the law on economic crime. We've included some highlights below on this topic. These will be of interest to senior leaders and Board members in particular:
  - Corporate criminal liability: Act introduces a new test which means criminal liability will be attributed to firms for a wide range of economic crimes based on whether a "senior manager" was involved in the offence. Whether a "senior manager" is in scope will depend on the decision-making power of the senior manager, as opposed to their job title, with the intention being to bring individuals such as the CEO or CFO within scope of the offence.
  - Failure to Prevent Fraud: Act introduces a new offence whereby firms will be liable if their "associates" (i.e. employees, agents or others acting on their behalf) commit a range of

fraud offences intending to benefit the firm. Examples of this offence include mis-selling, manipulation of financial forecasts or account, or issuing company statements that are knowingly misleading.
- These reforms will require steps to be taken to ensure that compliance and fraud-prevention procedures meet the requirements under the Act.

### 5. PRA and FCA - Feedback Statement on Artificial Intelligence and Machine Learning

- Remember DP 5/22? We'll forgive you if you don't, but effectively the PRA and FCA asked stakeholders whether existing regulatory requirements and guidance are sufficient to address the risk and harms associated with AI.
    - The regulators have now published their Feedback Statement, summarising the responses received. The feedback highlighted most respondents' view that no new "AI SMF" role or "AI prescribed responsibility" is required given there are so many possible applications of AI within businesses and rather responsibilities can be reflected in existing Prescribed Responsibilities and statements of responsibilities.
    - Of course there were dissenting voices too, so we will need to see where the regulators land. Many respondents believed existing regulatory requirements (including SMCR) and firm governance structures are sufficient to address AI risks but asked for further guidance, e.g., as to how to interpret "reasonable steps" in the context of AI.
    - Some respondents noted that there may not be sufficient skills and experience within firms, including among senior management, to support the level of oversight required to ensure technical (e.g. data and model risks) and non-technical (e.g. consumer and market outcomes) risk management. We know that the collective suitability and skills of the Board in relation to AI has been something that firms and the regulators have been thinking about for some time.
- Another thing to note, the Corporate Governance Institute UK & Ireland have also issued a warning for UK corporate boards regarding their governance approach to AI, which is a helpful read and might be helpful for firms considering how they build out their AI governance frameworks.

### 6. PRA - PS 9/23 - Policy Statement on the bonus cap

- Recalling that the PRA and FCA's joint Consultation Paper on the bonus cap for dual regulated firms. The PRA has now published its long-awaited Policy Statement removing the limit on the variable remuneration paid to material risk takers (MRTs) in banks to two times salary (Bonus Cap). The policy change takes effect from 31 October 2023, after which time banks can choose to set their own maximum ratios of variable to fixed remuneration.
- Banks now need to decide whether and when to implement the policy change. This decision will not be straightforward. Because of the Bonus Cap, many banks awarded MRTs role-based allowances (RBAs), a form of fixed pay, to supplement variable remuneration. Banks may choose to implement a higher ratio and remove RBAs. However, depending on the contractual arrangements in place, RBAs may not be able to be wound back unilaterally, giving rise to complex employment law considerations that will need to be worked through. Banks will also need to consider potential diversity and equity issues, in addition to deciding what the new ratio should be and the governance processes needed to support its implementation.

## 7. PRA - Dear CFO and Dear CRO Letters

- The PRA has been busy with Thematic Reviews, and has published a Dear CFO letter setting out its findings from its thematic review of written auditor reports, and a Dear CRO letter sharing its findings from its thematic review of fixed income financing. From an SMCR perspective, these letters are worth highlighting to your relevant Senior Managers.
- The Dear CFO letter includes thematic findings on climate risks (which is a quasi-prescribed responsibility for dual regulated firms). There is recognition of firms being at different stages and the availability of data and management information (MI) being varied. Areas of focus for 2024 include greater oversight of climate risks by those responsible for financial reporting, agreeing detailed plans and timeframes for developing climate accounting capabilities with key committees, to enable progress tracking and reporting to ensure plans are executed in a timely way.
- The Dear CRO letter needs to be shared with the Board Risk Committee and the PRA expects a benchmarking exercise to be conducted against their observations and this, plus any remediation plans, to be shared with the relevant supervision team by 8 December 2023.
- This letter comes following "*episodes of extreme volatility and illiquidity*" in even the deepest markets. The letter highlights PRA observations and expectations of practices that firms should build into their risk management of matched book repo business. These include the PRA observing a number of shortcomings in firms' counterparty risk management processes.
- The PRA states specifically that stress scenarios should be formally linked to risk exposure monitoring and should be incorporated fully into the decision-making and governance processes of the second line of defence.
- They also want firms to ensure that operational processes and margining platforms are sufficiently robust and scalable to cope with extended periods of heightened market volatility which should lead to exceptional margin payment flows and securities settlements that mitigate these counterparty risks.

## 8. Use of WhatsApp – an update

- The use of WhatsApp and other messaging systems has been in focus in the United States for some time and the SEC has issued significant penalties: 16 financial firms have been fined a combined $1.8bn after staff discussed deals and trades on personal devices; 9 Wall Street firms have been fined a combined $549m over employees' use of personal messaging apps; and a number of traders have been fired for using WhatsApp and other unauthorised messaging platforms. UK regulators are beginning to take similar action.
- For example, following an investigation into Wyelands Bank, the PRA found that senior staff regularly exchanged messages on WhatsApp in respect of the bank's strategy, as well as actual and potential transactions and the bank had failed to adopt appropriate policies and procedures in relation to the retention of business-related correspondence and records.
- A number of firms, both buy and sell side, are starting to consider this more closely, including US groups which are seeking to balance SEC scrutiny with EU/UK GDPR/employment law requirements.

## 9. FCA - Final Notices – there's a few!

- The FCA has published a Final Notice fining Equifax Limited ("Equifax") £11,164,400 for breaching Principle 3 (*organise and control affairs responsible and effectively*), Principle 6 (*pay due regard to the interests of customers*) and Principle 7 (*pay due regard to the information needs of clients*) due to failures in relation to the risk management of outsourcing of data processing, amongst other things. This is particularly interesting because it involves intragroup outsourcing (and in particular a UK regulated entity's reliance on a US parent) and highlights the importance of regulated firms ensuring that there is appropriate risk management of intra-group outsourcings. It highlights failures in management information and the fact that the Board was presented with information that was too high-level and unstructured meaning they couldn't exercise meaningful oversight of information/data security matters. We'd suggest the SMF responsible for outsourcing framework (often the SMF 24) and SMFs responsible for overseeing specific outsourcing arrangements take note of this.
- This Final Notice fined ADM Investor Services International Limited ("ADMISI") £6,470,600 as a result of inadequate risk management frameworks. The FCA originally conducted a Periodic Assessment and required the firm to complete a Risk Mitigation Programme, but two years later a number of issues remained. Again, this Final Notice highlights the importance of clearly delineating responsibilities for matters between different teams and lines of defence, record keeping and ensuring that the MI provided actually allows those receiving it to effectively oversee and assess particular matters. It also highlights the importance of effectively remediating matters once an issue has been identified.
- The FCA has published a Decision Notice against Mr. James Staley, who has referred the decision to the Upper Tribunal. Mr. Staley was found to have breached Conduct Rule 1 (*act with integrity*), Conduct Rule 3 (*be open and cooperative with the regulators*) and Senior Manager Conduct Rule 4 (*disclose appropriately any information which the regulators would reasonably expect notice*). As such, the FCA fined him and prohibited him from performing any senior management or significant influence function for any regulated entity. This is in relation to disclosures made to the FCA regarding Mr. Staley's relationship with Mr. Jeffrey Epstein.

## 10. FCA – Account Closures and Data Protection

- Last month we covered the FCA's report on UK payment accounts. This month the FCA has issued a statement following the independent report commissioned by NatWest into decisions on potential account closures and data protection matters. As part of its ongoing supervisory activity, the FCA has said it is considering the processes, systems and controls that were in place regarding these matters, the allocation of responsibilities (noting that the independent report wasn't asked to look into individuals' conduct), and relevant governance mechanisms.
- Note this podcast on "Debunking Debanking" and this podcast on DSARs in a debanking context.

## 11. FCA - the new Financial Promotions Gateway (PS 23/13)

- This will be something for your SMF 16s (most likely) to consider given the importance of this change and the associated timeframes . In summary, if your firm approves financial promotions for unauthorised third parties under Section 21 of FSMA and wants to continue doing so, it needs to submit a variation of permission application to get the relevant approver permission. This process is set out in PS23/13 and SUP 6A of the FCA Handbook. Existing authorised persons can apply to the FCA for permission from 6 November 2023 to 6 February 2024. If a firm doesn't do this it will need to stop approving financial promotions for unauthorised persons on 7 February 2024 (unless an exemption applies).

- On the people side, the FCA wants tighter control and oversight of who is approving what and wants to ensure that approvals are given only by appropriately knowledgeable people. Firms will have to demonstrate that they have employees with the necessary competence and expertise. The FCA expects firms to maintain what would reasonably be considered an acceptable level of competence in relation to the types of financial product for which they approve financial promotions. The FCA also expects firms to maintain their in-house expertise in relation to approving relevant types of financial promotion. Therefore, if a firm loses access to this expertise and it is not replaced, the FCA expects the firm to stop approving promotions for products related to this expertise and notify the FCA.
- Firms should confirm now whether they approve financial promotions, either for group entities or for third parties and therefore what action needs to be taken including how relevant firms will continue to approve them moving forwards. Our guide summarises the 10 things firms need to know about the financial promotions gateway.

12. Other

- Finally, published today is the latest FCA Market Watch 75 which looks at market soundings under UK MAR which may be of interest to your Senior Manager responsible for market abuse policies/procedures/controls/training.

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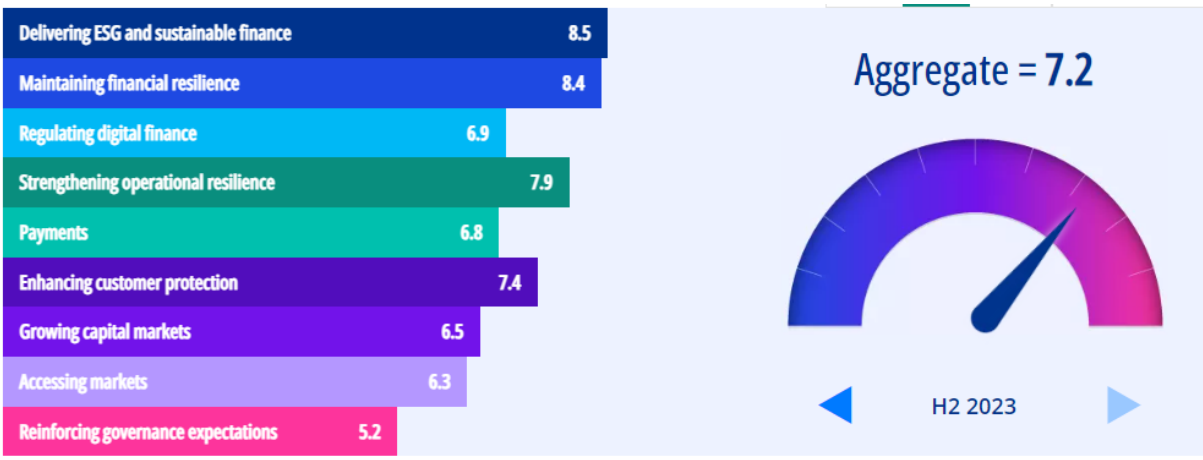
## Regulatory Barometer – H2 2023

**Events of the last 12 months have led to much debate about what financial services regulators could and should do differently.** *The need, not just for appropriate regulation, but also for robust supervision and enforcement has never been clearer.*

- Since 2020, regulatory and supervisory authorities have had to respond first to global events such as the pandemic and invasion of Ukraine and now to governments seeking to boost local economies and retain or attract new entrants to markets. Pressures on cost management and growth, the need for increased investment in technology and data, disruption from non-traditional players and changing customer expectations are also dominating the industry.
- As well as proactively driving their key priorities, regulators are having to consider how to balance political ambitions around national or regional competitiveness with ensuring that they continue to deliver against their primary objectives.
- New regulatory objectives and drivers will take some time to filter into tangible impacts for firms. Even without these though, there continue to be significant impacts across the sector in terms of requirements to digest, implement and plan for regulatory change, including EU reviews and post-Brexit changes either coming into force or nearing finalisation.
- The aggregate regulatory pressure score for this edition of the Barometer is therefore 7.2, a slight increase on the H1 2023 score of 7.0.




ESG and Sustainable Finance retains the highest score for regulatory impact in this edition of the Barometer. Expanding and more demanding disclosure requirements, regulatory scrutiny on greenwashing and intensifying supervisory expectations are all contributing factors.

The score for Financial Resilience has increased since our H1 report, as banks and insurers get closer to rules for the final Basel reforms and Solvency II and face significant implementation challenges in the short to medium term. EU and UK approaches are starting to diverge.

The January 2025 implementation deadline for DORA and additional requirements for critical third parties in both the EU and UK, combined with increased regulatory and supervisory scrutiny of FMIs, keep Operational Resilience near the top of the table.

Firms need to implement amendments made to capital markets regulation, such as MiFID II, over the next year and the divergence of the requirements between the EU and the UK, alongside the divergence in primary market regulation proposals, contribute to an increase in the score for Capital Markets.

This edition introduces Payments as a key theme in its own right, recognising the fundamental role of payments systems in the financial services sector and the volume of regulatory developments either planned or underway.

Digital Finance shows a slight increase in score as new regulatory frameworks debated over the last few years move towards finalisation.

Much of the upward movement in the score for Customer Protection is attributable to the July 2023 implementation deadline for Consumer Duty in the UK. This theme is also gaining more traction in the EU.

Regulatory focus on the provision of cross-border services and revised expectations regarding third country branches has driven a very small increase in the score for Accessing Markets.

**Governance** is arguably underpinning most regulatory activity, but is not subject to a specific regulatory overhaul, hence the slight dip in score. This may change once regulatory intentions around SMCR become clearer.

### Delivering ESG and sustainable finance

- The ESG policy agenda has moved on with publication of the UK Green Finance Strategy in March and the EU's latest Sustainable Finance Package in June, both of which will impact the financial sector and regulatory expectations of firms.
- Greenwashing concerns are paramount in regulatory and supervisory responses. As well as driving new disclosure requirements, regulators' focus on preventing greenwashing is fuelling initiatives on taxonomies, product labels, ESG data and ratings, and corporate sustainability due diligence.
- The sheer breadth of reporting and disclosure requirements presents significant challenges for firms, with key standards now finalised and the focus shifting to implementation and assurance. The completed TNFD framework reflects increasing focus on broader nature and biodiversity-related sustainability issues, and requirements for transition plans are ramping up.
- Investment managers and financial advisers are increasingly expected to consider sustainability risks in their investment and advice processes, even when they do not offer or specifically advise on green products.
- Regulatory developments on the management of climate and environment-related risk, including on potential capital treatments, have slowed for banks and insurers, but supervisory expectations are rising to reflect expected increases in maturity of risk management and governance approaches. Pension trustees are being asked to address gaps where they have failed to manage this risk adequately.
- Overall, **ESG and Sustainable Finance** continues to have a very high regulatory impact score. The pressure on FS firms remains intense, due to expanding reporting and disclosure requirements, lower tolerances from supervisors where firms fail to meet expectations and growing momentum around nature and social impacts. Further changes are in the pipeline.

### Tackling greenwashing

- The ESAs, in their June reports to the European Commission, identified an increase in the total number of potential greenwashing cases across all financial sectors and proposed a common understanding of greenwashing across banking, insurance and pensions and financial markets. Firms should be aware that greenwashing can occur intentionally or unintentionally and in relation to entities and products that are either within or outside the remit of the EU regulatory framework. The reports highlight how greenwashing can occur in each sector and considers current and future regulatory/supervisory approaches. Final reports are expected by end May 2024.
- Taxonomies provide consistent definitions of what can be considered 'green' or sustainable. The EU Taxonomy technical screening criteria for climate mitigation and adaptation objectives have now been supplemented by draft criteria for the remaining four environmental objectives, which will apply from January 2024. Consultation on the UK Green Taxonomy is expected before the end of 2023. The UK is likely to follow the same structure as the EU but with UK-specific refinements, for example around the streamlining and usability of 'Do No Significant Harm'

criteria (per the recent GTAG report). The UK Government has committed to a period of at least two years of voluntary disclosures before the introduction of any mandatory obligations.

- In the EU, the SFDR is under review to ensure that it works consistently and effectively in parallel with other sustainability regulation. The ESAs have already consulted on changing the 'level two' requirements, but more significantly, the Commission is now gathering views on how the 'level one' requirements could be adjusted or fundamentally restructured - potentially resulting in the introduction of new product categories that align with the FCA's SDR.
- In the UK, the delayed SDR will be the primary tool to prevent greenwashing, with the general anti-greenwashing rule taking effect from late 2023, and requirements for product- and entity-level disclosures taking effect between 2024 and 2026. In addition, the FCA has proposed three product labels for wealth, fund and asset managers, with in-scope firms to label their products voluntarily if they meet the relevant criteria.
- ESMA expects to finalise guidelines before the end of 2023 to ensure that fund names do not mislead consumers as to ESG characteristics, although it is not yet clear how this may be impacted by potential reforms to SFDR. ESMA is also conducting a common supervisory action to understand how asset managers are complying with sustainability requirements in practice. Work continues on the EU Green Bond Standard, but progress on the EU Ecolabel has been delayed while the SFDR is reviewed.

Reporting and disclosures

- The ISSB's IFRS S1 and S2 are now final and will be applicable from 1 January 2024. Although envisaged as global baseline standards, individual jurisdictions will decide whether and how to adopt them.
- The UK Government plans to create UK Sustainability Disclosure Standards (UK SDS) by July 2024, based on the ISSB standards. In H1 2024 the FCA will consult on updating its TCFD-aligned disclosure requirements to reference IFRS S1 and S2. Further ISSB standards will follow, with biodiversity, human capital, and human rights proposed as focus areas for the next two years.
- The European Commission has adopted the ESRS, which will underpin disclosures by companies subject to the EU's CSRD. The first reporting in 2025 will capture the largest EU companies, with smaller companies and some non-EU companies potentially in-scope in subsequent years. The Commission has also clarified additional disclosure requirements for firms following publication of draft technical screening criteria for the remaining four environmental objectives of the EU Taxonomy.
- TCFD, IFRS S2 and ESRS E1 include requirements for firms to disclose information about their transition plans, and the UK TPT's final disclosure framework and implementation guidance is expected in October 2023. In H1 2024, the FCA will draw on TPT outputs to consult on guidance for listed companies' transition plan disclosures.
- The TNFD risk management and disclosure framework is now complete, providing recommendations and guidance for all market participants to use on a voluntary basis. Further clarification is awaited on how this will be integrated into other standards.
- The BCBS will consult by the end of 2023 on integrating climate-related financial risks into the Pillar 3 disclosure framework. Pillar 3 ESG disclosures are already required for the largest EU banks and will be phased in until June 2024 for smaller firms. GAR disclosures will also apply in 2024 based on 2023 data. Banks may opt to disclose the BTAR from June 2024 with collection from counterparties on a voluntary basis.

- TPR has been reviewing ESG disclosures from pension schemes and will share its findings with industry. Where trustees have not produced the correct disclosures, the TPR has the power to impose fines up to £50,000.
- IOSCO has called for an effective global assurance framework for sustainability disclosures, to be developed by assurance and ethics standard-setters. A draft framework is expected by the end of 2023.

### Climate and environment-related financial risk for banks and insurers

- Banks must meet the ECB's supervisory expectations, as set out in the Guidelines for Climate and Environmental Risk, by end-2024 at the latest. And the EBA is tasked with developing guidelines for banks to identify, measure, manage and report on ESG risks and develop quantifiable targets to monitor them and specific guidelines on climate-related stress testing.
- The EBA has launched an industry survey to collect quantitative and qualitative data from credit institutions on their green loans and mortgages. EBA and EIOPA have jointly called for an increased uptake of natural catastrophe (NatCat) insurance. Only one quarter of EU climate related NatCat losses are currently insured, with supervisors flagging this as a potential risk to financial stability.
- The European Commission has asked the ESAs to conduct a one-off climate risk scenario analysis to assess the resilience of the EU's financial system. The exercise will cover severe but plausible scenarios in both benign and adverse macro financial environments, with results expected no later than Q1 2025.
- Debate on the treatment of sustainability risks and their impact on capital requirements continues. The BoE has published a paper noting that further work is needed to assess whether there may be gaps in the capital regime, and in Europe the treatment of sustainability risks in Solvency II was a key point of contention in the European Parliament.
- Momentum is growing around broader nature and biodiversity impacts – see also Reporting and disclosures for the latest on the TNFD. The NGFS has also published a Conceptual Framework which aims to help central banks and supervisors move towards an integrated assessment of climate and broader nature-related risks. The principles-based approach builds on previous work by the joint NGFS-INSPIRE Study Group on Biodiversity and Financial Stability.

### ESG and markets

- GHG emissions are a priority KPI for stakeholders and investors and will be reflected in firms' net zero transition plans. Participation in carbon markets may be appropriate to help deliver on emission reduction commitments. However, there is currently a patchwork of regulation and calls for greater consistency and transparency in these markets. Although regulators have not yet identified any immediate issues, they are seeking to develop regulatory mechanisms that will ensure that markets remain effective. Meanwhile, the ICVCM, an independent industry body, has published 10 Core Carbon Principles addressing the integrity of carbon markets.
- Following an IOSCO consultation on recommendations for regulators, EU authorities have agreed the principles for a Carbon Border Adjustment Mechanism (CBAM), which will levy import charges on goods based on their carbon-intensity from 2026 - the UK Government is investigating a similar proposal. The EU is also in the early stages of developing a certification and verification scheme for credits linked to the removal of carbon from the atmosphere.

- There have been significant developments on ESG data and ratings in the EU, UK and other markets. ESMA's proposal for a regulatory regime for ESG ratings providers would see firms requiring formal authorisation to provide their services to EU firms. They would also be forbidden from providing a number of other services, including consulting and audit services, a move which could have significant impacts on firms who have grown organically to meet market demand. In the UK, HMT is consulting on bringing ESG data and ratings firms within the regulatory perimeter, which would require firms to seek authorisation under the Regulatory Activities Order (RAO). At the same time, the FCA has tasked the IRSG with developing a principles-based voluntary code of conduct for firms. Further afield, Japan, India and Singapore are developing their own approaches, and firms operating internationally will have to navigate multiple regimes unless equivalence is granted.

### Portfolio management and advice

- Since 2022, EU UCITS Management Companies, AIFMs and MiFID investment firms have been required to integrate sustainability risks and sustainability factors into their investment processes, decision-making procedures and organisational structures, risk management, due diligence, resources and conflicts of interest management. Additionally, MiFID investment firms (investment managers and distributors) must incorporate 'sustainability preferences' into their investment advice and suitability processes and product governance frameworks. ESMA guidelines regarding product governance, suitability and sustainability preferences have been finalised and will apply from October. In the meantime, ESMA has published a call for evidence to understand better the evolution of the market, how firms apply the rules in practice, and the experience of investors. It will assess the responses along with EU regulators.
- The FCA has not yet adopted similar sustainability requirements for UK firms. However, it announced plans to consult on rules for financial advisers to incorporate sustainability matters and investor preferences when delivering investment advice. And in its February discussion paper, it invited views on how sustainability can be embedded within regulated firms' objectives, strategies, governance, incentives, and staff competence. Feedback to the paper will inform the FCA's future regulatory approach.

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### Maintaining financial resilience

- With continuing economic uncertainty, including inflationary pressures and recent exits from the market, regulators and supervisors are focused on maintaining robust levels of financial resilience and looking ahead to escalating risks and system-wide vulnerabilities including climate and environmental risks and increasing digitalisation. Firms are expected to maintain appropriate levels of capital and liquidity in the face of evolving economic conditions, and to prioritise high quality data, risk management and governance.
- Implementation timelines and requirements for remaining (e.g. Basel 4) or revised (e.g. Solvency II) framework elements are being clarified. Further frameworks are being developed, including resolution for insurers in the UK and EU and a prudential regime for smaller UK banks. Stress testing remains a key supervisory tool in monitoring banks' and insurers' vulnerabilities.

- In addition to ongoing policy changes to the prudential framework for investment firms, the FCA has completed a supervisory review of IFPR implementation and identified financial resilience as a supervisory priority for several sectors.
- The regulatory pressure score for financial resilience has increased reflecting significant impacts relating to the final Basel reforms, Solvency II, recovery and resolution for banks and insurers and the need to upskill on climate-related financial risk (see Delivering ESG and Sustainable Finance).

Investment firms

- The FCA's latest consultation invited views on further amendments to the IFPR. It proposed clarifications on various topics such as the own funds threshold requirement and the group ICARA process. The FCA also published its wide-ranging observations on IFPR implementation, identifying several areas for improvement. For firms opting-into a group ICARA process this included more granular expectations on assessments for each firm in the group. The FCA reiterated its focus on justifying key assumptions, the governance of the ICARA process and the robustness of wind-down plans, with gaps across wind-down plans being a notable theme. It also noted that weak systems and controls continue to lead to inaccurate or incomplete regulatory reporting.
- Related to this point, the FCA finalised a new regulatory return for certain non-MiFID firms to formalise ad-hoc information gathering it has undertaken since the onset of the pandemic. Impacted firms will need to report from January 2024. The FCA has stated that it intends to review prudential requirements for some of these firms in 2023.
- The FCA has also identified financial resilience as a supervisory priority for several sectors. For example, in its recent 'portfolio letter' addressed to wholesale brokers, the FCA noted that firms should have sufficient competence and expertise and should review the level of liquidity they hold to ensure it is commensurate with the risks. Financial resilience is also a stated supervisory priority in its latest portfolio letter for asset managers.
- The EU continued to supplement the EU IFD/IFR regime. The EBA's most recent standards relate to the own funds requirements as well as the prudential consolidation of an investment firm group, covering the consolidation scope, methods, and methodology.
- *Considerations for firms*
  - Have we clearly mapped and implemented the requirements for new or recalibrated prudential frameworks?
  - Have we considered how to track and manage potentially divergent requirements across jurisdictions?
  - Given the likelihood of continuing market volatility, are our control frameworks sufficiently robust?
  - Are we comfortable that we have robust governance and controls around internal models?
  - Have we assessed the adequacy of our preparedness for market exit?

Banks

- The 2023 EBA and BoE stress tests found banks to be resilient under adverse scenarios, and sufficiently capitalised to withstand further economic deterioration, but regulators cautioned that they may still be vulnerable to worsening conditions. Regulators also noted that the tests require updating to account fully for bank runs in the digital age, where online withdrawals and social media communication can rapidly amplify problems – as highlighted by recent bank failures.

- Banks now have just over a year to start implementing the final Basel reforms (also known as Basel 4, Basel 3.1 or Basel III Endgame) in the EU and UK. Provisional agreement on the banking package to finalise the EU's Basel implementation was reached on 27 June. The agreement needs to be confirmed by the Council and Parliament before adoption and many details are yet to be published. The PRA has consulted on UK requirements and final rules are expected in late 2023 or early 2024. The US issued its proposals in July. Differing approaches to internal models, proportionality and other local specificities are fuelling debate on the 'level playing field' and add to the complexity for banks operating across borders.
- Banks are expected to comply with the PRA's five model risk management principles by 17 May 2024. The ECB has also consulted on updates to its internal models guide and banks will need to plan for changes in areas such as model calibration, climate and environmental risks and IT implementation.
- UK banks and relevant third-country branches with trading activity that could affect the financial stability of the UK must meet the PRA's requirements for identification of trading activity wind-down strategies by 3 March 2025. The PRA has also proposed requirements for BAU solvent exit analysis and planning for smaller, non-systemic firms, to be in place by October 2025.
- The UK Government is expected to consult shortly on a series of mid-term reforms to improve the functionality of the ring-fencing regime. This could result in banking groups without major investment banking operations being removed from the regime.
- From a supervisory perspective, the ECB is addressing shortcomings in credit and funding risk management (including IRRBB and CSRBB), strengthening governance and risk data aggregation and reporting, and stepping up efforts on the management of C&E risks (see Delivering ESG and Sustainable Finance). Similarly, the PRA is focused on non-performing exposures, securitisation, stress testing, model risk management, the internal ratings-based approach/hybrid models and regulatory reporting.

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## Regulating digital finance

Accelerated adoption of digital innovation within financial services continues. This is providing significant benefit to customers and service providers, but also introduces novel risks to consumer protection and, on a wider scale, to financial stability. As a result, regulators are now taking much more deliberate steps to update their regulatory and legal frameworks.

The automation and streamlining of processes in the trade lifecycle could potentially disintermediate incumbent players. The line between retail and wholesale services is blurring as trading apps allow consumers to access products directly, without the need for middlemen or other gatekeepers. There are concerns that this ease of access is also leading to the gamification of financial services.

The uptake of crypto-assets requires regulators to determine whether they can be accounted for within existing regulatory frameworks, or whether new approaches are necessary. Central banks are also considering minting their own CBDCs to safeguard the traditional role of currency.

While some jurisdictions are pursuing prescriptive bespoke frameworks for AI, others are opting for more flexible principles-based approaches where they can lean heavily on existing structures.

As Big Tech firms continue to expand their presence within financial services, regulators are closely assessing the trade-off between benefits and harms, with particular scrutiny of their role as the gatekeepers of data. The challenge for regulators now is to support innovation whilst still protecting customer data and ensuring that holders of data do not have an unfair competitive advantage.

Since the H1 2023 Barometer, there has been a slight increase in pressure resulting from digital finance regulation. After a period of observation, regulators are now publishing comprehensive consultations on proposed frameworks, and engaging heavily with firms and other stakeholders on how proposals should be implemented. However, only a few of these have been finalised and are ready for firms to implement.

### Crypto-assets and CBDCs

- The EU's MiCA provisions for stablecoins are set to apply from mid-2024, and provisions for other service providers will apply from 2025. The EBA and ESMA are now consulting on corresponding RTS, ITS and Guidelines. During the CRR/CRD trilogues, negotiators also leveraged MiCA's 'risk buckets' to agree a transitional regime for crypto capital charges, until the final BCBS standards are adopted in legislation.
- In the UK, HMT has published several highly anticipated consultations. An overarching crypto framework proposes the creation of several crypto-assets regulated activities, mirroring equivalents in traditional finance. This would require all crypto-native firms to obtain full FCA authorisation – a step-change compared to the current AML requirements. HMT has also published proposals for a Digital Securities Sandbox which align closely to the EU's pilot DLT regime. And more detail is expected before the end of 2023 on how stablecoins will be brought within existing e-money and payment services regulation.
- FCA rules applying the Financial Promotions Order to certain crypto-assets (as promised last year by HMT) will come into effect from October with an extension available for changes that require 'greater technical development.
- Global standard setters (including the FSB and IOSCO) have published a flurry of final recommendations on crypto-assets, having strengthened initial recommendations in light of recent market failures. Despite being non-binding, national regulators are being encouraged to incorporate these into their respective frameworks.
- The European Commission has published draft legislation for the legal framework of a potential digital euro. Similarly, the BoE has published its first consultation on a digital pound and is now deeming it 'likely' that one will be needed. While acknowledging that it would seek to limit financial stability risks, the BoE noted that it would not protect any status quo structures.

### Artificial intelligence and machine learning

- The EU Parliament is fine-tuning proposals for the prescriptive AI Act, which classifies systems into four tiers of risk with increasing levels of requirements. These start with transparency and voluntary codes of conduct and escalate to ex-ante conformity assessments and ex-post quality and risk assessments and monitoring. The majority of the Act focuses on identified high-risk systems –while only three of these seem applicable to financial services, the list would be updated by the Commission on an ongoing basis. The Act also proposes to establish a new AI Board to oversee its application across the bloc.

- In comparison, the UK is opting for a much more flexible and principles-based approach. The government's pro-innovation March Whitepaper (updated in August) proposed to build on existing regimes and empower existing regulators to fold a set of five cross-cutting principles into their remit. It is therefore unlikely that UK financial regulators will intervene with new specific rules for AI. Rather, frameworks such as Consumer Duty and the SMCR will likely be leveraged to hold firms to account for the appropriate use of, and governance over, AI models. Suggestions have been made in the UK Parliament for the creation of a bespoke AI SMCR regime, rather than relying on existing defined roles, but this remains to be debated.
- To act as a stopgap while formal regulation continues to mature, the EU-US Trade and Tech Council summit is planning to present a voluntary code of conduct to leaders of the G7 in the autumn. These non-binding standards are expected to focus on transparency, risk audits and other technical details for companies developing AI.

## Platformisation, Big Tech in Finance

- Big Tech firms can harness their strong network effects and large volumes of consumer data to deliver tailored financial services to those underserved by traditional firms. As part of its three-year strategy (launched in April 2022), the FCA committed to identifying potential competition benefits and harms from Big Tech's entry into financial services.
- An FCA feedback statement highlighted that these firms may start to move away from the current partnership model as their dominant entry strategy and seek to compete more directly with existing firms. Moreover, their conglomerate operations create opportunities for rapid expansion into complementary markets. While in the short-term this could benefit consumers, there is a risk that the competition benefits could be eroded if these firms are able to create and exploit entrenched market power.
- Policymakers and regulators are now increasingly using regimes that seek to proactively prevent harm to complement existing competition law enforcement activity. These include the EU Digital Markets Act, multiple investigations across various economic sectors by the UK CMA, and the FCA continuing to engage with the DRCF. In July, the FCA announced that Big Tech's role as gatekeepers of data in financial services will now come under increased scrutiny.
- The provision of cloud services to financial services entities – where a strong dependence on a small number of providers poses risks to the overall operational resilience of the sector – is another area of particular regulatory focus (see Strengthening operational resilience). FSMA 2023 has given the UK regulators powers to regulate and supervise critical third parties and more detail on the framework is expected before the end of 2023.

## Data sharing and innovation

- Maintaining the UK's position as a leader in Open Banking continues to be a priority for HMT, the CMA and the FCA. One year into its work, the cross-authority taskforce has confirmed the principles underpinning the long-term regulatory framework, set out its vision for the open banking future entity, published a two-year roadmap of priorities, set up six resolute workstreams to action them and developed principles for commercial frameworks for premium APIs. The European Commission has made targeted amendments to the Open Banking framework in its PSD3 proposal to improve its functioning, removing obstacles to providing Open Banking

services and improving customers' control over their payment data, enabling new, innovative services to enter the market.
- Building on the Open Banking framework, regulators are keen to develop Open Finance, to allow consumers and SMEs to access and share their data on a wider range of financial products with third-party providers. The Data Protection and Digital Information Bill is at an advanced stage in the UK Parliament. Once enacted, this will create a clearer regulatory environment for personal data that could help drive the adoption of Open Finance. Laying the groundwork for the delivery of open finance throughout the EU, the European Commission has set out a legislative proposal for a framework for financial data access (FIDA). FIDA would establish an Open Finance framework facilitating responsible access to individual and business customer data across a wide range of financial services.
- The UK Government has also laid regulations in Parliament outlining a framework for pension dashboards designed to help retail customers better track and understand the various pension pots they hold. However, implementation has been delayed until 2026. EIOPA is consulting on the principles of Open Insurance, but this is currently only designed as a theoretical use case.

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### Strengthening operational resilience

Operational resilience remains a key priority in regulators’ work programmes. The ESAs are focused on the implementation of DORA, including the development of regulatory technical standards. The BoE, PRA and FCA are assessing progress against existing operational resilience policies, developing new policy and oversight approaches for critical third parties, and monitoring cyber threats, and the BoE has extended outsourcing and third-party risk management requirements to FMIs.

Regulatory authorities have realised that a broader approach to operational resilience — incorporating equally important components such as people, processes, technology and information — is needed. They recognise that inadequate operational resilience has the potential to affect not only individual firms and their customers, but in an increasingly digital and interconnected world, to cause rapid contagion, with significant impacts on wider financial stability and the functioning of financial markets.

Regulators require firms to demonstrate end-to-end operational resilience, including cyber and ICT resilience, in their key business activities, to prevent severe disruption and maintain financial stability. Strong governance and accountability are expected, as is robust testing of disruption scenarios. Firms must consider the possibility of multiple concurrent disruptions and the emergence of new threats and vulnerabilities, including extreme events arising from climate change, geopolitical events and bad actors.

Resilience expectations are extending to a wider range of participants operating in the financial sector. Cloud service providers and other critical third parties are under scrutiny, with regulators particularly concerned about concentration and other risks associated with outsourcing critical functions to potentially unregulated entities.

The regulatory pressure score for operational resilience remains high, due to the challenges of implementing DORA by January 2025, expanding requirements for FMIs and the expectation of further proposals for critical third parties.

Enterprise-wide resilience

- Operational resilience has been on the financial services' regulatory agenda for many years, but it has often been addressed in a piecemeal and siloed way. In recent years, which has changed, with regulators looking to create joined-up policy and expecting firms to embed enterprise-wide resilience.
- Regulators in the UK and EU agree on the need for firms to prioritise the resilience of their most critical services and operations and to minimise the effects of disruption on customers. In the UK, firms must now have identified and catalogued their important business services and defined impact tolerances for disruption to these services. The next major milestone, in March 2025, will be to demonstrate their ability to remain within impact tolerances when under stress. Strong governance and accountability are expected. UK regulators are emphasising that firms not formally under scope of the rules should consider them as good practice.
- In the broad landscape of regulatory requirements, guidance and principles, some are more prescriptive than others, but all have the same intent - to maintain the integrity and stability of financial institutions and financial infrastructure and to protect customers from harm. With that in mind, a well thought out enterprise-wide resilience strategy should satisfy regulatory requirements and deliver against principles across multiple jurisdictions.

Digital resilience

- DORA entered into force in January 2023 and must be applied by 17 January 2025. The Joint Committee of the ESAs launched the first consultation on its detailed policy packages on 19 June. The packages build on existing EU and international standards and comprises four draft RTS and one set of draft ITS, covering ICT risk management frameworks, classification of ICT-related incidents, templates for the register of information and specification of the policy on ICT services supporting critical or important functions performed by ICT TPPs. Further RTS and ITS will follow.
- DORA will impact a very wide range of financial entities in the EU. Critically, it will also apply to ICT third parties – for more see Third-Party Risk. It will have significant interactions with other regulations. NIS2, the new directive to strengthen cyber security in the EU, will align with sector-specific legislation set out in DORA for regulated entities. The Capital Requirements Directive (CRD) will require ICT business continuity and disaster recovery plans to comply with DORA. MiFID II will refer to DORA and include amended provisions relating to continuity and regularity in the performance of investment services and activities, resilience and sufficient capacity of trading systems, effective business continuity arrangements and risk management. Solvency II, UCITS, AIFMD, IORPD II and the Statutory Audits Directive will refer to DORA regarding management of ICT systems and tools. PSD2 authorisation rules will refer to DORA, although incident notification rules will exclude ICT-related incident notifications that DORA will harmonise.
- The ECB has announced that it will conduct a cyber risk stress test in 2024. The exercise is expected to begin on 2 January 2024, with banks needing to submit questionnaires and supporting evidence by 29 February 2024.

## Third-Party Risk

- Regulatory scrutiny of third-party relationships and risk management has intensified. In the UK, the PRA's policy on third party risk management provided a holistic framework for managing outsourcing and third-party risk with specific requirements around governance, materiality, risk assessment, data security, and business continuity and exit planning. In February, the BoE issued a corresponding Policy Statement on FMI outsourcing and third-party risk management. FMIs must comply with the relevant supervisory statements and, for RPSOs and SSPs, the requirements of the Code of Practice, by 9 February 2024.
- In the EU, DORA builds on the outsourcing Guidelines already issued by the EBA, ESMA and EIOPA to strengthen oversight and monitoring of third-party ICT.
- Non-financial firms increasingly provide essential services to the financial sector giving rise to concerns about reliance on a small number of third-party providers. DORA will empower the ESAs to designate Critical ICT Third Party Providers (CTPPs) through a new oversight framework. The designation will be based on qualitative and quantitative criteria including the potential systemic impacts of the third party and the firms it services, the extent to which the third party is relied upon, its substitutability etc. Third party service providers not designated as critical will also be able to opt into the oversight framework. Critical third-country ICT service providers to financial entities in the EU will be required to establish a subsidiary within the EU so that oversight can be properly implemented.
- Similarly, in the UK, FSMA 2023 empowers HMT to designate Critical Third Parties (CTPs) and the regulators to regulate and supervise them. The BoE, PRA and FCA followed their July 2022 discussion paper on critical third parties to the financial sector with a survey, which closed in May and aimed to support analysis of the costs and benefits of a potential critical third-party regime. A further consultation on the proposed requirements and expectations for CTPs is expected later in the year.

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## Payments

The continuing and rapid evolution of the payments landscape and technology and its resulting impact on consumer behaviours and expectations poses benefits and challenges for providers and regulators alike.

In stark contrast to ten years ago when 'cash was king,' consumers and businesses now make use of a wide variety of forms of digital payments and, whilst still essential for some, cash use is in decline. This is driving regulatory change to ensure there is an agile and flexible regime that supports innovation and competition, whilst simultaneously ensuring that payment systems are efficient and do not put consumers at risk or exclude them from access to products and services.

Regulators are considering the systems underpinning payments and looking at how to ensure markets work well. They are doing this with an eye on future market opportunities and developments such as Open Banking or the introduction of new forms of digital currency.

Whilst offering many consumer benefits, the increasing number of digital forms of payment has opened the door to new frauds and scams. Alive to the potential impact and scale of this issue, regulators are establishing a suite of rules to protect consumers and encouraging firms to consider making changes to reduce risk.

In both the UK and EU, there is strong understanding of the continued need for access to cash. Activity is underway to bolster existing measures, in an attempt to stem the decline of cash which may be detrimental to some consumers. Regulators are also seeking to understand the drivers for the continued use/need for cash with a focus on future solutions.

UK-regulated payment firms are also busy embedding the Consumer Duty and ensuring compliance now the implementation deadline has passed.

### Payment infrastructure and innovation

- Changes have been made to payment systems with Eurosystem's successful launch of the T2 wholesale system, and the UK's migration of CHAPS to ISO 20022. The latter, together with confirmation of a new tariff framework for RTGS and CHAPS, mark significant milestones in the BoE's RTGS renewal programme and will support the NPA. The European Commission has proposed that instant Euro payments be available to consumers and businesses across the EU via the Instant Payments Regulation. The ECB is exploring how wholesale financial transactions recorded on DLT platforms could be settled in central bank money to ensure that developments keep pace with, and contribute to, digital innovation in wholesale and retail payments.
- The UK Government recognised the potential emergence of systemically important firms in payment chains by confirming reforms to the BoE and PSR statutory perimeters. The Financial Stability Board (FSB) is continuing to implement the G20 Roadmap for enhancing cross-border payments.
- In both the UK and EU there is continued recognition of the importance of access to cash for many businesses and consumers. The BoE and FCA are monitoring levels of cash use which are continuing to fall. This has resulted in new legislation enshrined in FSMA giving the FCA powers to ensure reasonable provision of cash access services. The BoE has also confirmed its approach to the supervision of the wholesale cash distribution market with the aim of ensuring that the UK's wholesale cash market meets the needs of consumers and the wider economy for cash over the long term. The European Commission has introduced a legislative proposal on the legal tender of Euro banknotes and coins, to safeguard Euro cash as a means of payment. This includes requirements for Member States to monitor access to cash. Commission proposals in PSD3 also improve access to cash by allowing retailers to offer cash withdrawals without purchase and changing the scope of the licencing regime.

### Consumer protection

- In the UK, the PSR has advanced its consumer protection initiatives - confirming that nearly all CHAPS and Faster Payments will be covered by CoP from October 2024 and introducing scam data publication rules to improve reimbursement for APP scams victims.
- Mitigating the risk of fraud and financial crime also forms a key part of the UK's next phase of Open Banking, with Open Banking Limited (OBL) tasked with actions to combat financial crime such as Open Banking-based data-sharing in Faster Payments, a financial crime data collection framework and a transaction risk indicator benchmark for all in the Open Banking ecosystem.

- Using powers granted by FSMA, the PSR has confirmed mandatory reimbursement requirements for victims of APP scams which are expected to come into force in 2024 and is consulting on the standard of care expected of consumers when executing payments and reimbursement limits.
- In a similar vein, the European Commission proposes to introduce measures through the modernisation of PSD2 for greater data-sharing, improvements to the application of strong customer authentication, the introduction of a CoP style system and extending refund rights to some scam victims.
- The regulators are also seeking to protect consumers from harm by improving the clarity, transparency and content of consumer information. The UK Government confirmed its intention to revoke the customer information requirements in the Payments Accounts Regulations 2015, handing over responsibility to the FCA under existing requirements. The European Commission has proposed measures under PSD3 to improve the transparency of statements and charges and protect customers from unjustified payment account termination.

## Competition/Access and Choice

- The UK Government's Future of Payments review will consider how payments may be made in the future and will make recommendations on the steps needed to successfully deliver world leading retail payments and boost the competitiveness of UK fintech. The review will consider the most important retail payment journeys now and, in the future, benchmark UK customer experience against other jurisdictions and examine the likelihood of current payment initiatives delivering world-leading payment journeys for UK consumers. HMT is considering responses to its call for input and is expected to publish its report and recommendations in Autumn 2023.
- UK politicians have been vocal in their concerns about the rise in cross-border interchange fees and the impact on UK businesses and consumers, believing these to be indicators that the market is not working well. Driven by this, and its own findings, the PSR is conducting two market reviews, one on scheme and processing fees and the second on cross border interchange fees. The reviews will consider aspects such as profitability, competition dynamics and constraints. Interim findings are expected by the end of 2023, with any proposed remedies following in 2024.
- To address concerns that the supply of card-acquiring services was not working well for merchants with a turnover of less than £50 million, the PSR has introduced new rules designed to help merchants understand the pricing elements of services, prompt shopping around and make switching easier.
- European Commission proposals for PSD3 seek to improve competition in electronic payments further, for example through enhancements to non-bank PSPs access (direct or indirect) to payment systems. The Commission has also put forward a Financial Data Access (FIDA) proposal, introducing a framework to support safe and secure access to a range of customers' financial data thereby allowing the market to innovate to serve the needs of consumers.

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## Growing capital markets

The capital markets in both the EU and the UK are undergoing a period of significant change. The UK leaving the EU has changed the structure and concentration of the market as firms have needed to move operations into the EU.

The EU is now finalising mandatory reviews of the mass of regulation that was implemented post-financial crisis, such as MiFID II/MiFIR, and the UK is amending on-shored EU regulation to adapt it to the UK market. Both jurisdictions are looking to raise their attractiveness as destinations to raise capital for new and growing companies, by amending listings and prospectus regulation. New fund structures have also been introduced and existing structures adjusted, as European jurisdictions compete for share of market growth and cater for private investment in long-term assets to aid economic recovery and grow national capital markets.

Work to analyse potential financial stability vulnerabilities and develop policy solutions across the non-bank sector has progressed to the policymaking stage, with a particular international focus on liquidity management in open-ended funds. In the meantime, market volatility and challenges for liability-driven investment strategies have further heightened regulatory scrutiny.

LIBOR transition was completed with the cessation of USD LIBOR in mid-2023. Wholesale market participants are now looking ahead to see how technology can assist in bring efficiencies and resilience to post-trade market infrastructure.

The increase in regulatory impact score in this edition reflects the need for firms to implement amended requirements, over the next year, which have arisen from the recent reviews of secondary market regulation. Differences in the requirements between the UK and the EU contribute to this increase. Divergence of regulation is continuing with the reviews of primary market legislation.

### Growing the capital markets

- The EC's December 2022 proposals to take forward the CMU action plan continue to be negotiated. The proposals include an attempt to harmonise insolvency practices across the EU, amendments to the Prospectus and Market Abuse Regulations, the introduction of a Listings Act, and a new directive on multiple-vote shares.
- Taking forward recommendations from Lord Hill's UK Listing Review, the FCA has proposed to replace standard and premium listing share categories with a single listing category. The UK Government is in the process of creating the new Public Offers and Admissions to Trading regime, which will adapt the on-shored EU Prospectus Regulation. Ahead of this, the FCA is seeking views, through a series of engagement papers, on how it might make changes to the rules.
- The UK Government has accepted the recommendations of an independent review of investment research. Significantly, these suggest that the MiFID II unbundling rules should be reversed by allowing asset managers to combine research with execution charges. The FCA will consider the recommendations and will consult on new rules to be made in H1 2024.
- The UK Government also plans to introduce an intermittent wholesale market trading venue that would act as bridge between public and private markets.
- Regulators have continued to adjust fund regimes to contribute to investment in illiquid assets and increase choice. The FCA broadened the distribution of the LTAF to retail investors, and HMT consulted on introducing a new fund structure – the 'Reserved Investment Fund,' an unauthorised contractual scheme vehicle. The EU had already concluded its review of the ELTIF Regulation, followed by an ESMA consultation on draft RTS to set out more detailed requirements on specific topics, such as ELTIFs' redemption arrangements. In Switzerland, the

planned Limited Qualified Investor Fund regime is expected to be available for fund launches in the first quarter of 2024.
- More broadly, there are continued efforts to enhance the stewardship of companies and increase transparency. Ahead of a potential review by the EC, ESMA and the EBA completed an assessment of the implementation of SRD2, finding that certain improvements could be made. And in the UK, the industry-led Vote Reporting Group published a consultation to build consensus on a voluntary vote reporting template for asset managers to capture fund and mandate level votes.

Secondary Markets

- FSMA 2023 has enacted key amendments to UK MiFIR/MiFID II as consulted upon by HMT through the Wholesale Markets Review. These include easing restrictions on where market participants can trade (with removal of the share trading obligation and the double volume cap) and aligning the derivatives trading obligation with the EMIR clearing obligation. Also emerging from the Wholesale Market Review are changes, now finalised by the FCA, to the equity transparency regime, including the introduction of a Designated Reporter Regime. Further consultations are expected this year on fixed income market transparency and the commodities derivatives regime. The FCA's consultation on a UK consolidated tape for bonds sets out a framework where trading venues will be required to send the bond data for free to an FCA authorised and supervised CT provider. A slightly different model is being considered for an equity tape.
- Meanwhile, in the EU, agreement has been reached on the MiFIR review, although technical detail has yet to emerge. An updated framework for EU consolidated tapes and a general ban of payment for order flow (PFOF) have been agreed.
- Firms will need to implement divergent changes to MiFIR transparency requirements in each jurisdiction, in addition to changes to EMIR reporting required by the EMIR Refit at the end of April 2024 in the EU and the end of September 2024 in the UK.

Fund liquidity management

- Fund managers can expect an evolution of the requirements relating to OEF liquidity risk management and liquidity management tools. The FSB and IOSCO followed their analytical work with policy proposals in July. IOSCO consulted on guidance to support greater and more consistent use of LMTs, including a standardised list of LMTs, guidance on how dilution adjustments should be calculated and more detail on governance and disclosure frameworks. The FSB consulted on amending its 2017 recommendations, including changes to reduce structural liquidity mismatch by grouping funds into categories with associated requirements, and to increase the availability and use of LMTs. Specifically for ETFs, IOSCO published good practices to support its principles.
- In the meantime, the FCA invited views on clarifying its expectations regarding investment due diligence, eligible assets, fund liquidity stress testing and liquidity management tools. It also completed a supervisory review, finding that improvements are needed. In the EU, the AIFMD review is close to being finalised, and will have policy implications that aim to increase and align the availability of LMTs. The EC has instructed ESMA to review the rules regarding eligible assets in UCITS. And the ESRB has issued its own policy options to address risks in corporate bond and property funds.

- Meanwhile, several EU regulators have undertaken policy or supervisory work at national level on liquidity management. On a related topic, ESMA completed a common supervisory action on asset valuation in UCITS and AIFs and found room for improvement.
- Following its 2021 policy recommendations, the FSB is now taking stock of members' progress on implementing MMF reforms to understand policy choices and common challenges. It will publish its findings by the end of the year. In July, an EC report found that EU rules have strengthened the EU MMF regulatory framework, therefore it is not proposing revisions to the legislation at this stage. The UK authorities, however, are expected to consult on potential changes to the UK MMF regime later this year.
- Separately, regulators have further heightened their expectations of LDI managers and pension fund trustees. In April 2023, the FCA and TPR built on their previous communications by publishing recommendations and guidance. Notably, the FCA stated that its expectations extend beyond LDI managers to 'other market participants, including asset managers' where they face similar types of risks.
- More broadly, the FSB has published policy recommendations on leverage for authorities to consider, and IOSCO has completed a thematic review of private assets, indicating an increasing focus on this sector.

## Market Infrastructure

- The LIBOR transition was completed in June 2023 with the cessation of USD LIBOR and market participants are now turning their attention to the May 2024 transition from T+2 to T+1 settlement in US and Canadian markets. European firms trading US financial instruments will need to consider the impact on their operations. An industry led 'Accelerated Settlement Taskforce' has been formed to recommend an approach for the UK with an interim report expected by end 2024. ESMA has been tasked with producing a report by end 2024 on shortening the settlement cycle in the EU.
- Political agreement has been reached on the EU CSDR review which formalises use of the mandatory buy-in regime as a measure of last resort.
- Tokenisation could bring efficiencies to post trade processes and further reduce settlement times – regulators are encouraging its development with sandboxes and pilot regimes. As part of its review of the asset management regulatory framework, the FCA invited views on whether changes are needed to enable the tokenisation of fund units and investment in tokenised assets. It will consider feedback as part of its broader approach to potential changes to the regime.
- CCPs and clearing members should continue to expect supervisory scrutiny around their operational management of margin and liquidity. The EC EMIR 3.0 proposal aims to increase transparency on margining models and reduce the likelihood of procyclical collateral haircuts. ESMA has proposed revised technical standards on anti-procyclicality margin measures.
- Building on the CCP stress tests carried out in both EU and the UK, the BoE has launched a system wide exploratory scenario (SWES) to improve understanding of the behaviours of banks and non-banks, including CCPs during stressed market conditions. The exercise and report will be concluded in 2024.
- Work continues at an international level on the sufficiency of the existing toolkit for CCP resolution, in particular during non-default loss scenarios. FSMA 2023 expands the UK's resolution regime for CCPs to align with the latest FSB guidance. ESMA continues to consult on and publish regulatory technical standards and guidelines for implementation of the EU CCP

Recovery and Resolution regime (CCPRRR). Cross-border access to CCPs is considered further in '[Accessing Markets](#accessing-markets).'

- The FCA is halfway through its wholesale data market study and has concerns about the market power of large and established firms. The study has highlighted commercial practices that could increase complexity and reduce transparency in pricing and contractual terms in the markets for benchmarks, credit ratings data and market data vendor services.
- *Considerations for firms*
    - Are our regulatory monitoring and change processes set up to deal with diverging UK and EU capital markets regulation?
    - Have we reviewed our governance arrangements around fund liquidity risk management and the stress testing process?
    - Are we investigating on new technology could improve our post trade processes?

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## Accessing markets

Regulatory developments since the UK left the EU underline the need for firms working across all jurisdictions to continue to monitor regulatory change and market access arrangements to pre-empt any potential disruption to their business.

The agreement of the Windsor Framework paved the way for a UK/EU Memorandum of Understanding on financial services, including the establishment of a Regulatory Forum between HMT and the EC – its first meeting is expected to take place in the autumn. However, cross-border access looks unlikely to improve in the short term and firms need to focus on ensuring that they have sufficient substance and remain compliant with local access arrangements. To this end, the EU authorities have set out expectations regarding third country insurance branches and proposed changes to the requirements for banks. In the asset management sector, delegation of portfolio management from the EU to third countries looks set to continue, but the EU has enhanced its rules.

Debate continues on the EC's proposal to require a proportion of EU clearing to take place in EU CCPs. And wider cross-border services remain under scrutiny – for example, the focus on reinsurance arrangements. Conversely, the PRA's approach is one of 'responsible openness,' and the UK review of Solvency II is expected to significantly benefit overseas insurers wishing to access the UK market.

In the UK, the Temporary Permissions Regime is coming to an end, requiring EU firms in the regime to either become authorised or be placed in run off. For funds, further details are still awaited on the UK's Overseas Funds Regime which will replace the Temporary Marketing Permissions Regime. More broadly, the UK FSMA has allowed the establishment of MRA frameworks.

The very small increase in the regulatory pressure score over the last six months can be attributed to regulatory focus on the provision of cross-border services and revised expectations regarding third country branches.

*Considerations for firms*

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

Delegation of portfolio management

- Following Brexit, the practice of delegation by EU fund management companies to third countries has been thoroughly considered and debated by EU authorities and regulators. In July, the European Parliament and Council reached provisional agreement on the Commission's proposals to amend the AIFMD and aspects of the UCITS Directive, including changes to increase transparency around the rules governing delegation arrangements. There were differences in opinion over whether proposed amendments on delegation went far enough. The revised approach looks set to allow delegation to continue to third countries, including the UK, but 'subject to reinforced supervision and preserving market integrity,' including new reporting requirements.
- In parallel, regulators have clarified their expectations and undertaken supervisory reviews. ESMA previously published findings from its assessment of the Brexit relocation process, which 'put into question' whether adequate activities have relocated into the EU and whether relocated firms are autonomous and independent - suggesting substance and governance in EU entities may need to be enhanced further. The review also concluded that none of the assessed regulators had performed a comprehensive review of delegation arrangements. And in a letter to fund management companies, the Central Bank of Ireland concluded that there is 'more work to be done' regarding substance and resources.

Third country branches

- EIOPA has updated its expectations on substance and governance arrangements for insurers and brokers with a 'reverse' third country branch (including the UK). EEA firms need to have appropriate substance in the EEA and should not be disproportionately dependent on operations in third country branches. EIOPA seems to be particularly focused on insurance brokers.
- Conversely, the UK's approach to cross-border market access and supervisory deference is one of 'responsible openness.' It is looking to increase the attractiveness of the UK wholesale and commercial insurance market by removing capital and reporting requirements for overseas branches as part of the UK review of Solvency II.
- Proposals for amendments to the prudential framework under the 2021 EU banking package could potentially impact non-EU banks doing business in the EU. In a bid to harmonise national requirements at EU level, new provisions under the CRD would tier third country branches (TCBs) based on their size and impose new obligations for authorisation, minimum regulatory and reporting requirements and supervision. All existing TCBs would require reauthorisation – a 12-month transitional period following the 18-month transposition period for the amendments is proposed. Political agreement on the banking package was reached at the end of June, but details are yet to be made public.

Regulated markets and clearing

- The EC has extended equivalence for UK central counterparties (CCPs) until June 2025. However, in December 2022, in reaction to the continued dominance of UK CCPs in European clearing, the Commission proposed to amend EMIR (via EMIR 3.0) to require all EU market participants to hold active accounts at EU CCPs for clearing at least a portion of certain systemic derivatives contracts.
- ESMA will be tasked with specifying the level of clearing to be done through EU accounts. The proposal also simplifies the procedures in EMIR for EU CCPs to follow when launching new products and changing risk models, aiming to make EU CCPs more attractive. Clearing members are concerned that the proposal to have mandatory EU CCP active accounts will cause splitting of books that will lead to a loss of netting benefits and efficiencies which will generate additional costs for market participants. Compromises suggested in negotiations include a phased in approach to the active accounts' requirements.
- The BoE has confirmed its approach, under on-shored EMIR, to 'tiering' non-UK CCPs based on the level of risk they could pose to UK financial stability, with Tier 2 CCPs subject to direct UK supervision and regulation. However, even Tier 2 CCPs can apply for specific regulatory provisions to be granted 'comparable compliance', with the UK then deferring its supervision in these areas to a CCP's home authority. The BoE has started to recognise some non-UK CCPs. It has also assessed that its relationship with the CFTC (including an MoU) allows it to place reliance on the CFTC's supervision and oversight of incoming US CCPs.

## Cross-border provision of services

- Following changes to FSMA, the UK is in MRA negotiations with Switzerland to allow both countries to defer to each other in regulation and supervision of firms undertaking cross-border financial services. It is also still working on putting together a new relationship framework for Gibraltar (the Gibraltar Access Regime). A new MoU on financial services signals progress on enhancing supervisory cooperation with the EU post-Brexit.
- In the meantime, considerable focus remains on services being provided from third countries, particularly insurers' cross-border risk transfers. EIOPA is concerned with the robustness of contracts under stress conditions where the third country may present a risk from a legal or compliance perspective. The PRA's focus is on the changing nature of the life insurance market - the significant expansion of Bulk Purchase Annuities and the emergence of funded reinsurance (transfer of both asset and liability risk) to a limited number of relatively new and/or specialised reinsurers.
- Reading between the lines, the PRA appears to be concerned that overseas regulatory regimes may not be tailored to UK annuity risk and that capital would be better directed towards UK productive investment. Such supervisory distrust is not only cross-border, but also starting to seep into the discussions about the future of the EU Single Market – with the desirability of national-level levers a point of contention within the EU Solvency II review.
- Cross-border access looks unlikely to improve in the short term and firms need remain reliant on national regulators' individual cross-border access regimes to access professional clients. This requires firms to have a detailed understanding of arrangements in specific member states – which vary widely.
- For EU firms providing services in the UK, the Temporary Permissions Regime will close at the end of 2023. Firms that did not apply for authorisation or subsequently withdrew their application will have entered the Financial Services Contracts Regime, allowing them up to 15 years to run-off existing contracts of insurance and five years for all other contracts. In the case

of CCPs, the BoE Temporary Recognition Regime was previously extended until 31 December 2024.

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## Reinforcing governance expectations

Supervisors continue to reinforce the need for good corporate governance in response to specific regulatory failings within firms and broader sectoral issues. Effective governance arrangements also come under heightened attention during economically difficult times and volatile markets.

Good governance enables the clear identification of fit and proper senior managers, supports the performance of their roles and responsibilities and allows them to be held accountable. Regulators are therefore re-asserting the importance of robust governance arrangements in the interests of both market stability and investor protection.

Regulators increasingly recognise the positive impact of diversity, equity and inclusion (DEI) practices in reducing risk for regulated firms by helping to eliminate groupthink and creating stronger alignment between employees at all levels and the customers they serve. The implementation of the Consumer Duty in the UK is designed to create a cultural change in how firms think and behave towards retail customers. Regulators are calling out pay gaps and lack of diversity among firms' boards and senior management. They are also focused on helping firms recognise the interconnectedness of accountability, culture, DEI and, when coupled with effective corporate governance, the transformative effect it can have.

The significant volume of new ESG requirements and developments in digital finance will require boards to implement and oversee robust regulatory transformation programs with clear designation of accountability across all three lines of defence.

Most governance arrangements are well established. The incremental change in score is attributable to the increase in volume of communications relating to diversity, equity and inclusion. New purpose rules are expected in the short to medium term – which are anticipated to drive significant change.

## Culture

- Although regulators do not prescribe what a firm's culture should be exactly, supervisors view poor culture as a driver of harm. In response, they are aiming to address poor conduct and culture through day-to-day supervision, as seen in some of the FCA's portfolio letters, as well as through newer, broader proposals. The UK Consumer Duty seeks to bring about a more consumer-focused approach with outcomes that set expectations for firms' cultures and behaviours. The culture and ethics within firms also continues to feature in the work programmes of EIOPA, EBA and ESMA.
- In the UK, the PRA and FCA have published consultation papers designed to drive change on DEI in regulated firms. The FCA has cautioned that firms that do not embrace diversity of thought will struggle to serve the needs of a diverse customer base and manage risks effectively. It has published findings from a multi-firm diversity and inclusion review to encourage further industry action and inform the future supervisory approach.

- In the EU, the ECB has consulted on revising its guide to fit and proper assessments and published an updated document that includes taking gender diversity into account as an element of collective suitability.
- In its 2023-2024 Roadmap, the IAIS highlighted its intention to continue work to help insurance supervisors further understand the benefits of DEI and the connection between promoting DEI and their supervisory mandates. Similarly, ESMA's 2023 work programme notes that it will work on ways to strengthen its approach to diversity and inclusion, through a variety of initiatives aimed at fostering a culture where diversity is regarded as a source of enrichment, innovation and creativity, and where inclusion is promoted by managers and all staff.

Accountability

- As part of the Edinburgh Reforms, the UK Government called for evidence on the Senior Management and Certification Regime's effectiveness, scope, proportionality and on potential improvements. The outcome of this is awaited, alongside a PRA and FCA review of the regime. Meanwhile, FSMA 2023 expanded the scope of the SMCR to CCPs and CSDs and allows HMT to further extend the regime to CRAs and RIEs if it determines that to be appropriate following consultation with industry. UK regulators consistently assign relevant senior managers to be responsible for remediation work in their Dear CEO letters and have called out the SMCR as a possible way to regulate the use of AI, demonstrating continued focus on full implementation and use of the regime.
- In the EU, the ECB is increasing its focus on 'fit and proper' assessments for senior managers, and the EBA and ESMA have updated their joint guidelines on the assessment of the suitability of members of the management body and key function holders.
- The UKCGC emphasizes the importance of integrating environmental, social, and governance (ESG) issues into broader governance practices and daily operations, thus normalising ESG as a critical leadership topic.
- The proposed EU Corporate Sustainability Due Diligence Directive will establish a duty to identify, bring to an end, prevent, mitigate and account for negative human rights and environmental impacts in a company's own operations, its subsidiaries and its value chains. Directors may also be required to ensure their business activities align with the climate change goals of the Paris agreement.
- Other jurisdictions are taking forward the implementation of their accountability regimes with developments in Ireland, Singapore, Australia and Hong Kong, SAR (China). Firms working across these jurisdictions face challenges in mapping the interaction and overlaps in their governance structures.

Oversight, including AML/CFT controls

- Supervisors expect boards and senior management to have clear oversight of the financial, operational and conduct risks to their firms and understand how risks are being impacted by the changing external environment. Where costs are being reduced, the control environment should be maintained at a sufficient level.
- Regulators continue to impose fines on firms for failure to have adequate oversight of anti-money laundering (AML) systems and controls, indicating that some firms have more to do to fully embed internal controls. Regulations also continue to develop.

- In the EU, negotiations on the AML/CFT Regulation and the 'new' sixth AML directive have reached trilogue stage. The package of rules will establish a new AML Authority and enlarge and strengthen the existing framework. This will include extending AML/CFT rules to the crypto-asset sector, in particular implementing the FATF 'travel rule' which brings the transparency required in crypto-asset transfers in line with wire transfers. However, the fact that the UK and EU have diverging implementation timelines (1 September 2023 for the former and 30 December 2024 for the latter) and levels of stringency for the crypto travel rule, may lead to enforcement difficulties.
- More broadly, Switzerland is working on a new law concerning the transparency of legal entities and the identification of beneficial owners.
- In the UK, The Economic Crime and Corporate Transparency Bill is in the final stages of consideration in Parliament. The powers from this Bill, alongside the government's Economic Crime Plan 2, aim to strengthen the UK's supervisory regime, with increased information sharing between partners and greater government oversight to ensure effectiveness and compliance with Money Laundering Regulations. The UK Government has taken action to improve transparency and protect customers from unjustified payment account termination. Work is also underway, commissioned by FSMA, to review the treatment of politically exposed persons (PEPs) and their families.

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ESG Autumn Roundup

This month, the International Energy Agency (IEA) released an update to its landmark report *Net Zero Roadmap*, which outlines a pathway for achieving the 1.5 °C ambition. The good news is that this goal is still within reach if we take bold action. *The IEA calls for clean energy spending to triple to $4.5trn annually by the early 2030s. Even more stark is the IEA's view that 'no new long-lead-time upstream oil and gas projects are needed' as fossil fuel demand needs to fall 80% by 2050. This transition mindset is essential as we look towards COP28 in Dubai in late November.*

1. New York Climate Week (multi-sector)

- What: New York Climate Week is always one to watch, with global leaders in town for the UN General Assembly and civil society ready to lend its voice to climate action. This year did not disappoint, with thousands of protesters marching through the streets calling for President Biden to end approvals of new fossil fuel projects. Despite growing public pressure, the nature and speed of the "phase out" of fossil fuels continued to be contentious.
- Some notable developments from NY Climate Week:
- The Taskforce on Nature Related Financial Disclosures (TNFD) published its final disclosure recommendations.
- The High Seas Treaty was signed by 82 states who have agreed to follow through on ratification. On the Treaty's ratification by 60 states, it will be in force (read more about the Treaty's significance in our March ESG View).
- Māori leaders from the Pacific proposed a resolution for a global agreement on protecting the legal personhood of whales in international waters.
- The US Treasury announced the launch of its nine Principles for Net Zero Financing and Investment, highlighting best practice for financial institutions that have made net zero pledges.

- US Members of Congress wrote an open letter to the US Federal Reserve to urge measures to be adopted to adequately address climate-related financial risk.
- **Looking ahead:** NY Climate Week was the last time world leaders would meet prior to COP28; therefore we anticipate similar momentum and tensions at the upcoming climate conference.

## 2. ICMA Sustainability-linked bonds Q&A update (multi-sector)

- **What**: On 26 September the International Capital Market Association (ICMA) and the Executive Committee of the Principles updated its Q&A related to Sustainability-Linked Bonds (SLBs).
- **Details:** The main updates relate to selection of key performance indicators (KPIs), considerations for selecting credible sustainability performance targets (SPTs) and reporting requirements under the Sustainability-Linked Bond Principles (SLBP). Among other things, the Q&A emphasises the need for issuers to provide investors with appropriate disclosure on the impact of M&A activity on the SLB's ambitions and characteristics and tying this activity to the overall ESG strategy, so as to maintain credibility of selected SPTs. The updates detail what types of issuer disclosure is needed under the SLBP and instances where failure to report should result in a triggering event for adjustments to bond characteristics.
- **Context:** The ICMA Q&A is an important source of guidance particularly given the increasing appetite of global investors for green and sustainable debt. The Q&A goes some way to addressing the challenges around the disclosures, since KPIs will need to be tailored to the relevant issuer.

## 3. NGFS publishes a conceptual note on short-term climate scenarios (financial institutions)

- **What:** On 3 October, the Network for Greening the Financial System (NGFS) released a Conceptual Note on Short-term Climate Scenarios on its thinking on the range of short-term scenarios in focus and a roadmap of the analytical work to be undertaken by the NGFS.
- **Key details:** The five scenarios, span three to five years and are intended to help central banks and financial supervisors understand the broader financial repercussions of transitioning to a net zero economy and coping with major natural disasters. The NGFS intends to develop a deeper understanding of the financial system's readiness for sudden climate policy shifts and rapid technological change, which are not typically identified over longer-term scenarios.

## 4. Innovation in technology and ESG (multi-sector)

- **Global Regulators host first Greenwashing TechSprint showcase**
- The Global Financial Innovation Network (GFIN), an international group of 80 financial regulators and related organisations, held its first Greenwashing TechSprint this summer, and the winners were announced on 29 September. This TechSprint is part of the GFIN's wider work to improve trust and transparency in the ESG market and shows that regulators are looking to technology to tackle greenwashing. The two problem statements were:
- Problem statement 1: How can technology, including AI and Machine Learning, enable regulators and supervisors to verify that ESG-related product claims to retail consumers are accurate and complete?
- Problem statement 2: How can technology help monitor, collate and identify examples of greenwashing from financial services firms' websites, social media platforms and other documentation or data which can also be shared across jurisdictions?

- Innovation Hub for Data Centres
- On 28 September, leading technology companies, Danfoss, Google, Microsoft and Schneider Electric, announced the creation of a new Innovation Hub to help the green transition of data centres. The International Energy Agency has reported that data centres and data transmission networks are responsible for 1% of energy related GHG emissions, therefore progress on this front can have a large impact on the road to net zero. The Hub will bring together stakeholders, including regulators, researchers, operators, utility providers, NGOs, and grid/network services and it will first focus on developing solutions that lower or equalize the data centres' carbon emissions and contribute to the stabilising of the electricity grid.

European Developments

1. EU Commission adopts new rules restricting microplastics (multi-sector)

- What: On 25 September, the European Commission adopted amendments to the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation to restrict microplastics intentionally added to products.
- Details: The amendments aim to tackle the estimated 42,000 tonnes of microplastics that are intentionally added to medical, cosmetic and other products and released in the EU every year. The measures prohibit the sale of products that include microplastics, which are synthetic polymer particles below five millimetres that are insoluble and resist degradation.
- To the extent products are already regulated by other EU legislation, for example certain medicinal products and food, these will not be subject to the ban, but manufacturers will have to report the estimated microplastics emissions from those products to the European Chemicals Agency (ECHA) every year. They will also have to provide instructions on how to use and dispose of the product to prevent microplastics emissions.
- Next steps: The first measures, including the ban on microbeads (a type of microplastic) typically found in cosmetic products, will start applying when the restriction enters into force on 17 October 2023. Other measures and products are subject to transition periods. For example, manufacturers will have five years to reformulate controlled-release fertilisers, detergents and similar products, to comply with the new requirements.

2. EU approves "European Green Bond" label standards (multi-sector)

- What: On 5 October, European Parliament has voted to adopt a new voluntary standard for the use of a "European Green Bond" label. As first of its kind in the world, this regulation uniforms standards for issuers who wish to use the designation "European green bond" or "EuGB" for the marketing of their bond.
- Details: The standards are aligned with the EU's taxonomy framework that defines which economic activities the EU considers environmentally sustainable. Key elements include:
- Transparency: disclosing considerable information about how the bond's proceeds, obligation to show how these investments feed into the company's transition plans as a whole and engaging in a general green transition, for all companies that choose to adopt the standards.
- External auditors: independent bodies responsible for assessing compliance with the standards through a registration system and oversight framework for the external auditors and all actual or potential conflicts of interest of external auditors are properly identified, eliminated or managed and disclosed transparently.

- Flexibility: issuers of European Green Bond must ensure that at least 85% of the funds raised by the bond are allocated to economic activities in line with the EU Taxonomy Regulation, while the remaining 15% can be earmarked for other economic activities, provided the issuer meets the requirements to clearly explain the investments destination. This will occur until the taxonomy framework is fully operational.

- Context: This regulation is an important step forward for the European green agenda as it provides a signal to the market as to how they can continue to develop green bonds with credibility.

3. EU proposes ban on unverifiable sustainability claims (multi-sector)

- What: On 19 September the European Parliament and Council reached provisional agreement on new rules to ban misleading advertisements and provide consumers with better product information.
- Details: The aim of the new rules is to protect consumers from misleading practices and help them make better purchasing choices. Negotiators from the EU Parliament and Council agreed to measures which would preclude among other things:
- generic environmental claims, e.g., “environmentally friendly,” “natural,” “biodegradable,” climate neutral” or “eco,” without proof of recognised excellent environmental performance relevant to the claim;
- claims based on emissions offsetting schemes that a product has neutral, reduced, or positive impact on the environment;
- sustainability labels not based on approved certification schemes or established by public authorities;
- presenting software updates as necessary even if they only enhance functionality features;
- presenting goods as repairable when they are not.
- Context: These new rules are part of a wider EU effort to empower consumers and end unsubstantiated green claims. The EU Green Claims Directive is still working its way through the legislative process and are set to compliment the ban on unverifiable sustainability claims agreed upon this September. See our March ESG View for further details of the Green Claims Directive.
- These new rules also come following a flurry of recent activity in the funds industry on sustainability claims; ESMA’s recent risk analysis on ESG names and claims; the Dutch regulator issuing guidelines reiterating that sustainability information must be correct, clear and non-misleading; and the Central Bank of Ireland (CBI) calling for enhancements in sustainable practices in the fund sector, including support for introducing fund naming rules.

4. European Commission delays certain disclosure requirements under CSRD (multi-sector)

- What: On 17 October, the European Commission released its 2024 Commission Work Programme, along with key legislative proposals which set out the Commission’s ambitions for the coming year. Notably, the Commission has said it aims to reduce the burdens associated with reporting requirements and has postponed provisions within the Corporate Sustainability Reporting Directive (CSRD). This includes a 2-year postponement for adoption of the sector-specific European Sustainability Reporting Standards (ESRS) (currently required in 2024) and for reporting requirements for certain third-party country undertakings. The full legislative proposal can be found here.

- **Context:** The ESG regulatory burden has been an increasing area of focus for the EU and it has resulted in some political push back. This month the European Parliament voted down a motion aiming to delay the introduction of ESRS. Despite the motion failing, the vote was still close, with 261 votes in favour and 359 against (with 11 abstentions). Watch this space as this could signal an emergence of an anti-ESG backlash akin to what we've seen in the U.S.

## UK Developments

### 1. UK launches Transition Plan Taskforce disclosure framework (multi-sector)

- **What:** On 9 October, the UK Transition Plan Taskforce (TPT) issued its final disclosure framework, which aims to provide a 'gold standard' for robust, credible and comparable transition plan disclosures. The framework has been designed to align with other guidance and frameworks, including the International Sustainability Standards Board (ISSB) standards.
- **Key details:** The framework is underpinned by three guiding principles:
- Ambition: An entity should disclose its strategic climate ambition and how this is reflected in its governance and other areas.
- Action: Among other things, a transition plan should:
- Translate objectives into concrete steps to be taken in the short, medium- and long-term.
- Set out a roadmap of planned actions that will contribute an entity's strategic ambition.
- Consider Scope 1, 2, and 3 emissions and prioritise decarbonisation through direct abatement over purchasing carbon credits.
- Seek to ensure that climate is appropriately considered to avoid the risk of "carbon lock-in" and to ensure resilience to extreme weather expected in the near future.
- Accountability: Transition plans should be fully integrated into an entity's business, financial planning and governance processes. Entities should report material information about their transition plan within financial reports. Transition plans should be flexible, dynamic, and responsive to new information and external developments - and updated and reviewed regularly.
- **Next steps:** The FCA's Primary Market Bulletin 45, published in August 2023, confirmed its plans to consult in 2024 on rules and guidance for listed companies to disclose in line with the UK-endorsed ISSB standards and the TPT Framework as a complementary package. Listed companies and regulated firms are encouraged to engage early with the TPT Framework. The TPT is currently consulting on sector guidelines, see our consultations round up below for more details.

### 2. CMA publishes Green Agreements Guidance (multi-sector)

- **What:** On 12 October the Competition and Markets Act (CMA) published the final version of guidance on the application of the Chapter I prohibition of the Competition Act 1998 to environmental sustainability agreements (the Guidance).
- **Key details:** The Guidance considers what kind of environmental sustainability agreements could infringe the Chapter I prohibition, along with examples of agreements which are capable of exemption under the Competition Act. It sets out practical examples that businesses can use to inform and shape their own decisions when working with other companies on environmental sustainability initiatives. The CMA does not expect to take enforcement action against agreements that are in line with the Guidance. For FCA authorised firms, it is noteworthy that under the Financial Services and Markets Act 2000, the FCA has concurrent powers to enforce

competition law in the financial services sector and it has announced it will have regard to the CMA's guidance in the application of its concurrent competition powers.

## MENA Developments

### 1. MENA Climate Week 2023 (multi-sector)

- **What:** Held in Riyadh, Saudi Arabia during the week of 8 October, MENA Climate Week 2023 brought together leaders from government and global organisations to explore opportunities and ideas to reduce greenhouse gas emissions. This was the second of four regional Climate Weeks to be held during 2023 (we reported in our September ESG View on the Africa Climate Week), with the aim to build momentum in the lead up to COP28 in Dubai later this year.
- During the week, the President of the Islamic Development Bank (the IsDB) made a commitment to ensure that 35% of all IsDB financing will be allocated to climate projects by 2025, in addition to alignment with the Paris Agreement and the development of Green and sustainable Sukuk financing mechanisms. This commitment was made in collaboration with the UN Environment Programme Finance Initiative.
- Another notable development during the week was the announcement of the Saudi Greenhouse Gas Crediting and Offsetting Mechanism (GCOM), which is set to launch in early 2024. GCOM is a market mechanism that aligns with Article 6 of the Paris Agreement, which will allow companies to purchase carbon credits to offset their greenhouse gas emissions in Saudi Arabia.
- **Looking ahead:** MENA Climate Week has provided a helpful lead into COP28. Look out for further updates following the remaining two Climate Weeks, to be held in Panama City during the week of 23 October, and in Johor Bahru, Malaysia during the week of 13 November.

## APAC Developments

### 1. Singapore announces eligibility criteria for international carbon credits (multi-sector)

- **What:** On 4 October, the Ministry of Sustainability and the Environment (MSE) and the National Environment Agency (NEA) released new eligibility criteria for international carbon credits that can be used by local companies to offset the emissions they are liable for under the national carbon tax regime (under the Carbon Pricing (Amendment) Bill). The eligibility criteria aligns with Article 6 of the Paris Agreement and international standards, including the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).
- **Key details:** The criteria include that credits must not be counted more than once; they must exceed any emissions reduction/ removals required by any law or regulation, which would otherwise have occurred; they must be quantified based on a realistic, defensible, and conservative estimates and be calculated in a conservative and transparent manner, and measured and verified by an accredited and independent third-party before the credit was issued.
- Additional criteria requires that reductions or removals must not be reversible, or otherwise should have measures in place to monitor, mitigate and compensate any material reversal or removals. The project or programme must not violate any applicable laws, regulatory requirements, or international obligations of the host country and emissions reductions or removals must not result in a material increase in emissions elsewhere.

2. Monetary Authority of Singapore working paper on "transition credits" (multi-sector)

- What: On 26 September, the Monetary Authority of Singapore (MAS) and McKinsey & Company (McKinsey) jointly published a working paper (the Paper) setting out how high-integrity carbon credits can be utilised as a complementary financing instrument to accelerate and scale the early retirement of coal-fired power plants (CFPPs). The Paper suggests an end-to-end approach which investigates the key elements required to effectively retire a CFPP early using renewable energy, termed in the Paper as transition credits. The Paper is also accompanied with a template that provides detailed steps and sample tools for market participants to assess and execute such transactions.
- Next steps: The authors plan to have one or more pilot projects to test and demonstrate the concepts set out in the Paper, with the view to determining which approach, or combination of approaches, will be most powerful in pushing the early retirement of CFPPs.
- MAS also invites interested parties to join a coalition of partners to further validate this transaction approach and identify suitable CFPPs to pilot integrating transition credits into the early retirement of CFPPs. Any parties interested in partaking in this coalition, or who have a potential pilot project, should write in to transition_credits@mas.gov.sg.

3. Guidance against greenwashing for Asian businesses (multi-sector)

- What: On 3 October, the Asia Pacific branch of the Public Relations and Communications Association (PRCA) published *Guidelines on Environmental Sustainability Claims*. The Guidelines provide five guiding principles to communication professionals on making credible sustainability claims and avoiding greenwashing. The principles are:
    - Make accurate, science-backed statements;
    - Be specific about terminology used;
    - Consider context;
    - Show incremental impact when making claims or comparisons; and
    - Craft impactful communications that do not omit or hide information.
- Context: Despite the fact that regulation on greenwashing has not been as prominent in the APAC region as in Europe, the topic will only continue to grow in importance. We have seen regulators, as well as consumers, scrutinise sustainability claims for credibility. These guidelines can serve as a useful tool for marketing professionals to stay ahead of the curve on sustainability communications.
- ESG Disputes round-up
- Before we dive into our main disputes stories this month, here are a few notable mentions: as the seminal Portuguese Youth case continues in the European Court of Human Rights, this month we saw young people also take a stand in the US, with over 50 high schools calling for a Green New Deal for Schools. The month also saw a landmark ruling in the Brazilian Supreme Court, with the court rejecting time restrictions on Indigenous People's claiming rights to their ancestral land. Finally, we saw another aviation greenwashing case successfully brought against Austrian Airlines over climate neutrality claims.
- Remember, you can keep up to date with contentious ESG news as and when it happens by signing up to our ESG Disputes Radar.

1. ESG litigation funding receives US hedge fund boost (multi-sector)

- **What:** Gramercy, a US hedge fund who manages over USD 6bn in assets, has committed over USD 550m in the form of a secured loan to a litigation specialist law firm to fund claimants in environmental litigation. This includes those pursuing the largest opt-in class action lawsuit in England and Wales against two mining firms (BHP and Vale) at the centre of a dam collapse in Brazil. The loan, which forms part of Gramercy's litigation funding offering and promises returns notwithstanding broader market movements, includes co-investments from some of its clients.
- **Context:** The news will be a welcome boost to potential ESG claimants, particularly following the blow suffered by the litigation funding market earlier in the summer when the English Supreme Court's ruling in *R (on the application of PACCAR Inc) v The Competition Appeal Tribunal* rendered many litigation funding agreements unenforceable (see our article here). Gramercy's arrangement exemplifies a workable alternative to litigation funding agreements that entitle the funder to recover a percentage of damages.

2. DWS agrees to USD 19m penalty with SEC (asset management)

- The US SEC has found that DWS:
- made "*materially misleading*" statements about its controls for incorporating ESG factors into research and investment recommendations for ESG products;
  - from August 2018 to late 2021, whilst marketing itself as an ESG leader, failed to adequately implement certain provisions of its global ESG integration policy as it had led clients and investors to believe it would; and
  - failed to adopt policies and procedures to ensure its public statements about its ESG products were accurate.
  - Without admitting or denying the SEC's findings, DWS has agreed to pay a USD 19m penalty, as well as a cease-and-desist order and censure.
- This is the SEC's largest ESG-related penalty yet against an asset manager and demonstrates the regulator's continued focus on greenwashing / misrepresentation. Sanjay Wadhwa, Deputy Director of the SEC's Division of Enforcement and head of its Climate and ESG Taskforce, warns that "*whether advertising how they incorporate ESG factors into investment recommendations or making any other representation that is material to investors, investment advisers must ensure that their actions conform to their words*".
- **Context:** As with other investigations, the SEC relied on historic legislation to pursue its investigation rather than wait for ESG-specific enforcement powers. This reflects the approach taken by regulators in other jurisdictions and we expect the trend to continue.

3. Criminal proceedings against Total Energies (energy sector)

- **What:** On 22 September, four NGOs (Sea Shepherd France, Darwin Climax Coalitions, Wild Legal and StopEA-COP) filed a complaint against Total Energies before the Nanterre first-level Court in France.
- **Key details:** The complaint covers four serious offences: failure to prevent a disaster, manslaughter, unintentional injury and destruction or damage of property belonging to others likely to create physical harm. In contrast to the lawsuits already brought against Total Energies in France, the four NGOs behind the claim have decided to bring it under criminal proceedings, rather than civil. The NGO's allege that Total Energies had the opportunity to take action to fight climate change, without necessarily ceasing all fossil fuel projects, by limiting its investments in this sector. According to the NGOs, by continuing to develop new oil and gas infrastructures, in

contradiction with the recommendations of scientists and the International Energy Agency (IEA), Total Energies is contributing to the worsening of a crisis that is endangering a large part of the world's population, the victims of climatic catastrophes.

4. Shell employees spark internal debate on renewable energy strategy (energy sector)

- **What:** It has been reported that Shell employees have written an open letter addressed to Shell CEO Wael Sawan expressing concern that the company is moving its attention away from the progression of renewable sources of energy. The letter was posted on Shell's internal website last month, was viewed 80,000 times and received 1,000 "likes" from colleagues.
- Shell held its annual Capital Markets Day in June 2023, during which Mr Sawan announced plans to scale back investments in renewable energy. Following this announcement, two employees from Shell's low-carbon division drafted the letter. Mr Sawan is reported to have responded directly to the letter confirming that Shell still aims to be a net zero emissions company by 2050 but acknowledging that there may not always be agreement on the way forward.
- **Context:** Aside from the renewables debate itself, the incident is also a key illustration of the potential significance of employee activism and engagement, especially in circumstances where internal platforms allow for widespread publication and debate.
- ESG Consultation round-up
- Some notable ESG policy consultations in flight across the globe that are currently open for comment. Engagement is a great opportunity to influence the direction of travel for ESG matters.

1. FCA and PRA Consultation Paper on DE&I (financial institutions)

- **What:** On 25 September, the FCA and the PRA published their much-anticipated consultation papers (PRA CP 18/23 and FCA CP23/20) on a package of measures to promote diversity and inclusion (D&I) in the financial services sector.
- **Details:** The consultation is released with a view to achieving healthier firm cultures, reducing 'groupthink,' unlocking new talent and addressing consumer needs. It follows on from the regulators' July 2021 discussion paper (DP21/2) (see here for our summary). Firms will be subject to different proposals depending on the number of employees, their Senior Managers and Certification Regime (SM&CR) categorisation and whether they are dual-regulated. Smaller firms with fewer than 251 employees will be exempt from many of the requirements. Key proposals within the consultation include:
- An annual obligation to report employee numbers;
    - A requirement to set targets to address underrepresentation at Board, senior leadership and general workforce level;
    - Requirement for annual D&I reporting;
    - Requirement to publish D&I strategies;
    - Individual accountability under the SM&CR and remuneration alignment (for dual regulated firms).
- **Next steps:** Responses to the consultation paper can be submitted until 18 December 2023. The FCA/PRA Policy Statement will be published in 2024 and the implementation date for changes will be 12 months after publication of the Policy Statement.

2. UK Crown Estate's recommendations for a developing a UK Marine Nature Capital Market (multi-sector)

- **What:** The Crown Estate, Blue Marine Foundation, Finance Earth and Pollination have published a report with recommendations on key barriers and solutions to high-integrity marine natural capital markets, otherwise known as nature markets. The finance gap to meet the UK's nature-related outcomes is estimated to be at least between £44bn and £97bn over the next 10 years. Nature credit markets could help fill this gap.
- The report outlines 20 recommendations categorised under, "finance", "science" and "policy", all of which are open to feedback.
- **Timing:** Recommendations can be made here by 26 October.

## 3. UN call for evidence on protection of human rights in context of climate change (multi-sector)

- **What**: The United Nations (UN) high commission Special Rapporteur on climate change has issued a call for evidence on the promotion and protection of human rights in the context of climate change.
- **Details:** The call of evidence is based on one of the thematic issues identified by the UN Special Rapporteur concerning corporate accountability in the context of human rights and climate change. The request includes are range of questions seeking input from states, business enterprises, civil society organisations and intergovernmental organisations on corporate accountability posing questions, including around disclosure mechanisms, climate change risks and accountability, green bonds, net zero accountability and greenwashing and fossil fuel subsidies.
- **Next steps:** The deadline for submission is 30 November 2023, following which, all submissions will be made publicly available and posted on the Special Rapporteur's homepage at the OHCHR website.

## 4. UAE Principles for Sustainability Related Disclosures Consultation (multi-sector)

- **What**: On 26 September, members of the UAE Sustainable Finance Working Group launched a consultation on "Principles for Sustainability-related Disclosures for Reporting Entities", setting out four Principles that the signatories (being the Central Bank of the UAE, the UAE Securities and Commodities Authority, the Dubai Financial Services Authority of the Dubai International Financial Centre, and the Financial Services Regulatory Authority of the Abu Dhabi Global Market) will consider to be the minimum guiding principles for their respective disclosure frameworks relating to sustainability matters. The objectives are to promote transparency in sustainability-related matters, enabling investors to make informed decisions about proposed investments.
- **Timing:** Comments can be provided on the consultation by no later than 20 October 2023, with the Principles likely to be published during November 2023, depending on the outcome of the consultation. You can view the Consultation Paper here and submit responses to the consultation here.

## 5. TPT Sector Guidelines Consultation (multi-sector)

- **What:** On 9 October, together with the launch of the Transition Plan Taskforce (TPT) disclosure framework (discussed above), the TPT also published its TPT sector guidance. TPT Sector Summary outlines decarbonisation levers and metrics & targets for 40 sectors with the guidance intended to complement the TPT disclosure framework, providing further detail on why each element and sub-element is important to preparers under the framework along with additional disclosure considerations that firms may want to take into account when preparing their disclosures.

- **Next steps:** The Sector Summary will be open for comment until Friday 24 November 2023. In November, the TPT plans to publish seven pieces of Sector Deep Dive guidance for consultation. The Sector Deep Dive guidance will cover: Asset Managers, Asset Owners, Banks, Food & Beverage, Electric Utilities & Power Generators, Metals & Mining, and Oil & Gas.

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| Focus | Key Activities for 2023 / 2024 |
|---|---|
| Reducing & preventing serious arm. | **Take more action against problem firms** — by prioritising action against riskiest firms, enhancing detection, intervening quicker and increasing the number of firms it takes action against.<br>**Improve appropriate and efficient redress** — by issuing new guidance for redress calculations, review FOS eligibility rules for SME firms and improve complaints reporting.<br>**Reduce impact of firm failure** — by introducing a new regulatory return requiring 20,000 of its regulated firms to more information about their financial resilience.<br>**Validate the enhanced oversight of Appointed Representatives (Aids)** — by testing that firms have embedded the new rules as well as improving its engagement with firms.<br>**Reduce and prevent financial crime** — by increasing use of data to better identify which **firms** are more at risk whilst also developing new tools, undertaking more initiative-taking assessments of firms' controls, and reviewing the oversight of firms communicating and approving financial promotions including qualifying cryptcassets (once regulated).<br>**Be more assertive on market abuse** — by improving its capability, being more coordinated, focusing more on prevention and increasing transparency and unlavirkil disclosure relating to its Persons Discharging Management Responsibility (PD R) regime. |
| Setting & testing higher standards. | **Put customers' needs first** — by consulting on changes to treatment of customer in financial difficulty, oversee regulation of BNPL firms and consulting on future of cash access. Additionally, specifically relating to Consumer Duty, FCA will create an additional Interventions team within Enforcement. This function will be ready from August 2023 to enable rapid action where immediate consumer harm is detected.<br>**Enable consumers to help themselves** — by introducing an application gateway for firms that want to approve financial promotions for unauthorised firms, preparing for the regulation of cryptoassets promotions, and increasing capability to identify illegal financial promotions faster. |

| | |
|---|---|
| | **Deliver a strategy for ESG** — by consulting, when appropriate, on changes to Listing Rules to reference the final ISSB standards and providing a Feedback Statement to the Discussion Paper on ESG governance, incentives, and competence, including planned next steps. The FCA will also finalise and publish rules on Sustain-ability Disclosure Requirements and investment labels.<br>**Test operational resilience** — by assessing whether firms can work appropriately within their impact tolerances, (ahead of the 31 March 2025 deadline) and making it clearer to firms how they should report operational incidents to FCA. |
| Promoting competition and positive change. | **Implement the outcomes of the FRF** — by preparing for the replacement of retained al law with requirements in the FA's Handbook and by applying the changes to its objectives, regulatory principles and accountability arrangements agreed by Parliament.<br>**Strengthen the UK's position in global wholesale markets** — by updating the regulatory framework (including MiFIID2/MiFIR, asset management regulation, and Prospectus, Short Selling and Securitisation regulation), encouraging innovations via the FMI Sandbox and supporting evolving markets on digitalisation anciT+1 settlement as well as considering where it should enable retail access to capital markets.<br>**Shape digital markets to achieve good outcomes** — by continuing the range of activities started in 2022/23 including on BigTechs in retail financial markets, artificial intelligence and Open Banking and Finance. |

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**HMT publishes final proposals for UK cryptoasset regulation;** *On 30 October 2023, HM Treasury published its final proposals for the future financial services' regulatory regime for cryptoassets in the UK. These proposals are set out in HMT's response to its February 2023 consultation and call for evidence on the topic, its response to the May 2022 consultation on managing the failure of systemic digital settlement asset (including stablecoin) firms, and a policy paper giving an update on plans for the regulation of fiat-backed stablecoins.*

- The highly anticipated package of HMT crypto policy announcements was released on Monday 30th Oct. The response is almost 100 pages long and very comprehensive. It additionally acknowledged that certain stablecoins have the ability to become widespread means of payment, following on from its consultation last year on proposals to extend the regulatory perimeter to stablecoins.
- The Treasury confirmed that the government intends to introduce secondary legislation by 2024 to enable it to regulate stablecoins. It will do this by adapting the existing financial services framework: for payments using the Payment Services Regulation, and for issuance and custody, using the Regulated Activities Order.

- The government will expand the list of '***Specified Investments***' in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) and require firms undertaking relevant activities involving cryptoassets "by way of business" to be authorised by the FCA;
    - A new regulated activity for custody will be created covering the (i) safeguarding, (ii) safeguarding and administration, and (iii) the arranging of safeguarding or safeguarding and administration, of a cryptoasset.
    - The proposed regime does not intend to capture activities relating to cryptoassets which are specified investments that are already regulated **– e.g., security tokens, or derivatives.**
    - Activities relating to truly unique or non-fungible NFTs that are more akin to digital collectibles or artwork than a financial services (in the general sense) or product should not be subject to financial services regulation.
    - A regulatory framework for persons operating a cryptoasset trading venue will be created which would be based on existing RAO activities of regulated trading venues – including the operation of an MTF.
    - A new set of regulated activities relating to the intermediation of cryptoassets, drawing from analogous activities in the existing regulatory perimeter (i.e., 'dealing in investments as agent' and 'dealing in investments as principal') will be created.
    - In keeping with the prior approach, the entire paper makes no mention of derivatives on crypto-assets, nor any derivatives on a trading venue, nor the role for stablecoins or other ARTs to be represented as derivatives, nor to be used as margin and collateral for derivative trading.
- *{{Noting also the parallel but contrasting Australian policy statement that is also attached for reference, Regulating Digital Asset Platforms (Proposal paper); Australian Government Treasury; 28Oct2023.pdf}}*
- Phase 2 secondary legislation is scheduled for 2024 and detailed in the table:

| Table 4.A Proposed scope of cryptoasset activities to be regulated under Phase 2 | | |
|---|---|---|
| **Activity category** | **Phase 2 sub-activities (indicative, non-exhaustive)** | **Chapter** |
| Issuance activities | Admitting a cryptoasset to a cryptoasset trading venue | Chapter 5 |
| | Making a public offer of a cryptoasset | Chapter 5 |
| Exchange activities | Operating a cryptoasset trading venue which supports:<br>• the exchange of cryptoassets for other cryptoassets<br>• the exchange of cryptoassets for fiat currency<br>• the exchange of cryptoassets for other assets (e.g. commodities) | Chapter 6 |
| Investment and risk management activities | • Dealing in cryptoassets as principal or agent<br>• Arranging (bringing about) deals in cryptoassets<br>• Making arrangements with a view to transactions in cryptoassets<br>• Making arrangements with a view to transactions in cryptoassets | Chapter 7 |
| Lending, borrowing & leverage activities | Operating a cryptoasset lending platform | Chapter 10 |

| | | |
|---|---|---|
| Safeguarding and /or administration (custody) activities | Safeguarding or safeguarding and administering (or arranging the same) a cryptoasset other than a fiat-backed stablecoin and/or means of access to the cryptoasset (custody) | Chapter 8 |

1. Future of financial services regulatory regime for cryptoassets: Response to consultation and CfE;
   *In the response to its February 2023 consultation paper and CfE, HMT confirms its final proposals for cryptoassets regulation in the UK, including its intention to bring a number of crypto activities into the regulatory perimeter for financial services for the first time.*

- The February 2023 consultation set out extensive proposals for a UK regime for cryptoassets, which included plans to regulate core activities such as custody and lending and to bring centralised crypto exchanges into the scope of financial services regulation.
- HMT confirms in its response that most aspects of the proposals were well-received by the large majority of respondents, although it has modified certain features of the future framework to take onboard the evidence presented. It also sets out some actions that will be taken forward to provide further clarity on key areas of interest.
- Consultation Outcome Document provides the government's response to its February 2023 consultation, and confirms its final proposals for cryptoasset regulation in the UK
  - The government has confirmed its final proposals for cryptoasset regulation in the UK, including its intention to bring a number of cryptoasset activities into the regulatory perimeter for financial services for the first time.
  - This document provides the government's response to the consultation and call for evidence on the future financial services regulatory regime for cryptoassets, which was published on 1 February 2023 and closed on 30 April 2023.
  - It summarises the feedback received by HM Treasury in response to the consultation, and details how this has influenced further development of the government's approach.
  - The UK remains committed to creating a regulatory environment in which firms can innovate, while crucially maintaining financial stability and clear regulatory standards so that people can use new technologies both reliably and safely.
- Noting in particular: "*Chapter 6; Regulatory outcomes for operating a cryptoasset trading venue*" – c, 48-60 responses to this section.
  - A large number of responses suggested that the existing MiFID and FSMA frameworks were largely adequate – or at least served as a good starting point.
  - Many also noted that the proposed approach would bring beneficial consistency and familiarity and could encourage firms that operate already-regulated platforms to participate in the cryptoasset sector. A common theme of concern was proportionality and international competitiveness.
  - In particular, many responses warned that excessively stringent prudential requirements and onerous reporting requirements could result in crypto trading venues choosing to locate elsewhere. Several responses pointed out differences between cryptoasset trading venues (as they typically operate today) and MTFs which would need to be carefully considered. Specifically, the current prevalence of matched principal execution protocols in crypto trading venues arguably makes them more akin to OTFs rather than MTFs.
  - In addition, most crypto trading venues permit direct retail access, whereas MTFs admit only institutional investors. One response also highlighted that, unlike crypto trading venues, MTFs do not take custody of participant funds, issue their own securities, extend credit to members, or act (in effect) as a central clearing counterparty.

- Some felt that the proposed approach would push cryptoasset matching activity to other jurisdictions (or decentralised protocols), especially if similar prudential and data reporting requirements were adopted, together with the obligation to subsidiarise in the UK.
- A common theme in the feedback was international competitiveness and avoiding excessive barriers to entry for example, by permitting firms to make use of professional indemnity insurance arrangements as an alternative to own funds – in order to meet prudential requirements.
- Some responses suggested that order book reporting should be limited to off-chain transactions only, or that reporting requirements should be introduced when the industry has matured further.
- Another area where many responses suggested that the requirements **should go further was operational resilience**, with recommendations relating to contingency planning, testing, third party audits, proof of solvency, proof of reserves and proof of liability.
- **Proposed location requirements were a contentious theme**. Many were in support of the indication that firms operating cryptoasset trading venues would likely require subsidiarisation in the UK. But there were also strong objections to this on the basis that it would increase costs and regulatory burdens and fragment liquidity pools. Some also argued that this position would represent a departure from similar activities in traditional finance (where, for example, MTFs and OTFs can make use of the OPE under specific circumstances).
- Other common themes of feedback that will be addressed through subsequent FCA consultations and rulebooks:
    - Fee structures; *called for measures to ensure fair and transparent fees as well as rules to ensure that investors do not become unfairly 'locked in' to exchanges.*
    - Outsourcing; *support services from third parties (including overseas service providers and overseas entities within the same parent group)*
    - Resolution and insolvency
    - Execution protocols; *the need for a regime to accommodate matched principal trading as well as central limit order book matching.*
    - Business model segmentation; *many responses talked of the need to distinguish between venues only admitting wholesale market participants versus those which also admit retail consumers. Another suggestion was for clear distinctions between venues which undertake primary issuance activity versus those that only offer secondary market trading.*

<u>Points to note from HMT's response include:</u>

- HMT intends to take an <u>*activities-based approach to regulation*</u>, as articulated in the original proposals. The government is aiming to lay phase 2 secondary legislation for crypto activities in 2024 "subject to Parliamentary time".
- Detail on the regulated activities and tokens which will be in scope for phase 1 of HMT's approach to regulating cryptoassets, and how these will be demarcated from phase 2 activities and tokens, is set out in the separate '***stablecoins update***' policy paper.
- In response to the questions about certain execution protocols and trading models (e.g. OTFs / matched principal trading and proprietary trading), the government does not intend to explicitly endorse or prohibit specific business models or execution protocols in legislation.

    - Doing so at this point would limit the flexibility of a future regulatory regime at a stage when business models are still evolving at pace. It could also shape and influence market structures in unintended or suboptimal ways.
- HMT notes that some requirements applicable to MTFs and OTFs will be reviewed more broadly as part of the government and FCA's implementation of the Wholesale Market Review reforms.
- Vertically integrated business models; HMT recognises **that certain firms undertaking several regulated activities may present a higher risk to the wider ecosystem** in the event of failure and the government and regulators will continue to consider whether and how such firms should be subject to proportionate prudential requirements.
    - While there are risks to vertical integration it should be possible to mitigate said risks with appropriate governance, controls and risk management systems, as happens in the traditional financial sector.
    - The requirements will be addressed in detailed FCA rules, but the issue is also being explored in the DSS and could be explored by further Financial Market Infrastructure (FMI) sandboxes – in particular, the example of where a firm operates an MTF/organised trading facility (OTF) and simultaneously acts a central securities depository.
- It confirms that the proposed regime does not intend to capture activities relating to cryptoassets which are specified investments and so already regulated, e.g. security tokens, or activities relating to truly unique or non-fungible NFTs that are more akin to digital collectibles or artwork than a financial service (in the general sense) or product.
- HMT confirms that it "firmly disagrees" with suggestions that retail trading and investment activity in unbacked cryptoassets should be regulated as gambling rather than a financial service.
    - Regarding the feedback on customer segmentation, the government agrees, in principle, with the idea that certain requirements (e.g. disclosures, appropriateness checks) would differ for intermediaries when dealing with eligible counterparties since this would mirror existing conduct regimes and meet the core design principle of "same risk, same regulatory outcome."
- FCA authorisation will not be automatically granted to firms that are registered with the FCA under the Money Laundering Regulations.
- On location; HMT notes that should all international cryptoasset exchanges were to seek authorisation in the UK as cryptoasset intermediaries (and not as cryptoasset trading venues), this would be problematic since the proposed issuance and market abuse regimes 'hang off' regulatory trigger points that are controlled by authorised cryptoasset trading venues.
    - HMT acknowledges the need to mitigate the fragmentation of cryptoasset liquidity that could arise from a restrictive location and market access policy. It plans to proceed with an approach that *facilitates access to international liquidity pools under specific circumstances.*
    - On the topic of market access, the government shares industry's view of the benefit of working towards deference/equivalence type arrangements and is committed to cooperating with international partners – including through the UK's ongoing work with standard setting bodies such as IOSCO and the Financial Stability Board (FSB) – to deliver a framework that can accommodate this.
    - HMT recognises that the conditions required for equivalence/deference are not currently in place. Given this, an approach is required that will facilitate access to

global liquidity pools under specific circumstances (for example where the global liquidity pool is being operated in a jurisdiction which is meeting international recommendations and standards). This would apply on a time-limited basis for the interim period before appropriate equivalence/deference type arrangements are in place.

- HMT clarifies the intended outcomes for non-fungible tokens (NFTs), utility tokens, security tokens and other data objects or "things" which respondents were concerned could be captured unintentionally.
- On issuance and disclosures, HMT notes that recklessness and negligence liability standards will enable market participants to manage their liability provided they make reasonable enquiries. It also confirms its support for the use of publicly available information to compile appropriate parts of disclosure and admission documents.
- There will be a modified approach towards market abuse obligations on crypto exchanges, acknowledging the potential need for a staggered implementation for cross-venue data sharing obligations.
- HMT sets out its direction of travel and plan of action on staking, which is intended to inform the government's view on a set of critical questions and provide regulatory clarity to industry in an accelerated way. HMT notes that an engagement programme has already been launched with external stakeholders to inform this work.

- Overall, HMT notes that the UK remains committed to "creating a regulatory environment in which firms can innovate, while crucially maintaining financial stability and clear regulatory standards so that people can use new technologies both reliably and safely."

2. Managing the failure of systemic DSA (including stablecoin) firms: Consultation response; *HMT's consultation on managing the failure of systemic digital settlement asset (*DSA*) (including stablecoin) firms, which ran from 31 May to 2 August 2022, set out details of proposed amendments to the Financial Market Infrastructure Special Administration Regime (*FMI SAR*) to apply it to such firms. Under the proposals, the amended FMI SAR would apply to systemic payment systems, and to service providers of systemic importance to those systems, which use DSAs (as defined in the Financial Services and Markets Act 2023). Noting also this blog from back in June 2022.*

- Stablecoin update's; Update on plans for the regulation of fiat-backed stablecoins
  - Document provides additional detail following the UK regulatory approach to cryptoassets, stablecoins, and distributed ledger technology in financial markets consultation response published in April 2022
  - The government has provided an update on its legislative approach for bringing fiat-backed stablecoins into the UK's regulatory perimeter for financial services. This document provides additional detail following the UK regulatory approach to cryptoassets, stablecoins, and distributed ledger technology in financial markets consultation response published in April 2022.
  - This update will inform development of the Financial Conduct Authority and Bank of England's approaches for regulating stablecoin issuers and custodians, and systemic digital settlement asset payments systems and service providers, respectively.

- In its response to the consultation, HMT confirms that overall, respondents were broadly supportive of the proposed approach. Some respondents sought clarity on how the FMI SAR would be applied in practice, especially with regard to the additional return or transfer of customer funds and custody assets objective.

- In order to ensure a balance between clarity over how the FMI SAR will operate with respect to systemic DSA firms, whilst ensuring the Bank of England has the tools it needs to respond to the potential failure of a systemic DSA firms as soon as is possible, the government plans to develop two core products:
    - Initially, it will lay regulations "in due course" which implement the policy intent described in the initial consultation regarding the overarching framework – this will appoint the FMI SAR (with necessary amendments) as the primary regime for systemic DSA firms which are not banks, establish an additional objective for the FMI SAR focused on the return or transfer of customer funds and custody assets and supplementary necessary provisions, provide the BoE with the power to direct administrators as to the prioritisation of objectives, and include a requirement to consult the FCA where applicable.
    - HMT will then provide further clarity on the operation of the modified FMI SAR by making insolvency rules – these will cover the detail and mechanisms underpinning how the regime is intended to operate.
- The BoE will also consider whether further guidance on the operation of the FMI SAR is necessary in the context of its finalised going concern regime and update stakeholders at the appropriate time.

3. Update on plans for the regulation of fiat-backed stablecoins: Policy paper; *In its policy paper, HMT gives an update on its legislative approach for bringing fiat-backed stablecoins into the UK's regulatory perimeter for financial services (as part of phase 1 of its approach to crypto regulation). The paper provides additional detail following the UK regulatory approach to cryptoassets, stablecoins and distributed ledger technology in financial markets consultation response, which was published in April 2022.*

- Managing the failure of systemic Digital Settlement Asset (including stablecoin) firms
    - The government consulted on its approach to managing the failure of a systemic digital settlement asset (including stablecoin) firms by applying a modified Financial Market Infrastructure Special Administration Regime (FMI SAR) to such firms. Overall, respondents were broadly supportive of the proposed approach.
    - Some respondents sought clarity on how the FMI SAR would be applied in practice, especially with regard to the additional return or transfer of customer funds and custody assets objective.
    - As set out in the response, the government intends to lay regulations to implement the policy intent described in the consultation in due course and will provide further clarity on the operation of the modified FMI SAR by making insolvency rules.
- HMT confirms its intention to put in place a regulatory framework for fiat-backed stablecoins including when used as a means of payment, which it notes it has already started to implement through the introduction of measures in the Financial Services and Markets Act 2023.
- In the next stage of implementation, HM Treasury intends to bring forward secondary legislation "as soon as possible and by early 2024, subject to available parliamentary time". These legislative provisions will bring activities relating to fiat-backed stablecoins into the regulatory perimeter, enabling the FCA to regulate them.
- The policy update sets out further detail on the objectives of the proposed legislation to facilitate the FCA's regime. It also provides further information relating to the BoE's regime, the Payment Systems Regulator's regime, and co-responsibility for supervision of systemic fiat-backed stablecoin firms.

- The update is intended to inform the development of the FCA's and BoE's approaches for regulating stablecoin issuers and custodians, and systemic DSA payments systems and service providers, respectively.

## Regulatory Outlook and Diary

| *Forward Regulatory Calendar: Updated 01st November 2023* | | |
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| Q4 2023 | Hong Kong | Consultation of Hong Kong's reporting rules on adoption of UPI and CDE. |
| Q4 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.<br><br>EU policymakers have agreed on a final trilogue deal on 27 June 2023. There will be technical work to finalize the agreed compromise wording over the summer. The European Parliament and Member States will have to endorse formally the trilogue deal which will pave the way for the publication in the Official Journal, now expected in Q3/Q4 2023. The date of implementation of the EU banking package is expected on 1 January 2025. |
| Q4 2023 | Japan | Pursuant to the amended Comprehensive Guidelines for the Supervision of Agricultural Cooperative Financial Institutions (which became effective as of July 1, 2023), the Norinchukin Bank and its group entities are required to incorporate contractual recognition of temporary stay under the Agricultural and Fishery Co-operatives Savings Insurance Act into existing and new non-Japanese law governed master agreements. |
| Q4 2023 | EU | Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard. |
| December 04, 2023 | US | Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45 and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023. |
| December 31, 2023 | UK | Expiry of the temporary Intragroup Exemption Regime (TIGER) from clearing and margin requirements. (*this will change subject to HM* |

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| | | *Treasury passing a statutory instrument to extend the instrument to December 31, 2026).* |
| December 31, 2023 | Mexico | Deadline for entities and investment funds to comply with the margin requirements for uncleared derivatives under Banco de México's Circular 2/2023. |
| 2024 / 2025 | Singapore | MAS will defer implementation of the final Basel III reforms in Singapore between January 1, 2024, and January 1, 2025, to allow the industry sufficient time for proper implementation of systems needed to adopt the revised framework, including regulatory reporting. This aligns timelines with other major jurisdictions. MAS will monitor banks' implementation progress and finalize the implementation timeline for the final Basel III reforms, including the transitional arrangement for the output floor by July 1, 2023 |
| January 1, 2024 | US<br><br>EU<br><br>Switzerland<br><br>UK | Under US Prudential Regulations only, initial margin requirements apply to covered swap entities with material swaps exposure (average (daily) aggregate notional amount from June, July, and August 2023 exceeding USD 8 billion)<br><br>EU: Initial margin requirements apply to counterparties with an average (monthly) aggregate notional amount from March, April, and May 2023 exceeding EUR 8 billion.<br><br>Switzerland: Initial margin requirements apply to counterparties whose average (monthly) aggregate notional amount from March, April, and May 2023 exceeds CHF 8 billion.<br><br>UK: Initial margin requirements apply to counterparties with an average (monthly) aggregate notional amount from March, April, and May 2023 exceeding EUR 8 billion |
| 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 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-the counter derivatives, which are single-stock equity options or index options. |
| January 16, 2024 | US | Comment Deadline on U.S. Basel III proposal (See 88 Fed. Reg. 73770-73772 (October 27, 2023)). |

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| January 29, 2024 | US | Compliance Date for registered entities and swap counterparties to use the Unique Product Identifier (UPI) for swaps in the credit, equity, foreign exchange and interest rate asset classes for P43 and P45 reporting. |
| March 01, 2024 | Australia<br><br>US<br><br>EU<br><br>Australia<br><br>Canada<br><br>Hong Kong<br><br>Korea<br><br>Switzerland<br><br>Singapore<br><br>Japan<br><br>Brazil<br><br>Mexico | 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.<br><br>In Mexico, the corresponding compliance date is December 31, 2025<br><br>Brazil is daily and all others are month-end for March, April, and May average aggregate notional amount. |
| 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 15, 2024 | Mexico | Deadline for entities and investment funds to amend their master agreements for the exchange of margin for uncleared derivatives under the Banco de México's Circular 2/2023 |
| March 31, 2024 | Japan | Basel III: Implementation of revised credit risk, CVA, market risk (FRTB) for international active banks and domestic banks using IMM, and the leverage ratio (based on the amendment published on March 28, 2023, the implementation date for ultimate parent companies of a broker-dealer (limited to those designated by JFSA) has been changed to March 31, 2025). |

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| | | After March 31, 2023, optionality for financial institutions wishing to implement earlier than the above period must submit a notification to the Financial Services Agency (limited to those designated by JFSA). |
| April 01, 2024 | Japan | Go-live of revised JFSA reporting rules based on the CPMI-IOSCO Technical Guidance excluding Unique Product Identifier (UPI) and Delta. JFSA finalized the Guidelines of the revised reporting rules on December 9, 2022. |
| April 01, 2024 | India | The RBI published draft guidelines on minimum capital requirements for market risk as part of convergence with Basel III standards. Applicable to all commercial banks excluding local area banks, payment banks, regional rural banks, and small finance banks. Not applicable to cooperative banks. |
| 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. |
| July 1, 2024 | US | Compliance date for CFTC Block and Cap reporting amendments. Expiry of relief in CFTC Staff Letter No. 22-03. |
| July 1, 2024 | US | Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks and reporting-only requirement for market risk and CVA-risk |
| July 1, 2024 | Singapore | With regards to the final Basel III reforms in Singapore, all standards, other than the revised market risk and credit valuation adjustment (CVA) standards, as required under the revised MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore will come into effect from 1 July 2024.<br><br>For revised market risk and CVA standards, only compliance with supervisory reporting requirements will come into effect from 1 July 2024.<br><br>The output floor transitional arrangement of 50% will commence from 1 July 2024 and reach full phase-in (72.5%) on 1 Jan 2029. |
| July 12, 2024 | US | Compliance date: CFTC Governance Requirements for Derivatives Clearing Organizations (See 88 FR 44675- 44694 (July 13, 2023)). |

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| August 31, 2024 | Korea | Expiry of the FSS exemption from margin requirements for non-centrally cleared equity options. |
| September 1, 2024 | US<br><br><br><br><br>Australia<br><br><br><br>Canada<br><br><br><br>Hong Kong<br><br><br><br>Korea<br><br><br><br>Singapore<br><br><br><br>Japan<br><br><br><br>Brazil<br><br><br><br><br><br>Saudi Arabia | Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average (month-end) aggregate notional amount from March, April, and May 2024 exceeding USD 8 billion).<br><br>Australia: Initial margin requirements apply to Phase 6 APRA covered entities with an average (month-end) aggregate notional from March, April, and May 2024 amount exceeding AUD 12 billion.<br><br>Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with average (month-end) aggregate average notional amount from March, April, and May 2024 exceeding CAD 12 billion.<br><br>Hong Kong: Initial margin and risk mitigation requirements apply to HKMA AIs and SFC LCs with an average (month-end) aggregate notional amount from March, April, and May 2024 exceeding HKD 60 billion.<br><br>Korea: Initial margin requirements apply to financial institutions with derivatives exceeding more than average (month-end) aggregate KRW 10 trillion based on calculation from March, April, and May 2024.<br><br>Singapore: Initial margin requirements apply to MAS covered entities with an average (month-end) aggregate notional amount from March, April, May 2024 exceeding SGD 13 billion.<br><br>Japan: Initial margin requirements apply to JFSA covered entities with an average (month-end) aggregate notional amount from March, April, and May 2024 exceeding JPY 1.1 trillion.<br><br>Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average (daily) aggregate notional amount from March, April, and May 2024 exceeding BRL 25 billion.<br><br>SA: Initial margin requirements apply to covered entities belong to a group whose average (month-end) aggregate notional amount of non-centrally cleared derivatives from March, April, and May 2024 exceeds EUR 8 billion. |
| September 1, 2024 | South Africa | Initial margin requirements apply to a provider with average (month-end) aggregate notional amount from March, April, and May 2024 exceeding ZAR 8 trillion. (per amended rule pending finalization). |

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| September 28, 2024 | Canada | Multilateral Instrument 93-101, Business Conduct Rules become effective. |
| September 30, 2024 | EU | Go-live of UK EMIR Refit reporting. |
| Q4 2024 | Singapore | Expected go-live of the updated MAS reporting regime. |
| Q4 2024 | Singapore | Expected go-live of the updated MAS OTC derivatives trade 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 |
| December 31, 2024 | Mexico | Annual compliance date for entities and investment funds to comply with the margin requirements for uncleared derivatives under Banco de México's Circular 2/2023 if average aggregate notional amount exceeds UDI 20 billion based on month-end calculation period from March to May 2023 |
| 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. |
| January 1, 2025 | US<br><br>EU<br><br>Switzerland<br><br>UK | Under US Prudential Regulations only, initial margin requirements apply to covered swap entities with material swaps exposure (average (daily) aggregate notional amount from June, July, and August 2024 exceeding USD 8 billion).<br><br>Initial margin requirements apply to counterparties with an average (month-end) aggregate notional amount from March, April, and May 2024 exceeding EUR 8 billion.<br><br>Initial margin requirements apply to counterparties whose average (month-end) aggregate notional amount from March, April, and May 2024 exceeds CHF 8 billion.<br><br>Initial margin requirements apply to counterparties with an average (month-end) aggregate notional amount from March, April, and May 2024 exceeding EUR 8 billion. |

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| January 1, 2025 | Singapore | With regards to the final Basel III reforms in Singapore, compliance with capital adequacy and disclosure requirements for revised market risk and CVA standards will come into effect from 1 January 2025.<br><br>The output floor transitional arrangement of 55% will commence from 1 January 2025. |
| January 1, 2025 | Hong Kong | Expected implementation date for the minimum regulatory requirement for Basel III revised market risk and CVA risk. |
| March 1, 2025 | Australia<br><br>US<br><br>EU<br><br>Canada<br><br>Hong Kong<br><br>Korea<br><br>Switzerland<br><br>Singapore<br><br>Japan<br><br>Brazil<br><br>South Africa<br><br>UK<br><br>Mexico<br><br>Saudi Arabia | Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2025, or January 1, 2026 (EU/UK/CHF). In the US, this calculation period only applies under CFTC regulations. In Mexico, the corresponding compliance date is December 31, 2026. Brazil is daily and all others are month-end for March, April, and May average aggregate notional amount. |
| 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. |

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| January 1, 2025 | UK | Expected implementation of the Basel 3.1 standards |
| January 1, 2025 | UK | Expected implementation of the Basel 3.1 standards |
| April 07, 2025 | Japan | Proposed implementation date for UPI and Delta under the revised Guideline on the JFSA reporting rules. |
| March 31, 2025 | Japan | Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM. |
| June 18, 2025 | UK | End of the temporary exemption for pension scheme arrangements from clearing and margining under UK EMIR. |
| 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. |
| June 30, 2025 | EU | The temporary exemption from clearing and margin requirements for cross-border intragroup transactions under EMIR expires. |
| Q3 2025 | Hong Kong | Expected go-live of the updated HKMA and SFC OTC derivatives trade reporting regime. |
| July 1, 2025 | US | The Basel III endgame proposal has an effective date of July 1st, 2025, accompanied by a 3-year phase-in period for the new ERBA RWAs that starts at 80% of total RWA and phases in incrementally each year until July 1st, 2028. |
| July 1, 2025 | UK | Expected implementation of the Basel 3.1 standards |
| September 01, 2025 | US<br><br>Australia<br><br>Canada<br><br>Hong Kong | Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average (month-end) aggregate notional amount from March, April, and May 2025 exceeding USD 8 billion).<br><br>Australia: Initial margin requirements apply to Phase 6 APRA covered entities with an average (month-end) aggregate notional amount from March, April, and May 2025 exceeding AUD 12 billion.<br><br>Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with average (month-end) aggregate average notional amount from March, April, and May 2025 exceeding CAD 12 billion.<br><br>Hong Kong: Initial margin and risk mitigation requirements apply to HKMA AIs and SFC LCs with an average (month-end) aggregate |

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| | Korea<br><br>Singapore<br><br>Japan<br><br>Brazil<br><br>Saudi Arabia | notional amount from March, April, and May 2025 exceeding HKD 60 billion.<br><br>Korea: Initial margin requirements apply to financial institutions with derivatives exceeding more than average (month-end) aggregate notional amount of KRW 10 trillion based on calculation from March, April, and May 2025.<br><br>Singapore: Initial margin requirements apply to MAS covered entities with an average (month-end) aggregate notional amount from March, April, and May 2025 exceeding SGD 13 billion.<br><br>Japan: Initial margin requirements apply to JFSA covered entities with an average (month-end) aggregate notional amount from March, April, and May 2025 exceeding JPY 1.1 trillion.<br><br>Brazil Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average (daily) aggregate notional amount from March, April, and May 2025 exceeding BRL 25 billion.<br><br>Saudi Arabia: Initial margin requirements apply to covered entities belong to a group whose average (month-end) aggregate notional amount of non-centrally cleared derivatives from March, April, and May 2025 exceeds EUR 8 billion. |
| September 01, 2025 | South Africa | Initial margin requirements apply to a provider with average (month-end) aggregate notional amount from March, April, and May 2025 exceeding ZAR 8 trillion. (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 01, 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. |

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| January 01, 2026 | Australia | Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks. |
| January 01, 2026 | Singapore | With regards to the final Basel III reforms in Singapore, the output floor transitional arrangement of 60% will commence from 1 January 2026. |
| January 01, 2026 | EU | Expiry of the suspension of the BMR rules allowing EU supervised entities to continue to use non-EU benchmarks. |
| January 04, 2026 | 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, 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:<br><br>• the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event<br>• the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use<br>• whether the resolution tools available to the resolution authority are adequate.<br><br>Where appropriate, that report shall be accompanied by proposals for revision of this Regulation. |
| June 01, 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. |
| December 31, 2026 | UK | Expiry of the temporary Intragroup Exemption Regime (TIGER) from clearing and margin requirements |
| January 1, 2027 | Singapore | With regards to the final Basel III reforms in Singapore, the output floor transitional arrangement of 65% will commence from 1 January 2027. |
| 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. |
| January 1, 2028 | Singapore | With regards to the final Basel III reforms in Singapore, the output floor transitional arrangement of 70% will commence from 1 January 2028. |
| January 1, 2029 | Singapore | With regards to the final Basel III reforms in Singapore, the output floor transitional arrangement of 72.5% will commence from 1 January 2029. |

# Regulatory Calendar for Wholesale financial markets

| Lead | Initiative | Expected key milestones | Indicative impact on firms | Dates |
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| FCA | Accessing and using wholesale data; Market study assessing potential competition issues about benchmarks, credit rating data and market data vendors. | Launch of market study now planned for later in Q1 2023 to align with findings of trade data review. FCA published this update on timing on our external webpage. | H | Timing Updated<br><br>Jan/Mar 2023<br><br>April / June 2023 |
| FCA | Accessing and using wholesale data Trade data review; Assessment of potential competition issues and concerns about effectiveness of regulatory provisions in relation to trade data. | Feedback Statement published 11 January 2022 Trade data review launched June 2022 Publication of findings and next steps - planned for later in Q1 2023. | L | Timing Updated<br><br>Jan/Mar 2023 |
| BoE/ FCA/ HMT/ PRA | LIBOR Transition; Secure a fair, clear and orderly transition from LIBOR to robust, reliable and clean alternative risk-free rates | The FCA has compelled production of synthetic LIBOR for a limited number of settings and has been clear that these synthetic settings are only a temporary measure. Following FCA announcements in November 2022, end dates have now been announced or proposed for all LIBOR settings. End-March 2023: Synthetic 1-month and 6-month sterling LIBOR will cease. End June 2023: Overnight and 12-month US dollar LIBOR will cease. UK authorities are and will continue to work closely with international counterparts to monitor any new use of US dollar LIBOR and remove dependency on it in legacy contracts. End-March 2024: Synthetic 3-month sterling LIBOR is intended to cease. End-September 2024: The FCA has | H | Jan/Mar 2023<br><br>April / June 2023 |

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| | | consulted on a proposal to require publication of a synthetic US dollar LIBOR for the 1-, 3- and 6-month settings until September 2024. The consultation sought views on this and also on the FCA's proposed synthetic methodology, and which contracts could use these synthetic settings. However, market participants should not rely on the availability of synthetic US dollar LIBOR and should note that any potential synthetic settings would only be a temporary bridge to appropriate alternative risk-free rates. The FCA expects to announce its final decision in late Q1 or early Q2 2023. | | |
| BoE/ FCA/ PRA | Operational Resilience; Implementation of new requirements and expectations to strengthen operational resilience in the financial services sector following publication of final policy in March 2021 | In-scope firms had until 31 March 2022 to operationalise the policy framework. These firms will then have a further period to show they can remain within their impact tolerances for each important business service. They must achieve this by 31 March 2025 at the latest. | H | N/A |
| BoE/ FCA/ PRA | Oversight of Critical Third Parties (CTPs); The Bank, PRA and FCA published a joint Discussion Paper (DP) in July 2022. The aim of the DP was to inform future regulatory proposals relating to Critical Third Parties (particularly on technically complex areas, such as resilience testing) and to provide thought leadership from the Bank, PRA and FCA to UK cross-sectoral and international financial regulatory debates on CTPs. Subject to FSM Bill timetables, the supervisory authorities plan to consult on proposals relating to the oversight of Critical Third Parties in H2 2023 | Consultation Paper planned for 2023. | H | Oct – Dec 2023 |
| HMT | Review of the short selling regulation - including a Call for Evidence Repeal and replace the retained EU regulation of short selling to reduce burdens on | 5 March 2023: Consultation closes | L | Timing Updated |

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| | market participants and ensure it is appropriate for UK markets | | | Jan/Mar 2023 |
| HMT | Wholesale Markets Review; The Government introduced the Financial Services and Markets Bill on 20 July 2022. Subject to Parliamentary approval, the Bill will deliver the outcomes of the Wholesale Markets Review. The FCA consulted on improving equity markets (CP 22/12) in July 2022 and on the trading venue perimeter (CP 22/18) in September 2022. The FCA aim to publish the Policy Statements in Q1 and Q2 2023, respectively.<br><br>The FCA plan to consult on changes to commodity position limits and the consolidated tape regime in Q2/Q3 2023. The FCA intend to consult on the transparency regime for bonds and derivatives in Q4 2023.<br><br>The Government consulted on a number of amendments to ensure that the UK's wholesale markets regime works for UK markets in July 2021 as part of the Wholesale Markets Review (WMR). The consultation closed in September 2021. In March 2022, the Government published its response to the consultation. The proposals we consulted on as part of the WMR that are a priority have been included in the Financial Services and Markets Bill. Where industry supported changes but indicated that fast implementation is not paramount, the Government will use the FRF powers to deliver them. | Treasury consultation response published in March 2022. In July 2022, the Government introduced the Financial Services and Markets Bill which takes forward the most urgently needed WMR reforms.<br><br>FCA Consultation Paper 22/12 on Improving Equity Secondary Markets published in July 2022. Publication of the Policy Statement in Q1 2023. FCA consultation on guidance on the trading venue perimeter published in September 2022. Publication of the Policy Statement in Q2 2023.<br><br>FCA consultation on commodity derivatives and the consolidated tape in Q2/Q3 2023. FCA consultation on transparency for bonds and derivatives in Q4 2023. | L | Timing Updated<br><br>Jul - Sep 2023<br><br>Oct – Dec 2023 |
| HMT<br><br>(with input from | **Future financial services regulatory regime for cryptoassets – consultation;** In April 2022, the Economic Secretary to the Treasury set regulatory out ambitious plans for the UK to harness the benefits authorities) of crypto technologies with several commitments including consulting on a future regulatory regime. The | 01 February 2023: publication of Consultation Paper. The consultation will close on 30 April 2023.<br><br>The Government has now responded to this consultation. The Government has now introduced legislation - the | H | Timing Updated<br><br>April / June 2023 |

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| | Consultation Paper sets out our initial policy proposals for regulating cryptoassets in the UK.<br><br>**UK regulatory approach to stablecoins;** Treasury consultation on the broader regulatory approach to cryptoassets, including new challenges from so-called stablecoins. Further detail on the regime will be communicated in due course. | Financial Services and Markets Bill - that will give effect to the measure. Treasury is consulting on a future regulatory regime for cryptoassets (see 'Future regulatory regime for cryptoassets - consultation' under 'Payments and cryptoassets'). | | |
| BoE/ FCA/ HMT | FMI Sandbox; Legislation to create a Financial Market Infrastructure (FMI) sandbox was introduced in the FSM Bill 2022. The sandbox will support firms which want to use new technology, such as distributed ledger technology, to provide infrastructure services in financial markets. It will enable a more flexible and tailored approach to meeting requirements in current legislation, whilst appropriately balancing any risks to financial stability, market integrity and consumer protection. Treasury have started work with the Bank of England and the FCA on secondary legislation to deliver this. | The Government has published information on this initiative as part of its response the Call for Evidence on the Wholesale and Investment uses of Security Tokens. The FMI Sandbox will be up and running in 2023. | L | Oct -Dec 2023<br><br>(Not updated) |
| BoE/ FCA/ HMT | Amendments to derivatives reporting regime under UK EMIR; The FCA and the Bank plan to finalise amendments to the derivatives reporting regime under UK EMIR to align the UK regime with international standards as set by the Committee on Payments and Market Infrastructures and International Organization of Securities Commissions (CPMI-IOSCO) to ensure a more globally consistent data set and improve data quality. | Consultation Paper setting out changes to reporting requirements, procedures for data quality and registration of Trade Repositories under UK EMIR published Q4 2021 (closed February 2022). Policy Statement, validation rules and schemas to be published in Q1 2023. | L | Timing Updated<br><br>Jan/Mar 2023 and post July 2024 |
| BOE | Changes to the EMIR Derivatives Clearing Obligation The Bank has modified the scope of contracts which are subject to the derivatives clearing obligation to reflect the reforms to interest rate benchmarks, including LIBOR. No further changes are planned to be announced, but the implementation of the final | Policy Statement on the changes L to USD interest rate derivatives published in August 2022. SOFR referencing IRS added 31 October 2022; USD LIBOR referencing IRS removed 24 April 2023 | L | April / June 2023 |

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| | change announced in 2022 will come into effect in April 2023 | | | |
| FCA | Primary Markets Effectiveness - UK Listings Review response The FCA has bought forward consultation and discussion items on reforms to improve the effectiveness of UK primary markets, which follows FCA policy review work and responds to Lord Hill's final UK Listings Review Report and recommendations published on 3 March 2021. | Consultation Paper on special L E I purpose acquisition companies (SPACs) - published 30 April 2021 (CP21/10), closed 28 May 2021. Policy Statement on SPACs - published 27 July 2021 (PS21/10). Consultation Paper on further Listing Rule changes- published 6 July 2021 (CP21/21), closed 14 September 2021. Policy Statement on Listing Rules changes - published on 2 December 2021 (PS21/22). Discussion Paper (DP22/2) published 26 May 2022, closed on 28 July 2022. Potential Consultation Paper in Q2 2023, including feedback to DP22/2. | L | Timing Updated<br><br>April / June 2023 |
| FCA | **Implementing ISSB disclosure standards into FCA listing or transparency rules;** We expect the International Sustainability Standards Board to finalise international sustainability disclosure standards later in 2023. The FCA has previously indicated it will explore implementing those standards in its rules for listed companies once finalised, which would replace existing TCFD disclosure requirements. The FCA expects to consult towards the end of this year, with final rules in the first half of 2024 subject to feedback. Timing may be subject to the Government's response to the ISSB standards | Consultation Paper in Q4 2023 Policy Statement 2024 | L | Oct -Dec 2023 |
| HMT | Treasury consultation on power to block listings on national security grounds; This initial consultation asked for views on the scope of a proposed new targeted power to allow the Government to block a company's listings, if a listing presents a risk to national security.<br><br>This power will reinforce that reputation and help us maintain | This consultation closed on 27 August 2021. The Government responded to the consultation on 10 December 2021. This policy will require legislation to be enacted.However, more policy development is needed before that is possible. Treasury will continue to develop this power taking full account | L | N/A |

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| | the UK's status as a world-class destination for listings | of the responses to this consultation | | |
| HMT | UK prospectus regime review outcome; This initial consultation asked for views on the scope of a proposed new targeted power to allow the Government to block a company's listings, if a listing presents a risk to national security. This power will reinforce that reputation and help us maintain the UK's status as a world-class destination for listings. | The Government will legislate to replace the regime currently contained in the UK Prospectus Regulation following the passage of the Financial Services and Markets Bill. | L | All dates applicable |
| DBT/ HMT | Secondary Capital Raising Review (SCRR) led by Mark Austin; The SCRR is intended to look into improving further capital raising processes for publicly traded companies in the UK. The review was started in October 2021 and reported in July 2022. The Government has accepted all the recommendations addressed to it and is considering how to take these forward | The Government has accepted all the recommendations addressed to it and is considering how to take these forward | L | N/A |
| HMT | Review of the Securitisation Regulation; Treasury has met its legal obligation to review the Securitisation Regulation and lay a report before Parliament. Treasury, FCA and PRA taking forward work in areas identified in the report. | June - September 2021: Call for Evidence took place<br><br>December 2021: Treasury report on the review published and laid in Parliament<br><br>July 2022: Based on the review, an equivalence regime for nonUK Simple, Transparent and Standardised (STS) securitisations has been included in the FSM Bill 2022.<br><br>December 2022: A draft SI has been published, intended to demonstrate how Treasury may implement the outcomes of the FRF review for the Securitisation Regulation. This process will enable reforms in areas identified in the report to be taken forward. | L | Timing Updated<br><br>Jul - Sep 2023<br><br>Oct – Dec 2023 |

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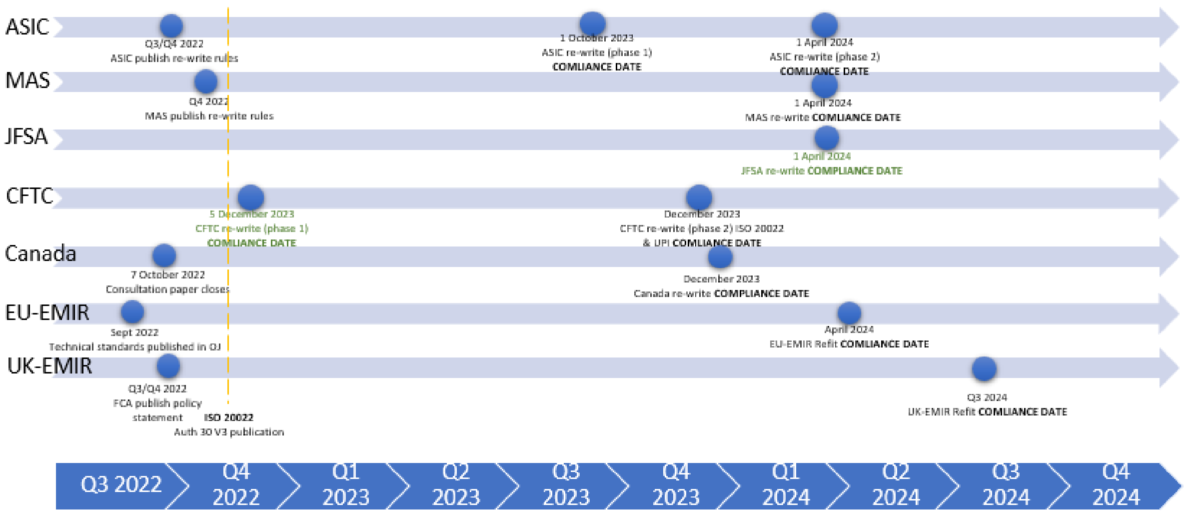
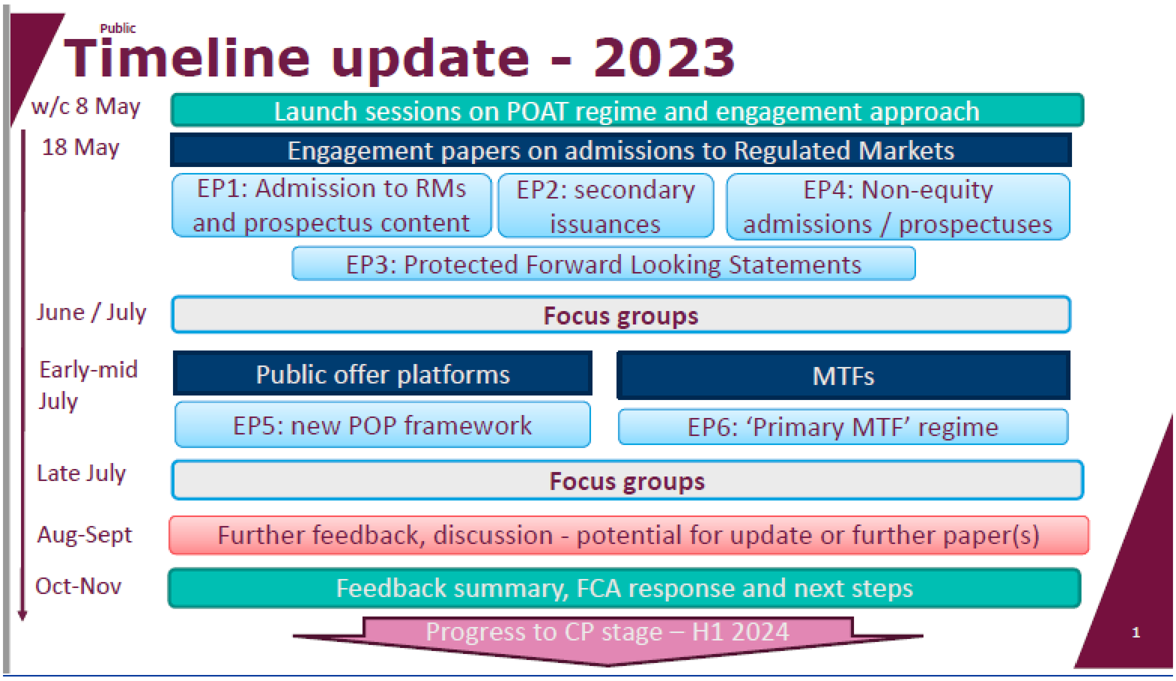
| | | 2023 and 2024: The FCA and the PRA will plan to consult on the FCA and PRA rules to deal with the relevant firm-facing provisions in the Securitisation Regulation (and related technical standards) taking into consideration the reform areas identified in Treasury's Review of the Securitisation Regulation. Treasury plans to lay legislation to enable the introduction of these rules. | | |

## Regulatory Reporting Re-writes: reporting start dates

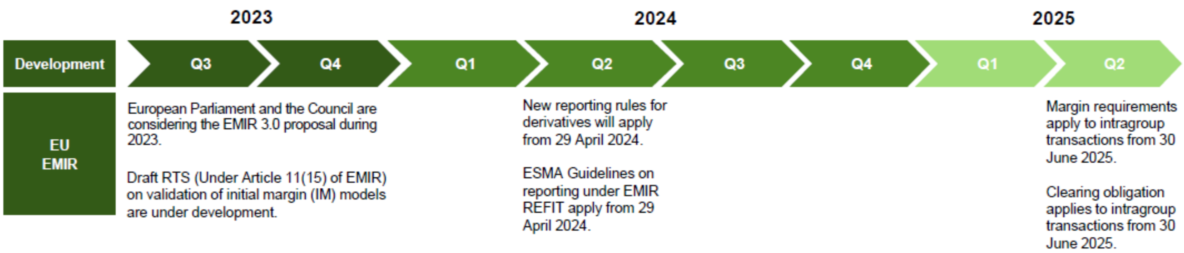





## Benchmarks, RFRs & LiBOR Transition

## Capital Markets and Market Structure

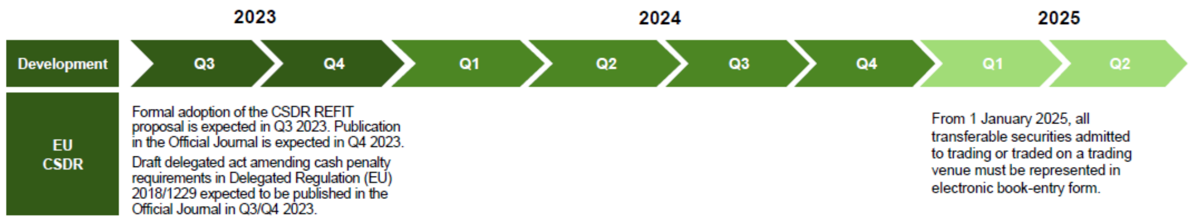
### EU EMIR




- Since its application, EMIR has been amended by EMIR REFIT and EMIR 2.2.
- Adopted in December 2022, proposals for the EMIR 3.0 package, comprising a proposed Regulation and Directive are passing through the legislative process. EMIR 3.0 will amend EU EMIR and other sectoral legislation to mitigate excessive exposures to third country CCPs and improve the efficiency of EU clearing markets, as well as to enhance the monitoring and treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivatives transactions.
- Recently adopted Level 2 measures have deferred the application of some of EMIR's requirements to intragroup transactions.

- On the forward horizon:
- On 1 February 2023, in view of IBOR transition ESMA published a Final Report submitting to the European Commission draft RTSs: (i) under Article 5(2) of EMIR on the CO; and (ii) under Article 32 of MiFIR on the Derivatives Trading Obligation (DTO). Subject to endorsement by the Commission the RTS on the CO will enter into force on publication, and the RTS on the DTO will enter into force on application of the MiFID3/MiFIR2 package.
- Draft RTS under Art 11(15) EMIR are in development, setting out supervisory procedures for initial and ongoing validation of initial margin (IM) models used to determine the level of margin requirements for uncleared over the counter (OTC) derivatives.
- ESMA published final Guidelines on reporting under EMIR REFIT on 20 December 2022, providing clarification on compliance with the EMIR technical standards. The Guidelines apply from 29 April 2024.
- Intragroup transactions: Commission Delegated Regulation (EU) 2023/314 has extended the deferred date of the application of margin requirements for intragroup transactions to 30 June 2025.
- Delegated Regulation (EU) 2023/315 has extended the deferred date of application of the CO for intragroup transactions set in the three Commission Delegated Regulations to 30 June 2025.
- The European Parliament and the Council of the European Union are considering the EMIR 3.0 package during 2023. Once adopted, EU Member States are expected to implement the amendments set out in the proposed Directive 12 months after the date of the entry into force of the proposed Regulation.

## EU CSDR

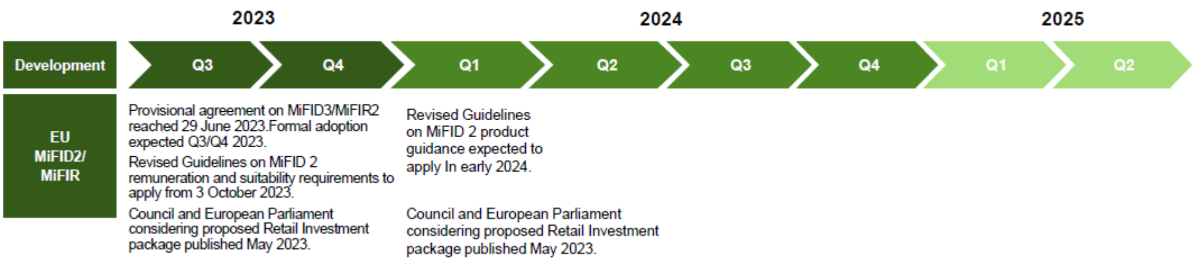



- The major phase of implementation, the introduction of a mandatory buy-in regime, was intended to come into effect on 1 February 2022, but has been suspended and will now take effect from 2 November 2025. In the meantime, in March 2022 the Commission published a legislative REFIT proposal with proposed amendments to the CSDR designed to:
  - Enhance supervisory co-operation;
  - Simplify the CSDR passporting process;
  - Facilitate CSDs' access to banking-type ancillary services;
  - Clarify elements of the settlement discipline regime;
  - Introduce an end-date for the grandfathering clause for EU and third-country CSDs and a notification requirement for third-country CSDs.
- On the forward horizon:
- From 1 January 2023, any EU issuer that issues transferable securities that are admitted to trading or traded on trading venues has been required to arrange for the securities to be represented in electronic book-entry form. From 1 January 2025, this requirement will apply to all remaining transferable securities that are admitted to trading or traded on trading venues.
- In November 2022, ESMA published a final report and draft RTS amending Article 19 of Commission Delegated Regulation (EU) 2018/1229. The amendments would remove the special distribution and collection process for cash penalties that applies to central counterparties (CCPs) and instead allocate responsibility for the collection and distribution of all cash penalties to central securities depositaries (CSDs). The Commission adopted a draft delegated act on 19 April 2023. Subject to non-objection by the Council and

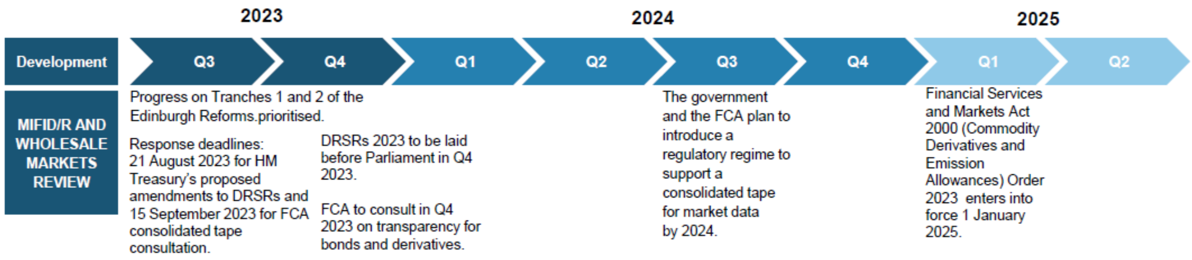
European Parliament, the delegated regulation will enter into force 20 days after its publication in the Official Journal of the European Union and apply 12 months later.

- In March 2022, the Commission adopted a legislative REFIT proposal to amend the CSDR. The Council and European Parliament reached political agreement on the proposal on 27 June 2023. Technical trilogues are expected to continue over summer 2023. Formal adoption is expected in Q3 2023 and the CSDR REFIT is expected to be published in the Official Journal of the European Union in Q4 2023.
- The CSDR's mandatory buy-in regime was intended to apply from 1 February 2022. The application of the relevant rules has been delayed until 2 November 2025.

## EU MIFID2/MIFIR

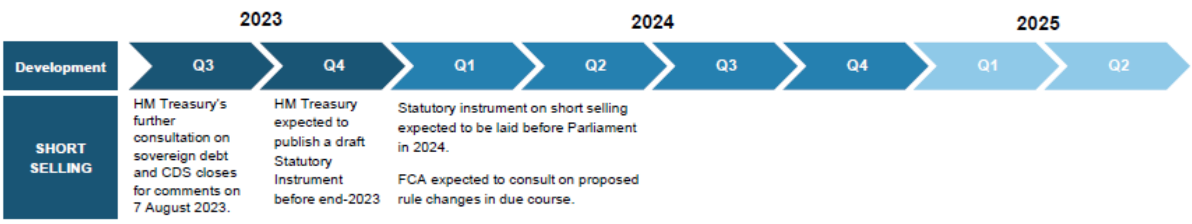



- The MiFID 2 'Quick Fix' measures in response to Covid-19 have applied since February 2022 and measures to integrate sustainability into the package were introduced in August and November 2022.
- In addition, new legislative measures following a review of the framework (sometimes referred to as 'MiFID3/MiFIR2') are expected to be finalised during 2023. MiFID2 will also see further changes due to initiatives being introduced under the Capital Markets Union (CMU) Action Plan.
- On the forward horizon
- The MiFID2 'Quick Fix' measures suspended best execution periodic reporting under Article 27(3) of the MiFID2 Directive until 28 February 2023. Given that the incoming MiFID3/MiFIR2 package will remove the Article 27(3), ESMA has advised national supervisors to deprioritise supervisory actions relating to breaches of Article 27(3) after 28 February 2023.
- The incoming Fintech Amending Directive (see slide 18) will strengthen operational resilience of MiFID firms by amending the MiFID2 Directive to apply the provisions of the DORA Regulation (see slide 35).
- Following trilogue negotiations, the Council and the European Parliament reached provisional political agreement on the MiFID3/MiFIR2 package on 29 June 2023. The package will make changes to MiFID2 and MiFIR to improve market data access and transparency. It is expected to be formally adopted later in 2023 and to apply 20 days after publication in the Official Journal of the European Union.
- An incoming CMU initiative to support access to public markets (known as the Listing Act package) (see slide 19), will among other things amend MiFID 2's provisions on research unbundling and SME growth markets, to stimulate investment in SMEs.
- During 2023-2024, the Council and the European Parliament will be considering the Commission's proposal for a Retail Investment package which sets out measures to increase consumer participation in capital markets (see slide 22) published on 23 May 2023. The package includes proposed amendments to MiFID2 (and other sectoral legislation) to introduce simplified/improved disclosures on products, new provisions relating to sophisticated retail investors and harmonisation of professional standards for advisers.
- Updated Guidelines on aspects of the MiFID2 remuneration and suitability requirements will apply from 3 October 2023, and revised Guidelines on MiFID 2 product governance will apply two months after translation into the official EU languages.




- The Financial Services and Markets Act 2023 (FSMA 2023), which was enacted on 29 June 2023, enables the government to reform the UK's prospectus regime, to implement recommendations from Lord Hill's UK Listing Review which aims to widen participation in the ownership of public companies, simplify the UK capital raising process, and make the UK a more attractive destination for initial public offerings.
- HM Treasury has also been working with the Department for Business, Energy & Industrial Strategy to deliver the recommendations made to government as part of the Secondary Capital Raising Review, and more broadly on reforms to corporate governance, aiming to further enhance the attractiveness of UK public markets.
- On the forward horizon
- The UK Prospectus Regulation has been allocated to Tranche 1 of the repeal and reform programme announced in December 2022 as part of the Edinburgh Reforms package.
- HM Treasury published an illustrative draft of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 on use of its powers in FSMA 2023 to amend the UK prospectus regime. This was followed by a revised draft in July 2023 on which technical comments are invited by 21 August 2023. Among other things the draft SI would: create a new prohibition on public offers of 'restricted securities' in the UK (subject to exemptions and exclusions);
- give the FCA powers to specify the content requirements for a prospectus for admission to trading of 'transferable securities' on a UK regulated market or UK primary multilateral trading facility;
- Introduce a new regulated activity of operating an electronic system for public offers of relevant securities; and
- Designate certain activities for regulation under the Designated Activities Regime introduced by FSMA 2023.
- HM Treasury expects to lay the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 before Parliament before the end of 2023.
- The FCA will need to consult on its proposed use of new powers. It plans to formally consult in 2024. The FCA has published 4 pre-consultation engagement papers in May 2023 and two engagement papers in July 2023 on aspects of the regime. Feedback on the engagement papers is invited by 29 September 2023.

## SHORT SELLING

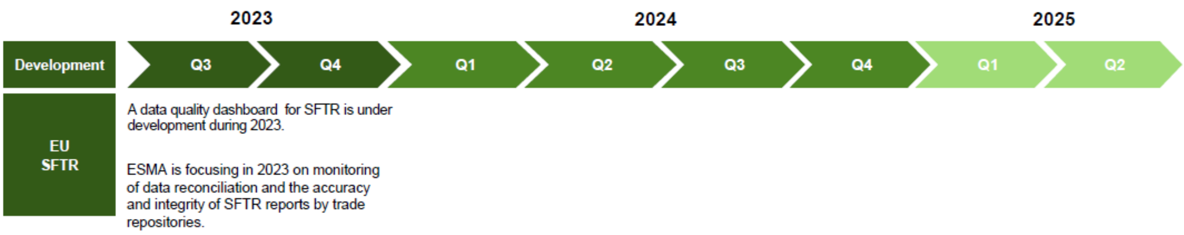



- The Financial Services and Markets Act 2023l (FSMA 2023), enacted on 29 June 2023, will repeal retained EU law on financial services and will give HM Treasury powers to amend, restate and replace that law.
- IHM Treasury is exploring how, on repeal of the UK short Selling Regulation (UK SSR) the UK short selling regime could be reformed to make it work better for UK markets.
- In December 2022, HM Treasury published a call for evidence on replacement of the UK SSR, with the aim of ensuring that the UK's approach to regulating the short selling of shares admitted to trading reflects the

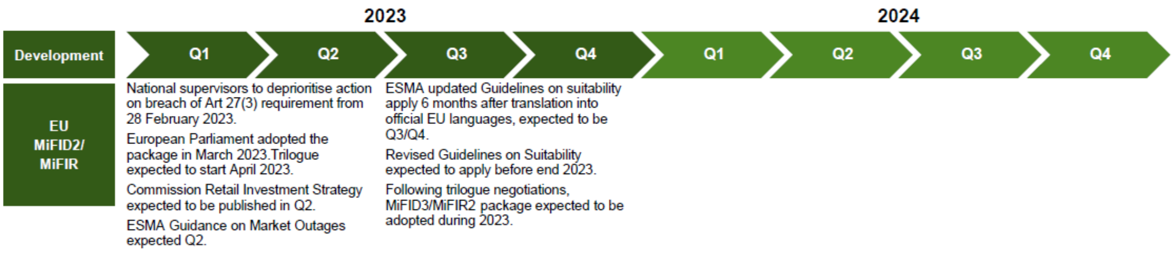
specificities of UK markets, continuing to facilitate the benefits of short selling, whilst also protecting market participants and supporting market integrity.

- On the forward horizon
- Reform of the UK SSR has been allocated to Tranche 2 of the repeal and reform programme outlined in the Edinburgh Reform package published on 9 December 2022.
- HM Treasury's call for evidence on the UK SSR closed on 5 March 2023. Responses will inform considerations as to the appropriate framework for the regulation of short selling. HM Treasury published a response document on 11 July 2023 summarising the feedback received.
- The call for evidence did not explore other specific provisions in the UK SSR including the short selling regime for UK sovereign debt and UK sovereign credit default swaps. On 11 July 2023, HM Treasury published a separate consultation document on sovereign debt and CDS aspects of the regime, which summarises views provided in response to the call for evidence. HM Treasury proposes to remove restrictions on uncovered short positions in UK sovereign debt and UK sovereign debt CDS, remove reporting requirements and amend other parts of the short selling regime where necessary, such as the market maker and authorised primary dealer exemptions. The further consultation is open for feedback until 7 August 2023.
- HM Treasury expects to lay a draft statutory instrument (SI) on the replacement short selling regime by the end of 2023, with a view to laying the finalised SI before Parliament in 2024.
- The FCA is expected to consult on relevant rule changes to reflect the short new selling regime in due course.

## EU SFTR



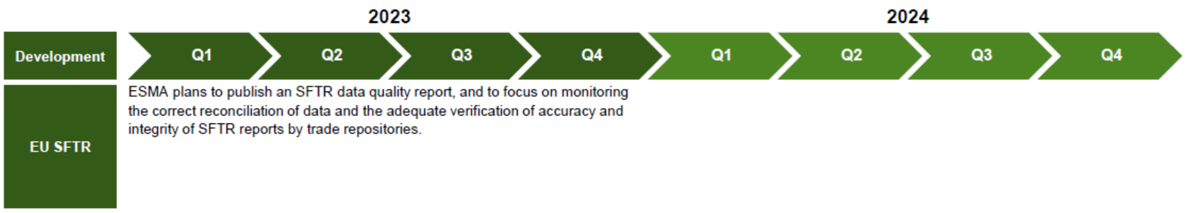

- ESMA Guidelines for the transfer of data between trade repositories under EMIR and the SFTR were published in March 2022 and have applied since October 2022.
- ESMA informed the European Commission in June 2022 that it has deprioritised the following EU SFTR deliverables: (a) a report on the efficiency of SFTR reporting; and (b) a report on SFTR fees.
- On the forward horizon:
- The key challenge with securities financing transactions (SFTs) is that, while many core regulatory and supervisory activities of the authorities rely on the data reported and disclosed by market participants, lack of reliable data can present difficulties in identifying property rights and counterparties and monitoring risk concentration.
- In April 2023, ESMA published its third SFTR data quality report. As regards EMIR and SFTR data quality, ESMA has been transitioning to a new approach to monitoring and engaging on data quality issues with member states' national competent authorities (NCAs), which involves: a data quality dashboard with indicators covering the most fundamental data quality aspects; and
- a data sharing framework which engages relevant authorities to follow up with counterparties in their jurisdiction upon a detection of a significant data quality issue, such as a breach of predefined levels in the agreed set of indicators
- ESMA has already worked with NCAs on implementation of a data quality dashboard for EMIR, which has undergone gradual implementation since May 2022. During 2023 it is working on an implementation of the data quality dashboard for SFTR.
- During 2023, ESMA's focus is on monitoring the correct reconciliation of data and the adequate verification of accuracy and integrity of SFTR reports by trade repositories.




EU MiFID2/MiFIR package; *The extensive legislative package known as MiFID 2 (comprising the MiFID 2 Directive and the MiFIR Regulation) has since 2018 been the cornerstone of EU legislation governing the authorisation and operation of investment firms and the buying, selling and organised trading of financial instruments.*

- The MiFID 2 'Quick Fix' measures in response to Covid-19 have applied since February 2022 and measures to integrate sustainability into the package were introduced in August and November 2022.
- In addition, the Commission has reviewed the functioning of the MiFID 2 framework and put forward legislative proposals (sometimes referred to as 'MiFID3/MiFIR2') which are passing through the EU legislative process during 2023. MiFID2 will also see further changes due to initiatives being introduced under the Capital Markets Union (CMU) Action Plan.
- The MiFID2 'Quick Fix' measures suspended best execution periodic reporting under Article 27(3) of the MiFID2 Directive until 28 February 2023. However, the incoming MiFID3/MiFIR2 package will remove the Article 27(3) requirement and so ESMA has advised national supervisors to deprioritise supervisory actions relating to breaches of Article 27(3) after 28 February 2023.
- •The incoming Fintech Amending Directive (see slide 18) will strengthen operational resilience of MiFID firms by amending the MiFID2 Directive to apply the provisions of the DORA Regulation (see slide 35).
- •The Council agreed its negotiating mandates on the MiFID3/MiFIR2 package on 16 December 2022 and is ready to begin negotiations with the European Parliament. The European Parliament's voted on the Reports of its ECON Committee in its March 2023 plenary session. Trilogue negotiations are expected to begin in April 2023.
- •The incoming CMU initiative, the Listing Act package to support access to public markets (see slide 19), will among other things amend MiFID 2's provisions on research unbundling and SME growth markets, to stimulate investment in SMEs.
- •The Commission's Retail Investment Strategy (see slide 22), expected in Q2 2023, will include proposed amendments to MiFID2 to introduce simplified/improved disclosures on products, new provisions relating to sophisticated retail investors and harmonisation of professional standards for advisers.
- •ESMA published updated Level 2 Guidelines on aspects of the MiFID2 suitability requirements in September 2022. These are expected to apply before the end of 2023.
- •ESMA is expected to publish guidance in Q2 2023 on market outages and its requirements on trading venue systems resilience.

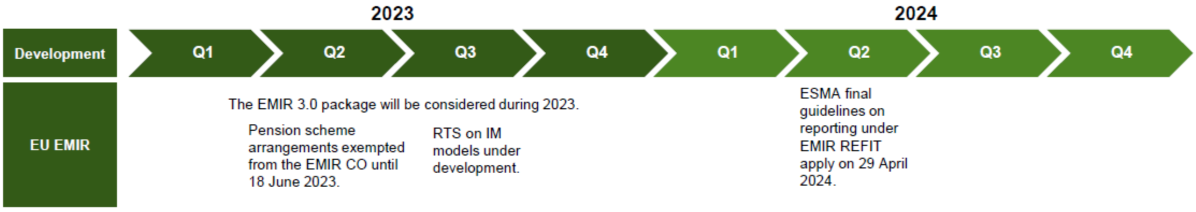
## EU SFTR




- During 2023, ESMA plans to publish an SFTR data quality report, and to focus on monitoring the correct reconciliation of data and the adequate verification of accuracy and integrity of SFTR reports by trade repositories.
- ESMA Guidelines for the transfer of data between trade repositories under EMIR and the SFTR were published in March 2022 and have applied since October 2022.
- ESMA informed the European Commission in June 2022 that it has deprioritised the following EU SFTR deliverables: (a) a report on the efficiency of SFTR reporting; and (b) a report on SFTR fees

## LISTING ACT PACKAGE


- The EU is moving forward with its ambitious plans for a new wide-ranging "Listing Act" package, following a wide-ranging consultation at the start of 2022. The package comprises three legislative proposals:
  - a proposed Directive to introduce targeted adjustments to MiFID2 to enhance visibility of listed companies, especially SMEs, and to introduce regulation for issuer-sponsored research (see slide 10 for other MiFID2 amendments), and to repeal the Listing Directive to enhance legal clarity;
  - a proposed Directive on multiple-vote share structures, to address regulatory barriers at the pre-IPO phase and, in particular, the unequal opportunities of companies across the EU to choose the appropriate governance structures when listing; and
  - a proposed Regulation amending the Prospectus Regulation and the Market Abuse Regulation, to streamline and clarify listing requirements applying on primary and secondary markets, while maintaining an appropriate level of investor protection and market integrity.
- The proposed measures will be considered by the European Parliament and the Council during 2023.
- The three legislative proposals will each enter into force on the 20th day following their publication in the Official Journal.
- Member States will need to create and publish national implementing measures by the expiry of 12 months following the entry of the Directives into force.
- The two Directives and the Regulation will each take effect 18 months after their entry into force.




In December 2022, the European Commission adopted proposals for the EMIR 3.0 package, comprising a proposed Regulation and Directive. EMIR 3.0 will amend EU EMIR and other sectoral legislation to mitigate excessive exposures to third country CCPs and improve the efficiency of EU clearing markets, as well as to enhance the monitoring and treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivatives transactions.

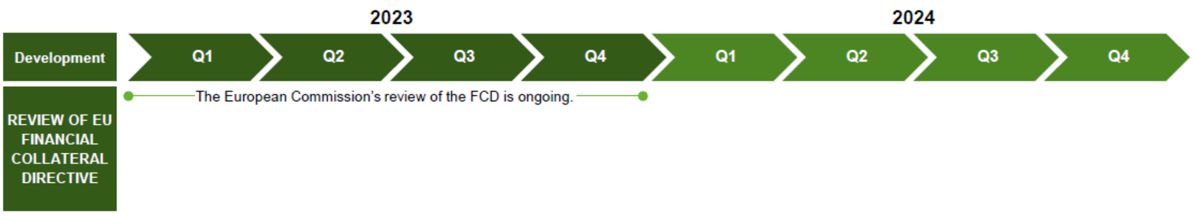
- Recently adopted Level 2 measures have deferred the application of some of EMIR's requirements.
- Commission Delegated Regulation (EU) 2022/1671 exempts pension scheme arrangements from the EMIR Clearing Obligation (CO) until 18 June 2023.
- •On 1 February 2023, in view of IBOR transition ESMA published a Final Report submitting to the European Commission draft RTSs: (i) under Article 5(2) of EMIR on the CO; and (ii) under Article 32 of MiFIR on the Derivatives Trading Obligation (DTO). Subject to endorsement by the Commission the RTS on the CO would enter into force on publication, and the RTS on the DTO would enter into force on application of the MiFID3/MiFIR2 package.
- •Draft RTS under Art 11(5) EMIR are under development, setting out supervisory procedures for initial and ongoing validation of initial margin (IM) models used to determine the level of margin requirements for uncleared over the counter (OTC) derivatives.
- •ESMA published final Guidelines on reporting under EMIR REFIT on 20 December 2022, providing clarification on compliance with the EMIR technical standards. The Guidelines apply from 29 April 2024.
- •Intragroup transactions:
  - Commission Delegated Regulation (EU) 2023/314 has extended the deferred date of the application of margin requirements for intragroup transactions to 30 June 2025.
  - Delegated Regulation (EU) 2023/315 has extended the deferred date of application of the CO for intragroup transactions set in the three Commission Delegated Regulations to 30 June 2025.
- •The European Parliament and the Council of the European Union are considering the EMIR 3.0 package during 2023. Once adopted, EU Member States are expected to implement the amendments set out in the proposed Directive 12 months after the date of the entry into force of the proposed Regulation.

## EU CSDR


- The next major phase of implementation, the introduction of a mandatory buy-in regime, was intended to come into effect on 1 February 2022. This, however, has been postponed. In the meantime, in March 2022 the Commission published a legislative REFIT proposal with proposed amendments to the CSDR.

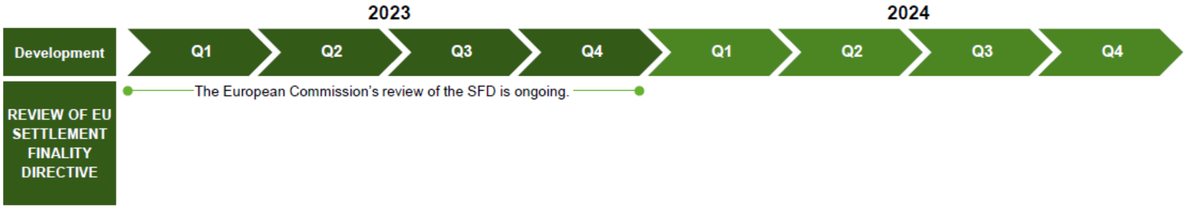
- From 1 January 2023, any EU issuer that issues transferable securities that are admitted to trading or traded on trading venues must arrange for the securities to be represented in electronic book-entry form. From 1 January 2025, this requirement will apply to all remaining transferable securities that are admitted to trading or traded on trading venues.
- •In November 2022, ESMA published a final report and draft RTS amending Article 19 of Commission Delegated Regulation (EU) 2018/1229. The amendments would remove the special distribution and collection process for cash penalties that applies to central counterparties (CCPs) and instead allocate responsibility for the collection and distribution of all cash penalties to central securities depositaries (CSDs). The draft RTS will now proceed through the EU legislative process.
- •In March 2022, the Commission adopted a legislative REFIT proposal to amend the CSDR. The proposal is now continuing through the EU legislative process. As yet, there is no firm date on which this process will conclude. Most recently, in December 2022, the Council of the EU announced that it had agreed its general approach on the proposed draft regulation, and the European Parliament's ECON Committee voted to adopt its report on 1 March 2023.
- •The ECON report was adopted by the European Parliament at its March 2023 plenary session. Trilogue negotiations are expected to begin during H1 2023.
- •The CSDR's mandatory buy-in regime was intended to apply from 1 February 2022. The application of the relevant rules has been delayed until 2 November 2025.

## FINANCIAL COLLATERAL DIRECTIVE




- Review of EU financial collateral directive; The Financial Collateral Directive (FCD) facilitates the cross-border use of financial collateral primarily by removing national law formalities and offering harmonised protections against insolvency challenges in certain cases. It also ensures that certain close out netting provisions are enforceable in accordance with their terms.
- The Commission launched a consultation on the functioning of the FCD in February 2021, in parallel with a consultation on the functioning of the Settlement Finality Directive given that the two Directives are closely connected in the post-trade context.
- The consultation closed on 7 May 2021 and the Commission is reviewing responses. As yet there are no firm indications as to when the Commission will conclude its review of the FCD. Matters under consideration for potential legislative amendment include:
    - revising the types of entity and collateral types that are in scope of the FCD;
    - clarifying the requirements of "possession" and "control" and the concept of "awareness of pre-insolvency proceedings;" and
    - achieving further harmonisation around the requirement that close out netting arrangements should take effect in accordance with their terms notwithstanding the onset of insolvency proceedings of a counterparty.

## SETTLEMENT FINALITY DIRECTIVE




- The Commission was mandated under Article 12a of the SFD to conduct a review of its functioning and was to have produced a report by 28 June 2021, including proposed legislative amendments where appropriate. Due to the close post-trade interconnection of the SFD with the Financial Collateral Directive (FCD), the Commission launched parallel consultations on the two Directives in February 2021.
- The last consultation closed on 7 May 2021 and the Commission is reviewing responses. As yet there are no firm indications as to when the Commission will conclude its review of the SFD. Matters under consideration for potential legislative amendment include: extending the scope of the SFD to cover EU institutions participating in third country systems as well as new types of entity;
  - enabling the SFD to apply in the context of permissionless DLT;
  - amending the protections relating to collateral security so that these can apply in the context of client clearing; and
  - clarifying and/or revising the concepts of irrevocability and the point in time at which an order enters the system.

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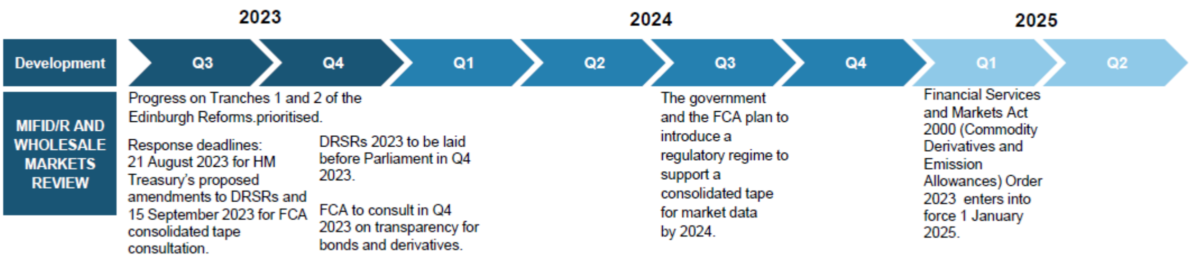
### UK Divergences




Post-Brexit, 'Plus ça change' for the City of London; Karel Lannoo*; *The clearest result of Brexit, as seen from a financial markets perspective seven years on from the fateful June 2016 referendum, is that nobody in Europe won. A classic case of a lose-lose situation, as was to be expected. Yet the big outflow of banking jobs from London did not happen, nor did any EU-based financial centre clearly emerge as the winner, and nor did any big boost to London materialise, as some Brexiteers had hoped.*

- Rather, Europe as a whole lost, as liquidity has become even more clearly concentrated in the US, in many different sectors. As both, the EU and UK are slowly converging again, and with a big political shift expected in the UK next year, prospects for the European financial marketplace are improving. But a decade will have been lost, with EU projects such as banking and capital markets union also clearly impacted.
- When discussing Brexit's impact on financial markets, a distinction needs to be made between the local financial markets in the UK and the City of London as a global financial centre. The former have clearly been

negatively affected by the UK's EU exit and by the political upheaval the country has gone through over the last few years. Two elements stand out: the decline in UK stock markets, and the crisis in UK pensions, as was well documented in a recent study.

- The number of listed UK companies has virtually halved over the last 25 years, new issue volumes have collapsed, valuations have stagnated, and the UK's share of global markets has fallen. A deep reform of the UK pension system, an important building block for the local capital market, is therefore needed, including an increase in contributions, reducing fragmentation, and improving asset allocation.
- In contrast, the City's position as the second biggest or most important global financial centre has not been so affected. The number of banks active in the UK, as authorised by the Prudential Regulation Authority (PRA) has continued to grow over the last five years by 4 % to 375 in 2023, an all-time high. Revenues have continued to increase, while the total number of banking employees is only slightly down. The UK is still home to the largest European bank, HSBC, and the total assets of the five largest banks have increased steadily since 2018.
- International banks are active in the City not because of domestic business, but to participate in international activities centred in London. Agglomeration effects continue to play an important role in financial centres and have remained resistant in London's case to the negative effects of Brexit and the ensuing political instability. According to the latest international rankings, London remains predominant as a financial centre, second only to New York. No other European centre even makes it into the top ten with the exception of Geneva. Business in international financial centres is uniquely focused on a few activities that cannot easily be displaced. They depend not only on financial institutions, but also on solid infrastructure, the abundance of highly specialised law firms, consultants, regulators, and an attractive international environment. For London, it concerns international lending and issuing and trading of international bonds, asset management and the related brokerage, specialised insurance, foreign exchange, and central counterparty clearing in derivative markets – all activities where it is far ahead of other European and regional financial centres.
- Why did the UK's departure from the EU not have a larger impact? Regulation and the rules allowing for the cross-border provision of services with a single licence in the EU are only one of the additional elements that have contributed to London's rise. Firms can easily set up another separately licensed EU-based entity and process transactions through to their main European entity. Even if this creates an additional cost, it does not weigh up against the advantage of being able to serve the EU market from one large financial centre. And with the EU-UK Windsor framework agreed on 27 February 2023, gone is the frosty relationship that characterised Boris Johnson's time in office. A long-awaited MoU between supervisory authorities on both sides can be concluded, as a first step towards more equivalence agreements to facilitate market access.
- Regulation-wise, although it was expected the UK would use the opportunity to diverge from the EU, this has not happened. In banking, obviously, the room for manoeuvre is limited, as EU rules implement the internationally agreed Basel standards, and the long shadow of the 2008-09 financial crisis is still high on many Brits' minds. Additionally, the UK had already diverged somewhat, even as an EU member, specifically in its rules separating retail from wholesale banking, and the rules on resolution. But both are certainly not examples of tweaking regulatory standards to race to the bottom, and in the aftermath of the SVB collapse in the US, this is certainly not on the agenda.
- The big question, however, are the rules for capital market activities, as contained in MiFID.
- Post-Brexit, the UK has retained any national legislation and regulation that implemented the parts of MiFID that had to be transposed into national law. Hence, the UK had its own MiFID II, through which it has 'onshored' the parts of MiFID that applied directly when the UK was an EU Member State (see Latham Watkins). It only made minor amendments to ensure that the regime operates effectively in a UK-only context (for example, moving ESMA's functions to the Financial Conduct Authority). However, none of these amendments were intended as policy changes. The result was that post-Brexit we immediately ended up with two separate but parallel, regimes — the EU MiFID and the UK MiFID (which is the same as EU MiFID, but with some minor changes).
- But rest assured, more divergence is coming. As part of the Wholesale Markets Review, and the Financial Services and Markets Act (FSMA), the UK now intends to develop a smarter regulatory framework and is beginning to alter rules in UK MiFID that it does not think are appropriate for the UK market. Revocation of on-shored EU financial services regulation is on the agenda but this is easier said than done. The legal consequences of revocation are mindboggling – what would be revoked and what not? Investigations or

enforcement actions may still be ongoing under onshored pieces of legislation, or interactions with other pieces may be overlooked.

- Hence "the '*FSMAification'* of EU-derived law is going to be a long and arduous journey. For those of us hoping that Big Bang 2.0 will result in a less complicated patchwork of legislation and regulation in this area, we remain cautious for now. We will all also need to carefully engage in every consultation around each revocation proposal to consider the potential unintended consequences," according to Allan & Overy.
- More in general, the UK's attempt to move back towards a principles-based system, laudable as it may be, raises questions about accountability and control. The primary responsibility for regulation is delegated to the UK regulatory authorities, subject to Parliament's oversight, which is a lesser system of control and oversight than that of the EU.
- Hence, more than seven years after the Brexit vote, the expected big shift of business from the City of London to the EU has not materialised, nor has an EU centre emerged as a clear competitor. This indicates that other elements matter and not just access to the single market, elements such as critical mass and reputation, the availability of talent, and flexible labour market rules. Time thus to converge once again and to truly realise European financial objectives together.

The Financial Services and Markets Act 2023 (FSMA 2023), which was enacted on 29 June 2023, enables the government to reform the UK's prospectus regime, to implement recommendations from Lord Hill's UK Listing Review which aims to widen participation in the ownership of public companies, simplify the UK capital raising process, and make the UK a more attractive destination for initial public offerings.

- HM Treasury has also been working with the Department for Business, Energy & Industrial Strategy to deliver the recommendations made to government as part of the Secondary Capital Raising Review, and more broadly on reforms to corporate governance, aiming to further enhance the attractiveness of UK public markets.
- On the forward horizon
- The UK Prospectus Regulation has been allocated to Tranche 1 of the repeal and reform programme announced in December 2022 as part of the Edinburgh Reforms package.
- HM Treasury published an illustrative draft of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 on use of its powers in FSMA 2023 to amend the UK prospectus regime. This was followed by a revised draft in July 2023 on which technical comments are invited by 21 August 2023. Among other things the draft SI would: create a new prohibition on public offers of 'restricted securities' in the UK (subject to exemptions and exclusions);
- give the FCA powers to specify the content requirements for a prospectus for admission to trading of 'transferable securities' on a UK regulated market or UK primary multilateral trading facility;
- Introduce a new regulated activity of operating an electronic system for public offers of relevant securities; and
- Designate certain activities for regulation under the Designated Activities Regime introduced by FSMA 2023.
- HM Treasury expects to lay the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 before Parliament before the end of 2023.
- The FCA will need to consult on its proposed use of new powers. It plans to formally consult in 2024. The FCA has published 4 pre-consultation engagement papers in May 2023 and two engagement papers in July 2023 on aspects of the regime. Feedback on the engagement papers is invited by 29 September 2023.

Possible Questions arising *(please add and amend)*

1. Should a TOTV approach be maintained, even if revised?
2. In the absence of a UK-TOTV.

a. What basis for making non-derivative financial instruments in scope of the UK transparency regime (ISIN?)

b. What basis for making derivatives come under the scope of the UK transparency regime (UPI⁺?)
c. Do we need a practical definition of a derivative under the RAO? (If C1-C10 are removed)
d. Is any role envisaged for Mutual Recognition ["Equivalence"]
3. How to create a list of "Real-time Liquid" Bonds
a. Sovereigns, Agencies, Supranationals?
b. Corporate Bonds? (only on issue size?)
c. Role of rating Agencies: any gaps, fluidity or duality between "Investment Grade" and "High Yield"
d. Are all convertibles and "other" notes to be illiquid?
e. Is the Bank of England approach to issue size buckets clear and transparent?
4. How to create a list of "Real-time Liquid" Derivatives
a. Sufficiency and straight-forwardness of the 3-qualifying criterion:
i. "standardised"
ii. CCP Cleared / "Clearing eligible"
iii. Where Market Participants can make realistic price/size comparisons
b. BOE Clearing Obligation ["CO"]
i. Complications around the term "clearing eligible"
1. Where / CCP location
2. Newly cleared products or terminations (e.g. ICE iTRAXX), minor clearing (e.g. FX derivatives), not quite clearing (e.g. Swap agent), exemptions (e.g. Compression)
3. Clearing of cash/ funding products per SEC currently
c. Other - Should any derivatives not mandated to be cleared come under enhanced liquidity?
i. BMR usage?
ii. (Mutual recognition)
d. Do TRS and Equity derivatives require a tailored regime for reporting? (presumably all illiquid.)
5. Trading Venue Methodologies
a. Is the RTS2 categorisation salvageable ?
b. For removal from Pre-trade transparency beyond RFQ and Voice-Hybrid
i. User specific liquidity pools such as Primary Dealers? (or is a primary dealership best limited to primary markets and nearby?)
ii. Auction systems ?
iii. If solely CLOB should all Pre-trade transparency requirement be delegated to the TV?
c. Are there any aspects of post-trade transparency that could be delegated to an RM but not also to MTF/ OTF?
d. Any comments on the exclusion of pre-arranged blocks not already clear from PS23/11: Guidance on the trading venue perimeter?
e. Where should considerations be given [if ever] to comparing Dark v Lit negotiation & execution quality (FCA propose comparable transaction size and scale)?
f. What would act as disincentives to the provision of trading interests being made available? [or the reverse...]
i. Likely a long list...
ii. Scope here for comments / concerns:
1. "Rate Cards" topic
2. "CTP inclusion" topic
3. Any time windows before matching (cf. CFTC 15 seconds)
g. Are derogations needed for packages?
6. FX Forwards and Derivatives
a. Should any products be made real-time transparent or left to venues?
b. Treatment of Third Country Venues under OPE
c. How should "Clearing eligible" be understood
d. Treatment of <2-day instruments
e. Treatment of forward starting instruments

Note of the call

i. FCA attendees
   a. Fabio Braga Fabio.Braga@fca.org.uk
   b. Stephen McGoldrick Stephen.McGoldrick@fca.org.uk
   c. John Wu john.wu@fca.org.uk
   d. Stephen Hanks stephen.hanks@fca.org.uk

ii. Discussion on CTP Consultation
   a. Narrow versus Broad tape approach under FCA concerns that no firms apply for the RFP.
   b. Concerns as to the capacity of a CTP to create, and commercialise a unique consolidated data set into derived data
   c. Whether a cross-border and/or mutually-recognised regime could be developed
   d. Segregation of the CT from the operator and the rights accruing to each, especially in the configuration of a transfer or termination of the 5-year term
   e. FCA confirmed 19th December for the dual publications of the CTP_PS & the Non-equity Transparency_CP.

iii. SH set out FCA Policy work on the Smarter Regulatory Framework
   a. Remaining changes to UK MiFID/R
   b. Simplify, rewrite and remove those layered and repeating aspects MiFID Org Reg and RAO/FSMA (such as the Financial Instruments perimeter guidance)
   c. Rewrite and merging of parts of COBS and SYSC
   d. Other Regulatory Perimeter issues remain with HMT

iv. SM noted that Consultation of Non-equity Transparency moving into finer details for both Bonds and Derivatives (likely not others) where the objective remains to simplify and to narrow the scope of requirements
   a. Pre-trade transparency is being removed, and therefore not under discussion for trading systems including RFQ, Voice/Hybrid and "'pre-arranging systems" per the FCA discussion in PS23/11: Guidance on the trading venue perimeter
   b. Revised rules to be entirely with the FCA Handbook, which means that RTS2 will disappear for the UK
   c. Application of a subset of instruments as to be "real-time transparent"
   d. Open question still as to whether to reapply a version of TOTV for which the scope would be any bonds or instruments that are traded in the UK; or to prescribe the scope between specified instruments traded in the UK, which would be categorised as either liquid or episodic
   e. FCA welcomes any industry comments, noting that the second approach had been preferred until some recent engagement had reconsidered the TOTV method.

v. Approach to bonds & derivatives
   a. Primary markets exempted
   b. Sovereign bonds specified according to an issue size categorisation as any codification of "On-the-Run" would be less objective.
   c. Corporate Bonds to be split into "High-yield" and "Investment Grade" based on work undertaken within the longstanding BOE/PRA Data Collection Study again with issue size as the primary variable.
   d. Derivatives to be treated under the "Class of Financial Instruments ["CFI"]" approach, but without any granularity from the Common Data Elements ["CDEs"], but rather by "UPI-plus[1]." The "plus" referring to the CCP eligibility and trade start-date.

vi. Orderbooks versus "Dark Volumes: FCA noted that absence of orderbooks in derivatives markets should require a discreet approach where transactions may be priced either outside any available CLOB or at an indicated mid-market cross.
   a. Incentives should be provided for in order to encourage and protect as many prices being made available as possible, whether onto a system that is not pre-trade transparent or onto one that is such as a CLOB.
   b. Rules books provision for "price or liquidity protection" should be based on whether order size in any lit systems is of meaningful scale when considering a framework for market abuse and monitoring.

[1] About the UPI – Unique Product Identifier; 02Aug2023.pdf

c. FCA, and other parties, agreed that there was no utility in the US/CFTC "15-second rule" for crossing trades

vii. Discussion on Privileged Transparency such as Primary Dealer Liquidity Pools
   a. Case of GEMM only liquidity venues discussed.
   b. SM had only considered these under the "primary market exemptions" akin to the way CD markets work and was interested to look at the role and use-case in continuous secondary markets. Cited the nuance of the desired approach to be "*Transparency v Access to Quotes.*"

viii. Other products
   a. FB noted the prospective treatment of other classes of financial instruments such as ETNs; CFDs; ETDs; C6, C7, C10 Commodity and Index Derivatives:- as holding no value to be included within the real-time transparency regime and having been failing in the RTS2 regime
   b. Some LIS outcomes were upside-down and the FCA shall propose to delegate appropriate transparency down to the Trading Venues for categorisation and calibration
      i. Some derogations appear to be RM only and others to all MiFIR TVs; but none to SIs
      ii. Very few of these asset classes were properly liquid and any that are, may well be better served under delegated outcomes, including any relevant pre-trade transparency, even if only offered to "members and participants" [*"dissemble the machinery"*]
   c. The FCA intends to ask TVs for information around these types of instruments in order to set up the requirements for trading venue rulebooks to exercise such delegations in a disclosed and non-discriminatory manner

ix. Discussion on FX Derivatives
   a. FCA was interested to discuss the derogations for post-trade transparency they could apply for FX instruments, notwithstanding any other HMT considerations as to the MiFID perimeter ["Commercial Purposes Exemption"...]
   b. FCA underscored the diversity of products, of market participants and use-cases; which led to a strong preference for delegating the transparency into rule-books
   c. Firms added that beyond the points above, transparency considerations turn on whether the transactions create out-of the-money "pin risks" or Gamma-peaks
   d. FCA also wanted to consider CCP-cleared versus uncleared considerations and the role of diverse versus homogeneous counterparty credit on market activity and structures.
   e. SM supposed still that the TVs were best placed to scale and apply the appropriate tests based on a waterfall of considerations such as the below, for which otherwise a set of FCA regulatory technical standards would be burdensome, broad-brush and require frequent resetting:
      i. Degree of instrument and contractual standardisation
      ii. Whether the instrument is CCP Cleared
      iii. Whether market participants could apply realistic comparisons between quotes and between venue liquidity pools.

Ends.

Key UK developments timeline

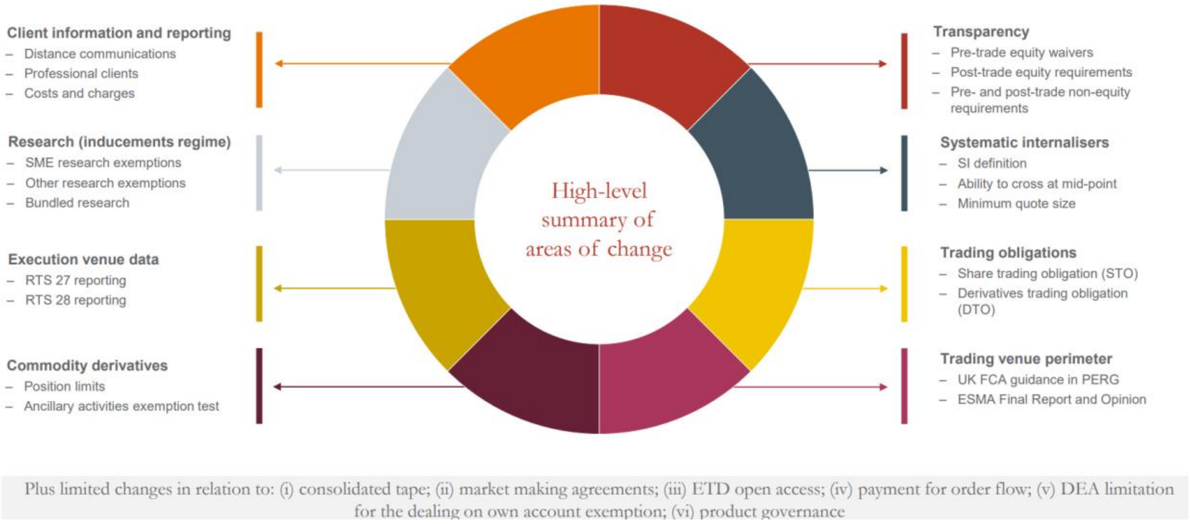

MiFID II/MiFIR changes since Brexit

| In the UK… | In the EU… |
|---|---|
| Brexit changes<br><br>The UK implemented nonpolicy changes to the MiFID legislation and rules so that they continued to be functional after the UK left the EU | UK status post-Brexit<br><br>The EU did not need to make legislative changes but did issue statements and commentary about the practical impact of the UK's departure |
| "Quick fix" changes<br><br>In response to Covid-19, the UK implemented changes to the MiFID legislation and rules to accommodate the pressures on firms. The UK also made related changes to the rules on investor reporting in 2022 | "Quick fix" changes<br><br>In response to Covid-19, the EU implemented changes to the MiFID legislation and rules to accommodate the pressures on firms |
| Review<br><br>In 2021, HMT carried out the Wholesale Markets Review (WMR), which proposed changes to the MiFID legislation and rules | Review<br><br>In 2022, the Commission launched a review which resulted in a proposed directive and regulation amending the MiFID regulatory framework |
| WMR rule changes<br><br>In 2022, the FCA consulted on changes to its rules which it was able to make under its existing powers – some of these changes are in force (but not all) | Political agreement<br><br>In June 2023, the Parliament and the Council reached political agreement on the amending proposals |
| WMR legislative changes<br><br>FSMA 2023 makes changes to MiFIR and the MiFI Regulations 2017, which implement WMR proposals and/or give the FCA powers needed to implement them | Next steps<br><br>Currently technical trilogues are ongoing, and publication in the OJ is not currently expected to be earlier than Q1 2024 |

European Venues & Intermediaries Association

London Energy Brokers' Association

Overview: key areas where there is movement *Since the UK left the EU, the UK and/or the EU have made or proposed changes in the following key MiFID areas.*



| Topic | UK change? | EU change? | Summary comment |
|---|---|---|---|
| Clarifying the trading venue perimeter | Yes | Yes | Both jurisdictions have issued guidance with a very similar approach to breaking down the definition of trading venue |
| Commodity derivatives. *For the UK and EU there are pre-existing changes to the scope of the regime as a result of the UK FCA Statement on Supervision of Commodity Position Limits and the EU quick fix amendment* | Yes | Yes | Both jurisdictions are revising the ancillary activities exemption test and changing the scope of the position limits regime, but in slightly different ways |
| Waivers from the transparency requirements for equities | Yes | Yes | Both jurisdictions are looking at the reference price waiver rules, but further changes are expected in the UK following the FCA's further review |
| Double Volume Cap | Yes | Yes | UK has removed the cap; EU proposes a 7% single volume cap |
| Systematic internalisers | Yes | No | Both jurisdictions are looking at the treatment of SIs in slightly different ways and notably the UK is introducing the new designated reporter regime |
| STO | Yes | Yes | UK has removed the obligation; EU is limiting scope |
| DTO | Yes | Yes | Both jurisdictions are aligning DTO with EMIR CO and both are reviewing the scope of post-trade risk-reduction services [*the concept of post-trade risk reduction services is also relevant to other areas such as the application of best execution requirements*] |

Both the UK and the EU have issued guidance on the trading venue perimeter. *There are some different focus areas, but both publications discuss how technology systems, such as order management systems and bulletin boards, should be assessed to see whether they meet the four key elements of the multilateral system definition.*

- Both the UK and the EU publications emphasise the need to carry out case-by case analysis for fringe cases looking at the four key elements of the multilateral systems definition
- Four key elements (both UK and EU)

1. *System or facility*
2. *Multiple third party buying and selling interests*
3. *Trading interests able to interact*
4. *Trading interests are in financial Instruments*

- ESMA's Opinion on the Trading Venue Perimeter

- *Communication tools*
- *Order management systems and execution management systems*
- *Request for quote systems*
- *Pre-arranged transactions*
- FCA trading venue perimeter guidance
- *Voice broking*
- *Internal matching*
- *Crowdfunding*
- *Bulletin boards*
- Market making agreements
- *The UK (but not the EU) has proposed to remove the requirement for algorithmic trading firms pursuing market making strategies to enter into market making agreements with trading venues*
- Open access regime for ETDs
- *The EU is proposing to remove the open access obligation for exchange-traded derivatives (ETDs)*
- *The UK has already suspended this obligation and expects to remove it in due course*
- Payment for order flow
- *In the EU, political trilogue discussions resulted in agreement to ban PFOF, which must be phased out by 30 June 2026, subject to an exemption for existing PFOF arrangements between firms and clients in the same member state*
- *The UK general position is that payment for order flow is already prohibited in the vast majority of cases by the MiFID inducement rules.*
- Direct electronic access
- *The EU (but not the UK) has proposed to remove the reference to direct electronic access from the dealing on own account exemption*
- *Currently, DEA firms are required to be authorised even when dealing on own account (i.e. the article 2(d) exemption is not available to DEA firms)*
- Ongoing movement towards the development of consolidated tapes (UK and EU)
- OTC / ETD derivatives identifiers
- Currently, OTC derivatives are identified for MiFIR purposes by their ISIN.
- There are well-documented issues with using the ISIN for transparency and transaction reporting.
- Ongoing discussions in the industry and among regulators persist.
- In a number of jurisdictions regulators are considering or have confirmed a move to UPI, or “UPI+” – a version of UPI augmented with extra data points.
- Issues with ISIN
- *Inconsistent specificity*
- *In some cases, granularity leads to distinctions between identical OTC derivative products (e.g. because of the maturity date field)*
- *In other cases, lack of granularity means that reasons for pricing differences can be unclear*
- *Cost implications of moving from ISIN*
- *How to define UPI+ and UPI++*
- *Interaction between RTS 2, RTS 22 and RTS 23 and technical dependencies*
- *Learning lessons from other jurisdictions (notably the US)*
- Jurisdictions/regulators moving to UPI (or UPI+)
- *UK - FCA minded to replace ISINs with UPI+*
- *Australia – ASIC confirmed UPI to be used from October 2024*
- *Singapore – MAS confirmed UPI to be used from October 2024*
- *Japan – FSA confirmed UPI (and Delta) to be reported from 7 April 2025*
- *US – CFTC confirmed UPI to be used from January 2024 (SEC expected to follow suit)*
- *Canada – expected to move from April 2024 (but no formal announcement yet)*
- *Hong Kong – expected to move (but no formal announcement yet)*

The key role of SIs as liquidity providers is recognised both in the UK and the EU. *There are proposals on both sides of the channel focussing on the current SI requirements to carry out technical frequent assessments to establish their SI or non-SI status in relation to specific asset classes, and their ability to trade efficiently.*

- New designated reporter status – UK proposal but also discussed in the EU; *This status will apply across all asset classes. Designated reports will take on post-trade reporting obligations, making it easier to identify the reporting party for a transaction.*
- Ability to cross at midpoint – UK and EU proposals; *Before now, SIs have been subject to the tick size regime and have only been able to match orders at midpoint for LIS orders. The UK has lifted this LIS limitation. The EU is discussing changing the LIS limitation but may not lift it entirely.*
- Minimum quote size – UK and EU proposals; *The UK WMR found that there is industry appetite to increase the minimum from 10% to nearer 100%. The EU proposes to raise the minimum to twice the standard market size.*
- New definition – UK and EU proposals; *FSMA 2023 gives the FCA powers to change the SI definition criteria. In the EU, discussions acknowledge that the current technical criteria and assessment requirements are unduly burdensome*

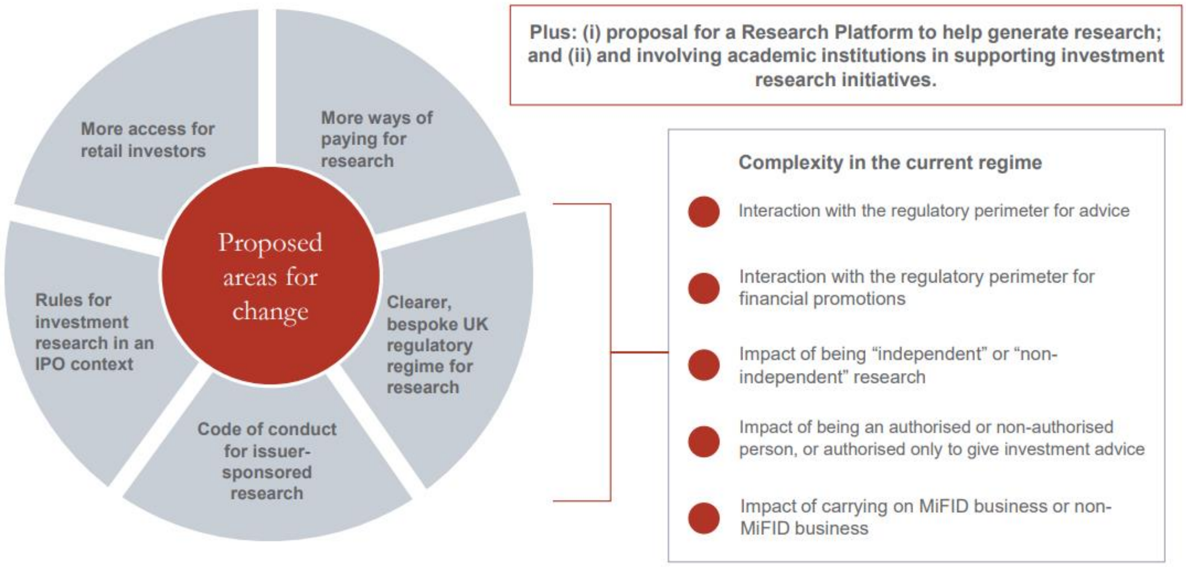
Some impact for firms and markets in the UK in practice; *It is difficult to predict exactly what the effects of the UK WMR proposals will be but there are some key practical questions that may be helpful to consider when carrying out regulatory monitoring and horizon-scanning.*

- *Systematic internalisers – possibility of moving to designated reporter status and no longer electing to be an SI*
- *Firms using research providers – restructuring commission arrangements if the FCA proceeds with the Investment Research Review recommendations*
- *Technology and light-touch activities in relation to trading facilitation – analysis of whether these fall within the trading venue perimeter*
- *Removal of double volume cap – possible impact on dark pool trading*
- *Data providers and users – consolidated tape and intention for more effective transparency (e.g. equity waivers and post-trade risk reduction services)*
- *Managing ongoing consequences of divergence*

| Topic | UK change? | EU change? | Summary comment |
|---|---|---|---|
| Providing client information electronically | Yes | Yes | *Broadly the same – the change shifts the default method of providing clients with information to electronic means* |
| Relaxation of distance communications requirements | Yes | Yes | *Broadly the same – the change allows costs and charges information to be provided after the transaction concludes where the client consents* |
| Relaxation of costs and charges disclosure requirements for professional clients | Yes | Yes | *Broadly the same – the change removes the costs and charges requirements (Article 50 of the MiFID Org Reg) for professional clients* |
| Exemption from the research payment rules for SME research | Yes | Yes | *Same intention but different thresholds of market capitalisation – UK threshold is below £200m and EU threshold is below EUR 1bn* |
| Exemptions from the research payment rules in other cases | Yes | No | *It is possible that the UK research regime will differ significantly from the EU research regime in future – see next slide* |
| Relaxation of reporting requirements for professional clients | Yes | Yes | *Broadly the same – the change removes, for professional clients: (i) the "adequate reports" requirement and (for investment advice and portfolio management); and (ii) the cost-benefit analysis requirement* |
| Removal of RTS 27 reporting for execution venues | Yes | Yes | *Same effect – on the EU side, this is currently not a legislative change, but ESMA has made a statement that there is no regulatory expectation of compliance* |
| Removal of RTS 28 reporting for firms | Yes | No | *EU firms still have to make RTS 28 reports* |

The UK research regime; *The UK "quick fix" amendments went further than the EU "quick fix" amendments in relation to research (see right). In addition, the UK Investment Research Review has made various proposals in relation to changes to the current research rules, and the FCA has stated it will aim to make relevant rule changes in H1 2024*

- UK "quick fix" changes not replicated in the EU:
  - Exemption for third party research on fixed income currencies and commodities instruments
  - Exemption for research providers not (and not in a group) providing execution services
  - Clarification that openly available written research is out of scope




UK "smarter regulatory framework"

| PS 23/4 changes | FSMA 2023 changes |
|---|---|
| – Streamlining the lists of non-price forming transactions used for different purposes in the context of equity transparency | – New FCA rule-making powers for pre-trade transparency requirements for equity instruments and pre- and post-trade transparency requirements for non-equity instruments (including waivers, waiver suspensions and deferrals) |
| – Amending the definition of most relevant market for the purposes of liquidity to remove restrictions in relation to the tick size regime [*in force*] | – Removal of the double volume cap (DVC) mechanism and the share trading obligation (STO) [*in force*] |
| – Remove the size threshold for OMF order waivers [*in force*] | – New definition of SI and new FCA power to make rules for this purpose |
| – Introduction of the designated reporter regime | – Extended ability for SI to trade at midpoint [*in force*] |
| – Amendments to reporting fields and trade flags | – Syncing up the derivatives trading obligation (DTO) with the EMIR clearing obligation [*in force*] |
| - guidance on the trading venue perimeter | – New FCA rule-making powers to suspend/modify the DTO |
| | – New FCA rule-making powers for risk reduction services |
| | – Changes to the scope of the commodity derivatives position limits regime |

The UK's smarter regulatory framework project includes a number of workstreams that also impact on how the financial markets will function going forward.

- UK Listings Review and resulting FCA Engagement Papers
  - Improvements to the UK markets
  - Additionally the Secondary Capital Raising Review
- Global ambitions
  - UK reactions to wider EU and international capital markets developments
  - New secondary objectives for the regulators
- Retail investor engagement
  - Access to the markets for retail investors
  - Impact of EU Retail Investment Strategy and Consumer Duty
- New types of market
  - Intermittent trading venue
  - Digital assets
  - Public-private exchange

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Edinburgh Reforms tracker – where are we now? *On 9 December 2022, the Chancellor of the Exchequer, Jeremy Hunt MP, unveiled at an industry roundtable in Edinburgh over 30 regulatory reforms. These "Edinburgh Reforms" followed on from the 2022 Chancellor's Autumn Statement in which he highlighted financial services as one of the UK's five key growth sectors. The reforms themselves are intended to turbocharge UK growth and deliver a smarter and home-grown regulatory framework for the UK.*

- Since the Chancellor's announcement the Government has published various papers and the Financial Services and Markets Act 2023 which provides for the review, repeal, reform and replacement of EU-derived financial services legislation has been published.
- This Regulation Tomorrow blog highlights our blogs and podcasts covering many of the papers that have so far been published.

General

- "Edinburgh Reforms" of UK financial services | Regulation Tomorrow
- The Edinburgh Reforms: What do they mean for markets? | Regulation Tomorrow 27 Jan 23
- The Edinburgh Reforms: Initial takeaways | United Kingdom | Global law firm | Norton Rose Fulbright 9 Dec 22

Financial Services and Markets Act 2023

- Text of Financial Services and Markets Act is published | Regulation Tomorrow
- HM Treasury publishes Financial Services and Markets Act 2023 explanatory notes | Regulation Tomorrow
- HM Treasury publishes the Financial Services and Markets Act 2023 (Commencement No.1) Regulations 2023 | Regulation Tomorrow
- HM Treasury publishes the Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations 2023 | Regulation Tomorrow
- HM Treasury publishes Statutory Instruments 2023 Financial Services and Markets the Financial Services and Markets Act 2023 (Commencement No.3) (Amendment) Regulations 2023 | Regulation Tomorrow

Repeal of EU law

- Edinburgh Reforms: HM Treasury Policy Statement and retained EU financial services law | United Kingdom | Global law firm | Norton Rose Fulbright
- Edinburgh Reforms – Building a smarter financial services framework for the UK | Regulation Tomorrow

- Edinburgh Reforms: HM Treasury Policy Statement and retained EU financial services law | United Kingdom | Global law firm | Norton Rose Fulbright
- HM Treasury Policy Paper 'Building a Smarter Financial Services Regulatory Framework for the UK: HM Treasury's Plan for Delivery' | Regulation Tomorrow

International competitiveness and growth objective

- FCA updates webpage on FRF Review | Regulation Tomorrow
- BoE publishes speech on the PRA's new competitiveness and growth objective | Regulation Tomorrow

MiFID II / MiFIR

- FCA provides further update on ancillary activities exemption for commodity derivatives | Regulation Tomorrow
- New split the difference podcast: Consolidated Tape | Regulation Tomorrow
- HM Treasury publishes policy paper on the Investment Research Review | Regulation Tomorrow
- FCA revokes its transitional direction on the share trading obligation | Regulation Tomorrow
- FCA updates statements of policy on the operation of the MiFID transparency regime | Regulation Tomorrow
- FCA updates statement on use of the temporary transitional power to modify the UK's derivatives trading obligation | Regulation Tomorrow
- FCA Policy Statement on improving equity secondary markets | Regulation Tomorrow
- FCA announces further wholesale markets reforms | Regulation Tomorrow

Securitisation

- The Edinburgh reforms and securitisation: The road ahead | Regulation Tomorrow
- PRA consults on the general requirements for securitisation | Regulation Tomorrow
- HM Treasury publishes near-final draft SI – The Securitisation Regulations 2023 | Regulation Tomorrow
- FCA consults on proposed securitisation rules | Regulation Tomorrow
- FCA releases SFTR publications | Regulation Tomorrow

PRIIPs

- FCA Discussion Paper on Future Disclosure Framework | Regulation Tomorrow
- "Edinburgh Reforms" of UK financial services | Regulation Tomorrow (HM Treasury consultation, PRIIPs and UK Retail Disclosure)
- HM Treasury publishes consultation response on UK retail disclosure | Regulation Tomorrow

EMIR

- PRA and FCA consult on changes to UK EMIR bilateral margining requirements | Regulation Tomorrow

Market abuse

- HM Treasury publishes draft SI on insider dealing | Regulation Tomorrow
- Joint HM Treasury ad FCA statement on the criminal market abuse regime | Regulation Tomorrow

Prospectus

- UK Prospectus Regime Review consultation response | Regulation Tomorrow
- HM Treasury publishes near-final draft SI – the Public Offers and Admissions to Trading Regulations 2023 | Regulation Tomorrow

Short Selling Regulation

- "Edinburgh Reforms" of UK financial services | Regulation Tomorrow (Call for evidence, Short Selling Regulation Review)
- HM Treasury publishes response to UK Short Selling Regulation call for evidence and launches further consultation | Regulation Tomorrow

Payments

- "Edinburgh Reforms" of UK financial services | Regulation Tomorrow (HM Treasury consultation, Information requirements in the Payment Accounts Regulations 2015)
- HM Treasury Payment Services Regulations 2017 Review and Call for Evidence | Regulation Tomorrow
- HM Treasury publishes consultation response on Payment Accounts Regulations reforms | Regulation Tomorrow
- HM Treasury publishes call for input to inform the Future of Payments Review 2023 | Regulation Tomorrow
- HM Treasury publishes response to consultation on payments regulation and the systemic perimeter | Regulation Tomorrow
- Policy_Note_FCA_Rulemaking_for_Payments_Illustrative_Statutory_Instrument__1_.pdf (publishing.service.gov.uk)
- Draft_Statutory_Instrument_Payment_Services_and_E-Money_Regulations__1_.pdf (publishing.service.gov.uk)

Ringfencing

- The Edinburgh Reforms – the future of ring-fencing | Global law firm | Norton Rose Fulbright
- Edinburgh Reforms: Ring fencing | Regulation Tomorrow
- HM Treasury publishes Call for Evidence on aligning the ring-fencing and resolution regimes | Regulation Tomorrow

Building societies

- HM Treasury consultation – amendments to the Building Societies Act 1986 | Regulation Tomorrow

Consumer credit

- "Edinburgh Reforms" of UK financial services | Regulation Tomorrow (HM Treasury consultation, Reforming the Consumer Credit Act 1974)
- Reforming the Consumer Credit Act 1974 | Global law firm | Norton Rose Fulbright
- UK commits to reform of the Consumer Credit Act | Regulation Tomorrow
- HM Treasury publishes consultation response on Consumer Credit Act reform | Regulation Tomorrow

New Designated Activities Regime

- The Designated Activities Regime: what is it and how will it impact firms? | Global law firm | Norton Rose Fulbright
- FCA publishes updated perimeter report | Regulation Tomorrow

SMCR reforms

- Edinburgh Reforms – SMCR | Regulation Tomorrow
- Regulation Tomorrow podcast – Edinburgh Reforms Series: SMCR | Global law firm | Norton Rose Fulbright

ESG

- HMT consults on the future regulatory regime for ESG ratings providers | Regulation Tomorrow
- HM Government publishes the 2023 Green Finance Strategy | Regulation Tomorrow

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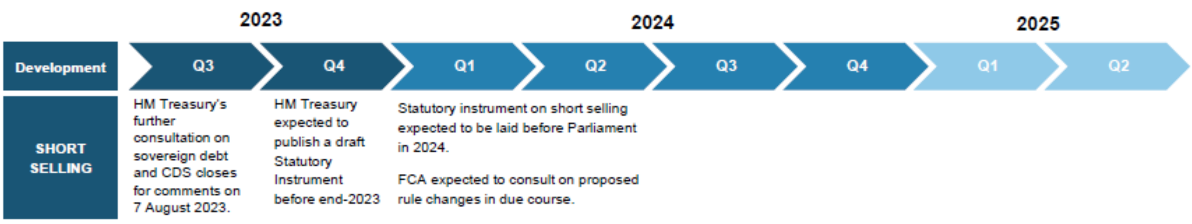
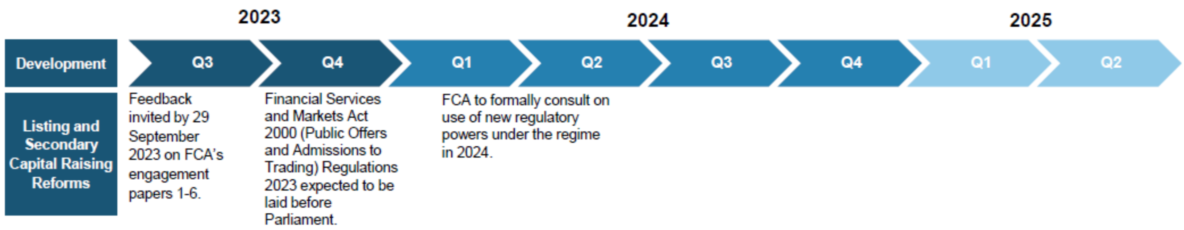
## SHORT SELLING




The Financial Services and Markets Act 2023l (FSMA 2023), enacted on 29 June 2023, will repeal retained EU law on financial services and will give HM Treasury powers to amend, restate and replace that law.

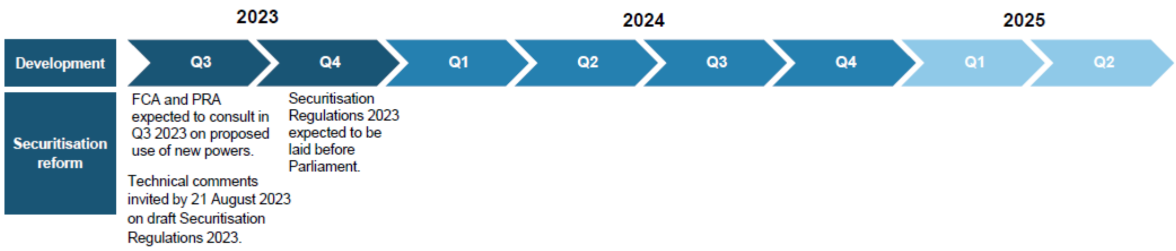
- IHM Treasury is exploring how, on repeal of the UK short Selling Regulation (UK SSR) the UK short selling regime could be reformed to make it work better for UK markets.
- In December 2022, HM Treasury published a call for evidence on replacement of the UK SSR, with the aim of ensuring that the UK's approach to regulating the short selling of shares admitted to trading reflects the specificities of UK markets, continuing to facilitate the benefits of short selling, whilst also protecting market participants and supporting market integrity.
- On the forward horizon
- Reform of the UK SSR has been allocated to Tranche 2 of the repeal and reform programme outlined in the Edinburgh Reform package published on 9 December 2022.
- HM Treasury's call for evidence on the UK SSR closed on 5 March 2023. Responses will inform considerations as to the appropriate framework for the regulation of short selling. HM Treasury published a response document on 11 July 2023 summarising the feedback received.
- The call for evidence did not explore other specific provisions in the UK SSR including the short selling regime for UK sovereign debt and UK sovereign credit default swaps. On 11 July 2023, HM Treasury published a separate consultation document on sovereign debt and CDS aspects of the regime, which summarises views provided in response to the call for evidence. HM Treasury proposes to remove restrictions on uncovered short positions in UK sovereign debt and UK sovereign debt CDS, remove reporting requirements and amend other parts of the short selling regime where necessary, such as the market maker and authorised primary dealer exemptions. The further consultation is open for feedback until 7 August 2023.
- HM Treasury expects to lay a draft statutory instrument (SI) on the replacement short selling regime by the end of 2023, with a view to laying the finalised SI before Parliament in 2024.
- The FCA is expected to consult on relevant rule changes to reflect the short new selling regime in due course.

LISTING AND SECONDARY CAPITAL RAISING REFORMS




- FSMA 2023, which was enacted on 29 June 2023, enables the government to reform the UK's prospectus regime, to implement recommendations from Lord Hill's UK Listing Review which aims to widen participation in the ownership of public companies, simplify the UK capital raising process, and make the UK a more attractive destination for initial public offerings.
- HM Treasury has also been working with the Department for Business, Energy & Industrial Strategy to deliver the recommendations made to government as part of the Secondary Capital Raising Review, and more broadly on reforms to corporate governance, aiming to further enhance the attractiveness of UK public markets.
- On the forward horizon
- The UK Prospectus Regulation has been allocated to Tranche 1 of the repeal and reform programme announced in December 2022 as part of the Edinburgh Reforms package.
- HM Treasury published an illustrative draft of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 on use of its powers in FSMA 2023 to amend the UK prospectus regime. This was followed by a revised draft in July 2023 on which technical comments are invited by 21 August 2023. Among other things the draft SI would:
  - create a new prohibition on public offers of 'restricted securities' in the UK (subject to exemptions and exclusions);
  - give the FCA powers to specify the content requirements for a prospectus for admission to trading of 'transferable securities' on a UK regulated market or UK primary multilateral trading facility;
  - Introduce a new regulated activity of operating an electronic system for public offers of relevant securities; and
  - Designate certain activities for regulation under the Designated Activities Regime introduced by FSMA 2023.
- HM Treasury expects to lay the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 before Parliament before the end of 2023.
- The FCA will need to consult on its proposed use of new powers. It plans to formally consult in 2024. The FCA has published 4 pre-consultation engagement papers in May 2023 and two engagement papers in July 2023 on aspects of the regime. Feedback on the engagement papers is invited by 29 September 2023.

## SECURITISATION REFORM

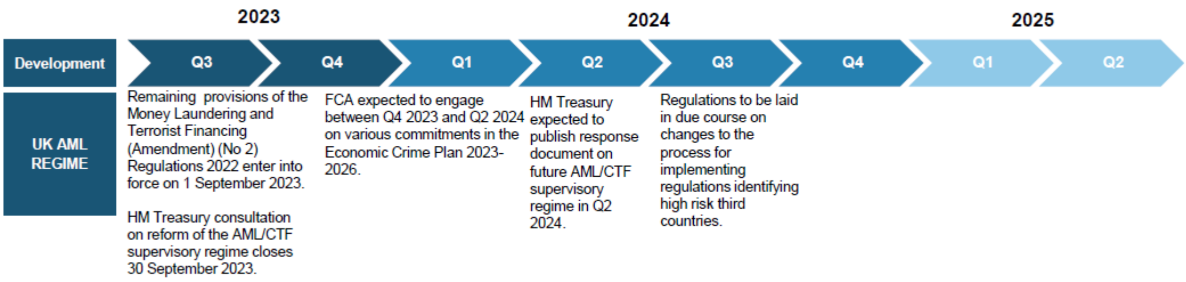



FSMA 2023, 2023, enables the government to reform the UK's securitisation regime and deliver the recommendations of the 2021 Securitisation Review with the aim of:

(i)bolstering securitisation standards in the UK, in order to enhance investor protection and promote market transparency; and

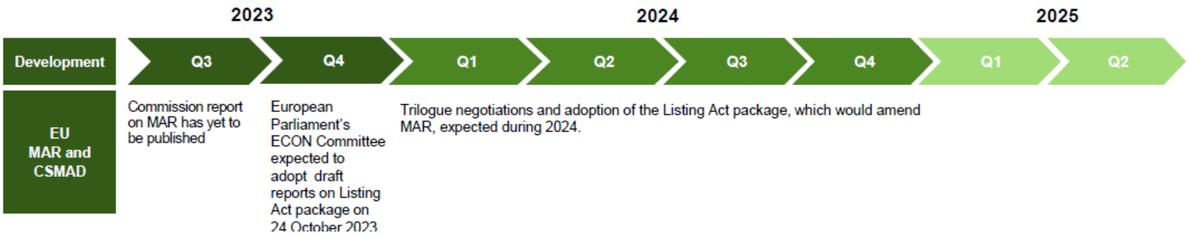
# AML & MAR

## UK AML REGIME



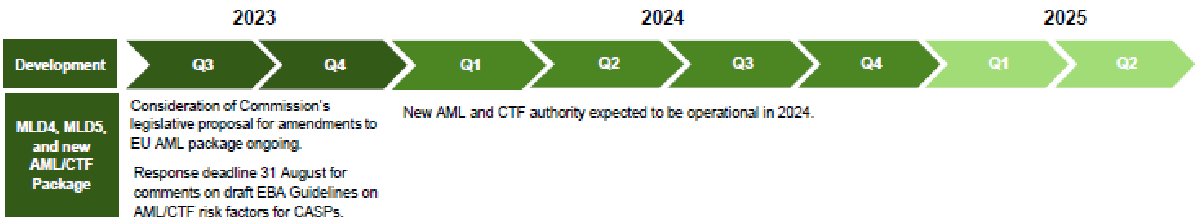

- On 21 July 2022, the UK's Money Laundering and Terrorist Financing (Amendment) (No 2) Regulations 2022 were passed. These set out specific amendments to the UK's AML regime, which have now largely been phased in, with the remaining provisions taking effect on 1 September 2023.
- Alongside the consideration of these specific amendments, the UK has been conducting a wider review of its AML regime. A report on this review was published on 24 June 2022. This indicated that further reform to the UK's AML regime is needed and, therefore, further consultations and amendments to the regime should be expected. In March 2023, the Government published its second Economic Crime Plan, covering the period 2023-2026. outlining an ambition for an improved end-to-end response to tackling money laundering, which will require further targeted consultations.
- On the forward horizon
- 
- The Money Laundering and Terrorist Financing (Amendment) (No 2) Regulations 2022 were made on 21 July 2022. They make various targeted amendments to the UK's Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, including in relation to the reporting of discrepancies and requirements relating to crypto asset businesses and cryptoasset transfers. Most of the requirements entered into force on 11 August 2022, 1 September 2022 and 1 April 2023 . The remaining provisions relate to [crypto] will enter into force on 1 September 2023.
- On 30 June 2023, HM Treasury published a consultation on reform of the anti-money laundering and counter-terrorism financing supervisory regime, which set out four possible models for a future AML/ CTF supervisory system. The consultation closes for comments on 30 September 2023, with HM Treasury planning to issue a response document in Q2 2024.
- On 20 June 2023, the government published an impact assessment on proposals for a change in the process by which regulations identifying high-risk third countries for money laundering purposes are implemented. Regulations will be laid in due course laid to make the proposed legislative amendments.
- The Economic Crime Plan 2023-2026 sets out a range of commitments aimed at combatting the criminal abuse of cryptoassets. The FCA is expected to engage between Q4 2023 and Q2 2024 on various commitments, including: delivering training to law enforcement and partner agencies to improve understanding of the UK cryptoasset regime; updating its cryptoasset business registration webpages and providing tailored communications where necessary to improve understanding of cryptoasset regulation; and engage with crypotasset businesses and monitoring their compliance with the "travel rule".

## EU MAR AND CSMAD




- MAR and CSMAD; framework. MAR extended the scope of the market abuse regime and introduced new requirements including in relation to insider lists, disclosure of inside information and reporting of suspicious orders and transactions.
- CSMAD sets minimum requirements for EU member states' criminal sanctions regimes for market abuse.
- On the forward horizon
- MAR required the Commission to submit a report on MAR and, if the Commission considered this to be appropriate, a proposal for amendments to MAR, by 3 July 2019. In September 2020, ESMA published a report on MAR. The Commission's report has yet to be published.
- In December 2022, the Commission published a package of proposals to simplify EU listing rules, referred to as the Listing Act package (see slide 19). A measure supporting the EU's Capital Markets Union agenda, this will, among other things, amend MAR to:
  - narrow the scope of the obligation to disclose inside information and enhance legal clarity as to what information needs to be disclosed and when;
  - clarify the conditions under which issuers may delay disclosure of inside information; clarify the market sounding procedure; simplify the insider lists regime; and
  - simplify the reporting mechanism for buy-back and stabilisation programmes. The proposals are continuing through the EU legislative process.
- The European Parliament's ECON committee is expected to vote on its draft reports on the Listing Act package on 24 October 2023. Third drafts of the reports were published in June 2023.

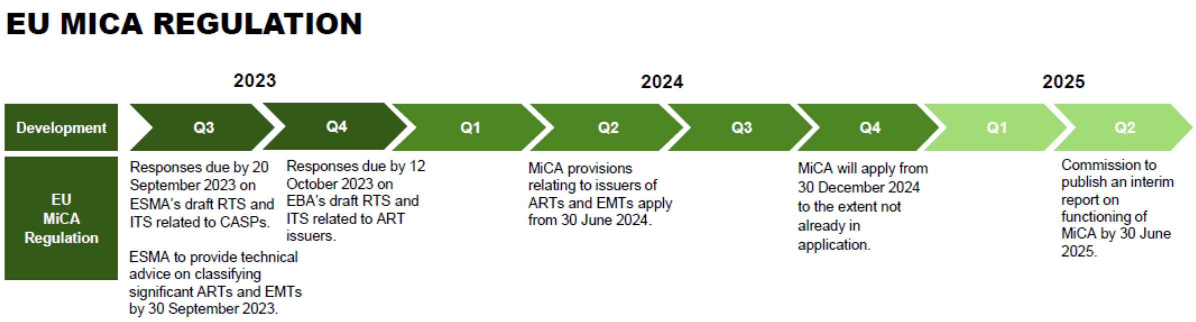
## EU MLD4, MLD5 AND THE NEW AML AND CTF PACKAGE




- MLD4 contains the EU's anti-money laundering framework. MLD5 made targeted amendments to MLD4 to increase transparency around owners of companies and trusts through the establishment of public beneficial ownership registers, prevent risks associated with the use of virtual currencies for terrorist financing, restrict the anonymous use of pre-paid cards, improve the safeguards for financial transactions to and from high-risk third countries and enhance Financial Intelligence Units' access to information.
- In 2021, the Commission adopted an ambitious new package of legislative proposals, intended to further strengthen and update the AML and CTF framework.
- On the forward horizon

- In July 2021, the Commission adopted a package of legislative proposals: (i) a regulation establishing a new EU AML and CTF authority (AMLA Regulation); (ii) a new regulation on AML and CTF (AML Regulation)'; (iii) a sixth directive on AML and CTF (MLD6); and (iv) a regulation on information accompanying transfers of funds and certain cryptoassets (revised recast Wire Transfer Regulation).
- The package continued its progress through the EU legislative process in 2022, with the Council agreeing its general approach in June and December 2022 and the European Parliament agreeing its negotiating position in April 2023. The revised recast Wire Transfer Regulation was adopted in May 2023 and published in the Official Journal on 9 June 2023. Trilogue negotiations with respect to the remainder of the package are ongoing.
- Following a consultation between December 2022 and February 2023, in March 2023 the EBA published new and revised guidelines on (i) policies and controls for the effective management of money laundering and terrorist financial risks when providing access to financial services; and (ii) customer due diligence.
- On 31 May, EBA launched a consultation on proposals to change the scope of its guidelines on AML and CTF risk factors under MLD4 to include the specific features of cryptoassets and cryptoasset service providers (CASPs). The consultation closes on 31 August 2023 and revised guidelines will be published in due course.
- It was originally expected that the new AML and CTF authority, created under the new AML package, would be operational in early 2024 but this timeline may be extended.

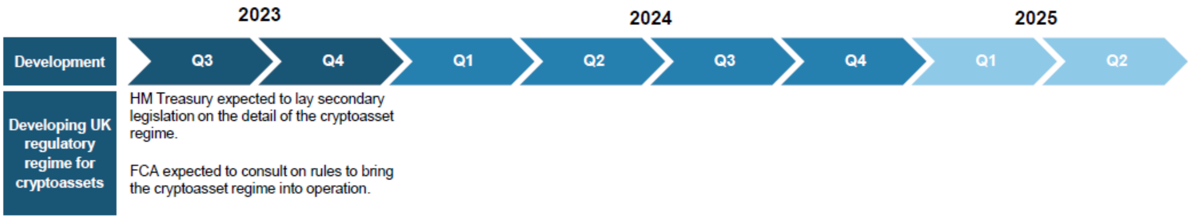
## Crypto & DLT




- MiCA applies with respect to cryptoassets that do not qualify as MiFID financial instruments, deposits or structured deposits or traditional e-money under existing EU financial services legislation. In-scope cryptoassets are stablecoins ('Asset Referenced Tokens' (ARTs) and 'e-money Tokens' (EMTs)) and utility tokens ('other cryptoassets').
- As well as placing obligations on those who issue or offer cryptoassets to the public, MiCA provides a framework for service providers ('CASPs'), which will bring in separate authorisation and ongoing requirements for activities such as trading and custody of this asset class. It will ensure among other things that customer assets are properly segregated from a cryptoasset firm's own assets and will ensure the cryptoassets firm has enough liquidity on hand in the form of reserves to meet customer withdrawals. It will also introduce a market abuse regime.
- On the horizon:
- MiCA was published in the Official Journal on 9 June 2023 and entered into force on 29 June 2023.
- MiCA's provisions related to stablecoins (Asset Referenced Tokens and E-Money Tokens) apply from 30 June 2024, with the remainder of its provisions applying from 30 December 2024.
- MiCA will be supported by further 'Level 2' delegated acts, regulatory technical standards (RTS) and implementing technical standards (ITS), and 'Level 3' guidelines:

- The Commission issued a provisional call for evidence to ESMA in January 2023, requesting technical advice by 30 September 2023 to inform a future Delegated Act on classification of asset-reference tokens and e-money tokens as significant.
- In July 2023, the EBA launched consultations on draft RTS on changes in control of ART issuers and ART issuers' complaints-handling, and draft RTS and ITS on ART issuer authorisation, for responses by 12 October 2023.
- In July 2023, ESMA published consultations on draft RTS and ITS related to CASPs' notification and authorisation requirements, conflicts management, complaints handling and change in control, for responses by 20 September 2023.

DEVELOPING UK REGULATORY REGIME FOR CRYPTOASSETS




- On 1 February 2023, HM Treasury published a consultation on the future UK regulatory approach to cryptoassets other than stablecoins. The response deadline for the consultation was 30 April 2023.
- HM Treasury proposes to add cryptoassets to the list of "specified investments" under the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (the **RAO**) and to create various new regulated activities or designated activities (under the new designated activities regime introduced under the Financial Services and Markets Act 2023 (**FSMA 2023**) relating to cryptoassets. Many of these proposed activities mirror, or closely resemble, regulated activities under the existing FSMA regime. The proposals include an issuance and disclosures regime for cryptoassets, a market abuse regime, and a regime for cryptoasset services such as lending and borrowing, trading, brokerage, platform operation and custody.
- **On the horizon:**
- The FSMA 2023, which received Royal Assent on 29 June 2023, enables HM Treasury to expand the UK's regulated activities framework to encompass cryptoasset related activities.
- HM Treasury is expected to provide feedback on responses to its February consultation and to lay secondary legislation covering the detail of the regime. No firm timing is currently indicated.
- The FCA is also expected to consult and make the wide range of relevant rules under its general rule making powers to bring the regulatory regime into operation. No firm timing is currently indicated.
- Separate proposals are under development to bring cryptoasset promotions within the scope of the UK financial promotions regime (see **slide 60**).

**HMT publishes final proposals for UK cryptoasset regulation;** *On 30 October 2023, HM Treasury published its final proposals for the future financial services' regulatory regime for cryptoassets in the UK. These proposals are set out in HMT's response to its February 2023 consultation and call for evidence on the topic, its response to the May 2022 consultation on managing the failure of systemic digital settlement asset (including stablecoin) firms, and a policy paper giving an update on plans for the regulation of fiat-backed stablecoins.*

- The highly anticipated package of HMT crypto policy announcements was released on Monday 30th Oct. The response is almost 100 pages long and very comprehensive. It additionally acknowledged that certain stablecoins have the ability to become widespread means of payment, following on from its consultation last year on proposals to extend the regulatory perimeter to stablecoins.

- The Treasury confirmed that the government intends to introduce secondary legislation by 2024 to enable it to regulate stablecoins. It will do this by adapting the existing financial services framework: for payments using the Payment Services Regulation, and for issuance and custody, using the Regulated Activities Order.
- The government will expand the list of '*Specified Investments*' in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) and require firms undertaking relevant activities involving cryptoassets "by way of business" to be authorised by the FCA;
  - A new regulated activity for custody will be created covering the (i) safeguarding, (ii) safeguarding and administration, and (iii) the arranging of safeguarding or safeguarding and administration, of a cryptoasset.
  - The proposed regime does not intend to capture activities relating to cryptoassets which are specified investments that are already regulated – e.g., security tokens, or derivatives.
  - Activities relating to truly unique or non-fungible NFTs that are more akin to digital collectibles or artwork than a financial services (in the general sense) or product should not be subject to financial services regulation.
  - A regulatory framework for persons operating a cryptoasset trading venue will be created which would be based on existing RAO activities of regulated trading venues – including the operation of an MTF.
  - A new set of regulated activities relating to the intermediation of cryptoassets, drawing from analogous activities in the existing regulatory perimeter (i.e., 'dealing in investments as agent' and 'dealing in investments as principal') will be created.
  - In keeping with the prior approach, the entire paper makes no mention of derivatives on crypto-assets, nor any derivatives on a trading venue, nor the role for stablecoins or other ARTs to be represented as derivatives, nor to be used as margin and collateral for derivative trading.
- *{{Noting also the parallel but contrasting Australian policy statement that is also attached for reference, Regulating Digital Asset Platforms (Proposal paper); Australian Government Treasury; 28Oct2023.pdf}}*
- Phase 2 secondary legislation is scheduled for 2024 and detailed in the table:

| Table 4.A Proposed scope of cryptoasset activities to be regulated under Phase 2 | | |
|---|---|---|
| Activity category | Phase 2 sub-activities (indicative, non-exhaustive) | Chapter |
| Issuance activities | Admitting a cryptoasset to a cryptoasset trading venue | Chapter 5 |
| | Making a public offer of a cryptoasset | Chapter 5 |
| Exchange activities | Operating a cryptoasset trading venue which supports:<br>▪ the exchange of cryptoassets for other cryptoassets<br>▪ the exchange of cryptoassets for fiat currency<br>▪ the exchange of cryptoassets for other assets (e.g. commodities) | Chapter 6 |
| Investment and risk management activities | • Dealing in cryptoassets as principal or agent<br>• Arranging (bringing about) deals in cryptoassets<br>• Making arrangements with a view to transactions in cryptoassets<br>• Making arrangements with a view to transactions in cryptoassets | Chapter 7 |

| | | |
|---|---|---|
| Lending, borrowing & leverage activities | Operating a cryptoasset lending platform | Chapter 10 |
| Safeguarding and /or administration (custody) activities | Safeguarding or safeguarding and administering (or arranging the same) a cryptoasset other than a fiat-backed stablecoin and/or means of access to the cryptoasset (custody) | Chapter 8 |

4. Future of financial services regulatory regime for cryptoassets: Response to consultation and CfE;
*In the response to its February 2023 consultation paper and CfE, HMT confirms its final proposals for cryptoassets regulation in the UK, including its intention to bring a number of crypto activities into the regulatory perimeter for financial services for the first time.*

- The February 2023 consultation set out extensive proposals for a UK regime for cryptoassets, which included plans to regulate core activities such as custody and lending and to bring centralised crypto exchanges into the scope of financial services regulation.
- HMT confirms in its response that most aspects of the proposals were well-received by the large majority of respondents, although it has modified certain features of the future framework to take onboard the evidence presented. It also sets out some actions that will be taken forward to provide further clarity on key areas of interest.
- Consultation Outcome Document provides the government's response to its February 2023 consultation, and confirms its final proposals for cryptoasset regulation in the UK
  - The government has confirmed its final proposals for cryptoasset regulation in the UK, including its intention to bring a number of cryptoasset activities into the regulatory perimeter for financial services for the first time.
  - This document provides the government's response to the consultation and call for evidence on the future financial services regulatory regime for cryptoassets, which was published on 1 February 2023 and closed on 30 April 2023.
  - It summarises the feedback received by HM Treasury in response to the consultation, and details how this has influenced further development of the government's approach.
  - The UK remains committed to creating a regulatory environment in which firms can innovate, while crucially maintaining financial stability and clear regulatory standards so that people can use new technologies both reliably and safely.
- Noting in particular: "*Chapter 6; Regulatory outcomes for operating a cryptoasset trading venue*" – c, 48-60 responses to this section.
  - A large number of responses suggested that the existing MiFID and FSMA frameworks were largely adequate – or at least served as a good starting point.
  - Many also noted that the proposed approach would bring beneficial consistency and familiarity and could encourage firms that operate already-regulated platforms to participate in the cryptoasset sector. A common theme of concern was proportionality and international competitiveness.
  - In particular, many responses warned that excessively stringent prudential requirements and onerous reporting requirements could result in crypto trading venues choosing to locate elsewhere. Several responses pointed out differences between cryptoasset trading venues (as they typically

operate today) and MTFs which would need to be carefully considered. Specifically, the current prevalence of matched principal execution protocols in crypto trading venues arguably makes them more akin to OTFs rather than MTFs.

- In addition, most crypto trading venues permit direct retail access, whereas MTFs admit only institutional investors. One response also highlighted that, unlike crypto trading venues, MTFs do not take custody of participant funds, issue their own securities, extend credit to members, or act (in effect) as a central clearing counterparty.
- Some felt that the proposed approach would push cryptoasset matching activity to other jurisdictions (or decentralised protocols), especially if similar prudential and data reporting requirements were adopted, together with the obligation to subsidiarise in the UK.
- A common theme in the feedback was international competitiveness and avoiding excessive barriers to entry for example, by permitting firms to make use of professional indemnity insurance arrangements as an alternative to own funds – in order to meet prudential requirements.
- Some responses suggested that order book reporting should be limited to off-chain transactions only, or that reporting requirements should be introduced when the industry has matured further.
- Another area where many responses suggested that the requirements should go further was operational resilience, with recommendations relating to contingency planning, testing, third party audits, proof of solvency, proof of reserves and proof of liability.
- Proposed location requirements were a contentious theme. Many were in support of the indication that firms operating cryptoasset trading venues would likely require subsidiarisation in the UK. But there were also strong objections to this on the basis that it would increase costs and regulatory burdens and fragment liquidity pools. Some also argued that this position would represent a departure from similar activities in traditional finance (where, for example, MTFs and OTFs can make use of the OPE under specific circumstances).
- Other common themes of feedback that will be addressed through subsequent FCA consultations and rulebooks:
  - Fee structures; *called for measures to ensure fair and transparent fees as well as rules to ensure that investors do not become unfairly 'locked in' to exchanges.*
  - Outsourcing; *support services from third parties (including overseas service providers and overseas entities within the same parent group)*
  - Resolution and insolvency
  - Execution protocols; *the need for a regime to accommodate matched principal trading as well as central limit order book matching.*
  - Business model segmentation; *many responses talked of the need to distinguish between venues only admitting wholesale market participants versus those which also admit retail consumers. Another suggestion was for clear distinctions between venues which undertake primary issuance activity versus those that only offer secondary market trading.*

Points to note from HMT's response include:

- HMT intends to take an *activities-based approach to regulation*, as articulated in the original proposals. The government is aiming to lay phase 2 secondary legislation for crypto activities in 2024 "subject to Parliamentary time".
- Detail on the regulated activities and tokens which will be in scope for phase 1 of HMT's approach to regulating cryptoassets, and how these will be demarcated from phase 2 activities and tokens, is set out in the separate '***stablecoins update***' policy paper.

- In response to the questions about certain execution protocols and trading models (e.g. OTFs / matched principal trading and proprietary trading), the government does not intend to explicitly endorse or prohibit specific business models or execution protocols in legislation.
  - Doing so at this point would limit the flexibility of a future regulatory regime at a stage when business models are still evolving at pace. It could also shape and influence market structures in unintended or suboptimal ways.
- HMT notes that some requirements applicable to MTFs and OTFs will be reviewed more broadly as part of the government and FCA's implementation of the Wholesale Market Review reforms.
- Vertically integrated business models; HMT recognises **that certain firms undertaking several regulated activities may present a higher risk to the wider ecosystem** in the event of failure and the government and regulators will continue to consider whether and how such firms should be subject to proportionate prudential requirements.
  - While there are risks to vertical integration it should be possible to mitigate said risks with appropriate governance, controls and risk management systems, as happens in the traditional financial sector.
  - The requirements will be addressed in detailed FCA rules, but the issue is also being explored in the DSS and could be explored by further Financial Market Infrastructure (FMI) sandboxes – in particular, the example of where a firm operates an MTF/organised trading facility (OTF) and simultaneously acts a central securities depository.
- It confirms that the proposed regime does not intend to capture activities relating to cryptoassets which are specified investments and so already regulated, e.g. security tokens, or activities relating to truly unique or non-fungible NFTs that are more akin to digital collectibles or artwork than a financial service (in the general sense) or product.
- HMT confirms that it "firmly disagrees" with suggestions that retail trading and investment activity in unbacked cryptoassets should be regulated as gambling rather than a financial service.
  - Regarding the feedback on customer segmentation, the government agrees, in principle, with the idea that certain requirements (e.g. disclosures, appropriateness checks) would differ for intermediaries when dealing with eligible counterparties since this would mirror existing conduct regimes and meet the core design principle of "same risk, same regulatory outcome."
- FCA authorisation will not be automatically granted to firms that are registered with the FCA under the Money Laundering Regulations.
- On location; HMT notes that should all international cryptoasset exchanges were to seek authorisation in the UK as cryptoasset intermediaries (and not as cryptoasset trading venues), this would be problematic since the proposed issuance and market abuse regimes 'hang off' regulatory trigger points that are controlled by authorised cryptoasset trading venues.
  - HMT acknowledges the need to mitigate the fragmentation of cryptoasset liquidity that could arise from a restrictive location and market access policy. It plans to proceed with an approach that *facilitates access to international liquidity pools under specific circumstances.*
  - On the topic of market access, the government shares industry's view of the benefit of working towards deference/equivalence type arrangements and is committed to cooperating with international partners – including through the UK's ongoing work with standard setting bodies such as IOSCO and the Financial Stability Board (FSB) – to deliver a framework that can accommodate this.
  - HMT recognises that the conditions required for equivalence/deference are not currently in place. Given this, an approach is required that will facilitate access to global liquidity pools under specific circumstances (for example where the global liquidity pool is being operated in a jurisdiction which is meeting international recommendations and standards). This would apply on a time-limited basis for the interim period before appropriate equivalence/deference type arrangements are in place.

- o HMT clarifies the intended outcomes for non-fungible tokens (**NFTs**), utility tokens, security tokens and other data objects or "things" which respondents were concerned could be captured unintentionally.
- o On issuance and disclosures, HMT notes that recklessness and negligence liability standards will enable market participants to manage their liability provided they make reasonable enquiries. It also confirms its support for the use of publicly available information to compile appropriate parts of disclosure and admission documents.
- o There will be a modified approach towards market abuse obligations on crypto exchanges, acknowledging the potential need for a staggered implementation for cross-venue data sharing obligations.
- o HMT sets out its direction of travel and plan of action on staking, which is intended to inform the government's view on a set of critical questions and provide regulatory clarity to industry in an accelerated way. HMT notes that an engagement programme has already been launched with external stakeholders to inform this work.
- Overall, HMT notes that the UK remains committed to "creating a regulatory environment in which firms can innovate, while crucially maintaining financial stability and clear regulatory standards so that people can use new technologies both reliably and safely."

5. **Managing the failure of systemic DSA (including stablecoin) firms: Consultation response;** *HMT's consultation on managing the failure of systemic digital settlement asset (**DSA**) (including stablecoin) firms, which ran from 31 May to 2 August 2022, set out details of proposed amendments to the Financial Market Infrastructure Special Administration Regime (**FMI SAR**) to apply it to such firms. Under the proposals, the amended FMI SAR would apply to systemic payment systems, and to service providers of systemic importance to those systems, which use DSAs (as defined in the Financial Services and Markets Act 2023). Noting also this blog from back in June 2022.*

- **Stablecoin update's; Update on plans for the regulation of fiat-backed stablecoins**
- o Document provides additional detail following the UK regulatory approach to cryptoassets, stablecoins, and distributed ledger technology in financial markets consultation response published in April 2022
- o The government has provided an update on its legislative approach for bringing fiat-backed stablecoins into the UK's regulatory perimeter for financial services. This document provides additional detail following the UK regulatory approach to cryptoassets, stablecoins, and distributed ledger technology in financial markets consultation response published in April 2022.
- o This update will inform development of the Financial Conduct Authority and Bank of England's approaches for regulating stablecoin issuers and custodians, and systemic digital settlement asset payments systems and service providers, respectively.

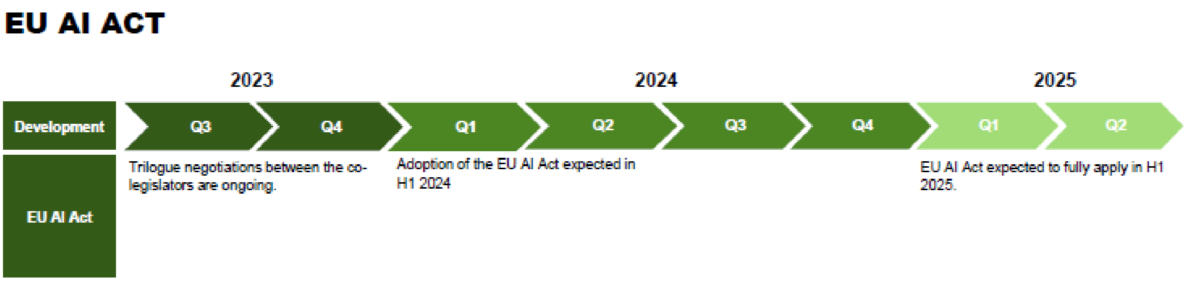
- In its response to the consultation, HMT confirms that overall, respondents were broadly supportive of the proposed approach. Some respondents sought clarity on how the FMI SAR would be applied in practice, especially with regard to the additional return or transfer of customer funds and custody assets objective.
- In order to ensure a balance between clarity over how the FMI SAR will operate with respect to systemic DSA firms, whilst ensuring the Bank of England has the tools it needs to respond to the potential failure of a systemic DSA firms as soon as is possible, the government plans to develop two core products:
- o Initially, it will lay regulations "in due course" which implement the policy intent described in the initial consultation regarding the overarching framework – this will appoint the FMI SAR (with necessary

amendments) as the primary regime for systemic DSA firms which are not banks, establish an additional objective for the FMI SAR focused on the return or transfer of customer funds and custody assets and supplementary necessary provisions, provide the BoE with the power to direct administrators as to the prioritisation of objectives, and include a requirement to consult the FCA where applicable.
  - HMT will then provide further clarity on the operation of the modified FMI SAR by making insolvency rules – these will cover the detail and mechanisms underpinning how the regime is intended to operate.
- The BoE will also consider whether further guidance on the operation of the FMI SAR is necessary in the context of its finalised going concern regime and update stakeholders at the appropriate time.

6. Update on plans for the regulation of fiat-backed stablecoins: Policy paper; *In its policy paper, HMT gives an update on its legislative approach for bringing fiat-backed stablecoins into the UK's regulatory perimeter for financial services (as part of phase 1 of its approach to crypto regulation). The paper provides additional detail following the UK regulatory approach to cryptoassets, stablecoins and distributed ledger technology in financial markets consultation response, which was published in April 2022.*

- Managing the failure of systemic Digital Settlement Asset (including stablecoin) firms
  - The government consulted on its approach to managing the failure of a systemic digital settlement asset (including stablecoin) firms by applying a modified Financial Market Infrastructure Special Administration Regime (FMI SAR) to such firms. Overall, respondents were broadly supportive of the proposed approach.
  - Some respondents sought clarity on how the FMI SAR would be applied in practice, especially with regard to the additional return or transfer of customer funds and custody assets objective.
  - As set out in the response, the government intends to lay regulations to implement the policy intent described in the consultation in due course and will provide further clarity on the operation of the modified FMI SAR by making insolvency rules.
- HMT confirms its intention to put in place a regulatory framework for fiat-backed stablecoins including when used as a means of payment, which it notes it has already started to implement through the introduction of measures in the Financial Services and Markets Act 2023.
- In the next stage of implementation, HM Treasury intends to bring forward secondary legislation "as soon as possible and by early 2024, subject to available parliamentary time". These legislative provisions will bring activities relating to fiat-backed stablecoins into the regulatory perimeter, enabling the FCA to regulate them.
- The policy update sets out further detail on the objectives of the proposed legislation to facilitate the FCA's regime. It also provides further information relating to the BoE's regime, the Payment Systems Regulator's regime, and co-responsibility for supervision of systemic fiat-backed stablecoin firms.
- The update is intended to inform the development of the FCA's and BoE's approaches for regulating stablecoin issuers and custodians, and systemic DSA payments systems and service providers, respectively.

## Digital finance, SupTech, RegTech & FinTech




Tokenization in financial services; July 2023 CFTC Global Markets Advisory Committee meeting

1. Digital assets have demonstrated resilience through a period of extreme volatility, with emergence of non-crypto applications
2. Blockchain based representation of real-world assets (i. tokenization) is growing as a key application of blockchain technology across traditional and new asset classes
3. Tokenization demonstrates qualities across value chain participants inherited from three tenants of the underlying technology: 24/7 operations, atomic settlement and programmability
4. A combination of challenges across technology, market readiness, economics and regulation have impacted the ability of the industry to scale
5. Accelerated adoption across certain asset classes point to a potential inflection point where these challenges could change or disappear
6. Whether or not tokenization is at an inflection point, there are a few steps companies could

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Over the past year, regulators have published various consultations on how to regulate the cryptoasset sector and are now engaging closely with stakeholders to fine-tune their proposals. *At the same time, global standard setters are publishing non-binding recommendations, which they suggest are incorporated into these developing frameworks. As a result, expectations for firms are becoming clearer.*

- UK developments

- Since 1 September, the Financial Action Task Force's (FATF) Travel Rule has been live in the UK. This rule, already used in traditional finance, now brings the transparency required for crypto transfers in line with wire transfers. More specifically, it requires financial institutions to send and record information on the originator and beneficiary of a transfer, and that this information remain with the transfer throughout the payment chain. The rule does not go live in the EU until the end of December 2024. This discrepancy in implementation timeline — as well as the fact that the EU version adopts a stricter stance on un-hosted wallets — could prove difficult for firms to navigate.
- The FCA's crypto promotions rules — which will begin regulating cryptoassets as Restricted Mass Market Investments — are set to come into force on 8 October. However, in response to industry readiness (or lack thereof), the FCA recently announced that firms will be able to apply for a 3-month extension (until 8 January 2024) to implement certain changes that require `greater technical development' (e.g. the 24-hour cooling off period). The remainder of the core rules will still come into effect from October, with noncompliant individuals facing an unlimited fine and up to 2 years in prison. The FCA flagged in an accompanying Dear CEO letter, that it was particularly disappointed by the lack of engagement from overseas, unregistered crypto firms. A few weeks later, the FCA re-emphasised these concerns in a `final warning letter', while also signalling that intermediaries (including social media platforms, app stores, search engines and payments firms) can be held accountable for enabling firms to illegally promote to UK consumers. In particular, these intermediaries could be at risk of committing money laundering offences.
- HM Treasury's (HMT) consultation on stablecoins is expected shortly — where the Government will lay out details regarding how stablecoins will become regulated under amended e-money and payment services regimes. As in the EU, it is also expected that the most systemic stablecoins will be subject to additional requirements and supervision by the central bank. This regulation is still expected to be finalised and enforced as part of the Government's `Phase 1' changes — i.e. before wider cryptoasset regulation — see below. Industry interest in stablecoins has surged following the recent launch of a USD coin by a mainstream payment provider.
- The response to the joint HMT/FCA consultation on an overarching regulatory regime for cryptoassets is also expected shortly. The consultation period closed on 30 April.
- In July, HMT published a consultation setting out its approach to delivering a Digital Securities Sandbox (DSS). This will be the first FMI sandbox delivered under the powers granted through the Financial Services and Markets Act. The DSS will enable firms to set up and operate FMIs, performing trading and / or settlement activities, in a regulatory environment that has been temporarily modified to accommodate digital asset technology. Overall, the proposals align very closely to the EU's DLTR pilot regime — which has been live since March. Once all responses to the consultation have been considered, HMT will lay a statutory instrument before parliament later this year, which will establish the legal framework for the sandbox. And, in parallel, the Bank of England and FCA will begin publishing further guidance around the application process.
- EU developments
- MiCA's provisions for stablecoins are set to apply from July 2024, and provisions for other service providers will apply from January 2025. In advance of this, the EBA and ESMA have been consulting on corresponding RTS, ITS and Guideline packages that must be finalised before the new regime commences. The second of these three packages is expected in October.
- Several Member States are already actively preparing for MiCA's implementation. France has begun updating aspects of its national regime, including rules for enhanced cryptoasset service provider (CASP) registration procedures. Germany has issued clarifications regarding which assets fall within scope. And both Ireland and the Netherlands have issued corresponding consultations — with the Dutch central bank emphasising its intention to take a hard-line approach.
- During the June Capital Requirements Regulation (CRR)/ Capital Requirements Directives (CRD) trilogues, EU legislators also leveraged MiCA's `risk buckets' to agree a transitional regime for cryptoasset capital charges, until the final BCBS standards are adopted in legislation.
- The development of CBDCs also continues, with a recent BIS survey showing that 93% of central banks are now considering issuing one. On 18 October, ECB governors will officially decide whether to advance on to the `realisation phase' of a digital euro — which would include running external pilot tests. Following this final phase, the central bank would decide whether to progress with minting an EU CBDC.

- Further afield
- In September, IOSCO published draft global measures to regulate the DeFi sector. These recommendations dovetail with their earlier recommendations for the wider cryptoasset market that were published in May. The most significant takeaway is IOSCO's stance that, regardless of the operating model of a DeFi arrangement, it is in fact possible to identify relevant `Responsible Persons' who can be held accountable for investor protection and market integrity. This could represent a significant shift in dialogue around the regulation of smart contracts — where assigning accountability has repeatedly been a blocker. Although the recommendations are non-binding, due to the fact that IOSCO's membership is made of up of 95% of the world's securities regulators, it's seen as highly likely that the proposals will cascade down into national frameworks.
- Also in September, the FSB and IMF published a report synthesising their parallel recommendations for the cryptoasset market and describing how they interact with each other. Overall, the report emphasises that comprehensive regulatory and supervisory oversight of cryptoassets should be a baseline requirement to address risks — with some emerging markets also needing additional targeted measures.
- Finally, an IMF staff paper has also called for a tax to be levied on cryptoasset miners to address the market's vast carbon footprint.
- What does this mean for firms?
- As regulatory frameworks edge towards completion, differences are emerging between jurisdictions. Firms should carefully consider these differences, in conjunction with their specific business models, when deciding the most appropriate location to establish themselves.
- In particular, regulatory change teams should identify and capture developments at an early stage and implement an operating model to effectively manage diverging regulations. Management should factor upcoming regulatory developments into their business strategy, including potential domicile. And finally, teams responsible for the promotion and marketing of any cryptoasset products must be ready to comply with the FCA's rules in advance of the new deadline.

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## Sanctions

New UK, EU and US Sanctions on Russia and Belarus update as of 28 September 2023

With the rapid expansion of UK, EU and US sanctions on Russia and Belarus in recent weeks - and with more in the regulatory pipeline - we set out:

1. What's New (to 28 September)
2. A 5-step checklist for assessing how your activities may be affected
3. A Sanctions Summary

1. WHAT'S NEW

UK

- On 21 September 2023, OFSI issued General Licence INT/2023/3179120, which permits UK designated individuals and entities to pay water companies for water and sewage services (and water companies may make return payments to frozen UK bank accounts if due as the result of an overpayment).
- On 21 September 2023, in a move co-ordinated with the US, the FCDO updated its 'Common High Priority Items' list of items critical to Russian weapons systems and military development (e.g. integrated circuits,

electronics components, etc.) adding e.g. bearings for heavy vehicles and antennae used for navigation systems.

- On 14 September 2023, the existing UK and US exemption from sanctions of the Sakhalin-2 Project was extended until 28 June 2024. The Sakhalin-2 Project is one of the world's largest liquefied natural gas projects, based in Sakhalin Island, Russia.
- On 12 September 2023, the UK House of Lords European Affairs Committee launched an inquiry into the implications of Russia's invasion of Ukraine for UK-EU relations. One of the focus areas of the inquiry is on UK-EU cooperation on sanctions. The Committee has issued a call for evidence, which will close on 27 October 2023.
- On 8 September 2023, the Department for Business and Trade published updated guidance on UK sanctions on the import of Russian iron and steel processed in third countries. The guidance sets out the evidence that traders will need to provide to demonstrate compliance for all imports of certain iron and steel products from third countries as well as practical examples of how the rules may be applied in practice. The measures will come into force on 30 September 2023.
- On 7 September 2023, the FCDO designated 11 members of a Russian cybercriminal gang who were behind the Trickbot/Conti ransomware attacks. These attacks included the hacking of critical infrastructure and hospitals during the Covid-19 pandemic. This was a joint designation with the US OFAC.
- On 6 September 2023, the FCA published its review of the sanctions systems in place in over 90 financial services firms. The FCA found various examples of good practice as well as areas that needed improvement. Key areas that required improvement were in relation to:
  - Senior management oversight of sanctions risks;
  - Global sanctions policies;
  - Over-reliance on third party sanctions screening tools;
  - Contingency planning;
  - Skills and resources;
  - Screening capabilities;
  - Customer Due Diligence and Know your Customer assessments; and
  - Breach reporting to the FCA.

EU

- On 20 September 2023, in T-248/22 *Mordashov v Council*, the General Court of the EU rejected an application to annul the designation of Alexy Mordashov, president of the Severgroup. The Court said the EU had not erred in its assessment of Mr Mordashov as an influential businessman in sectors of the Russian economy that provide a substantial source of income to the Russian government, and rejected his challenge to the process, reasoning and proportionality of the listing.
- On 13 September 2023, Europol published a report assessing the threats posed by financial crimes at an EU level. The report contains some commentary on sanctions evasion, including methods used to circumvent sanctions and the link between sanctions and money laundering.
- On 8 September 2023, the European Union designated 6 Russian individuals who were alleged to have been responsible for the investigation of, and court proceedings against, journalist Vladyslav Yesypenko and Crimean Tatar, Nariman Dzhelyalov. The individuals designated include Russian prosecutors, judges and FSB agents.
- On 7 September 2023, the European Commission published a guidance note addressed to European operators to assist them with identifying, assessing and understanding the possible risks of sanctions circumvention, with a particular focus on export-related sanctions. The note contains practical guidance, outlining the steps to be applied when conducting strategic risk assessments.
- On 6 September 2023, the 5th Chamber of the General Court rejected Mikail Gutseriev's de-listing application. Mr Gutseriev is an oil tycoon with strong links to Belarus. The General Court concluded that Mr Gutseriev benefited from and supported President Lukashenko's regime, accumulating significant wealth and influence among Belarus' political elite.

- In August 2023, the European Parliamentary Research Service published a report on the impact (e.g. delays) of the current requirement for unanimous voting on common foreign and security policy issues, in particular sanctions. The report considers the potential benefits of adopting qualified majority voting (QMV) for sanctions, which could accelerate the process but might harm EU unity and effectiveness of sanctions.

US

- On 21 September 2023, in a move co-ordinated with the UK, the US BIS updated its 'Common High Priority Items' list of items critical to Russian weapons systems and military development (e.g. integrated circuits, electronics components, etc.) adding e.g. bearings for heavy vehicles and antennae used for navigation systems.
- On 14 September 2023, OFAC imposed nearly 100 sanctions on Russian elites and Russia's industrial base, financial institutions and technology suppliers. Those designated include Andrei Bokarev, Iskandar Kakhraonovich Makhmudov and Aleksei Krivoruchko. On the same day, the US Department of State also designated more than 70 entities and individuals. These include Otar Partskhaladz, Denkar Ship Construction Incorporated Company and Pavel Shevelin.
- In a press release published on 13 September 2023, the US Department for Justice confirmed that Belarusian businessman and US resident, Sergey Karpushkin, had pleaded guilty to engaging in a scheme to violate US sanctions. The scheme involved the purchase and acquisition of metal products, valued at over $139 million, from companies owned by Sergey Kurchenko, a designated Ukrainian businessman. Mr Karpushkin has agreed to forfeit over $4.7 million in criminal proceeds from the scheme.
- On 8 September 2023, the US Financial Crimes Enforcement Network published a Financial Trend Analysis on patterns and trends of suspected evasion of Russia-related export controls contained in Bank Secrecy Act reporting. Particular trends emerging from the report include:
  - Suspicious transactions link trade activity, likely involving sensitive goods, between end users in Russia and other jurisdictions, particularly China, Hong Kong, Turkey and the UAE.
  - The majority of companies identified as being associated with, or directly facilitating, Russian export control evasion are linked to the electronics industry.

G7

- On 15 September 2023, a Belgian official reportedly indicated that a ban on the import of Russian diamonds will be agreed by the G7 by the end of 2023. The ban will supposedly consist of a direct ban on purchases from 1 January 2024 as well as an indirect ban to come into effect more gradually. The G7 previously promised to "reduce the revenues that Russia extracts from the export of diamonds" at the Hiroshima Summit in May and the UK announced a plan to introduce legislation this year banning the import of Russian diamonds, copper, aluminium, and nickel.

## 2. 5-STEP CHECKLIST

### 1. Which countries' sanctions apply to your activities?

The UK, EU, US and other countries' sanctions typically must be observed if there is a sufficient nexus to confer jurisdiction, which is if:

- their nationals (individuals) are involved, wherever they are in the world (in the case of US sanctions, this includes US permanent residents/Green Card holders);
- any part of a transaction is conducted within their territory or airspace; and
- legal entities incorporated or constituted under their law, including foreign branches are involved; or

- with respect to US sanctions, if a transaction is conducted in US dollars or clears through the US financial system, or data is routed through servers in the US, or other back-office support or facilitation is provided by US persons (including service requests to an equipment supplier).

UK sanctions may also apply to non-UK persons outside the UK if there is a sufficient nexus. This will depend on the facts of each case but could include:

- transactions using clearing services in the UK;
- actions by a local subsidiary of a UK company;
- actions directed from within the UK; and/or
- financial products or insurance bought on UK markets but held or used overseas.

Additionally, US 'secondary sanctions' may be applied to non-US persons outside the US in the absence of any US nexus if a transaction involves sanctionable conduct that would be prohibited to a US person and that is determined by the US authorities to be a 'significant' transaction or otherwise provides material support to a sanctioned party. Whether a transaction is 'significant' is based on a number of open-ended criteria e.g. the size, number and frequency of transactions.

Further, US export control restrictions may apply even if sanctions do not. For example, US export controls will apply if US-origin goods, software or technology located in a third country are re-exported, regardless of whether a U.S. person is involved in the transaction.

2. Are any of your business partners subject to an asset freeze?

The UK, EU, US and others have imposed asset freezes ('blocking sanctions' in US terms) on most Russian banks and strategic industries (e.g. defence, transport, research, media and aerospace), and senior individuals in the Russian government, state-owned corporations and major businesses, including family members, and they are continuing to add new names to their national lists of such 'designated persons.'

An asset freeze generally requires those within the scope of the national sanctions, as described at step 1 (above), to:

- freeze any assets of the designated parties that they may hold and to report these to their authorities;
- not make any funds or economic resources available to them, directly, indirectly or for their benefit;

In addition, US restrictions go further and in effect also prohibit all transactions with the designated (i.e. listed) party.

The same restrictions also apply to any non-designated entity that is:

- 'owned' by a designated party or parties. The US threshold is 50% or more, while the UK and EU thresholds are 'more than 50%'. The US and the EU (in guidance) consider the criterion met if the aggregated ownership of two or more designated parties exceeds the threshold. The UK (also in guidance) recognises aggregated ownership only if there is evidence of a joint arrangement between two or more designated parties; or
- (in the UK/EU, not the US) 'controlled' by a designated entity (i.e. able to ensure the affairs of the undesignated entity are conducted in accordance with their wishes, for example through controlling a majority of voting shares or having the right to appoint or remove a majority of the board of directors).

It is often challenging to reach a definitive view of whether this 'control' criterion is applicable, for example if a majority shareholder becomes sanctioned and passes some of their shares to unsanctioned family members or to business associates. If you would like assistance on these issues, do get in touch.

If you do business with Russia or Belarus, you should screen your business partners - banks, suppliers, customers, distributors – against the applicable national sanctions lists and, given the current rapid pace of developments, set up alerts for new designations, in order to be able to identify any relevant new sanctions measures without delay. In some instances, the measures include exceptions or general licences that provide for a wind-down period, but others may have immediate effect. Note that asset freezes on Russian banks may prevent you from receiving or making payments to business partners or to employees.

It should also be noted that, while there are many similarities between the respective national lists, there are also significant differences. For example, a Russian company might be subject to EU sanctions but not to UK or US sanctions. In such cases, it may be possible for UK persons to do business with the Russian company provided that there is no EU nexus (as described in step 1 above), including that any EU nationals are recused.

3. Are any of your activities affected by other financial sanctions?

Short of an asset freeze, sanctions measures may restrict or prohibit:

- granting new loans or credit (including payment terms);
- sanctioned banks from clearing payments in certain currencies;
- dealing in transferable securities and money market instruments issued by sanctioned parties;
- the size of bank deposits by nationals of sanctioned countries;
- the access of sanctioned banks to the SWIFT messaging systems; transactions with the Russian Central Bank and certain State-owned enterprises;
- new investment or acquisitions and the provision of investment services.

The screening of your business partners, including banks, should check for the application of any of these restrictions. However, note that there may be exceptions, grounds for licensing and/or wind-down periods.

4. Are your products or services restricted?

Trade sanctions may restrict or prohibit:

- the sale, supply, transfer or export to Russia/Belarus, directly or indirectly, of certain goods and technology beyond those that are normally subject to export controls. This generally includes related financial services, brokering and technical assistance (e.g. repair, maintenance). The restrictions may be focused on only certain designated entities. There may be exceptions, grounds for licensing and/or wind-down periods;
- the import, purchase, transport or insurance of certain goods or technology from, or originating in, Russia/Belarus – notably including oil - with similar related provisions as those for exports;
- accounting, tax consulting, business and management consulting, public relations, architectural, engineering, IT consultancy, legal advisory and trusts services;
- closure or airspace and ports to aircraft and ships;
- more wide-ranging embargoes on most finance and trade with certain regions (previously Crimea, now extended to the occupied areas of Donetsk and Luhansk).

5. Do you have the right measures in place to mitigate your risks?

Given the evolving and expanding scope of sanctions, have you audited your compliance programmes and contractual commitments to make sure you are mitigating any risks? For example, have you:

- Updated your compliance policies and procedures, ensuring they are proportionate and workable?
- Reviewed your technology infrastructure to support your day-to-day compliance (e.g. with on-boarding clients and service providers or providing IP/geolocation support for your KYC process)?
- Tailored and updated your training for your compliance leads and others across your business?
- Reviewed whether your contracts enable you (or the counterparty) to suspend or terminate it without liability or serious risk of challenge, whether through a specific sanctions provision or other clauses such as the material adverse change clause?

## 3. SANCTIONS SUMMARY

We set out below a high-level overview of the current UK, EU and US sanctions in addition to asset freezes (as set out above).

Please note that exceptions, grounds for licensing and wind-down periods often apply to specific sanctions; if you would like an analysis as to the legality of a particular transaction, trade or matter, do get in touch.

### UNITED KINGDOM

The UK has announced its intention to introduce certain new sanctions measures which it has not yet implemented, including:

- A ban on the import of all Russian diamonds and all imports of Russian-origin copper, aluminium, and nickel;
- Restrictions to cut off wealthy Russians' access to UK banks including a £50,000 limit on bank accounts; and
- The suspension of the process by which actions taken to manage the orderly failure of Russian banks are recognised under the laws of the UK, in cases where the bank is a sanctioned entity.

#### Financial services:

- A ban on dealing with transferable securities and money market instruments or issuing new loans or credit with a maturity exceeding 30 days to:
  - where issued since 2014, an entity listed in Schedule 2 (including Sberbank, VTB Bank, Gazprombank, VEB, Rosneft, Transneft and Gazprom Neft) or their non-UK subsidiaries;
  - where issued since 1 March 2022, UK subsidiaries of Schedule 2 entities; a "person connected with Russia" (an individual located in or ordinarily resident in Russia, or an entity domiciled, incorporated or constituted under the law of Russia); an entity owned by or acting on behalf/at the direction of such as person; or the Government of Russia;
  - where issued on or after 16 December 2022, by a person not connected with Russia where the purpose of the loan or credit is to make a new investment in Russia;
- A ban on UK credit or financial institutions establishing or continuing a correspondent banking relationship with, or processing sterling payments to from or via, a designated person;
- A ban on financial services for foreign exchange reserve and asset management to the Central Bank of the Russian Federation, the Russian National Wealth Fund and the Ministry of Finance, and persons owned or controlled directly or indirectly by them or acting on their behalf or direction;
- A ban on new investment, specifically the:
  - direct acquisition of any ownership interest in Russian land and entities connected with Russia;

- indirect acquisition of any ownership interest in Russian land and entities connected with Russia for the purpose of making funds or economic resources available to, or for the benefit of, persons connected with Russia;
- direct or indirect acquisition of any ownership interest in entities with a place of business in Russia (which are not persons connected with Russia) for the purpose of making funds or economic resources available (directly or indirectly) to, or for the benefit of, persons connected with Russia;
- establishment of joint ventures with a person connected with Russia;
- opening of representative offices and establishing branches and subsidiaries in Russia; and
- provision of investment services directly related to the above; and
- Selected Russian banks removed from the SWIFT messaging system.

Trade:

*Exports*

- A ban on the export, supply and delivery, and making available of the following goods and technology, and related services, to Russia:
- military and internal repression items;
- advanced technology items: dual-use, 'critical industry,' special materials, quantum computing, aviation, maritime and space;
- a wide range of items mainly for the manufacturing sector and luxury items;
- infrastructure-related, energy-related and oil refining items, and jet fuel;
- sterling or EU denominated banknotes; and
- the supply and delivery of certain revenue generating goods from Russia to third countries, except those with important humanitarian or civilian use such as certain agricultural and energy-related goods.

*Imports*

- A ban on the import or acquisition of the following goods and technology consigned from or originating in Russia, as well as related services:
- oil and oil products, LNG, and coal and coal products;
- iron and steel items, including of Russian iron and steel goods that have been processed in third countries;
- a range of materials and manufactured items generating revenue for Russia;
- gold and gold jewellery; and
- a 35% tariff on imports of certain goods originating in Russia and Belarus.

*Services*

- A ban on the provision of the following services:
- maritime transport, insurance and other financial services for ships carrying Russian crude oil/refined oil products to or between third countries, unless the crude oil/refined oil products has been sold below a specific price cap;
- trust services, accounting, business and management consulting, public relations, advertising, architectural, auditing, engineering and IT consultancy and design services to persons connected with Russia;
- legal advisory services to any person who is not a UK person in relation to any activity which would, if carried out by a UK person or in the UK, contravene UK sanctions on Russia, except legal representation, compliance with UK statutory obligations, whether an act complies with UK sanctions, and work contracted pre-30 June 2023 and completed by 29 September 2023;
- social media, internet services and app stores are required to block content from RT and Sputnik; and

- a ban on all Russia-owned or operated aircraft and ships from UK airspace, landings, and ports, and on aviation and shipping technical assistance to, or for the benefit of, designated people/entities. *Crimea, Donetsk and Luhansk*

- A ban on:
  - finance and investment;
  - the export, supply and delivery, and making available of the following goods and technology, and related services: military, infrastructure-related goods and tourism services;
  - all imports.

*Belarus*

- Restrictions on dealing with transferable securities or money-market instruments;
- A ban on providing insurance and re-insurance to the Belarusian Government and Belarusian public bodies and agencies;
- A ban on the export, supply and delivery, and making available of the following goods and technology, and related services, to Belarus: military and internal repression; dual-use, critical industry, quantum computing, advanced materials, certain minerals, oil refining items, luxury goods, banknotes, materials that could be used to produce chemical and biological weapons, and machinery-related goods;
- A ban on the import or acquisition of the following goods and technology consigned from or originating in Belarus, as well as related services: oil products, iron, steel, potash, tobacco, gold, processed gold, gold jewellery, cement, rubber and wood;
- Ban on Belarusian and other specified ships from entering UK ports, and aircraft from UK airports; and
- An obligation (subject to criminal penalties and enforced by OFCOM) on social media services, internet access services and application stores to take reasonable steps to prevent users from accessing online content generated by designated persons.

EUROPEAN UNION

Financial services:

- Banking:
- A ban on the provision of SWIFT services to most Russian banks;
- A ban on transactions with Russia's central bank;
- A ban on deposits from Russian nationals or legal persons if the total value exceeds 100,000 EUR;
- A ban on the provision of crypto-asset wallet, account or custody services to Russian persons and residents; and
- A ban on the sale of banknotes and transferrable securities denominated in any official currencies of the EU member states.
- Investment:
- A ban on investment, participation or contribution to projects co-financed by the Russian Direct Investment Fund;
- Since 18 March 2023, the Russian Regional Development Bank has been subject to a full transactional ban for contracts concluded before 17 December 2022;
- A ban on providing credit rating services, or access to any subscription services in relation to credit rating activities, to any Russian person, resident, entity or body;
- A ban on new investments in the Russian energy and mining sectors (except certain metals);
- A ban on dealing in transferable securities (including crypto-assets), or money-market instruments of any maturity, issued by certain listed Russian entities and on new loans and/or credit to them;
- A ban on the listing and provision of services in relation to shares of Russian state-owned entities on EU trading venues;

- A ban on EU central securities depositories services for transferable securities issued after 12 April 2022 to any Russian persons;
- The Russian Maritime Register of Shipping has been added to the list of state-owned enterprises subject to financial restrictions;
- The exclusion of all financial support to Russian public bodies;

Trade:

*Exports*

- A ban on the export, supply and delivery, and making available of the following goods and technology, and related services, to Russia:
- military, internal repression, dual-use and advanced technologies including quantum computers, high-end electronics, software, sensitive machinery and transportation;
- energy industry (except nuclear and energy transport), oil refining, coal and coking coal;
- aviation, jet fuel and space;
- luxury goods;
- maritime navigation; and
- items which may contribute to Russia's military, industrial and technological enhancement including coal, certain electronic components, certain machinery components, chemicals and torture goods.
- The EU's 11th package of sanctions also extended the prohibition for certain sensitive goods (such as advanced technology and aviation-related materials) exported from the EU to third countries, via Russia (intended to address the risks of such goods being diverted while passing through Russia).

*Imports*

- A ban on the import or acquisition of the following goods and technology consigned from or originating in Russia (as well as related services):
- oil and refined products. Direct imports of crude oil by pipeline are permitted for the time being but such oil, and products refined from it, may not be transferred to other Member States or third countries. There is an exception for seaborne products that transit Russia but originate in a third country and are owned by non-Russians;
- coal and other solid fossil fuels;
- products including: wood, cement, fertilisers, seafood, liquor, iron and steel (including products processed in third countries using iron and steel from Russia), machinery and appliances, wood pulp and paper, cigarettes, plastics, vehicles, textiles, footwear, leather, ceramics, certain machinery components, certain chemical products, cosmetics and elements used in the jewellery industry; bitumen and related materials like asphalt; and synthetic rubber and carbon blacks;
- Russia-origin gold (including jewellery) if it has been exported from Russia into the EU or to any third country; and
- A ban on the participation of Russian companies in public procurement in member states.

*Services*

- A ban on the provision of the following services:
  - Maritime transport and insurance to ships carrying Russian crude and petroleum crude oil/ refined oil products to third countries, with an exemption for the provision of insurance where the crude oil/ refined oil products has been sold below a specific price cap;
  - listed Russian state-owned broadcasters broadcasting in the EU, and advertising products or services in any content broadcast by these entities;

- provision of architectural and engineering services, IT consultancy services, legal advisory services, accounting, auditing, bookkeeping or tax consulting services, business and management consulting, public relations, advertising, market research and public opinion polling services, as well as product testing and technical inspection services to the Government of Russia, or entities established in Russia;
- all transactions with certain state-owned companies including the Russian Maritime Shipping Register; and

- A ban on EU nationals holding any posts on the governing bodies of any Russian state-owned or controlled legal persons, entities or bodies.

*Donetsk, Luhansk, Zaporizhzhia and Kherson*

- With respect to the occupied areas of the oblasts:
- an import ban on all goods and related services;
- restrictions on trade and investment related to certain economic sectors;
- a prohibition on supplying tourism services; and
- an export ban on goods and technology suited to the transport, telecommunications, energy or oil, gas and mineral sectors; and a ban on the provision of technical assistance, brokering, construction or engineering services to infrastructure in the regions and within the aforementioned sectors.

*Access*

- The closure of EU airspace to all Russian-owned, Russian registered or Russian-controlled aircraft;
- A prohibition on providing access to vessels registered under the flag of Russia, Russian-operated vessels or vessels suspected of circumventing EU oil sanctions to EU ports; and
- A ban on any Russian transportation of goods by road within the EU.

Belarus

- A ban on the sale of banknotes and transferrable securities denominated in any official currencies of the EU member states, or to any natural or legal person, entity or body in Belarus;
- A ban on transactions with the Central Bank of Belarus related to the management of reserves or assets;
- A block on SWIFT services to Belinvestbank, Belagroprombank, Bank Dabrabyt, the Development Bank of the Republic of Belarus, as well as their Belarusian subsidiaries;
- Financial and air-traffic sanctions;
- A ban on the listing of, and provision of services in relation to, shares of Belarus state-owned entities on EU trading venues;
- A €100,000 cap on deposits from Belarusian nationals, residents, or entities established in Belarus;
- A ban on the sale of euro-denominated transferable securities issued after 12 April 2022 to Belarusian nationals, residents, or entities established in Belarus;
- A ban on the provision of services by EU central securities depositories to Belarusian nationals, residents, or entities established in Belarus;
- A ban on any Belarusian transportation of goods by road within the EU;
- A ban on the sale, supply, transfer or export, directly or indirectly, to or for use in Belarus and related services of the following goods and technology: military and internal repression, goods and technology suited for use in aviation and the space industry including aircraft engines and drones, firearms and their parts, essential components and ammunition, dual-use and technology and a range of materials, manufactured goods and machinery; and
- An expansion of existing bans on imports from Belarus into the EU of goods for the following products and related services: tobacco, minerals, wood, cement, iron and steel, rubber, and potash.

UNITED STATES

Financial services:

- A ban on all transactions involving the Central Bank of the Russian Federation; the National Wealth Fund of the Russian Federation; and the Ministry of Finance of the Russian Federation, and dealing in bonds issued by them after 1 March 2022;
- A ban on dealing in new debt of over 14 days maturity and new equity of strategic entities: Sberbank, AlfaBank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways;
- Selected Russian banks removed from the SWIFT messaging system;
- All forms of new investment in Russia, including the formation of joint ventures and all loans for commercial purposes to persons located in Russia;
- The export, re-export, sale or supply of USD denominated banknotes to the Russian government or any person located in Russia.

Trade:

*Exports*

- A ban on the export, supply and delivery, and making available of the following goods and technology, and related services, to Russia:
- military and dual-use items, and a wide range of advanced technologies, encryption products and software including updates;
- a wide range of items, including all of Chapters 84, 85 and 90 of the US HTS (tariff codes), which could contribute to the enhancement of Russian industrial capacities including virtually every kind of machine, engine, electronics device, industrial process equipment, and test/inspection/instrumentation tooling, as well as goods vehicles, and equipment for refrigeration, elevators, construction, printing, textiles, valves, bearings, seals, electrical, radio, railways and testing; and luxury goods;
- The expansion of controls on US-origin and foreign-made (non-US) items and direct products of US technology for listed Russian military end use/r and military-intelligence end use/r;
- A ban on the provision, exportation, or re-exportation, directly or indirectly, of goods, services or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects; and
- The suspension of general licences issued by the Nuclear Regulatory Commission for the export of source material, special nuclear material, by-product material and deuterium to Russia.

*Imports*

- A ban on the import or acquisition of the following goods and technology consigned from or originating in Russia (as well as related services):
  - Russian-origin fish; seafood; alcoholic beverages;
  - non-industrial diamonds; and
  - oil, gas, coal and related products.

*Services*

- A ban on the provision of maritime insurance to ships carrying Russian crude oil or/ refined oil products to or between third countries, unless the oil/ refined oil product has been sold below a specific price cap;

- A ban on Russian aircraft from US airspace and the supply of any US-origin or US-controlled items for use in servicing aircraft operated by certain airlines;
- A ban on accountancy, corporate formation, management consultancy, and PR services, and, from 18 June, engineering and architecture services; and
- A ban on US advertising and sales of equipment to Channel One, Russia-1 and NTV.

*Donetsk and Luhansk*

- Sanctions on the parts of Donetsk and Luhansk occupied by Russia prohibiting new investment and the import or export of goods, services or technology.

Belarus:

- Similar bans on exports, imports and investment as apply to Russia.

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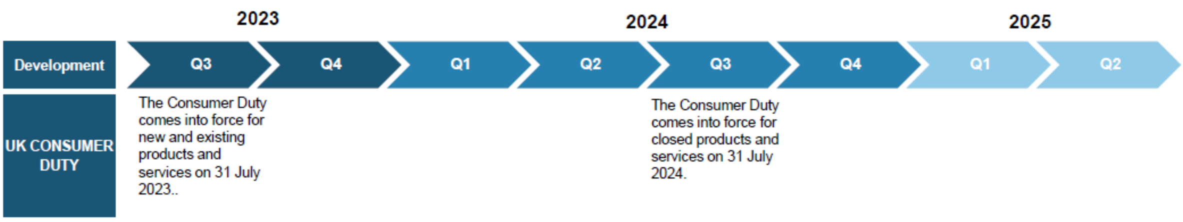
## Conduct / Enforcement / Reporting

UK CONSUMER DUTY




- The FCA is introducing a new 'Consumer Duty,' the purpose of which is to create a higher level of consumer protection in retail financial markets. The Consumer Duty comprises a package of measures, comprised of a new Principle 12 (the 'Consumer Principle') of the FCA's Principles for Businesses, supported by detailed rules and guidance.
- The Consumer Duty will apply to products and services sold to retail clients and will extend to firms that are involved in the manufacture or supply of products and services to retail clients even if they do not have a direct relationship with the end retail customer where the firm's role in the manufacture and distribution chain of the product or service allow it to exercise a material influence over, or determine, retail customer outcomes.
- On the horizon:
- The Consumer Duty comes into force for new and existing products and services on 31 July 2023.
- The Consumer Duty comes into force for closed products and services on 31 July 2024.
- The FCA has carried out a range of engagement and outreach work in advance of the entry into force of the Consumer Duty, to assist firms in achieving compliance. This includes a range of portfolio and sector letters addressed to different types of firm. Detailed information is available on the FCA's website.

qomply.co.uk/restricted/roundtables/sept2023/QomplyRoundtable20230919_.mp4

- With Ashurst's Jake Green on Transaction Reporting
- Do it any way with the FCA, but demonstrate commitment, effort, structure, responsibility mapping, E&O checking; and governance oversight

**JMLSG revised guidance receives ministerial approval;** On 20 September 2023, the Joint Money Laundering Steering Group (**JMLSG**) received HM Treasury ministerial approval of revisions to Part II Sector 22 (Cryptoasset providers and custodian wallet providers) of its Guidance. This also includes the new Sector 22 Annex 1 relating to cryptoasset transfers (Travel Rule) and related updates to Sector 22.

**10 Firms Fined for Failing to Preserve Electronic Communications;** *Five broker-dealers, three dually registered broker-dealers and investment advisers, and two affiliated investment advisers settled charges with the SEC and CFTC for recordkeeping violations after failing to preserve electronic business communications made using their personal devices.*

- In separate Orders, the SEC and the CFTC found that firm employees communicated using their personal devices via unapproved communication platforms, including text message, WhatsApp and GroupMe.
- The SEC and the CFTC stated that the employees did not preserve the business-related written communications sent and received using such off-channel communication platforms. The SEC and the CFTC stated that some directors and officers responsible for supervising junior employees failed to comply with policies regarding non-firm-approved methods on their own personal devices. According to the Orders, due to the broker-dealers' inadequate record maintenance, regulatory investigations were "likely impacted," negatively affecting the agencies' ability to carry out regulatory functions.
- As a result, the SEC found that the broker-dealers violated Exchange Act Sections 15(b)(4)(e) ("Registration and regulation of brokers and dealers") and 17(a) ("Records and Reports") and Rule 17a-4(b)(4) ("Records to be Preserved by Certain Exchange Members, Brokers and Dealers") thereunder. The CFTC concluded that the firms violated CEA Section 4g ("Reporting and recordkeeping") and Rules 1.31 ("Regulatory records; retention and production"), 1.35 ("Records of commodity interest and related cash or forward transactions") and 166.3 ("Supervision").
- To settle the charges with the SEC, the firms agreed to (i) cease and desist from further regulatory violations, (ii) a censure, (iii) comply with the undertakings set forth in the Order and (iv) pay a civil money penalty totaling $79,000,000. To settle the charges with the CFTC, the firms agreed to (i) cease and desist from further regulatory violations and (ii) pay a civil money penalty of $20,000,000.
- Statements
- CFTC Commissioner Kristin N. Johnson said that "cases such as these are really about the culture of compliance at these companies, or lack thereof." She noted that the "people whose job description included ensuring proper compliance . . . were not only tolerating prohibited technology use, but also engaging in it themselves."
- CFTC Commissioner Christy Goldsmith Romero called the enforcement action "another victory in holding Wall Street institutions accountable for their pervasive use of unauthorized communication methods." She urged financial institutions to consider the enforcement action a "wakeup call . . . to reset the tone at the top."

1. SEC Press Release: SEC Charges 10 Firms with Widespread Recordkeeping Failures
2. SEC Order: Interactive Brokers Corp. and Interactive Brokers LLC
3. SEC Order: Robert W. Baird & Co. Incorporated
4. SEC Order: William Blair & Company, L.L.C., and William Blair Investment Management LLC
5. SEC Order: Nuveen Securities, LLC
6. SEC Order: Fifth Third Securities, Inc.
7. SEC Order: Perella Weinberg Partners LP; Tudor, Pickering, Holt & Co. Securities LLC; and Perella Weinberg Partners Capital Management LP
8. CFTC Press Release: CFTC Orders Interactive Brokers to Pay $20 Million for Recordkeeping and Supervision Failures for Widespread Use of Unapproved Communication Methods
9. CFTC Order: Interactive Brokers Corp. and Interactive Brokers LLC
10. CFTC Statement, Kristin N. Johnson: Statement of Commissioner Kristin N. Johnson Regarding CFTC's Twentieth Offline Communications Case

11. [CFTC Statement, Christy Goldsmith Romero: Statement of Commissioner Christy Goldsmith Romero In Support of Holding Interactive Brokers Accountable for Widespread Use of Whatsapp and Personal Text Messaging to Evade Regulatory Oversight]

Nasdaq Stockholm Surveillance Officer Held in Custody After Raid; Tuesday's police raid on Nasdaq Inc.'s Swedish operations has resulted in a surveillance officer from the stock exchange being held in custody to avoid any further collusion or the destruction of evidence. The Nasdaq employee is being held in a Stockholm police station along with two other people, according to prosecutor documents seen by Bloomberg News. /jlne.ws/3sVUZj4

[FINRA AWC: TP ICAP Global Markets Americas LLC; Fined for Failing to Include "No Remuneration" Indicator in TRACE Reports]; A *firm settled charges with FINRA for inaccurately reporting 600,000 transactions to the Trade Reporting and Compliance Engine due to its failure to include a "No Remuneration" indicator.*

- In the Letter of Acceptance, Waiver and Consent, FINRA stated that firms are required to include the NR indicator which "provides more meaningful pricing information that better reflects comparable prices for principal and agency trades by identifying those trades where no commission, mark-up, or mark-down was charged or known when reported." FINRA stated that "a failure to accurately report the NR indicator, among other things, affects the audit trail and regulatory surveillance patterns."
- FINRA found that the broker-dealer violated FINRA Rules 6730(d) ("Transaction Reporting"), 3110 ("Supervision") and 2010 ("Standards of Commercial Honor and Principles of Trade").
- To settle the charges, the broker-dealer agreed to (i) a censure, (ii) pay a $400,000 fine and (iii) remediate the reporting issues and implement appropriate supervisory procedures.
- The trade reporting rules are quite complicated and not intuitive. A misinterpretation or a computer glitch can easily result in hundreds of thousands of "violations." Accordingly, this is an area where it may make sense for firms to do a close review of their trade reporting algorithms or bring in outsiders to have a second look.
- Between July 2016 and December 2020, the firm inaccurately reported approximately 370,000 multi-leg transactions in TRACE-Eligible U.S. Treasury securities and securitized products with non-broker-dealer customers through its trading desk.2 In these transactions, the firm earned a mark-up or mark-down on one leg of the transaction, but not on the other leg of the transaction. The firm incorrectly determined the applicability of NR indicator reporting obligations with respect to these transactions and failed to report the leg of the transaction on which it did not earn a mark-up or mark-down using the NR indicator.
- The firm was unaware of the NR indicator reporting issues until FINRA notified the firm in late 2020, and the firm fixed the reporting issue in February 2021. However, the firm’s remediation was not effective with respect to U.S. Treasury securities because of a coding error that misidentified counterparties to U.S. Treasury transactions. As a result, between March 2021 and May 2023, although the firm did not earn a commission, mark-up or mark-down on the transactions, the firm inaccurately reported approximately 230,000 transactions in TRACE-Eligible U.S. Treasury securities with non-broker-dealer customers without the NR indicator when they should have been reported with the NR indicator. By failing to report the NR indicator on approximately 600,000 transactions in TRACE-Eligible Securities, the firm violated FINRA Rules 6730(d) and 2010.
- [6730. Transaction Reporting | FINRA.org]
- FINRA Rule 6730 requires each FINRA member that is a Party to a Transaction in a TRACE-Eligible Security to report the transaction to the Trade Reporting and Compliance1. On June 21, 2019, the SEC approved amendments to FINRA Rule 6730, which requires members to report transactions in US Treasury Securities executed to hedge a primary market transaction with an appropriate identifier2. For transactions executed on a business day at or after 8:00:00 a.m. ET through 6:29:59 p.m. ET, firms would be required to report the trade as soon as practicable, but no later than one minute of the time of execution
- F) No Remuneration Indicator; Where a trade report does not reflect either a commission, mark-up or mark-down, select the "No Remuneration" indicator, subject to the exceptions provided in paragraph (d)(1) above.
- (A) Except as noted in subparagraph (B), for principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) For agency transactions, report the price, which must exclude the commission.

(However, if a price field is not available, report the contract amount and, if applicable, the accrued interest.) Report the total dollar amount of the commission if one is assessed on the transaction. Notwithstanding the foregoing, a member is not required to include a commission, mark-up or mark-down where one is not assessed on a trade-by-trade basis at the time of the transaction or where the amount is not known at the time the trade report is due. A member must use the "No Remuneration" indicator described in paragraph (d)(4)(F) where a trade report does not reflect either a commission, mark-up or mark-down, except for an inter-dealer transaction, a "List or Fixed Offering Price Transaction," as defined in Rule 6710(q), or a "Takedown Transaction," as defined in Rule 6710(r).

- (B) For When-Issued Transactions in U.S. Treasury Securities executed before the Auction for the security and conducted on a principal basis, report the yield, which must include the mark-up or mark-down, of the security in lieu of price. For When-Issued Transactions in U.S. Treasury Securities executed before the Auction for the security and conducted on an agency basis, report the yield, which must exclude the commission, of the security in lieu of price. Report the total dollar amount of the commission.

Notice Of Disciplinary Action; CME; Effective Date 21 September 2023. Member: GFI Securities Limited. CME Rule Violations: Rule 526. Block Trades (In Part). The Exchange shall designate the products in which block trades shall be permitted and determine the minimum quantity thresholds for such transactions. The following shall govern block trades: F. Unless otherwise agreed to by the principal counterparties to the block trade, the seller, or, in the case of a brokered transaction, the broker handling the block trade, must ensure that each block trade is reported to the Exchange within the time period and in the manner specified by the Exchange. The report must include the contract, contract month, price, quantity of the transaction, the respective clearing members, the time of execution, and, for options, strike price, put or call and expiration month. The Exchange shall promptly publish such information separately from the reports of transactions in the regular market. /jlne.ws/3RqZsEM

Bosworth Brokers LLC Fined for Use of Unapproved Messaging Platform; IB *and an associated person ("AP") settled charges with NFA for recordkeeping and supervisory failures resulting from the use of an "unapproved, unmonitored communications platform."*

- In its decision, NFA stated that the AP's use of the unapproved messaging platform to communicate with customers prevented the broker-dealer from retaining required records. As a result, NFA found violations of NFA Compliance Rules 2-4 ("Just and Equitable Principles of Trade"), 2-10(a) ("Recordkeeping") and 2-9 ("Supervision").
- To settle the charges, the introducing broker and the AP each agreed to pay a fine of $100,000.

1. NFA Press Release: NFA orders Houston-based introducing broker Bosworth Brokers LLC and one of its principals to each pay a $100,000 fine
2. NFA Order: Bosworth Brokers LLC, Dennis Michael Bosworth and Andrew Michael Gizienski
3. NFA Complaint: Bosworth Brokers LLC, Dennis Michael Bosworth and Andrew Michael Gizienski

StoneX Markets Fined for Pre-Trade Mid-Market Mark Compliance Failures; *A swap dealer settled charges for failing to adhere to pre-trade mid-market mark ("PTMMM") compliance requirements.*

- The CFTC found that between 2016 and 2022 the swap dealer (i) failed to disclose thousands of PTMMMs, (ii) did not diligently supervise its PTMMM compliance process, (iii) failed to ensure the accuracy of PTMMMs and did not conform them with its internal pricing methodologies and (iv) provided inadequate training and monitoring of associated persons.
- The CFTC found that these deficiencies were in violation of CEA Section 4s(h)(1) ("Registration and regulation of swap dealers and major swap participants") and CFTC Rules 23.431(a) ("Disclosures of material information") and 23.602(a) ("Diligent supervision").

- As part of the settlement, the CFTC imposed (i) a civil monetary penalty of $650,000, (ii) a requirement to complete remediation and submit compliance reports to the Division of Enforcement and (iii) cease and desist orders from future violations of the PTMMM Business Conduct Standards.
- CFTC Order: StoneX Markets LLC
- CFTC Press Release: CFTC Orders StoneX Markets LLC to Pay $650,000 for Violations of Swap Business Conduct Standards

ECB speech – Treading softly yet boldly: how culture drives risk in banks and what supervisors can do about it; *On 19 September 2023, the* ***ECB*** *published a speech by Frank Elderson (Member of the ECB Executive Board and Vice-Chair of the ECB Supervisory Board) entitled Treading softly yet boldly: how culture drives risk in banks and what supervisors can do about it.*

- The speech discusses what the ECB assesses in terms of behaviour and culture in banks and the tools it uses to carry out such assessments. It also covers some of the challenges.

- Key points in the speech include:
- Culture is often the invisible hand that nudges employees towards either prudent risk management or reckless behaviour. It is the undercurrent that determines whether compliance considerations are seen as mere adornments or as important guiding principles.
- Behaviour is the tell-tale sign of whether a bank is primed for prudent risk management or careening toward recklessness.
- At the ECB, behaviour and culture is part of its supervision of banks' internal governance. This means that the ECB looks at both the "hardware" of banks' governance – their policies, management body set-up and composition – and, crucially, at the "software" – how people behave within the governance structures.
- The ECB's internal governance assessments lead to concrete and targeted qualitative requirements and recommendations that banks need to follow up on and implement over a certain period.
- Boardroom observation is an important method the ECB uses to assess whether constructive challenge is taking place on boards. The ECB's attendance at board meetings is targeted and limited and is aimed at assessing the board's dynamic and its ability to effectively challenge the management. Often, the ECB does not see signs of constructive challenge.
- Another way in which the ECB supervises behaviour and culture is by assessing risk culture in banks. One way in which it assesses risk culture is to look at the "tone from the top," as this plays a crucial role in establishing a culture of prudent risk-taking within the institution. As part of its assessment, the ECB interviews board members or business line representatives to inform its supervisory judgement. For a small number of banks, the ECB have also recently started piloting some risk culture deep dives which allow it to make a more in-depth assessment.
- The ECB is reflecting on how it can further incorporate culture and behavioural patterns into its supervisory approach to governance, and it is looking at how it could continue to enhance its supervisory toolkit and develop its expertise in these areas.
- The ECB is currently reviewing its guide on governance and risk culture, which it plans to publish at the end of 2024. The guide will out in detail the ECB's supervisory expectations on governance, risk management and risk culture and will include a set of good practices that it has observed across the banking industry.

Who cares about the new emojis? Financial markets regulators; By Matt Smith, CEO of SteelEye; *For those of you with teenage children, or anyone who gets easily excited over the simple things in life, the recent news that 118 new emoji characters are set to launch over the next year may serve as a light-hearted conversation starter at dinner. For those of you working in financial compliance, your reaction might be better illustrated with a 'confused face' emoji over what this might mean for illicit communications surveillance. For regulators, the 'inspector' emoji seems more apt.*

- With the Financial Industry Regulatory Authority (Finra) recently revealing one of its main priorities this year is to crack down on financial firms' use of emojis, there is a new frontier emerging in trading and communications surveillance – one that represents a growing challenge for already stretched financial compliance teams. After all, while emojis may seem like harmless fun, it can't be denied that they are another medium to communicate opinions or suggested actions when trading a financial asset. Take, for instance, the 'rocket ship,' 'stock chart' and 'money bags' icons. Due to their ability to telegraph very specific market-related beliefs, a US District Court judge recently ruled their use as objective evidence of financial advice – with legal consequences.
- Given one of the new emojis set to be launched this year depicts the mythical phoenix bird, famous for rising from the ashes, you can quite easily imagine how investors could use it in the context of a stock – perhaps suggesting a rally is due after a period of dire performance, who knows. But due to their nature, not all emojis can be easily interpreted, and that is where compliance teams face a challenge. How can you monitor communications for malpractice when systems are not able to pick up on the use of these symbols?
- Making matters doubly difficult, most surveillance lexicons – or in other words, a company's phone book of words and phrases that must be carefully monitored for regulatory compliance purposes – are predominantly text-focused. This means they fail to adequately detect the context behind a particular message or capture nuances present in modern communication methods, like emojis.
- Relying solely on limited keyword-based monitoring systems – most of which only boast about 5,000 words and phrases (or lexica) – will mean compliance teams increasingly overlook sophisticated forms of manipulation and the evolving techniques used by wrongdoers. The big problem is it's not just emojis that are missed by most lexicons. In fact, most do not even possess the capability to flag common slang, or even detect nuances between UK and US English, let alone other foreign languages.
- An effective surveillance system must be able to account for all these permutations, tracking over 20,000 different lexica to be considered effective. Take, for example, someone writing: "this is the first time I've authorised the mkt move to Tele." Most systems today are incapable of recognising these different spellings and would not trigger an alert. In the global business landscape that modern traders operate in, these dated and static lexicons are simply no longer fit for purpose before you factor in even more cryptic lexica like emojis.
- Moving forward, compliance teams and regulators should shift their focus towards implementing advanced contextual analysis techniques that can capture the true intent behind communications – whether it be new emojis, the latest slang, or any other language, like Japanese. With recent breakthroughs in powerful technology such as natural language processing AI, many fintechs are already developing highly comprehensive platforms much more capable of detecting trade-related communications. However, only through close collaboration can financial institutions and watchdogs develop an improved surveillance platform that truly encompasses a wider range of modern communication methods.
- By partnering with pioneering technology vendors, financial institutions can deploy integrated surveillance solutions that are fit for current communication trends and – crucially – able to adapt to emerging ones. Should they fail to make quick and meaningful progress on this front, compliance departments will soon resemble the 'Three Wise Monkeys' emojis – those covering their eyes, ears and mouths.

**AMF President Marie-Anne Barbat-Layani participated in the Eurofi international conference on 13-14-15 September in Santiago de Compostela, accompanied by Jerome Reboul, Deputy Secretary General for International Affairs, and Isabelle Massonnat, Head of Institutional Affairs.** *Speaking at a panel discussion on the future of the Capital Markets Union CMU, she stressed the importance of finalising the construction of a Capital Markets Union during the next European mandate. Trust and transparency are key elements in this context.*

- "Working towards a more European supervision, and at least giving authorities the necessary tools to ensure more convergence in supervision, a factor in the EU's competitiveness, are essential." The power to issue no action letters remains an essential "must have" for the European authorities.
- Marie-Anne Barbat-Layani also spoke about the importance of stimulating retail investment while ensuring investor protection, a central theme of the Retail Investment Strategy (RIS) proposed by the European Commission. This subject is at the heart of the AMF's strategic orientations.

- In the context of RIS, the measurement of the notion of value for money for the customer is a welcome proposal whose contours will be essential to clearly define, as well as the methodology to establish the relevant benchmarks to measure it. The supervision of influencers is also a major subject, in the era of digitalization, as well as that of financial education.
- Finally, it is important to find the right balance of power between supervisors with regard to the cross-border distribution of savings products in the supervision of conduct of business rules and product governance. Jérôme Reboul reaffirmed the regulator's desire to promote innovation while framing risks and ensuring investor safety as a priority.
- In this perspective, he mentioned the interest in developing the use of blockchain in the traditional field of post-trading, and in particular settlement. He also stressed the importance of a smooth and rapid implementation of the MiCA Regulation in the various Member States: a number of transitional challenges arise to which attention must be paid (risk of regulatory arbitrage on the part of the sector's players, or even refusal to implement).
- A step forward to be highlighted: a 1st PACTE approval was recently issued in France.

Under the spotlight: The implications of the FCA's proposed new oversight strategy for principal trading firms; The FCA (FCA) has given firms until the end of the month to consider its recommendations; firms are not required to report their actions back to the regulator. The FCA's 'supervisory strategy for Principal Trading Firms (PTF)' letter - circulated to chief executives last month - highlighted five key areas of focus for the regulator for the next two years. The TRADE takes a look at what the FCA's planned strategy means for the market empirically. The recent communication follows the previous Wholesale Broker Letter (WBL) and addresses the key risks which could arise in relation to PTF's, what drives them, and the FCA's expectations for these firms in mitigating these risks. /jlne.ws/3PJ6CDa

PFOF and its discontents; *Ugh fine, we'll debunk the GameStop conspiracy theory*

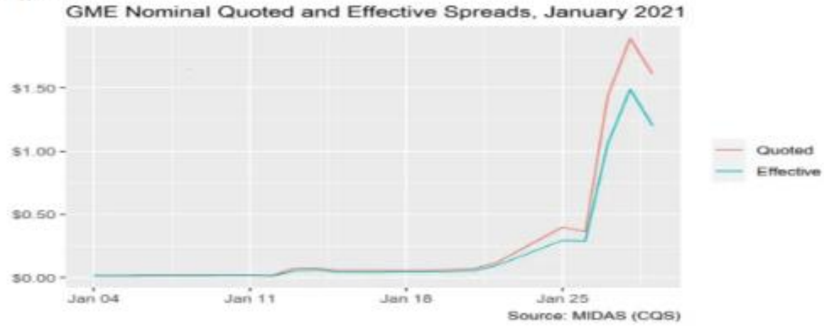
- During the meme-stonk craze of 2021, everyone had one question: Is a working-class revolution happening in the stock market? The answer was self-evident: No. Some people made money in a speculative bubble, which was nice for them! Some more people lost money, which was less nice for them, but they memed a hedge fund into oblivion, which was pretty funny. And in the process, they started to fancy themselves the new sans-culottes, which was very dumb.

- *Dumb Money*, out today, takes that misperception and tries to reify it. Alphaville is going to focus mostly on the movie's fidelity to reality. And we can't believe it's come to this, but we're going to defend Ken Griffin (shudder). The movie basically gins up outrage about a bizarre conspiracy theory that Griffin was behind Robinhood's ham-fisted decision to abruptly freeze its users' ability to buy GameStop near the peak of the 2021 meme stonk craze. Because Citadel (the separate hedge fund) had taken an equity stake in Melvin Capital, or something.
- While it is almost painful to engage with this line of thinking, I had to watch it get laid out for almost two hours, so now it's your turn. The alleged conspiracy appears to be that Robinhood prevented investors from buying shares of GameStop so hedge funds could cover their shorts? But there was an actual reason, which was that insane amounts of volatility in meme stocks prompted clearinghouses to demand more liquidity from brokers. As reported at the time, brokers dramatically raised their margin requirements for their customers, and Robinhood faced a $3bn charge. Given that it couldn't meet that it had to halt trading. in all the most volatile meme stocks. But Redditors could still trade merrily as much as they wanted on other brokerages, which mostly just raised margin requirements!
- The movie also makes spooky noises about payment for order flow (PFOF), where market-makers like Citadel Securities pay brokers like Robinhood to execute bundles of their clients' trades in dark pools. We haven't read the source material in The Antisocial Network and can't speak to any conspiracy theories in it, but the movie's

theory appears to be that because Citadel Securities was paying for order flow from Robinhood, it was able to lean on Robinhood to protect . . . Citadel the hedge fund's stake in Melvin Capital?

- This is bizarre for many reasons. First, it doesn't make sense to say Citadel Securities would want people to stop trading GameStop shares. Here's a very obvious fact about financial markets: No one trades for free. Trades include spreads that go to the market-makers who act as intermediaries between the two sides. Citadel Securities is one of these market-makers! The more trading that happens — especially by individuals! — the better it is for Citadel Securities. That's why the market-maker made a record $7bn of revenues in 2021. Oh and when there's a ton of trading in a stock that doesn't have a huge amount of shares outstanding, like GameStop, which spread goes nuts.
- The SEC had a nice chart in its staff report on the GameStop saga:

Figure 9




- If anything, Citadel Securities and other market-makers should have been encouraging more trading in GameStop, not discouraging it to rescue competitors to the Citadel LLC hedge fund. This will be painfully obvious to our financial-industry readers and has been covered well before, but we're hoping against hope that some Reddit degens and regular folks see it as well. Even Better Markets — hardly a friend of Wall Street in general and Citadel in particular — only termed it "unsubstantiated speculation" in its otherwise critical report on the saga. The biggest problem with the movie is that other people involved in the GameStop mania were more deserving of anger.
- All of Dumb Money's Redditors are charming and relatable, and there's no hint of the platoon of scammers who hosted Twitter spaces for months after the hedge funds' short positions actually got squeezed, claiming that the Big Squeeze would still happen if more traders would only HODL. Unlike Gill, these internet personalities were manifestly not posting real-time spreadsheets with their investment positions. In fact, I got in the habit of dialling into some of these characters' Twitter spaces after the GME short squeeze happened. Here's one of the exchanges that stood out at the time: One guy spoke up to offer free software to help day traders keep track of positions, for tax purposes. He was immediately met with hostility from the space's hosts. This was because his software involved recording of purchases and sales, and that implied that these "diamond hands" investors would ever sell. Things got really nutty, and not in an inspiring way.
- The movie also fully ignores the corporate executives who conspicuously egged on a retail-trading mania before diluting the ever-loving shit out of their shareholders. Robinhood's executives caught some flak, but bizarrely it was over payment for order flow (??), instead of the fact they pushed and encouraged a retail-trading boom until it came back to bite them, or the shoddy risk management that led to the sudden $3bn margin charge from the National Securities Clearing Corporation and triggered the meme stock trading halts. In slight defence of the movie's writers, there is one (we counted) acknowledgment that people didn't just sacrifice gains but lost real money if they listened to the carnival barkers exhorting them to hang on to the stock indefinitely. And it has the good sense to focus on Keith Gill, who seems significantly less grifty than many of his peers. It's also more entertaining than one might fear, in large part because of some big-name actors chewing scenery as fund managers. (It left us wanting to be friends with Vincent D'Onofrio's Stevie Cohen. Romeo the pig makes an appearance! Let's go Mets! Keep posting, king!) Also Pete Davidson is in it.

- But expectations were and should be low, because the movie is about lines on screens and numbers going up and down. Financial markets aren't going to be the source of f*ck-you money for any statistically significant number of people. But instead of showing the pernicious consequences of the GameStonk mania, the writers and directors decided to make the movie an incredibly stupid rallying cry for the Little Guy. Was this really "about class warfare plain and simple" as the movie seems to claim? Class warfare . . . in the stock market? That doesn't make sense because, as we described above, trading stocks mostly just creates revenue for financial intermediaries! It's like encouraging people to go to Las Vegas to stick it to The Man through the slot machines.
- The reality is that no one loves retail investors more than Wall Street. "Superstonk" is basically QAnon for people with brokerage accounts. There are various reasons one could decide to be mad at hedge fund managers, of course. But the movie doesn't provide any coherent ones. It has a vague distaste for short selling, but committed short sellers reveal frauds and actual corruption quite often. One-character monologues about the "Wall Street" firms that restructured her dad's company and gutted his pension, but hedge funds don't do that type of thing. Private equity does! And while hedge funds have been known to use the carried-interest tax loophole that has so benefited private equity, it doesn't seem like WallStreetBets is the place to fight that sort of battle. It is equally nonsensical for an individual investor to get mad at Ken Griffin for PFOF.
- Questions about PFOF are mostly an issue of quality of competition between market-makers and more rarely a few microseconds of difference in stock pricing between trading venues. This doesn't really affect individual investors, other than abstract questions about price discovery and a vague feeling of being used for profit — and if you happen to be a retail trader who thinks today's market-makers are gouging you, I have some bad news about the old set-up. One could instead choose to be angry that the billionaire spent tens of millions of dollars successfully lobbying against Illinois' proposal for a graduated income tax — it's one of just 13 states with flat income tax rates — and moved to Florida shortly thereafter. He told a Miami official he didn't move because of taxes, but because of Illinois' government corruption, crime and the collapse of social services in Chicago. (The latter may have something to do with the state's ability to collect revenue, but what do we know?)
- Instead the movie decides to focus on a disproved and byzantine conspiracy theory about equity market structure, because individuals decided to try organised action in financial markets, of all places. Hm . . . how did that Audre Lorde quote about the master's tools go?

NFA takes emergency enforcement action against Doral, Fla. commodity pool operator Bit5ive Mining Fund Advisor, LLC and its principal Richard Alexander Acosta; *September 18, Chicago—NFA has taken an emergency enforcement action against Bit5ive Mining Fund Advisor, LLC, (Bit5ive Advisor), an NFA Member commodity pool operator located in Doral, Florida, and Richard Alexander Acosta, a listed principal and the sole associated person of Bit5ive Advisor.*

- NFA took this action to protect participants in Bit5ive Mining Fund LP, a commodity pool operated by Bit5ive Advisor, as well as the investing public, the derivatives markets, and other NFA Members because of Bit5ive Advisor and Acosta's failure to cooperate with NFA. Due to their failure to produce requested documents and information, NFA is unable to determine, among other things, who invested in the Fund, as well as when and how much; whether there are additional investors in the Fund other than those disclosed to NFA; what Bit5ive Advisor and Acosta did with the funds received for investment in the Fund; and the source of funds used to repay one investor.

NFA orders Houston-based introducing broker Bosworth Brokers LLC and one of its principals to each pay a $100,000 fine; *September 18, Chicago—NFA has ordered Bosworth Brokers LLC (BBL), an NFA Member introducing broker located in Houston, Texas, and Andrew Michael Gizienski, a principal and associated person of BBL, to each pay a $100,000 fine.*

- The Decision, issued by an NFA Hearing Panel, is based on a Complaint authorized by NFA's Business Conduct Committee (BCC) and a settlement offer submitted by BBL, Gizienski and Dennis Michael Bosworth, another principal and AP of BBL, in which they neither admitted nor denied the Complaint's allegations. The BCC Complaint alleged that BBL failed to comply with its recordkeeping obligations under NFA Compliance Rule 2-

10 and that Gizienski failed to observe high standards of commercial honor and just and equitable principles of trade under NFA Compliance Rule 2-4, due to Gizienski's use of an unapproved, unmonitored platform to communicate with a BBL customer, which deleted communications after seven days. The Complaint also alleged that BBL failed to promptly list Gizienski as a principal, in violation of NFA Registration Rule 208. Finally, the Complaint alleged that BBL and Bosworth failed to supervise, in violation of NFA Compliance Rule 2-9.

- In its Decision, the Panel found that BBL and Bosworth violated NFA Compliance Rule 2-9; that BBL violated NFA Compliance Rule 2-10 and NFA Registration Rule 208; and that Gizienski violated NFA Compliance Rule 2-4.

Surveillance in the age of WhatsApp; Tue, Sep 19th, 2023, 2:00 pm British Time


The chief executive of Cboe Global Markets has resigned after the exchange operator said he failed to disclose personal relationships with colleagues. *The Chicago-based group said in a statement on Tuesday that the failure by Edward Tilly to disclose the ties "violated Cboe's policies and stands in stark contrast to the company's values."*

- Tilly is a veteran of Cboe and its predecessor, the Chicago Board Options Exchange, having started as a clerk on its trading floor in 1987. Cboe operates the largest venue for US equity options, among other businesses. He is the latest chief to unexpectedly depart over his personal relationships. Last week, BP chief Bernard Looney resigned over his failure to disclose the extent of past personal relationships inside the company. Cboe said Tilly resigned after an investigation by Cboe's board and external lawyers that began last month. The conduct at issue "was not related to and does not impact the company's strategy, financial performance, technology and market operations, reporting, or internal controls," the company said.
- Fredric Tomczyk, a Cboe board member, will take over as chief. Tomczyk joined the board in 2019, having been chief of broker TD Ameritrade for eight years until 2016. "Fred's familiarity with Cboe's business, combined with his multi-decade experience in the financial services industry, will provide stability and reinforce the company's commitment to growth," said William Farrow, a Cboe board member newly appointed as non-executive chair.
- Shares in Cboe were up about 3 per cent after the news and have gained 25 per cent this year, outperforming rivals and the broader market as the exchange benefited from a surge in options trading, particularly in its flagship S&P 500 products. The exchange group is best known, however, for its Vix indices, which measure the stock market volatility implied by options and are popularly known as Wall Street's "fear gauge."
- Earlier this year, Cboe also launched a push to win new listings in Europe, where it runs the largest pan-European share trading venue. Tilly had led Cboe since 2013, having held senior management positions since 2006 when he moved from the trading floor. He became chair in 2017 after leading Cboe's $3bn acquisition of the Bats trading platform, a move that extended its reach into US and European cash equities as well as exchange traded funds and currencies. "It's a big deal. He was a really good leader for the company," said John Lothian, publisher of an industry newsletter and formerly a futures broker in Chicago. "Ed represented a continuation of the Cboe culture even as that changed when it bought Bats, and it became much more

aggressive and less of a member-led exchange." In a filing, Cboe said that, under his contract, Tilly would retain stock options, including performance-related ones, prorated up to his departure date.

CFTC Orders Chicago-based Advantage Futures LLC to Pay $395,000 for Supervision Failures; Release Number 8779-23; September 20, 2023 *Issued an order simultaneously filing and settling charges against Advantage Futures LLC, a registered futures commission merchant based in Chicago, Illinois, for failing to diligently supervise the handling of commodity interest accounts, which resulted in incomplete and inadequate oversight of its surveillance of customers' trading activity for disruptive trading over a four-year period, in violation of CFTC regulations. The order requires Advantage to pay a $395,000 civil monetary penalty and to cease and desist from any further violations of its supervisory requirements, as charged.*

- According to the order, Advantage's policies and procedures specified that customer trades it cleared would be surveilled for disorderly trading using complex trade analysis software. However, during the relevant period, Advantage did not fully comply with its policies and procedures and failed to process and surveil three separate sets of customer order and execution data over three distinct periods.
- According to the order, Advantage's surveillance vendor failed to process data for one exchange's futures contracts between July 2018 and December 2020. This lapse occurred because Advantage's vendor dropped one of the data feeds after testing was complete and surveillance went live. Advantage did not ensure its vendor was receiving and processing all customer trade data, which resulted in certain of its customers' products trading not being surveilled for nearly two and a half years.
- The order also finds Advantage's surveillance vendor did not receive data from another exchange between June 2019 and June 2022. When Advantage switched to a new clearing broker in June 2019, Advantage, through its surveillance vendor, failed to switch the data feed connections from its prior clearing broker to its new clearing broker.
- In addition, the order finds Advantage failed to send its surveillance vendor the order and trade data for a some of its customers' total trading on two other exchanges between July 2018 and June 2022, which prevented surveillance on that trading activity.
- In total, the order finds Advantage's failures caused over 12.8 million cleared contracts to not be processed or surveilled between July 2018 and June 2022. This represents nearly 1.5% of Advantage's customers' trading volume during that four-year period. Advantage represents it has taken steps to ensure that, going forward, it receives and surveils trade and order data for exchanges it clears. Those steps include retaining a new surveillance vendor, reprocessing and reviewing data that was not reviewed in real time, hiring additional staff focused on trade surveillance, and implementing controls to ensure connectivity to exchange data feeds.
- The CFTC appreciates the assistance of the Quebec Autorité des marchés financiers.
- The Division of Enforcement staff members responsible for this case are Doug Snodgrass, Joy McCormack, Allison Passman, Scott Williamson, and Robert Howell.
- Advantage Futures LLC Settles Charges for Supervisory Failures on Surveillance of Customer Trading Activity; *registered futures commission merchant settled CFTC charges for failing to supervise adequately the monitoring of its customers' trading.*

- In its order, the CFTC found that between July 2018 and June 2022, the FCM failed to receive data from two different vendors over three distinct trading periods for surveillance of customers' potentially "disruptive" trading. The CFTC stated that the FCM did not verify that its vendor was receiving and processing all customer trading data, which led to "certain of its customers' products trading not being surveilled for nearly two and a half years." The CFTC determined that $12.8 million of cleared contracts were not surveilled.
- The CFTC charged the FCM for violating CFTC Rule 166.3 ("Supervision"). The settlement included (i) a civil monetary penalty of $395,000, (ii) a cease and desist from future violations and (iii) other remedial steps.

1. CFTC Order: Advantage Futures LLC
2. CFTC Press Release: CFTC Orders Chicago-based Advantage Futures LLC to Pay $395,000 for Supervision Failures

SEC Charges Citadel Securities for Violating Order Marking Requirements of Short Sale Regulations; 2023-192*; Commission today announced settled charges against broker-dealer Citadel Securities LLC for violating a provision of Regulation SHO, the regulatory framework designed to address abusive short selling practices, which requires broker-dealers to mark sale orders as long, short, or short exempt. These records are routinely used by regulators in policing prohibited short selling activity. To settle the SEC's charges, Miami-based Citadel Securities agreed to pay a $7 million penalty.*

- According to the SEC's order, for a five-year period, it is estimated that Citadel Securities incorrectly marked millions of orders, inaccurately denoting that certain short sales were long sales and vice versa. The SEC's order finds that the inaccurate marks resulted from a coding error in Citadel Securities's automated trading system and that the firm provided the inaccurate data to regulators, including the SEC during this period.
- "Compliance with the order marking requirements of Reg SHO is a key component of regulatory efforts to curtail abusive market practices, including 'naked' short selling," said Mark Cave, Associate Director of the SEC's Division of Enforcement. "This action against Citadel Securities demonstrates that a broker-dealer's failure to comply with the requirements of Reg SHO can have negative downstream consequences on the accuracy of the firm's electronic records, including its electronic blue sheet reporting, depriving the Commission of important information about the markets it regulates."
- The order charges Citadel Securities with violating Rule 200(g) of Reg SHO. Without admitting or denying the findings, Citadel Securities consented to a cease-and-desist order imposing a censure, a $7 million penalty, and a set of undertakings, including a written certification that the coding error has been remediated and a review of the firm's computer programming and coding logic involved in processing relevant transactions.

CFTC Grants Two Whistleblower Awards Totaling Over $15 Million; Release Number 8777-23;

- The CFTCtoday announced whistleblower awards totaling over $15 million to two whistleblowers who provided significant information and assistance that led the CFTC to bring separate successful enforcement actions. Because the whistleblowers immediately provided reliable information, the CFTC opened the respective investigations shortly after each whistleblower submitted a Form TCR.
- The recipient of one whistleblower award interpreted key evidence and helped the Division of Enforcement (DOE) staff identify new and productive lines of inquiry. This whistleblower pointed staff to the misconduct at issue in the resulting enforcement action and provided information that conserved CFTC resources.
- The other award recipient, after providing the initial information that led to the opening of the investigation, provided a high degree of additional support to DOE staff; including interpreting key evidence for staff; facilitating the appearance of another witness to corroborate the violations; and providing a declaration in support of the matter. Notably, the whistleblower's information led DOE staff to expand its analysis of the harm customers suffered as a result of the violations.
- "These awards illustrate the success of our whistleblower program," said Ian McGinley, Director of the Division of Enforcement. "The program incentivizes whistleblowers like these two to come forward with accurate information, including evidence of ongoing misconduct, to help protect market participants and hold wrongdoers accountable."
- "These whistleblowers provided sustained cooperation and support, which helped catch more misconduct and conserve CFTC resources," said Whistleblower Office Acting Director Christina McGlosson. "Today's awards show how whistleblowers can act as force multipliers for the CFTC's enforcement efforts."

SEC increasingly pursuing steeper fines The US SEC is increasingly seeking fines in enforcement cases that are considerably higher than they would have been for comparable issues a few years ago. SEC enforcement director Gurbir Grewal said that fines need to be "at a level where the cost of effecting a culture of compliance throughout an organization is cheaper than violating the federal securities laws." The Wall Street Journal

*Firm culture: "what's the minimum behaviour the firm can get away with"*

- *Culture not as a status quo*
- *Culture as then opposite to "Conduct"*
- *Culture is not homogeneous across the organisation – yet measurement needed via quantitative metrics.*

## Building Firm Culture: What to celebrate and what to work on

**Figure 11. Actions to maintain good conduct**

| | Total | Total | | |
|---|---|---|---|---|
| | | Leading | Embedding | Developing |
| Revisiting core training programmes to ensure they adequately address organisational and risk culture and conduct themes | 70% | 92% | 72% | 59% |
| Ensuring firm values are embedded into all elements of the people strategy | 69% | 87% | 81% | 53% |
| Focus on wellbeing and psychological safety in the workplace | 69% | 89% | 81% | 52% |
| Ensuring the performance and talent management process supports the firm's values and risk culture | 69% | 89% | 77% | 55% |
| A diverse senior leadership team/board | 68% | 88% | 80% | 50% |
| Ensuring employees have adequate career development opportunities | 66% | 88% | 74% | 50% |
| Underscoring the importance of diversity, equity and inclusion | 66% | 83% | 75% | 51% |

*Type of question: single option per row. Scale: Rank on scale with the following options: completely uninvested; slightly uninvested; neither; slightly invested; fully invested; unable to say. Results in table show percentage of respondents who chose the two most favourable options on scale.*


FOS publishes quarterly complaints data: Q1 2023/24; *On 14 September 2023, the Financial Ombudsman Service (**FOS**) published its [quarterly complaints data](#) for Q1 2023/24.*

- Every three months, the FOS shares quarterly data and information on the complaints it sees about financial products and services. This includes the number of enquiries and new complaints the FOS has received, as well as the proportion of complaints the FOS resolved in favour of consumers – or 'upheld.'

- This quarters data highlighted the following:
  - Overall, the FOS received 73,429 new enquiries and 43,953 new complaints about financial products and services.
  - This is an increase on complaints received in the same period last year. The FOS received 35,029 complaints in Q1 2022/23.
  - Complaints about buildings, car and motorcycle insurance have reached a combined five-year high, with an increase in complaints about delays in processing and paying insurance claims.

- Current accounts were the most complained about product this quarter, with complaints up by a third compared to the same quarter last year. This rise is due to fraud and scam complaints which also increased by a third in the same period.
- Complaints which were categorised as account closures made up just 5% of current account complaints and this is consistent with the same period last year.
- Travel insurance complaints have doubled in a year – increasing from 504 complaints in the first quarter of 2022/23 to 1,101 in the same quarter this year – the highest Q1 figure for travel insurance complaints in more than a decade.
- There has been a small increase in the percentage of cases upheld year on year. On average, the FOS upheld 37% of the cases it resolved, up from 34% in the same period last year.

Modifications by consent: COBS 8.1.1R, COLL 5.6.22R, SUP 16.23A.6(1); *On 11 September 2023, the FCA published updated directions for the following Modifications by Consent:*

- COBS 8.1.1R – This modification is available to providers of Child Trust Funds (**CTFs**) wishing to move matured CTFs to a protected account ISA, or by bulk transfer to a new provider, when the client is deemed as 'gone away' or is uncontactable.
- COLL 5.6.22R – Available to the depositary of a non-UCITS retail scheme (**NURS**) whose investment objective and policy include the power to invest in immovable property. For a NURS constituted as an investment company with variable capital (**ICVC**), it also applies to the ICVC itself.
- SUP 16,23A.6(1) (previously ICOBS 8.4.4 R(1)) -This modification will enable The Employer's Liability Trading Office to be classed as 'an auditor' for the purposes of SUP 16.23A.6(1).

FMSB precious metal compendium; *On 12 September 2023, the Financial Markets Standards Board (**FMSB**) published a compendium: Precious metals market evolution.*

- This compendium consolidates insights from three distinct spotlight reviews considering the potential evolution of precious metals markets. It outlines opportunities for enhancement and offers suggestions for heightening market transparency and efficiency.

- The compendium looks at key aspects of the precious metals markets, including:
- Market structure: An analysis of the current state of the precious metals market structure and an exploration of potential evolutions that could enhance transparency, efficiency and participation.
- Post-trade processes: An examination of the post-trade landscape which explores opportunities for increased efficiency through the adoption of new technologies and processes.
- Data and transparency: Highlighting the critical role of data and transparency in fostering trust and confidence within the precious metals markets. The paper outlines the steps the gold market can take to support the characteristics of gold as a high-quality liquid asset.

FCA publishes webpage on applying to approve financial promotions for unauthorised persons; *On 12 September 2023, the FCA published a new webpage: Applying to approve financial promotions for unauthorised persons, setting out how to apply to the FCA for 'approver permission' which will be required under new rules coming into force next year.*

- The webpage is aimed at firms that currently approve, or intend to approve, financial promotions for unauthorised persons, but is also relevant for firms applying to be authorised by the FCA. It explains that currently, an authorised firm can approve financial promotions for an unauthorised person, subject to the FCA's rules about financial promotions and adverts. From 7 February 2024, however, firms will need FCA permission to do this under the Financial Services and Markets Act 2000 unless an exemption applies.
- Included on the webpage is information on:
- How to find out whether a firm is exempt.

- The 3-month window for applying for approver permission.
- How to apply, including what to read and consider first, how to prepare an application, how to submit an application and what happens after an application has been submitted.

- Firms will need to apply to the FCA between 6 November 2023 and 6February 2024 to continue approving financial promotions ahead of the new rules coming into force on 7 February 2024. Firms that have submitted an application can continue to approve promotions after this window until they receive a decision on their application.
- Furthermore, firms approving financial promotions will also be required to report regularly on what they sign off and on any concerning adverts they cancel approval for, with the aim of helping the FCA to move faster to crack down on rogue adverts.

FCA issues policy statement with final rules on gateway for firms that approve financial promotions; *On 12 September 2023, the FCA published policy statement PS23/13: Introducing a gateway for firms who approve financial promotions. PS23/13 sets out the FCA's final policy position and near final rules and guidance on the gateway, which was introduced by the government through the Financial Services and Markets Act 2023.*

- Once the new gateway comes into effect, all authorised persons wanting to continue to approve financial promotions for unauthorised persons will need to apply to the FCA for permission to do so, subject to certain exemptions. Authorised persons that only approve their own financial promotions for communication by an unauthorised person, the financial promotions of their appointed representatives for the regulated activities they have accepted responsibility for, or the financial promotions of unauthorised persons within their corporate group, will not need to apply for permission under the new regime.

- The FCA notes that it has made several targeted changes to its proposals (in CP22/27, published in December 2022) for how to implement the gateway, in response to consultation feedback. The finalised approach, set out in PS23/13, includes:
  - How the FCA will assess applicants at the gateway and its basis for granting or refusing applications.
  - Reporting requirements for firms that are granted permission to approve financial promotions.
  - Not extending the compulsory jurisdiction of the Financial Ombudsman Service to the approval of financial promotions.
  - Updates to the FCA's non-Handbook guidance for firms that approve financial promotions for investments.
  - A review of the FCA's approach within 24 months of the rules coming into force.
- Next steps; Firms should consider whether there is a need for them to apply to continue to approve financial promotions for unauthorised persons.
- The FCA intends to enable firms to submit applications for permission to approve financial promotions from 6 November 2023, and that initial application period will close on 6 February 2024. On the following day, 7 February 2024, the new legislation will be implemented and firms that have not applied to the gateway will no longer be able to approve financial promotions (subject to exemptions). Firms that do apply at the gateway during the initial application period, however, will be able to continue approving financial promotions for unauthorised persons while the FCA determines their application.
- Any firms that do not apply at the gateway during the initial application but wish to approve financial promotions in the future can apply for permission to approve using a variation of permission form. However, they will not be able to approve financial promotions until the FCA has determined their application as successful.
- Applicants for Part 4A permission will also be able to begin applying for permission to approve financial promotions from 6 November 2023.
- Further information on applying to approve financial promotions for unauthorised persons is set out on a new FCA webpage, and the questions that applicants will be asked in the application are listed in Annex 1 and 2 of PS23/13.

FCA published a speech delivered by Sarah Pritchard, Executive Director of Markets and International, at the Financial Crime Summit 2023. *The speech addresses calibrating controls to build confident markets. In her speech, Ms Pritchard makes the following remarks:*

- As an outcomes and data-led regulator, the FCA is focusing on results. There has been an eight per cent reduction in the total amount lost through fraud in the last year, according to data from UK Finance.
- Firms need to understand their risks and calibrate their controls appropriately and proportionately. Those checks carried out by firms can disrupt serious criminality and protect the public. They should also expect spot checks by the FCA.
- The FCA has published its report on sanctions where it identifies good and bad practice.
- The FCA will increase its focus on whistleblowing in high-risk sectors and expects first line of defence employees to raise awareness of the process and benefits of whistleblowing for organisations and wider society. It will be testing how effectively these messages have been shared and will identify best practice across the industry.
- The FCA is also working to support changes to faster payments, so that payments can be slowed down in cases of suspected fraud.
- Firms must be able to manage financial crime risks. However, if politically exposed persons (**PEPs**) rules are applied inappropriately, individuals and their families may find themselves excluded from products or services through no fault of their own. Therefore, the FCA is engaging with PEPs, firms, and other stakeholders to understand whether it needs to make improvements to how the regime applies in the UK.

FCA publishes speech on calibrating controls to build confident markets; *On 6 September 2023, the FCA published a speech delivered by Sarah Pritchard, Executive Director of Markets and International, at the Financial Crime Summit 2023. The speech addresses calibrating controls to build confident markets. In her speech, Ms Pritchard makes the following remarks:*

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Acting to fight crime ; Speech by Sarah Pritchard, Executive Director of Markets and International at the Financial Crime Summit 2023 by 1LoD. Delivered remotely from London: 6 September 2023

Highlights

- Fighting financial crime is about upholding our standards and boosting our competitiveness.
- Firms should calibrate their financial crime fighting systems to the right risk level – whether that be high or low - and expect spot checks by the FCA. Our sanctions update identifies good and bad practice.

- Domestic Politically Exposed Persons (PEPs) should generally be treated as a lower risk, and we will act immediately if we see firms persistently acting disproportionately.
- Acting to fight crime
  - Black bin liners stuffed with £700,000.
  - An international deal for PPE kit.
  - A widow transferring money to her online love interest…

- What do these cases all have in common? They all had links to financial crimes and should have raised suspicious activity reports.
- In the first case, despite bulging black bin liners breaking from the weight of 700,000 in notes, nobody at a Walsall bank thought to raise a suspicious activity report. That lack of action cost NatWest nearly 265 million pounds in fines for breaching anti-money laundering regulations and a criminal conviction.
- In the second case, the alert was properly raised and the National Crime Agency arrested an individual suspected of setting up a UK company to run a fraudulent scheme profiteering from PPE shortages during the pandemic.
- And in the final case, HSBC were able to uncover a romance scammer who had created a fake online dating profile and came perilously close to convincing a woman to transfer tens of thousands in savings to her bogus love interest to help with a supposedly temporary cash flow problem.
- Financial crime is never a victimless crime. It not only costs corporations and consumers, but it also damages the integrity and reputation of our markets, and this undermines our international competitiveness.
- That is why fighting financial crime has been a key focus of our strategy.
- As an outcomes and data-led regulator, we are focusing on results. There has been an eight per cent reduction in the total amount lost through fraud in the last year – according to data from UK Finance.
- Much has been done but there is still much more to do. We want to identify and prevent harm – and take action.
- As part of this, we have clear expectations of firms. It is firms who are our first line of defence in the fight against crime.
- They need to understand their risks and calibrate their controls appropriately and proportionately. Those checks carried out by firms can disrupt serious criminality and protect the public.
- Taking early action can also save millions in fines down the line as well as the reputations of firms.
- Fraud accounts for 40 per cent of all crime. Sometimes people mistakenly think that because banks can reimburse victims, no one really loses out. But we all do as the costs of covering these crimes are passed on to all customers.
- Worse, financial crime, fraud and money laundering have even more sinister roots in human trafficking, terrorism and child exploitation.
- Risky business
- Not all risk is the same. As a lawyer, I know catering for extreme cases makes for bad law.
- Likewise, tackling financial crime and imposing controls should not be about a rigid, inflexible system aimed at the worst-case scenario. It is not a compliance, tick box exercise.
- To calibrate risk, you need to understand who your clients are, identify the sorts of transactions you would expect them to make and have systems in place to flag when there is suspicious activity.
- We have published our report on sanctions where we identify good and bad practice.
- In the run up to Russia's invasion of Ukraine, we saw firms anticipating the geopolitical developments and formulating contingency plans, ready to spring into action should the worst happen. We were impressed with their preparedness.
- But we also saw firms drag their feet, creating backlogs that they were unable to keep on top of. Equally, too many firms thought that an off-the-shelf tech solution would suffice.
- You simply cannot outsource risk calibration to a third party and palm off all responsibility for keeping on top of it to external firms. Firms need to understand their risks – both high and low – and make sure they have a proportionate and risk-based approach to deal with them.
- Testing firms' sanctions controls

- We are stepping up our testing of firms' risk-based systems and as a data-led regulator, using data and tech to do so.
- Our recent testing of firms' compliance with sanctions was driven by data and tech. We asked firms to test their own controls against a sample data set, and then selected those for a visit who had not picked up what we were expecting. More effective use of artificial intelligence will bolster our toolkit in the future.
- This is an example of us taking a risk-based approach - not a tick box approach, and we expect the same from firms.
- When we did this testing, we found good practice and bad. Good firms knew their client base, knew who they were dealing with and calibrated their sanctions alerting systems to UK as well as international sanctions lists.
- Bad firms didn't - they left their screening to outsourced entities, didn't understand the corporate structures for their corporate client base, and hadn't calibrated monitoring to UK sanctions requirements.
- So, in summary, those who carry out tick box compliance exercises should not be surprised to find a surprise visitor from the FCA on their doorstep.
- Never be afraid to question if your firm has the right risk calibration – checking if it is proportionate – whether it is too high or too low. If you're working in financial crime in the first line of defence, you should be able to see the golden thread between your activity and protecting the public from serious crime.
- We will increase our focus on whistleblowing in high-risk sectors and expect first line of defence employees to raise awareness of the process and benefits of whistleblowing for organisations and wider society. We will be testing how effectively these messages have been shared and will identify best practice across the industry.
- Whistleblowing has allowed us to tackle problems including consumers being mis-sold loans, unauthorised firms taking on customers, and failings in firms' own internal whistleblowing procedures.
- There are some who perhaps want us to move directly from whistleblowing to immediate enforcement. For obvious reasons, this can be counterproductive. It can imperil the anonymity of the whistleblower; it can undermine the likelihood of us being able to bring the case to court and it can also spur the wrong doers into covering their tracks and evading capture.
- Just like our other work, moving from whistleblowing to enforcement must be evidence-led, with the outcomes in mind. The integrity not just of the firm but of our markets is at stake
- PEPs Review and future developments; *Speaking of evidence, we are also working to support changes to faster payments, so that payments can be slowed down in cases of suspected fraud.*
- And through our Office of Professional Body Anti-Money Laundering Supervision (OPBAS), we are driving for more effective anti-money laundering supervision of lawyers and accountants to stop professional enablers of financial crime.
- On September 5 2023 we unveiled our terms of reference for our review of the Politically Exposed Persons (PEPs) regime. Its aim is to maintain the UK's high standards and clean markets while striking the right balance between being robust and proportionate when it comes to considering the risk of domestic PEPs.
- Our guidance is based on the international anti-money laundering rules that were implemented through domestic legislation. We make clear that UK public figures should generally be treated as a lower risk than foreign PEPs.
- Firms must be able to manage financial crime risks. But if PEPs rules are applied inappropriately, individuals and their families may find themselves excluded from products or services through no fault of their own.
- That is why we are engaging with PEPs, firms, and other stakeholders to understand whether we need to make improvements to how the regime applies in the UK.
- Firms must calibrate for the right risk level. We are intelligence-led, and where we find that firms are persistently problematic in managing that risk level, we will take action.
- Individuals can also raise concerns with their financial institutions and the Financial Services Ombudsman.
- Outcomes are our bottom line; *To run a successful firm, you need to be driven by the bottom line. To be a successful regulator, you also must be led by the data and focus on the results. And focus on outcomes.*
- That is why reducing financial crime is one of our key super-charged priorities this coming year. We have devoted resources to strengthen the focus on financial crime systems and controls when we authorise firms, we are using data testing and tools to identify firms where there may be weaknesses, have unleashed technology to detect and take down scam sites, and acted to fine and prosecute firms.

- We are one of the most prolific enforcers globally of anti-money laundering rules, with more than one billion pounds issued in penalties since 2010.
- More than 8,500 misleading adverts have been removed by us in 2022, 14 times as many as the previous year.
- We have carried out 352 initiative-taking assessments of sanctions in the last financial year – nearly 4 times as many as the previous year. And we have used synthetic data sets to test the effectiveness of firms' sanctions controls.
- More than 610 financial crime supervision cases have been opened in the same time frame, an increase of more than 65% from the previous year.
- We know that we are always stronger when working together and, in the UK, we have successful public and private partnerships when it comes to fighting financial crime.
- That is why we are committed to continue sharing the results of our work – examples of good and bad practice – including sharing data on firms used for payment fraud which will be published in the Autumn. We are playing our part in supporting the UK's public private economic crime plan, and in the UK's first national fraud strategy. Through the Consumer Duty, which came into force in July, we are also focusing on achieving good outcomes for consumers – and we will look to see how firms are operating their financial crime systems with the Consumer Duty in mind.
- Eradicating financial crime benefits not just consumers but all those involved in the investment sector. It ensures that investors can have confidence in the integrity of the market and those firms and individuals they entrust their pensions and investments to.
- But as an outcomes focused regulator; we need firms to play their part. My message is clear – financial crime risks differ. Risk calibration is important. Technology has a great role to play – but do not outsource all responsibility to your third-party providers – understand your clients, their level of risk, and act proportionality.
- It is up to all of us to be alert to the risk, taking action which is both robust and proportionate to protect our consumers, our firms and our clean markets.

FCA publishes letter to the wholesale banking sector after portfolio analysis and strategy forum; *On 8 September 2023, the FCA published a letter to the wholesale banking sector, following its portfolio analysis and strategy forum. The letter sets forth the FCA's supervisory work programme over the next two years which will shape its engagement with the wholesale banking sector. The letter also sets out the FCA's areas of supervisory focus.* The letter sets out the following:

- The external environment – The FCA expects wholesale banks to contribute to high standards of market excellence and help strengthen the UK's position as a global and vibrant financial centre. The FCA and wholesale banks have a shared objective in ensuring that markets work well, and while the FCA has arrangements in place to collect industry intelligence, it is always keen to hear from firms about their concerns of risks in markets.
- Risk management – Many firms have put in place remediation programmes in response to the events of the last 18 months. Better firms will have done this whether they were directly affected or not by the events. The FCA will look to senior management to evidence how these remediation programmes have delivered better risk management and oversight across businesses and how they are comfortable that this is underpinned by a strong culture. The FCA will also look to Boards to evidence how they are ensuring that such improvements are lasting.
- Maintaining high standards of control – The FCA is ramping up its testing programme to look at how banks are controlling conduct risks, including more in person supervisory assessments. Assessing how firms manage conflicts of interest will be a particular area of focus.
- Operational resilience – The FCA will continue to review firms' compliance with the requirements of PS21/3 Building Operational Resilience and their ability to remain within their impact tolerances as soon as reasonably practicable, but no later than 31 March 2025. The FCA will also use its engagement with relevant senior managers to assess how they have learnt the lessons of operational resilience events even if their firm has not been directly impacted.

- Organisational changes – If a firm starts to consider changes to how they serve clients, their location, their booking model or risk management arrangements, the FCA expects this to be brought promptly to its attention before any change is made. Where the FCA sees proposed changes that are not consistent with its objectives, the FCA will intervene.
- LIBOR transition -While USD LIBOR ceased on 30 June 2023, the FCA expects wholesale banks to continue actively transitioning the last of the contracts that reference USD LIBOR and not rely unnecessarily on synthetic LIBOR. Client and conduct considerations should remain at the core of the transition programme.
- Implementation of the Consumer Duty – The FCA will test the robustness of assessments made and actions taken to implement the Consumer Duty as well as the effectiveness of the arrangements in place to identify any implications of compliance with the Consumer Duty that might result from changes in activity.
- ESG – Wholesale banks have an important role in the transition to a more sustainable future. They should demonstrate that their financing activities are aligned with their own transition plans, and that product and public-facing commitments relating to ESG are delivered in practice.
- Artificial intelligence – As set out in DP5/22, a discussion paper issued jointly by the FCA, Prudential Regulation Authority and Bank of England, artificial intelligence and machine learning are rapidly developing technologies that have the potential to transform financial services. The FCA will engage with wholesale banks on current deployment as well as plans for the future and the associated control infrastructure.
- Diversity, equity and inclusion – Through the FCA's engagement with wholesale banks, the FCA's supervisory focus will be to understand how they are playing their role in helping to accelerate the pace of meaningful change on diversity, equity and inclusion in the sector.
- Non-financial misconduct – The FCA expects firms to have effective systems in place to identify and mitigate risks of all kinds. Should allegations or evidence of non-financial misconduct come to light the FCA expects a regulated firm to take them seriously through appropriate internal procedures and act according to the established facts.
- The FCA will assess the reports we receive and will consider carrying out work to assess the effectiveness of these controls.
- The letter notes that within two months, the FCA expects all CEOs to have discussed the contents of this letter with their fellow directors and/or Board and to have agreed actions and/or next steps.

FCA Calls For Prioritization Of Biodiversity Reporting; The FCA has urged global sustainability accounting standard setters to prioritize developing rules on how companies and financial institutions report on biodiversity. Read full article »

Morgan Stanley fined £5.41m as traders WhatsApp wholesale energy market transactions on their private phones; 01Sep2023.pdf

UK banks tighten up on work from home; 04Sep2023.pdf

NRF latest Regulation Tomorrow Plus podcast, Jonathan Herbst, Hannah Meakin and Anita Edwards discuss the key points covered in the FCA's recent portfolio letter to CEOs of 'principal trading firms' and consider the next steps.

FCA publishes letter to firms on preparations to comply with the cryptoasset financial promotions regime and modification to financial promotion rules; *On 7 September 2023, the FCA published a letter to firms setting out its findings from meetings with various cryptoasset firms regarding their preparations for the cryptoasset financial promotions regime, and additional actions it is taking to support firms in complying with the regime. The FCA's rules on financial promotions for cryptoassets, which were set out in Policy Statement PS23/6 published on 8 June 2023, will have effect from 8 October 2023. The letter makes the following key points:*

- Most firms have faced significant challenges in preparing for the financial promotions regime. The challenges have been concentrated in preparing for the 'back end' financial promotion rules i.e. personalised risk warnings, 24-hour cooling off period, client categorisation and appropriateness assessments.
- Firms in global group structures are having to make significant changes to their business models to comply with the regime.
- Firms have under appreciated the broad scope and nature of the financial promotions regime. The regime covers not only 'traditional' promotional material but also applies to a wide range of customer communications including websites and apps.
- Firms were not sufficiently considering how certain rules apply to the specifics of the cryptoasset services they provide – in particular, how their risk summaries and appropriateness assessments should be tailored to the specific cryptoassets being promoted.
- The good and poor practices observed by the FCA on firms' preparations for the financial promotions regime are set out in detail on a new webpage also published by the FCA.
- Following the feedback received, the FCA announces in the letter the following modification to the financial promotion rules:

  - Crypto firms registered with the FCA under the Money Laundering Regulations (**MLR**) and those firms otherwise authorised by the FCA can apply for a modification by consent to the FCA's financial promotion rules. This modification is available to MLR-registered firms intending to communicate cryptoasset financial promotions and authorised firms intending to communicate or approve cryptoasset financial promotions.
  - The effect of the modification will be to delay the implementation of the 'back end' Direct Offer Financial Promotion (**DOFP**) rules by three months – specifically, rules in COBS 4.10.2AR, COBS 4.12A.15R and COBS 10.1.2R related to personalised risk warnings, 24-hour cooling off period, client categorisation and appropriateness assessments.
  - For firms who are granted this modification the rules will not apply from the date the modification is formally consented to. The DOFP rules will enter into force on 8 January 2024 when the modification expires.
  - Firms should be aware that the rules related to client categorisation and appropriateness assessments apply to existing customers wishing to engage in further investment activity. Firms who are granted the modification must comply with these rules from 8 January 2024, including for their existing customers.
- The FCA notes that all other financial promotion rules will still apply from 8 October 2023.
- Further details on the FCA's modified expectations of firms in relation to the crypto marketing rules are set in a related press release.

Futures market participants call for Corzine ban Some futures market participants are calling on the US CFTC to consider banning former MF Global CEO Jon S. Corzine from futures trading. They say the CFTC can change the rules surrounding its 2017 settlement with Corzine to implement a market ban. Bloomberg

Expert: FERC watching 3 energy manipulation areas David Applebaum, a partner at the law firm of Jones Day and the former director of the Division of Investigations at the US Federal Energy Regulatory Commission, notes that the FERC's enforcement focus has expanded recently, including through its new priority to redress violations related to natural gas "infrastructure." He says three key areas of manipulation in energy markets have become a focus for FERC recently, including price manipulation, "gaming" manipulation, and weather events. MarketVoice

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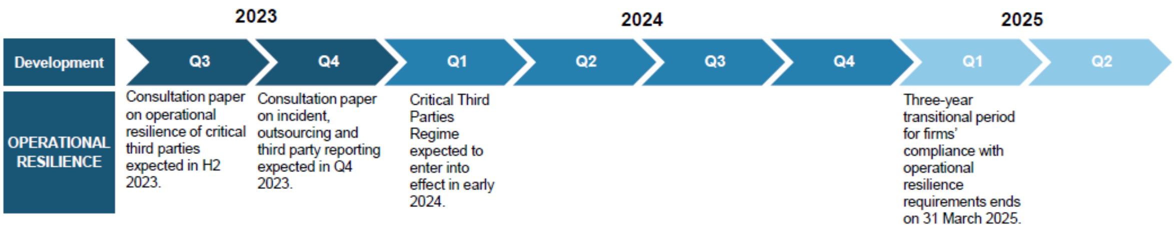
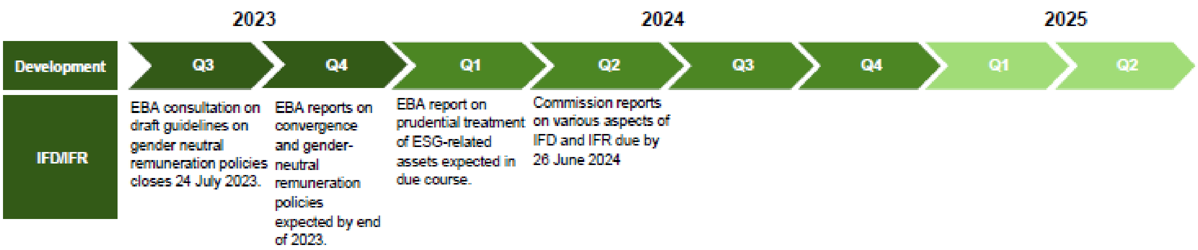
## Financial Stability, Operational Resilience

UK new operational resilience regime in 2021




- The FCA and PRA introduced a new operational resilience regime in 2021. The regime included an implementation period, under which firms needed to complete certain actions before 31 March 2022. The implementation period is now followed by a transitional period, ending on 31 March 2025. Firms should use the transitional period to implement strategies, processes and systems that enable them to address risks to their ability to remain within their impact tolerance for each important business service in the event of a severe but plausible disruption.
- On the horizon:
- The Financial Services and Markets Act 2023 (FSMA 2023) received Royal Assent on 29 June 2023. FSMA 2023 includes proposals to regulate cloud service providers and other designated 'critical third parties' providing services to UK regulated firms.
- In July 2022, the FCA, PRA and Bank of England published a joint discussion paper (DP22/3) on the operational resilience of critical third parties and how the regulators could use their new powers under the FSMA 2023. The consultation closed in December 2022 and feedback and a consultation paper are expected in H2 2023.
- Firms have until31 March 2025to implement strategies, processes, and systems that enable them to address risks to their ability to remain within their impact tolerance for each important business service in the event of a severe but plausible disruption.
- In Q4 2023, the Bank of England, PRA and FCA expect to publish a joint consultation paper on incident, outsourcing and third-party reporting. The purpose of this initiative would be to: (i) introduce clarity regarding the information that firms should submit when operational incidents occur; and (ii) collect certain information on firms' outsourcing and third-party arrangements in order to manage the risks that they may present to the FCA's and PRA's objectives, including resilience, concentration and competition risks.

## EU IFD/IFR

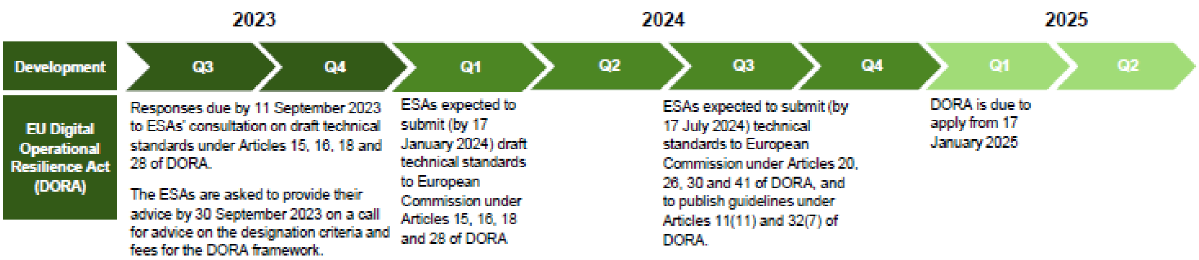



- While certain larger investment firms remain treated as credit institutions and subject to the capital regime under CRDIV, firms that are not subject to CRDIV are subject to the new IFD and IFR prudential regime. The IFD/IFR regime includes requirements on capital, consolidation, reporting, governance and remuneration. The IFD and IFR are supported by a number of 'Level 2' implementing and regulatory technical standards (ITS and RTS) and 'Level 3' guidelines, not all of which have been finalised.
- An EBA report on the application of gender-neutral remuneration policies is expected in Q4 2023.
- The EBA was required to report by 26 December 2021 on whether dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted K-factors or adjusted K-factor coefficients, would be justified from a prudential perspective. The report has not

been published. The EBA published a discussion paper on the topic in May 2022 and a report is expected in due course.

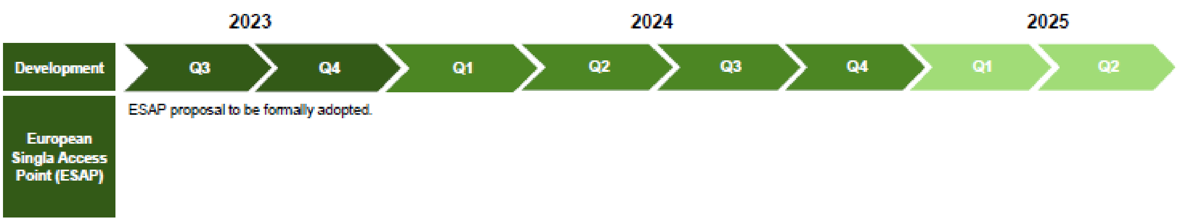
- The EBA consulted in April 2023 on draft Guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under on the IFR and IFD. The consultation closes on 24 July 2023 and finalised guidelines are expected in due course.
- An EBA report on the degree of convergence of the application of the Chapter 2 of the IFD (*Review process*) among member states is expected by the end of 2023.
- The Commission is required to report on the IFD and IFR, with legislative proposals to amend the package if it considers this to be necessary, by 26 June 2024.

## EU DORA




- DORA puts in place a detailed and comprehensive framework on digital operational resilience for EU financial entities. EU entities must ensure they have the capacity to build, assure and review their operational integrity to ensure that they can withstand all types of disruptions and threats relating to information and communication technologies (ICT). DORA introduces an EU-level oversight framework to identify and oversee ICT third party service providers deemed "critical" for financial entities.
- DORA will be supported by 'Level 2' technical standards and 'Level 3' guidelines, which are under development.
- DORA will apply from 17 January 2025.
- The DORA package includes the Fintech Amending Directive (see slide 18), which amends operational resilience requirements in a number of existing EU directives, including the UCITS Directive, the AIFMD and MiFID II.
- The European Commission has issued a provisional call for advice to the ESAs on the designation criteria (under which a third-party ICT service provider is designated as 'critical') and fees for the DORA oversight framework. The ESAs are asked to provide their advice by 30 September 2023.
- The ESAs are mandated to develop draft implementing and regulatory technical standards (ITS and RTS), which will set out detail supporting various aspects of the DORA framework. Draft technical standards are due to be submitted to the European Commission by January and July 2024. The joint committee of the ESA's published consultation papers on draft ITS and RTS under Articles 15, 16, 18 and 28 of DORA on 19 June 2023, for responses by 11 September 2023. The RTS relate to ICT risk management frameworks, the criteria for the classification of ICT related incidents, materiality thresholds for major incidents and significant cyber threats, and ICT third-party arrangements management.

## EUROPEAN SINGLE ACCESS POINT (ESAP)



- The Commission is proposing a new Regulation enabling ESMA to create and maintain a single access point to financial and non-financial company data for investors. This data is currently fragmented across EU member states, in many access points, in different languages and in various digital formats. The ESAP will instead provide free and non-discriminatory information about EU companies and investment products, regardless of where in the EU they are located or originated.
- The ESAP is part of the Commission's second Action Plan on Capital Markets Union (CMU). It is designed to facilitate access to funding for EU companies and contribute to achieving the CMU objective of making it easier and safer for citizens to invest.
- The ESAP Regulation is accompanied by an Omnibus Directive and an Omnibus Regulation, which amend a range of the relevant EU legislation to specify the information to be made accessible in the ESAP, as well as certain characteristics of that information in relation to formats.
- Inter-institutional negotiations on the ESAP proposal have taken place and a draft overall compromise package was agreed on 28 June 2023. The European Parliament is scheduled to vote on the proposal at a future plenary session, following which the ESAP proposal can be formally adopted.
- From a timing perspective, under the provisional agreement, the ESAP platform is expected to be available from summer 2027 and gradually phased in.
  - Phase I will include in ESAP's scope information relating to the Short Selling Regulation, Prospectus Regulation and Transparency Directive.
  - Six months after the ESAP has been made public (i.e., 48 months after its entry into force), Phase II will begin –scope will include among other things information relating to SFDR, Credit Rating Agencies Regulation and the EU Benchmarks Regulation.
  - Phase III (the final phase) will include relevant information from around 20 additional pieces of legislation, including MiFIR, CRR and the EU Green Bonds Regulation.

FCA supervisory priorities for wholesale banks; Managing risks in a volatile environment; *After a break of several years, the FCA has written (PDF 95.5 KB) to the CEOs of all wholesale (investment) banks active in the UK setting out its main supervisory priorities for the next two years. Recently wholesale banks have had to react to a number of stresses in the market ranging from a weak macro-economic environment, shocks to the commodities markets from geo-political events and a cyber-attack on a widely used financial data and services provider. The FCA's supervisory areas of focus are not a surprise given these stresses — risk management, maintaining high standards of control and operational resilience.*

- The letter also sets out the FCA's expectations for wholesale banks around booking models, LIBOR transition, Consumer Duty, AI, ESG, Diversity, Equity & Inclusion (DEI) and non-financial misconduct. The letter gives clear guidance to firms on what they should expect in their supervisory interactions and indicates a ramping up of those interactions. 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 within the next two months.
- Supervisory priorities
- Risk management
- FCA expectations
  - Firms should ensure that their stress assumptions have been updated in the light of market events last year and are fit for the current environment. Stress testing should recognise that severe stresses will often affect the entire system and take into account that markets may be concentrated in a limited group of buyers and seller types that may react to events in a similar fashion.
  - Firms should improve their management of client relationships. They should have good knowledge of clients' business profiles and understand how counterparties could be related and their concentrations in the market.
  - The FCA is keen to hear from firms if they see emerging pockets of risks which may affect the orderly functioning of markets.

- FCA action; The FCA will:

- Expect senior management to evidence (i) that remediation programmes in response to events of the last 18 months have delivered better risk management and oversight across businesses and (ii) how they are comfortable that this is underpinned by a strong culture. Better firms will have undertaken remediation programmes whether or not they were directly affected.
- Look to Boards to evidence how they are ensuring that such improvements in risk management are long-lasting.
- Carry out supervisory testing on the embeddedness of improvements in risk management by looking at the production and approval process of new products and transactions.

- Maintaining high standards of control; FCA expectations

- A challenging external environment should not lead to a reduction in conduct standards. For example, as a result of cuts to the control framework or when short term commercial interests are prioritised over regulatory obligations.
- Boards and senior management should provide an unambiguous tone from the top on the importance of good conduct.
- There should be clarity of responsibilities between the first and second lines of defence. For example, in ESG-related activities, the FCA has observed a lack of clarity of who is responsible for ensuring the bank is delivering against its public commitments.

- FCA action

- The FCA will ramp up its testing programme to look at how banks are controlling these risks, including more in-person supervisory assessments. Reviewing how firms manage conflicts of interest will be a particular area of focus. The FCA will look to test outcomes (rather than solely policies).

- Operational resilience
- FCA expectations

- Firms should comply with the requirements set out in policy statement on Building Operational Resilience. (PS21/3)
- Wholesale banks should understand their dependence on third party providers and take steps to mitigate the potential impact on business continuity that loss of service may have. The FCA hold firms, not the third parties on whom they might rely, responsible, and ultimately accountable, for their own operational resilience.

- FCA action

- The FCA will continue to review banks' compliance with the requirements of PS21/3.

- It will engage with relevant senior management to assess how they have learned the lessons of operational resilience events, even if their firm has not been directly impacted.

- Other expectations
- Booking model – if a firm starts to consider changes in the way it serves clients, its location, booking model or risk management arrangements, the FCA expects to be notified promptly before any change is made.
- LIBOR transition – firms should continue actively transitioning the last of the contracts that reference USD LIBOR and not rely unnecessarily on synthetic LIBOR. Client and conduct considerations should remain at the core of the transition programme.

- Implementation of the Consumer Duty — the FCA will test the robustness of assessments made and actions taken to implement the Consumer Duty. It will also test the effectiveness of processes firms have to identify whether any new activity will be caught by the Consumer Duty.
- ESG — firms should demonstrate that their financing activities are aligned with their own transition plans, and that product and public-facing commitments relating to ESG are delivered in practice. They should also have regard to the Transition Plan Taskforce's (TPT) developing framework for disclosure and implementation guidance. This will be an area of future discussion with firms.
- AI — the FCA will engage with wholesale banks on current deployment of AI as well as plans for the future and the associated control infrastructure the firm has established.
- DEI — supervisors will focus on understanding how wholesale banks are playing their role in helping to accelerate the pace of meaningful change on diversity, equity and inclusion in the sector.
- Non-financial misconduct — should allegations or evidence of non-financial misconduct come to light, the FCA expects firms to take them seriously through appropriate internal procedures, and to act according to the established facts. The FCA's position is that a corporate culture that tolerates sexual harassment or other non-financial misconduct is unlikely to be one in which people feel able to speak up and challenge decisions. Such a culture also raises questions about a firm's decision making and risk management.

The European Market Infrastructure Regulation was introduced by the European Union in 2012 to implement the G20 commitments to reduce systemic, counterparty and operational risk and increase transparency in the over-the-counter derivatives market. *The increase in transparency was implemented by obligations to report details of derivatives contracts to Trade Repositories (TRs). TRs centrally collect and maintain the records of all derivative contracts which then regulators use to monitor systemic risk and prevent market abuse.*

To improve the consistency, and therefore usefulness to regulators of the data reported, CPMI-IOSCO published, in April 2018, technical guidance on the harmonisation of critical data elements for OTC derivatives (`CDE guidance'). ESMA in the EU and the Bank of England/FCA for the UK have now updated the reporting rules in EU EMIR and UK EMIR — generally known as EMIR Refit — to take account of this guidance.

Continuing volatility and stresses in the financial markets mean that regulators have increased their focus on the quality of this reporting to help them spot emerging risks and issues.

Timetable

The implementation dates for EU and UK EMIR Refit are five months apart. The EU rules are due to enter into force from 29 April 2024, with the UK following on 30 September 2024.

Key changes under EMIR Refit

One of the biggest changes in EMIR refit is the number of reporting fields — 85 reporting fields will go live with Phase 1 and a further 66 fields live after 2 years — including critical data elements at both trade and reference data level. There will be new contract and product data requirements that will require firms to update interpretation reviews and documentation.

Reporting format will change to ISO 20022 standards and XML format. This presents a challenge as front to back infrastructure needs to be reviewed and refreshed.

Collateral and valuation reporting has been updated with the inclusion of additional calculated fields. Alongside this new valuation matching requirements are being introduced. Both these changes will require firms to review processes to ensure they are fit for purpose and aligned with industry practice.

EMIR Refit has amended the definition of financial counterparties (FC). FCs are now solely responsible for reporting on behalf of non-financial counterparties (NFCs). As such there is now the obligation for NFCs to accurately provide reporting data to their FC counterpart in the trade.

Industry challenges arising so far

KPMG in the UK has been working across the industry to help firms prepare for EMIR Refit. There are a number of common issues arising, including:

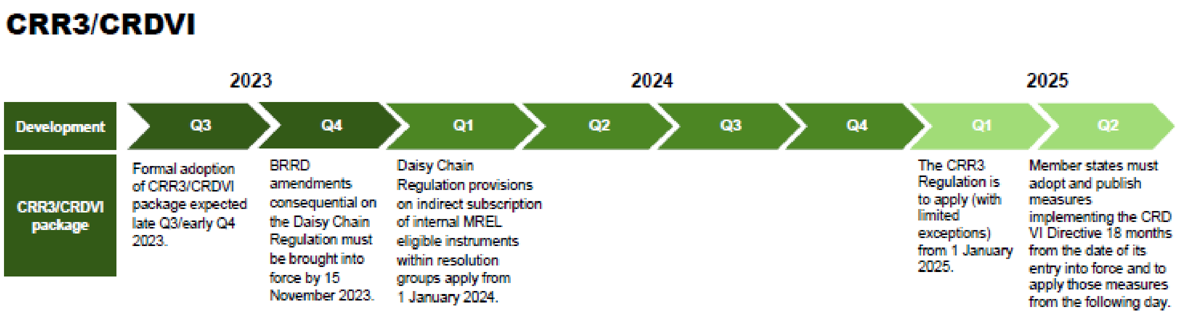
- Firms need to implement these updated requirements alongside remediation of current reporting and other jurisdictions' initiatives to implement the CPMI-IOSCO guidance. Firms are having to decide on tactical, focused fixes or a complete revamp of their transaction reporting.
- Differences of interpretation between EU and UK regimes can lead to operational issues and create inconsistencies in the reporting. We have also found inconsistent interpretation in the industry of key reporting attributes, such as price type, leading to inaccurate reporting (e.g. nominal vs. notional, asset class specific attributes).
- A decade of transaction reporting implementation and changes has created complex architecture and data environments. Reference data problems also persist in the industry in part due to this complex architecture but also due to difficulties in sourcing data. The increasing number of fields will only add to the complexity. Some firms are now trying to decide between in-house solutions and external vendors.
- The additional fields and reporting mean that controls and reconciliation processes will need to be reviewed and updated, both from a functional and technical perspective.

Getting ready

The recent changes to CFTC reporting have highlighted problems that will occur for EMIR Refit: sourcing and maintaining new reference data, introducing stricter reconciliation controls and reporting in a new format.

Our experience shows that early mobilisation and investment in change management and regulatory interpretation reviews will be crucial to ensure a smooth transition to the new schema and requirements.

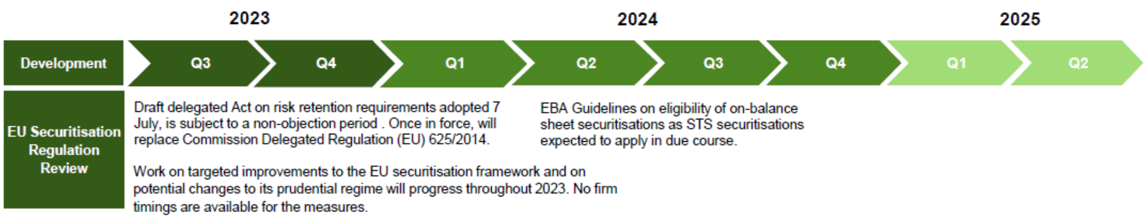
## Prudential & Risk




- Revisions to the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRDIV) known as the **CRR3/CRDVI package** are being made to implement in the EU the final reforms agreed by the Basel Committee on Banking Supervision in December 2017 (known as Basel 3.1). Other revisions introduce some EU-specific measures, including on the proportionate application of the prudential regime, the fitness and propriety of senior staff, the incorporation of ESG risks within the regime, and measures on supervisory powers (including prudential supervision of third-country branches).

- The so-called Daisy Chain Regulation has also made further revisions to the CRR to improve banks' resolvability, including clarifying the treatment of indirect subscription of internal MREL eligible instruments within a resolution group with a multiple point of entry resolution strategy.
- Most provisions of the Daisy Chain Regulation have applied from 14 November 2022, apart from: (i) provisions relating to the indirect subscription of internal MREL eligible instruments within resolution groups, which will apply from 1 January 2024; (ii) Consequential amendments to the Bank Recovery and Resolution Directive (BRRD), which must be brought into force by member states by 15 November 2023.
- Provisional agreement on the draft texts of CRR3 and CRDVI was reached in June 2023.
- The provisional agreement for the CRDVI proposal includes agreement that third country credit institutions will be required establish a branch in the EU and apply for authorisation unless they fall within an exemption. The scope of the exemptions from this requirement and any transitional arrangements will not be known until the final text is made availably publicly.
- Under the current proposals, Member states must adopt and publish measures implementing the CRD VI Directive 18 months from the date of its entry into force and to apply those measures from the following day. The CRR3 Regulation is to apply (with limited exceptions) from 1 January 2025.

## EU SECURITISATION REGULATION REVIEW




- As part of the capital markets union (CMU) action plan the Commission is currently engaged in a process of reviewing the EU securitisation framework. Fulfilling its mandate under Article 46 of the Securitisation Regulation (SR), the Commission published a report in October 2022, which set out the results of the Commission's stocktake on the SR's functioning. The Commission has highlighted some targeted improvements to the framework, which will be made without legislative revisions.
- Separately, the Commission is mandated under Article 519a of the Capital Requirements Regulation (CRR) to review the securitisation capital and liquidity frameworks. The Commission is currently considering the advice of the European Supervisory Authorities' Joint Committee, which was published in a report in December 2022.
- On the horizon:
- The Commission does not propose amending the Securitisation Regulation at this stage, but it has committed to the non-legislative improvements to the framework set out below.
  - ESMA should revisit the disclosure templates for the information originators, sponsors, SSPEs must make available under Article 7 of the SR, to reduce prescription and to simplify them where appropriate.
  - ESMA should develop a dedicated template for private securitisations.
  - The Commission will clarify in a future revision of the SR the provisions of Article 2(12) of the SR, which have caused problems for AIFMs.
  - The Commission will not establish a dedicated framework for green securitisation, and instead contribute to work on specifying the details of securitisation within the incoming EU Green Bond Standard framework (see slide 29). Green Bonds will include those issued by a special purpose vehicle in the context of a securitisation transaction.
  - A common EU guide should be developed on best practices for national supervisors.

- o In relation to the prudential regime for securitisation, the Commission is considering recommendations from the Joint Committee, which include a potential relaxation of capital requirements in the significant risk transfer market and a set of fixes designed to clarify existing requirements, remove some inconsistencies and improve risk sensitivity in the framework.
- The Commission adopted a draft delegated act on 7 July 2023, which sets out further detail on the SR's risk retention requirements for originators, sponsors, original lenders and servicers. Once in force, this delegated regulation will replace Commission Delegated Regulation (EU) 625/2014.
- The EBA ran a consultation between 21 April 2023 and 7 July 2023 on guidelines on the criteria for on-balance-sheet securitisations to be eligible as STS securitisations. As yet, there is no indication of when the guidelines may enter into application.

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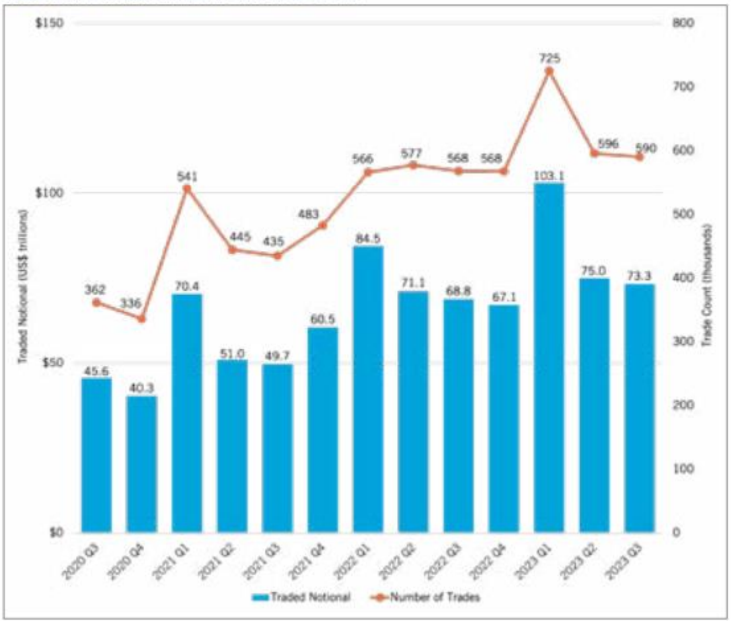
SwapsInfo Third Quarter of 2023 and Year-toSeptember 30, 2023, Review

Interest Rate Derivatives In the third quarter of 2023,

- IRD traded notional and trade count grew by 6.5% and 3.9%, respectively, compared to the third quarter of 20221. Overnight index swaps (OIS) traded notional increased by 46.8%, while fixed-for-floating interest rate swaps (IRS) and forward rate agreement (FRA) traded notional fell by 45.9% and 58.0%, respectively.

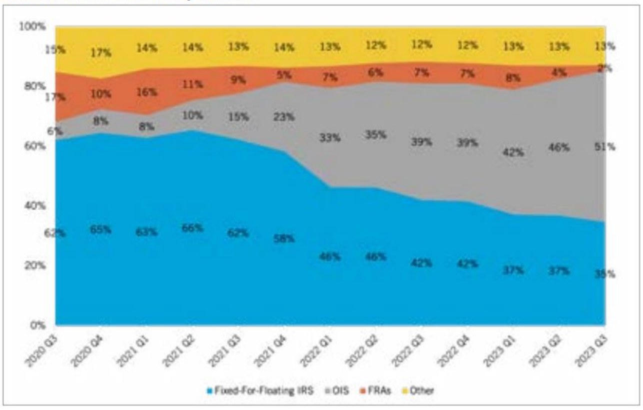
Chart 1: IRD Traded Notional and Trade Count




- OIS trade count rose by 35.0%, fixed-for-floating IRS trade count declined by 14.4% and FRA trade count dropped by 74.5%. In the third quarter of 2023:
- IRD traded notional rose to $73.3 trillion in the third quarter of 2023 from $68.8 trillion in the third quarter of 2022. Trade count increased to 590.4 thousand from 568.2 thousand over the same period.

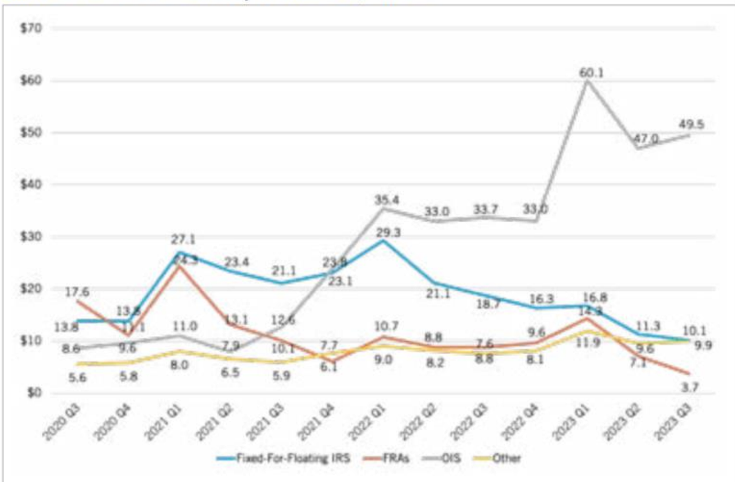
**Chart 2:** IRD Traded Notional by Product


**Chart 3:** IRD Trade Count by Product




- OIS traded notional grew to $49.5 trillion in the third quarter of 2023 from $33.7 trillion in the third quarter of 2022. Single currency fixed-for-floating IRS traded notional fell to $10.1 trillion from $18.7 trillion over the same period. FRA traded notional dropped to $3.7 trillion from $8.8 trillion.
- OIS accounted for 67.6% of total IRD traded notional and 50.7% of total IRD trade count. Single currency fixed-forfloating IRS and FRAs represented 13.8% and 5.1% of total IRD traded notional and 34.6% and 1.8% of total trade count, respectively.
- Cleared IRD transactions comprised 76.7% of total IRD traded notional and 79.3% of total trade count. 85.9% of fixed-for-floating IRS, 94.1% of FRA, 86.6% of OIS and 11.3% of other IRD traded notional was cleared.

**Chart 4:** IRD Traded Notional by Product (US$ trillions)




- IRD transactions executed on SEFs accounted for 52.8% of total IRD traded notional and 67.9% of trade count. 66.1% of fixed-for-floating IRS, 78.9% of FRA, 50.6% of OIS and 40.1% of other IRD traded notional was traded on SEFs.
- IRD contracts denominated in US dollars represented 40.2% of total IRD traded notional and 34.4% of total trade count. Euro-denominated transactions accounted for 32.4% of total traded notional and 21.1% of trade count. Sterlingdenominated transactions comprised 10.8% and 7.4% of total IRD traded notional and trade count, respectively.

- OIS traded notional denominated in US dollars increased by 39.8%, while US-dollar-denominated fixed-for-floating IRS and FRA traded notional declined by 98.4% and 99.6%, respectively. Euro-denominated OIS and IRS traded notional grew by 64.0% and 18.0%, while euro-denominated FRA traded notional fell by 58.2%. Sterling-denominated OIS traded notional rose by 34.7%.

**Chart 5:** IRD Trade Count by Product (thousands)

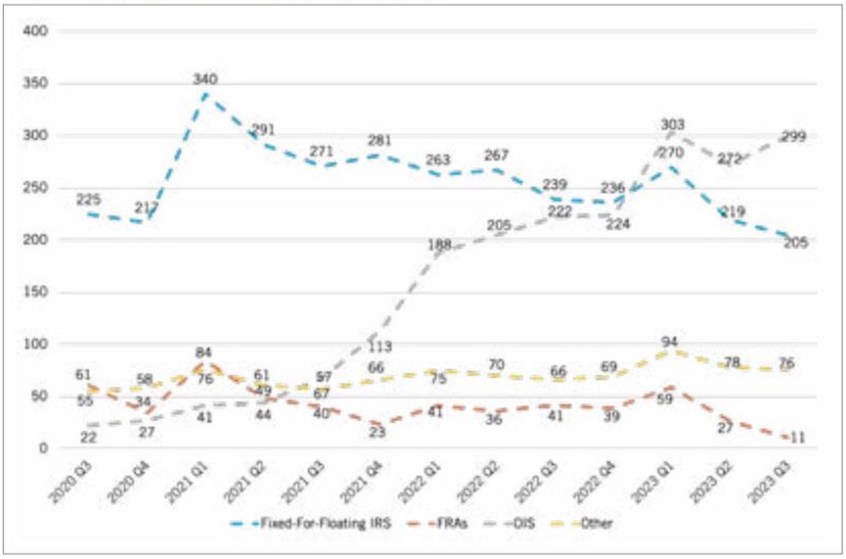


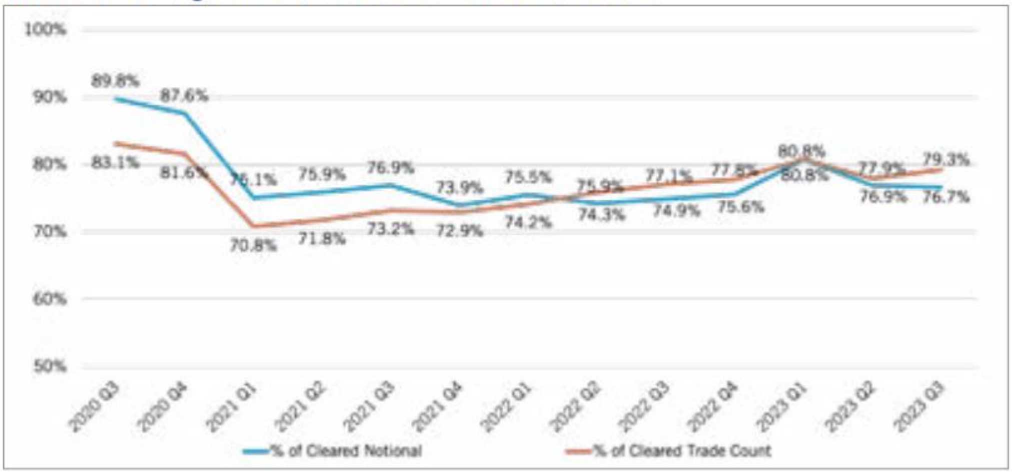

**Table 1:** IRD Average Daily Traded Notional, Daily Trade Count and Trade Size

| | Average Daily Traded Notional (US$ billions) | | | Average Daily Trade Count | | | Average Trade Size (US$ millions) | | |
|---|---|---|---|---|---|---|---|---|---|
| | IRS | FRAs | OIS | IRS | FRAs | OIS | IRS | FRAs | OIS |
| **2023 Q3** | 155.8 | 57.0 | 761.9 | 3,146 | 163 | 4,607 | 50.1 | 577.2 | 167.3 |
| **2022 Q3** | 283.9 | 133.5 | 511.0 | 3,618 | 628 | 3,360 | 74.9 | 444.0 | 153.4 |
| **2023 Q3 vs. 2022 Q3** | -45.1% | -57.3% | 49.1% | -13.0% | -74.1% | 37.1% | -33.1% | 30.0% | 9.0% |
| **YTD Q3 2023** | 195.9 | 130.1 | 803.2 | 3,557 | 495 | 4,486 | 54.9 | 566.9 | 183.2 |
| **YTD Q3 2022** | 355.5 | 147.0 | 523.9 | 3,942 | 615 | 3,147 | 84.4 | 487.9 | 167.4 |
| **YTD Q3 2023 vs. YTD Q3 2022** | -44.9% | -11.5% | 53.3% | -9.8% | -19.4% | 42.5% | -35.0% | 16.2% | 9.5% |

- Year-to-September 30, 2023: •
- IRD traded notional increased by 12.0% to $251.3 trillion in the nine months to September 30, 2023, from $224.3 trillion in the nine months to September 30, 2022. Trade count rose by 11.7% to 1.9 million from 1.7 million over the same period.
- The rise in IRD traded notional was driven by an increase in OIS traded notional, which grew by 53.4% to $156.6 trillion in the nine months to September 30, 2023, from $102.1 trillion in the nine months to September 30, 2022. Single currency fixed-for-floating IRS traded notional fell by 44.8% to $38.2 trillion from $69.2 trillion, while FRA traded notional dropped by 11.3% to $25.1 trillion from $28.4 trillion over the same period.
- OIS represented 62.3% of total IRD traded notional and 45.8% of trade count. Single currency fixed-for-floating IRS and FRAs comprised 15.2% and 10.0% of total IRD traded notional and 36.3% and 5.0% of total trade count, respectively.

- Cleared IRD transactions accounted for 78.4% of total traded notional and 79.4% of trade count. 87.2% of fixedfor-floating IRS, 97.7% of FRA, 86.4% of OIS and 12.4% of other IRD traded notional was cleared.
  SEF-traded IRD made up 53.3% of total traded notional and 67.6% of trade count. 68.3% of fixed-for-floating IRS, 88.1% of FRA, 47.0% of OIS and 38.7% of other IRD traded notional was executed on SEFs.

**Chart 6:** Percentage of IRD Cleared Notional and Trade Count




- IRD contracts denominated in US dollars comprised 41.1% of traded notional and 35.7% of trade count. Eurodenominated transactions accounted for 33.6% of traded notional and 23.1% of trade count. Sterling-denominated transactions made up 9.9% and 6.9% of total IRD traded notional and trade count, respectively.

**Chart 7:** IRD Cleared Notional by Product (US$ trillions)

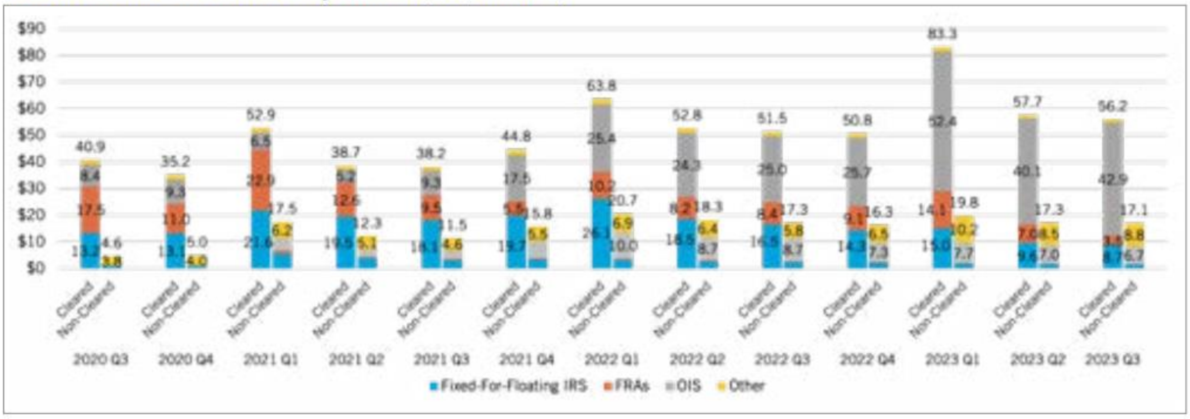
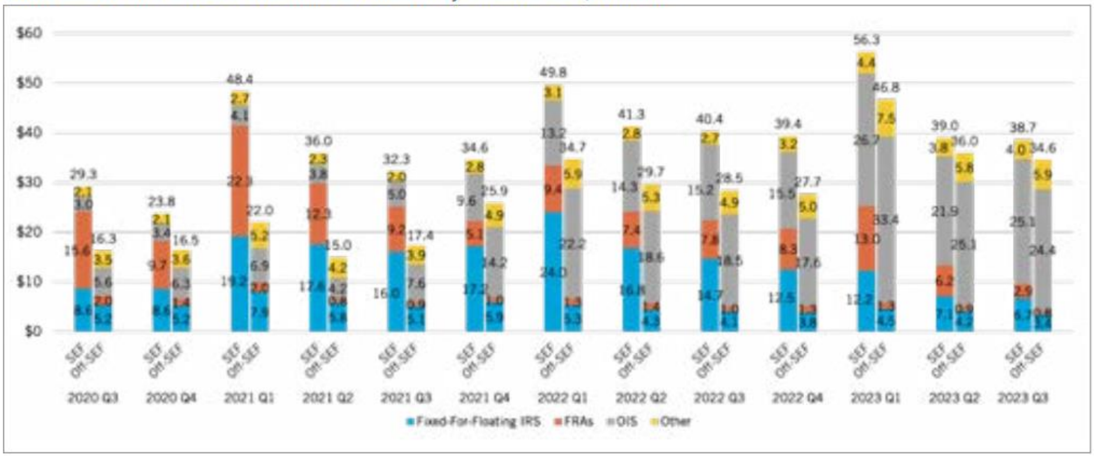


**Chart 8 :** Percentage of SEF and Off-SEF IRD Traded Notional and Trade Count


**Chart 9:** SEF and Off-SEF IRD Traded Notional by Product (US$ trillions)




- OIS traded notional denominated in US dollars grew by 49.6%, while US-dollar-denominated fixed-for-floating IRS traded notional fell by 81.5%. US-dollar-denominated FRA traded notional declined by 20.8% in the nine months to September 30, 2023, versus the same period in 2022. Euro-denominated OIS traded notional increased by 61.9%, while eurodenominated IRS and FRA traded notional fell by 1.1% and 11.0%, respectively. Sterling-denominated OIS traded notional rose by 41.1% and sterling-denominated IRS traded notional dropped by 41.8% in the nine months to September 30, 2023, compared to the nine months to September 30, 2022.

**Chart 10:** IRD Traded Notional by Currency

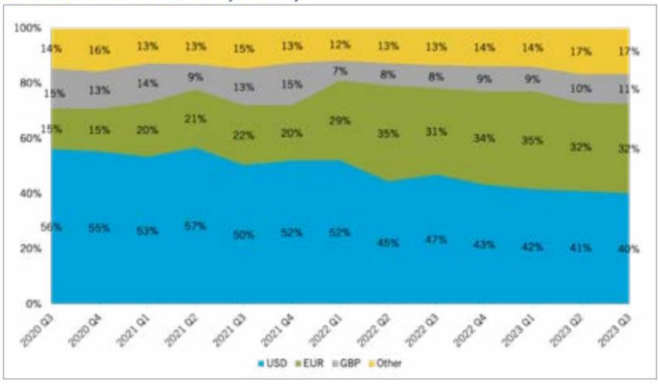



**Chart 11:** IRD Trade Count by Currency

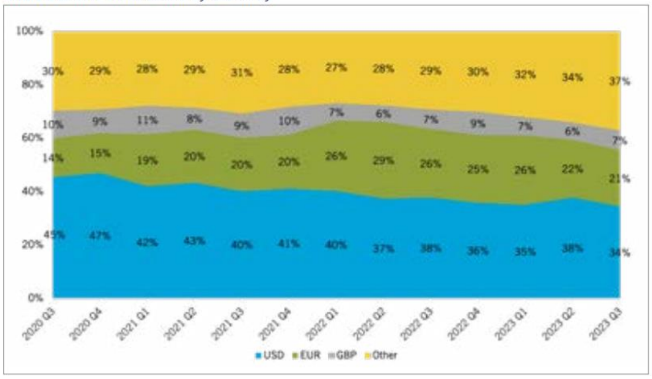



**Chart 12:** IRD Traded Notional by Currency (US$ trillions)

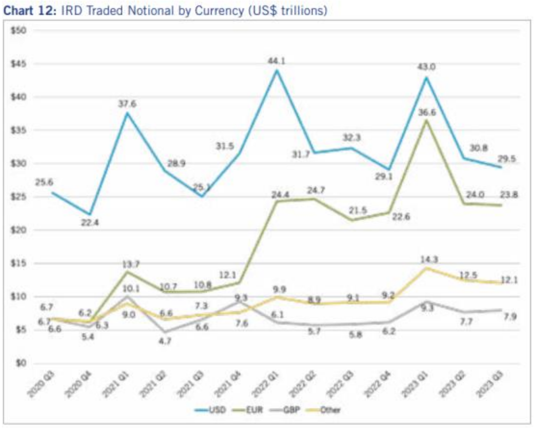



**Chart 13:** IRD Trade Count by Currency (thousands)

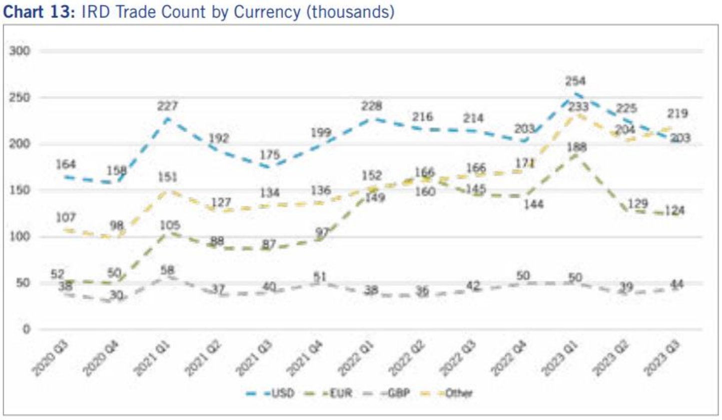
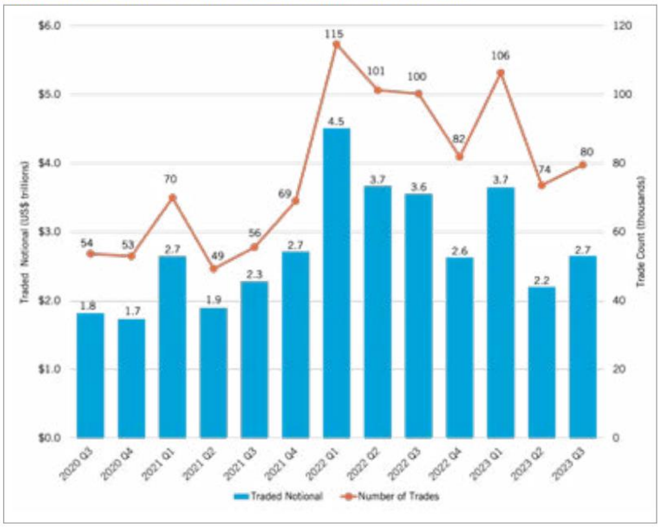


**Chart 14:** IRD Traded Notional by Currency and by Product (US$ trillions)


- Index Credit Derivatives Reported Under CFTC Regulations
- Index credit derivatives traded notional and trade count fell by 25.2% and 20.4%, respectively, in the third quarter of 2023 compared to the third quarter of 20222. There was less trading activity across CDX HY, CDX IG and iTraxx Europe.
- In the third quarter of 2023:
- Index credit derivatives traded notional dropped to $2.7 trillion in the third quarter of 2023 from $3.6 trillion in the third quarter of 2022. Trade count fell to 79.8 thousand from 100.3 thousand over the same period.

**Chart 15:** Index Credit Derivatives Traded Notional and Trade Count




- CDX HY traded notional declined by 24.4% to $434.7 billion in the third quarter of 2023 from $575.4 billion in the third quarter of 2022. CDX IG traded notional fell by 25.8% to $958.9 billion from $1.3 trillion and iTraxx Europe traded notional declined by 26.3% to $625.9 billion from $849.5 billion. CDX HY and CDX IG represented 16.3% and 36.1% of total index credit derivatives traded notional and 28.4% and 24.6% of total trade count, respectively. iTraxx Europe accounted for 23.5% of total index credit derivatives traded notional and 18.4% of total trade count.

**Chart 16:** Index Credit Derivatives Traded Notional by Product

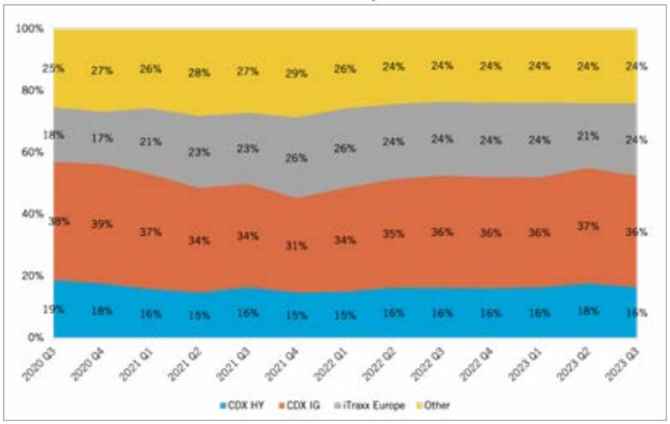
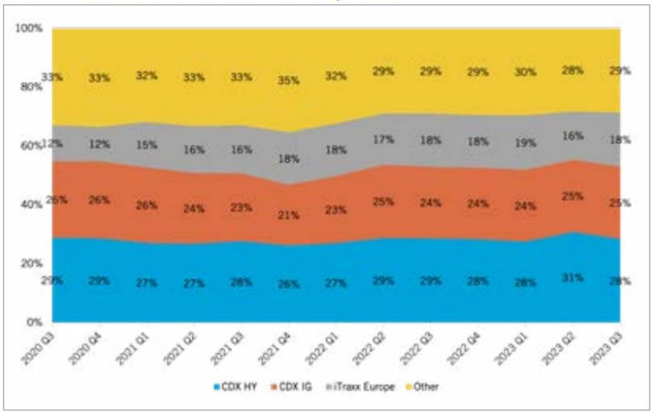



**Chart 17:** Index Credit Derivatives Trade Count by Product




- Cleared index credit derivatives transactions accounted for 87.1% of total index credit derivatives traded notional and 90.6% of total trade count. 99.2% of CDX HY, 99.2% of CDX IG, 95.5% of iTraxx Europe and 52.0% of other credit derivatives traded notional was cleared.
- SEF-traded index credit derivatives transactions comprised 85.9% of total index credit derivatives traded notional and 89.4% of trade count. 98.1% of CDX HY, 98.0% of CDX IG, 93.5% of iTraxx Europe and 51.6% of other credit derivatives traded notional was executed on SEFs.
- Index credit derivatives contracts denominated in US dollars made up 62.2% of total index credit derivatives traded notional and 63.1% of total trade count. Euro-denominated transactions accounted for 37.7% and 36.7% of total traded notional and trade count, respectively.

**Chart 18:** Index Credit Derivatives Traded Notional by Product (US$ trillions)

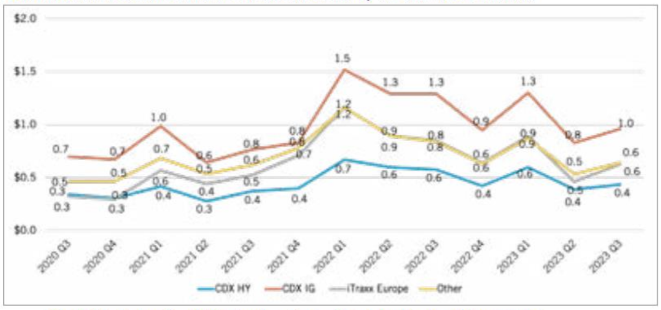
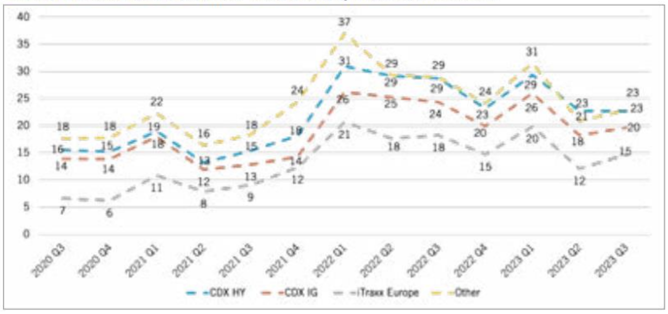



**Chart 19:** Index Credit Derivatives Trade Count by Product (thousands)




- Year-to-September 30, 2023:
- Index credit derivatives traded notional declined by 27.4% to $8.5 trillion in the nine months to September 30, 2023, from $11.7 trillion in the nine months to September 30, 2022. Trade count fell by 17.7% to 260.4 thousand from 316.3 thousand over the same period.

**Table 2:** Index Credit Derivatives Average Daily Traded Notional, Daily Trade Count and Trade Size

| | Average Daily Traded Notional (US$ billions) | | | Average Daily Trade Count | | | Average Trade Size (US$ millions) | | |
|---|---|---|---|---|---|---|---|---|---|
| | CDX HY | CDX IG | iTraxx Europe | CDX HY | CDX IG | iTraxx Europe | CDX HY | CDX IG | iTraxx Europe |
| **2023 Q3** | 6.9 | 15.2 | 9.8 | 360 | 312 | 229 | 17.0 | 46.4 | 40.3 |
| **2022 Q3** | 9.0 | 20.2 | 13.3 | 449 | 381 | 285 | 18.7 | 51.3 | 45.2 |
| **2023 Q3 vs. 2022 Q3** | -23.2% | -24.6% | -26.3% | -19.7% | -18.1% | -19.5% | -9.0% | -9.6% | -10.8% |
| **YTD Q3 2023** | 7.6 | 16.4 | 10.5 | 398 | 340 | 247 | 17.7 | 46.6 | 40.5 |
| **YTD Q3 2022** | 9.8 | 21.8 | 15.5 | 473 | 403 | 302 | 19.9 | 53.1 | 50.4 |
| **YTD Q3 2023 vs. YTD Q3 2022** | -22.9% | -24.7% | -32.7% | -15.8% | -15.7% | -18.3% | -11.2% | -12.2% | -19.5% |

- CDX HY traded notional dropped by 22.9% to $1.4 trillion in the nine months to September 30, 2023, from $1.8 trillion in the nine months to September 30, 2022. CDX IG traded notional fell by 24.7% to $3.1 trillion from $4.1 trillion. iTraxx Europe traded notional declined by 31.9% to $2.0 trillion in the nine months to September 30, 2023, from $2.9 trillion in the nine months to September 30, 2022. CDX HY and CDX IG represented 16.6% and 36.2% of total index credit derivatives traded notional and 28.7% and 24.5% of total trade count, respectively. iTraxx Europe accounted for 23.2% of total index credit derivatives traded notional and 17.9% of total trade count.
- Cleared index credit derivatives transactions made up 86.7% of total index credit derivatives traded notional and 90.0% of trade count. 99.3% of CDX HY, 99.4% of CDX IG, 96.4% of iTraxx Europe and 49.3% of other credit derivatives traded notional was cleared.

Chart 20: Perentage of Index Credit Derivatives Cleared Traded Notional and Trade Count

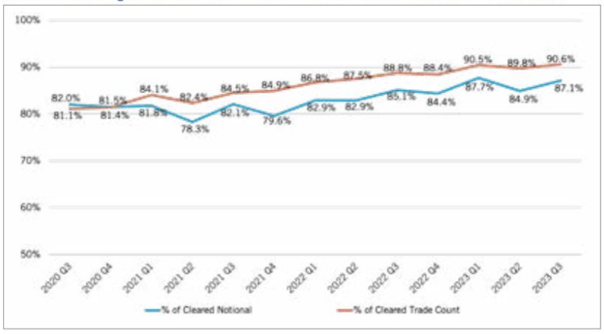
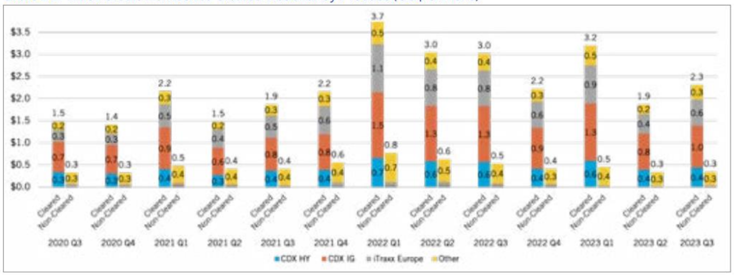



Chart 21: Index Credit Derivatives Cleared Notional by Product (US$ trillions)




- SEF-traded index credit derivatives represented 85.1% of total index credit derivatives traded notional and 88.8% of trade count. 97.6% of CDX HY, 98.0% of CDX IG, 94.3% of iTraxx Europe and 47.9% of other credit derivatives traded notional was executed on SEFs.

Chart 22: Percentage of SEF and Off-SEF Index Credit Derivatives Traded Notional and Trade Count

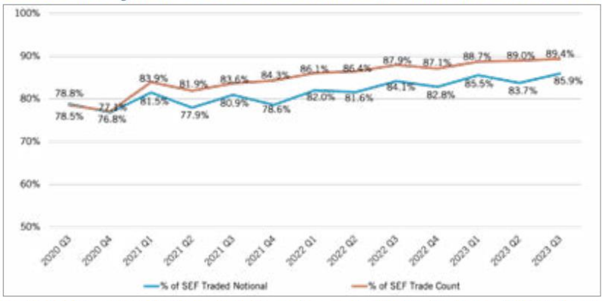
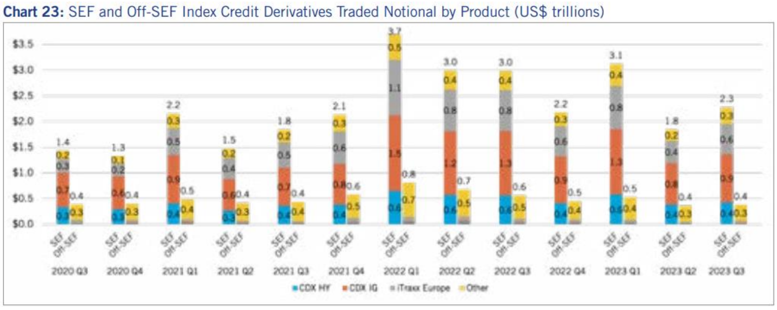



Chart 23: SEF and Off-SEF Index Credit Derivatives Traded Notional by Product (US$ trillions)




- Index credit derivatives contracts denominated in US dollars comprised 62.7% of total index credit derivatives traded notional and 63.1% of trade count. Euro-denominated transactions accounted for 37.2% and 36.7% of traded notional and trade count, respectively.

**Chart 24:** Index Credit Derivatives Traded Notional by Currency

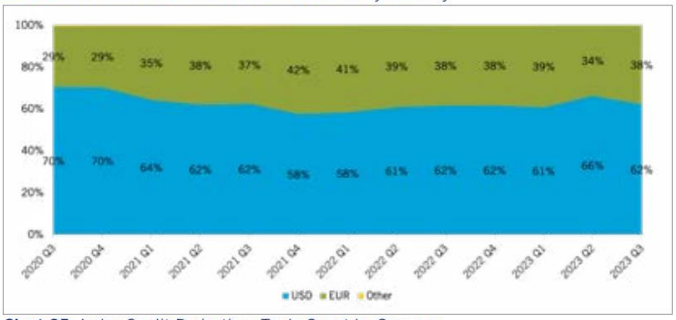



**Chart 25:** Index Credit Derivatives Trade Count by Currency

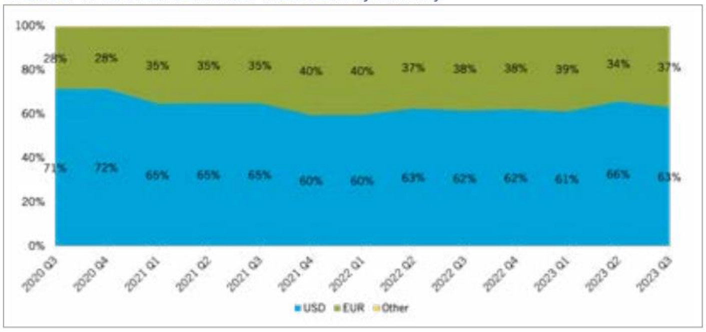
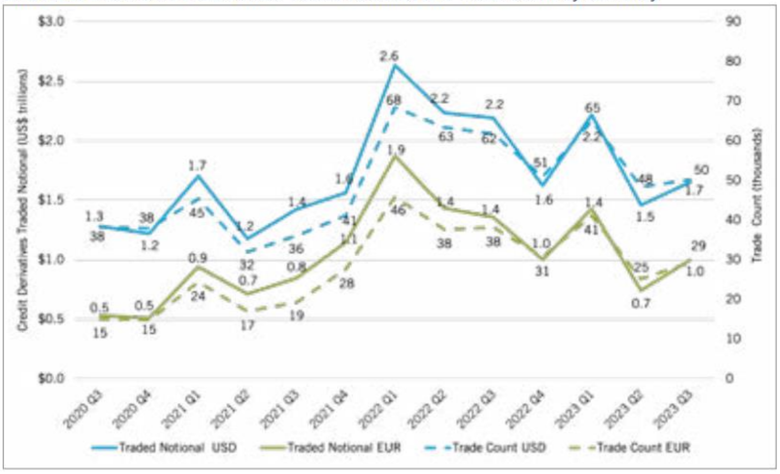



**Chart 26:** Index Credit Derivatives Traded Notional and Trade Count by Currency




- Security-based Credit Derivatives Reported Under SEC Regulations In the third quarter of 2023:
- Security-based credit derivatives traded notional declined by 1.0% to $173.9 billion in the third quarter of 2023 from $175.6 billion in the third quarter of 2022. Trade count dropped by 4.1% to 52.6 thousand from 54.9 thousand over the same period
- Corporate single-name credit default swaps (CDS) traded notional grew by 6.8% to $132.4 billion in the third quarter of 2023 from $124.0 billion in the third quarter of 2022. Sovereign single-name CDS traded notional fell by 20.9% to $32.0 billion from $40.4 billion.

**Chart 27:** Security-based Credit Derivatives Traded Notional and Trade Count[10]

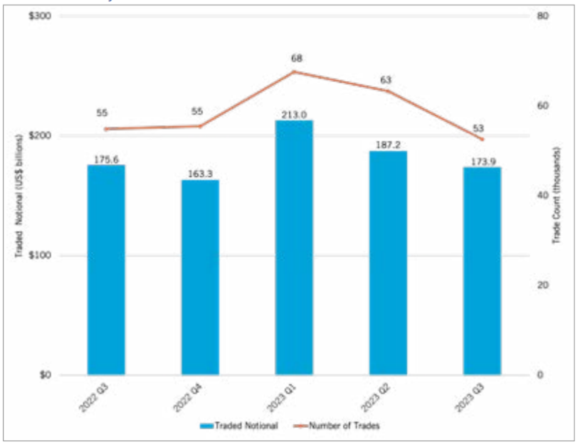
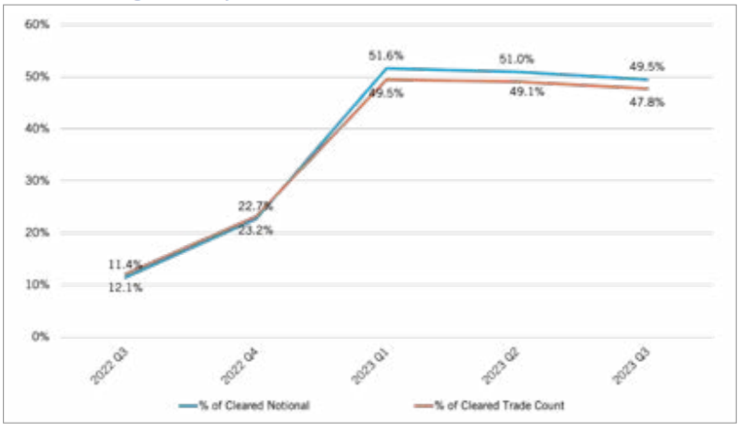



**Chart 32:** Perentage of Security-based Credit Derivatives Cleared Traded Notional and Trade Count[12]




- Corporate single-name CDS traded notional accounted for 76.1% of total security-based credit derivatives traded notional and sovereign single-name CDS made up 18.4%. Corporate and sovereign single-name CDS represented 77.1% and 14.7% of total trade count, respectively. Other security-based credit derivatives traded notional comprised 5.5% of total security-based credit derivatives traded notional and 8.2% of total trade count.
- Cleared security-based credit derivatives transactions accounted for 49.5% of total security-based credit derivatives traded notional and 47.8% of total trade count. 53.3% of corporate single-name CDS and 48.0% of sovereign single-name CDS traded notional was cleared.

Chart 28: Security-based Credit Derivatives Traded Notional by Product

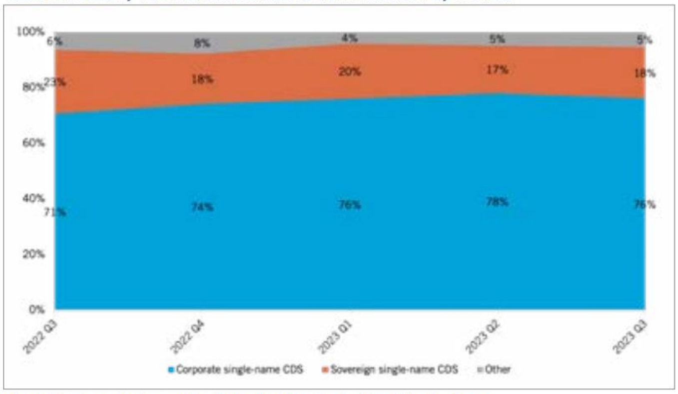
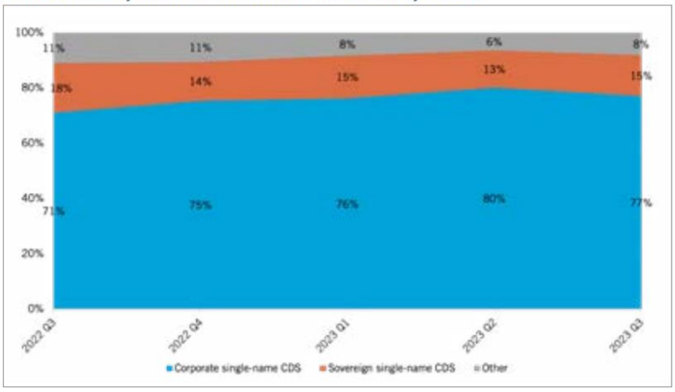



Chart 29: Security-based Credit Derivatives Trade Count by Product




One point from EVIA Strategy call on 29/10/2023 was to set out expectations for UPI+ constitution for TV creation and transmission for MiFIR and other Transparency Purposes. This would mean:

1. Two amendments to Existing Fields
2. Five new fields to Augment UPI

- *(To note that CDIDE (data WG of the FSB) has not formalised any concept of "UPI+" because it is bound to propagate a universal UPI. Rather, the concept stems from the replacement of ISIN for derivatives allied to necessary data fields for CTP fulfilment, and it is therefore currently a regional matter. There are multiple global derivatives reporting rewrites in 2024, all of which will mandate the use of UPI for at least a subset of reportable transactions. As such, the majority of market participants are already working on assigning UPIs to their existing reportable trade population.)*
- The adoption of UPI+ as a replacement for OTC ISIN would mandate the use of the existing ISO4914 UPI for OTC derivatives in transparency reporting, supplemented with the addition of key trade-level attributes that would result in meaningful transparency data for recipients.
- There are likely to be in the region of 700,000 UPIs available to market participants when the service goes fully live by the end of 2023, in comparison to 112 million OTC ISINs that have been created since their inception.

- Clearly none of this addresses the current failings and complexities of Total Return Swap ["TRS"] reporting data sufficiency. That's another matter.

Earlier this month an ISDA "UPI+ working group" analysed trade level attributes in order to determine which have a material impact on Price and should therefore be included in the final proposal to augment UPI for transparency purposes.

- The working group also reviewed existing fields in Table 2 of RTS2 to confirm whether any further changes were needed.
- The below table details the attributes that were discussed and confirmed as being included in the final proposal to use UPI for transparency reporting, augmented with 5 additional trade level attributes. We have also included the reason agreed for inclusion for future reference.
- These are being advocated to the FCA via the attached letter.

| Type | Attribute | Financial Instruments | Comments |
|---|---|---|---|
| Amendments to Existing Fields | Instrument identification code type | For all financial instruments | This field should be updated to mandate the usage of UPI for OTC derivatives |
| | Instrument identification code | For all financial instruments | This field should be updated to mandate the usage of UPI for OTC derivatives |
| New Field to be added to Table 2 of RTS 2 | Effective Date | For derivatives | The combination of Effective Date, Termination Date and the existing "Trading Date and Time" field will allow the tenor of the contract to be derived |
| | Termination Date | For derivatives | The combination of Effective Date, Termination Date and the existing "Trading Date and Time" field will allow the tenor of the contract to be derived |
| | Clearing House LEI | For derivatives | This field should be added to provide visibility of differing prices between CCPs |
| | Upfront payment | For CDS instruments | Only relevant in the context of CDS, the up-front payment is considered a price-impacting field and therefore warrants inclusion |
| | Spread | For derivatives | The spread for certain IRS trades containing a floating leg is considered a price-impacting field and therefore warrants inclusion. As this is only relevant for a subset of IRS, a value of 0 should be allowed where no spread exists |

| Proposed Attribute | Reason for descoping from UPI+ |
|---|---|
| Term of Contract Value | |

| | |
|---|---|
| Term of Contract Unit<br>Forward Starting Period<br><br>Forward Starting Period Unit | The UPI+ working group agreed not to include these fields in the proposal as Effective date / termination date are preferable values for reporting due to ease of implementation and the fact that users of transparency data can derive tenor from the reported dates. |
| Execution Venue LEI | Details referring to the Execution venue are already included within the existing "Venue of Execution" field and therefore the LEI would not be required |
| Day Count Fraction | Due to the inclusion of whole year tenors, this field is not relevant. Where there are varying day count fractions there would not be a significant enough impact on price to justify inclusion in UPI+. This decision is based on the starting assumption of the inclusion of whole year tenors only - should this change, then the day count fraction would become a relevant attribute |
| Payment Frequency | This field has a relatively low impact on the price and non-standard instances of payment frequency are rare. Therefore, it was agreed not to include this field |
| Price Multiplier | The majority of products will have a Price Multiplier of 1 and therefore there is no value including this field within transparency reporting |
| Look Back | It was agreed not to include Look back in transparency reporting due to the low volume of trades with a non-standard look back period. The majority of trades analysed appeared to be of a "non-standard" nature which would bring them out of scope of transparency reporting |
| Standard / Non-Standard Flag | The proposal for UPI+ is centred on the inclusion of centrally cleared "standard" trades and therefore there is no need to differentiate by including a specific flag |
| Price Forming Flag | There are already provisions in RTS2 for market participants to report a flag of 'NPFT' to identify submissions which do not contribute to price formation |
| Package Flag | There are already provisions in RTS2 for market participants to report a flag of 'TPAC' to identify package transactions |

On a UK DTO for sterling denominated OIS (1 to 10 years, 12, 15, 20, 25, and 30)

- As you know, since the removal of LiBOR Swaps from the DTO, the FCA has stated that they will wait for the CO scope to determine the reintroduction of RFRs into a revised DTO. The above group is also looking at a this from a trade data perspective. Any comments from a TV perspective clearly welcome.
- Attached/below is an analysis is based on data reported to APAs and TVs in the UK for the period from January 1, 2023, to June 30, 2023. (*The analysis excludes all small transactions with notional equal to or smaller than GBP 100,00. All broken-tenor transactions have also been excluded.)*
- The analysis shows that most tenor buckets were liquid using the quantitative liquidity criteria for OIS single currency swaps (average daily notional amount of GBP 50,000,000 and average daily number of trades of 10).
- The calculated thresholds for all tenors are significantly lower compared to the current thresholds the FCA has for GBP-denominated OIS transactions with tenors 3 to 6 months and 6 months to 1 year. (These are the only two tenors of SONIA OIS that are deemed liquid and subject to RTT now (see the FCA Thresholds tab in the file). https://data.fca.org.uk/#/fitrs/fitrsCalc
- The difference can be explained by the fact that OIS transactions with tenors less than one year accounted for about 87% of total sterling-denominated traded notional and 22% of trade count in the first half of 2023, but sterling-denominated OIS transactions with tenors of less than one year are not included in the current DTO list: https://register.fca.org.uk/servlet/servlet.FileDownload?file=0150X000006gbbG.

| Tenor | Total Traded Notional (£ billions) | Total Transaction Count | ADV (£ billions) | Average Daily Trade Count | Average Trade Size (£ billions) | ADV £ 50m | Average Daily Trade Count 10 | Has a Liquid Market | Thresholds Trade percentile | | | | | Thresholds Volume percentile | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | 50% | 60% | 70% | 80% | 90% | 50% | 60% | 70% | 80% | 90% |
| 1Y | **570.4** | **3,049** | **4.60** | **24.59** | **0.19** | Y | Y | Y | 100,000,000 | 150,000,000 | 175,000,000 | 250,000,000 | 325,000,000 | 300,000,000 | 500,000,000 | 700,000,000 | 1,100,000,000 | 2,000,000,000 |
| 2Y | 487.5 | 5,394 | 3.93 | 43.50 | 0.09 | Y | Y | Y | 75,000,000 | 90,000,000 | 100,000,000 | 125,000,000 | 175,000,000 | 125,000,000 | 150,000,000 | 200,000,000 | 275,000,000 | 750,000,000 |
| 3Y | 280.9 | 3,599 | 2.27 | 29.02 | 0.08 | Y | Y | Y | 70,000,000 | 80,000,000 | 90,000,000 | 125,000,000 | 150,000,000 | 100,000,000 | 150,000,000 | 150,000,000 | 200,000,000 | 300,000,000 |
| 4Y | 197.5 | 1,887 | 1.61 | 15.34 | 0.10 | Y | Y | Y | 70,000,000 | 100,000,000 | 125,000,000 | 150,000,000 | 200,000,000 | 200,000,000 | 200,000,000 | 200,000,000 | 250,000,000 | 1,125,000,000 |
| 5Y | 742.8 | 12,010 | 5.94 | 96.08 | 0.06 | Y | Y | Y | 50,000,000 | 60,000,000 | 75,000,000 | 85,000,000 | 125,000,000 | 80,000,000 | 100,000,000 | 125,000,000 | 150,000,000 | 250,000,000 |
| 6Y | 167.6 | 1,268 | 1.43 | 10.84 | 0.13 | Y | Y | Y | 90,000,000 | 150,000,000 | 200,000,000 | 200,000,000 | 300,000,000 | 200,000,000 | 250,000,000 | 300,000,000 | 300,000,000 | 300,000,000 |
| 7Y | 344.7 | 3,759 | 2.78 | 30.31 | 0.09 | Y | Y | Y | 90,000,000 | 100,000,000 | 100,000,000 | 150,000,000 | 200,000,000 | 150,000,000 | 150,000,000 | 200,000,000 | 250,000,000 | 300,000,000 |
| 8Y | 230.9 | 1,762 | 1.99 | 15.19 | 0.13 | Y | Y | Y | 100,000,000 | 125,000,000 | 150,000,000 | 200,000,000 | 300,000,000 | 225,000,000 | 250,000,000 | 375,000,000 | 500,000,000 | 500,000,000 |
| 9Y | 193.8 | 1,364 | 1.75 | 12.29 | 0.14 | Y | Y | Y | 100,000,000 | 125,000,000 | 200,000,000 | 250,000,000 | 300,000,000 | 200,000,000 | 250,000,000 | 300,000,000 | 400,000,000 | 500,000,000 |
| 10Y | 907.6 | 28,860 | 7.32 | 232.74 | 0.03 | Y | Y | Y | 25,000,000 | 25,000,000 | 30,000,000 | 40,000,000 | 50,000,000 | 35,000,000 | 45,000,000 | 50,000,000 | 70,000,000 | 100,000,000 |
| 12Y | 81.8 | 1,129 | 0.72 | 9.99 | 0.07 | Y | N | N | 75,000,000 | 75,000,000 | 100,000,000 | 100,000,000 | 150,000,000 | 100,000,000 | 125,000,000 | 150,000,000 | 200,000,000 | 250,000,000 |
| 15Y | 65.7 | 1,743 | 0.56 | 14.77 | 0.04 | Y | Y | Y | 25,000,000 | 35,000,000 | 45,000,000 | 55,000,000 | 100,000,000 | 55,000,000 | 85,000,000 | 100,000,000 | 100,000,000 | 150,000,000 |
| 20Y | 74.3 | 2,316 | 0.61 | 18.98 | 0.03 | Y | Y | Y | 30,000,000 | 30,000,000 | 40,000,000 | 45,000,000 | 60,000,000 | 45,000,000 | 50,000,000 | 60,000,000 | 90,000,000 | 800,000,000 |
| 25Y | 48.2 | 1,240 | 0.43 | 11.17 | 0.04 | Y | Y | Y | 30,000,000 | 50,000,000 | 50,000,000 | 70,000,000 | 75,000,000 | 60,000,000 | 75,000,000 | 80,000,000 | 100,000,000 | 100,000,000 |
| 30Y | 123.2 | 6,761 | 0.99 | 54.52 | 0.02 | Y | Y | Y | 15,000,000 | 15,000,000 | 20,000,000 | 25,000,000 | 35,000,000 | 25,000,000 | 25,000,000 | 35,000,000 | 45,000,000 | 90,000,000 |

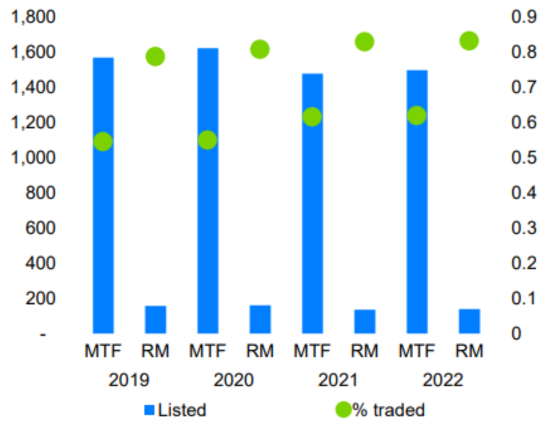
ESMA publishes analysis on the evolution of EEA share market structure since the application of MiFID II: *an article on the evolution of the European share market structure from 2019 to 2022, following the implementation of the markets in financial instruments directive (MiFID II). Specific focus is given to the impact of the UK's withdrawal from the EU, given its pivotal role in equity markets.*

- Confirming the transfer of volumes in a few countries, share trading remains highly concentrated on a few trading venues after the UK's withdrawal.
- The European market structure has changed in an important manner during the observed period. The important decrease in trading volumes observed after 2021 linked to the impact of the UK withdrawal was accompanied by four main changes:

1. a decrease in the number of trading infrastructures, even though their number remains elevated;
2. a shift in share trading distribution, both in terms of market types and countries,
3. a concentration of trading in a few EU countries and trading venues;
4. a relocation of domestic trading activities; and a rise in the specialisation of trading venues.

Average number of instruments available to trade

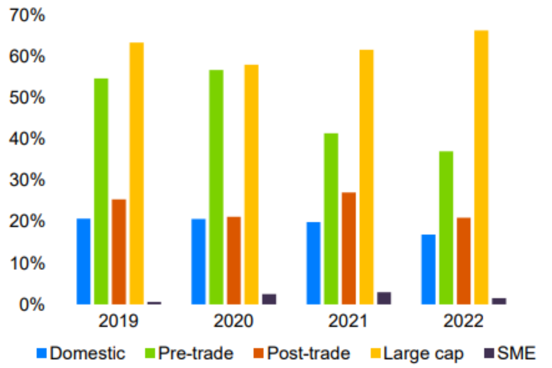
**Far higher number of shares available on MTFs**




Note: Average number of shares available for trading (lhs) and share of traded stocks by market type (rhs).
Sources: FIRDS, FITRS, ESMA.

MTF share trading by characteristics

**MTFs specialised in foreign, SME, dark trading**

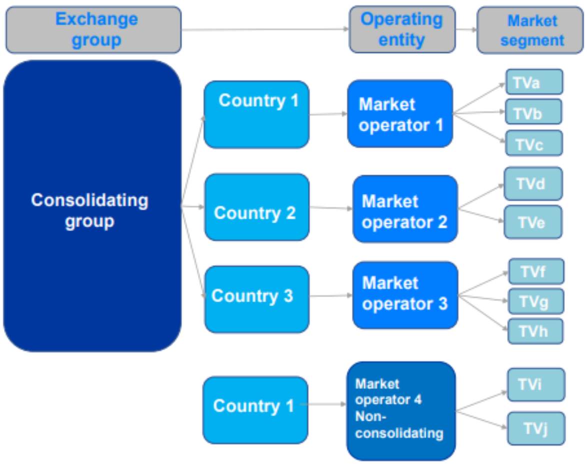



Note: Annual turnover in shares on multilateral trading facilities. Domestic = turnover in 'domestic' shares. Large cap = turnover in shares with a market capitalisation larger than EUR 20bn. SME = turnover in shares with a market capitalisation smaller than EUR 200mn. Pre-trade = turnover under pre-trade waiver. Post-trade = turnover under post-trade deferral.
Sources: FIRDS, FITRS, ESMA.

- This topic is of relevance to ESMA in terms of both its financial stability and orderly markets mandate, since competition among trading venues can lead to more innovative services and lower fees, but a fragmented trading landscape can also impact market liquidity.
- European market structure has changed in an important manner since the implementation of MiFID II / MiFIR. Making use of the regulatory transparency data, this article analyses the evolution of the EEA share market structure from 2019 to 2022. Given its pivotal role in stock markets, the impact of the UK's withdrawal led to a major decrease in trading volumes, and a decrease in the number of infrastructures trading shares, even though they remain elevated.
- Since the beginning of 2021, a new distribution of trading has been observed, both by market type and by country, as well as the relocation of domestic trading; and an increased specialisation of venues.
- Since the launch of the EU capital markets union initiative, new legislative and non-legislative proposals have aimed at fostering a single market for capital in the EU. These regulatory proposals, together with other external events including mergers, have shaped the integration and competition level of trading platforms.
- Making use of regulatory data, this article presents the evolution of the European share market microstructure from 2019 to 2022, with a specific focus on the impact of the UK's withdrawal from the EU, given its pivotal role in equity markets.
- In an upcoming ESMA working paper, we will test the significance of these main changes through a panel regression model, to test the descriptive statistics described in this article. B

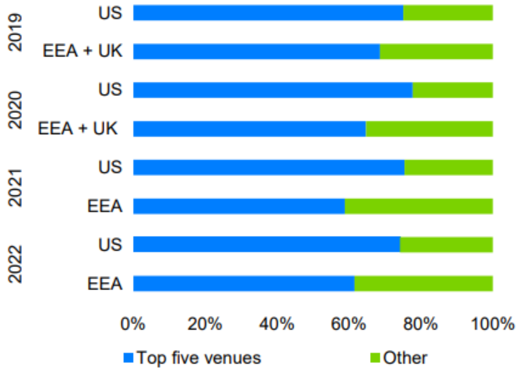
- In this sense, assessing the evolution of the European market structure in the recent transformative years is key to “improve the level-playing field between execution venues”, which is one of the three priority areas for the Review of the Regulation governing rules about the structure of the markets in financial instruments (MiFIR Review).

Example of on-exchange equity market structure




Annual on-exchange turnover on EEA and US venues

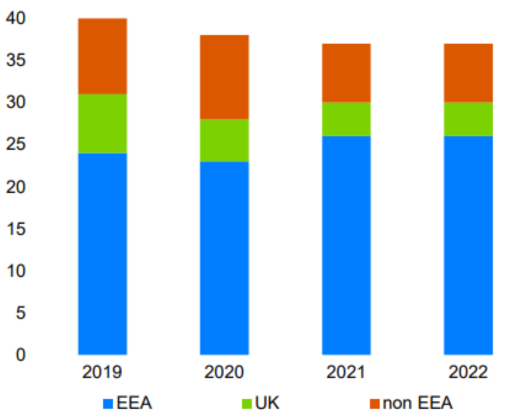
Higher concentration of trading in the US




Note: Share of annual on-exchange turnover volumes in shares on the top five US venues, compared to EEA + UK venues in 2019 and 2020 and EEA venues in 2021 and 2022, in % of on-exchange trading volumes.
Sources: FIRDS, FITRS, Refinitv Eikon, ESMA.

Number of groups trading shares, by domicile

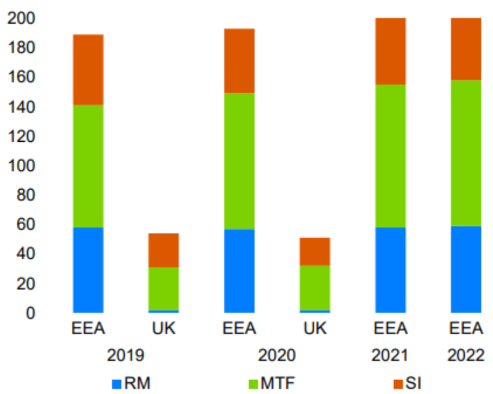
High number, slight decrease since 2019




Note: Number of unique groups with venues trading shares in the EEA, by country domicile.
Sources:FITRS, GLEIF, ESMA.

Number of venues and SIs trading shares

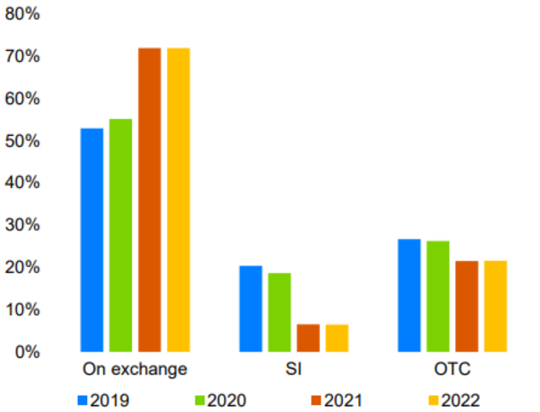
High number of infrastructures, also after Brexit




Note: Number of unique venues and SIs trading shares in the EEA and UK, by type.
Sources: FITRS, ESMA.

Annual turnover volumes by market type

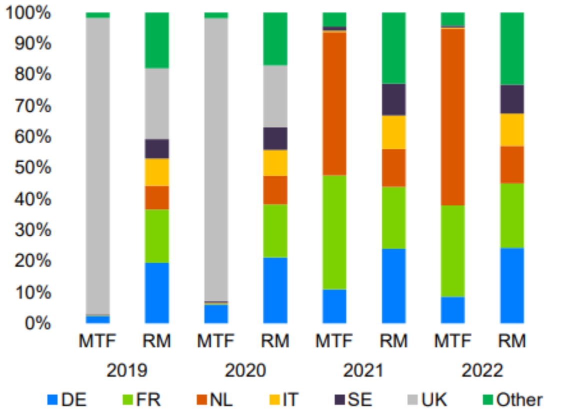
On-exchange trading increased after Brexit




Note: Share of annual turnover volumes in shares by market type, in %. In 2019 and 2020 the perimeter is the EEA + UK, in 2021 and 2022 the EEA.
Sources: FIRDS, FITRS, ESMA.

Annual trading volume by venue domicile

UK dominated MTF turnover pre-Brexit

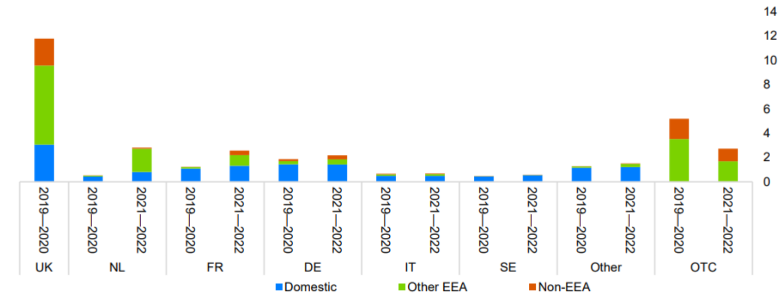



Note: Annual trading volumes in shares by market type and trading venue domicile. Share of the total, in %.
Sources: FIRDS, FITRS, ESMA.

Chart 6

Shares volumes by issuer and venue domicile

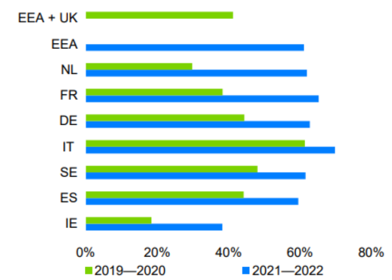
Decrease in non-EEA shares volumes, concentration of EEA cross-border trading




Note: Average share turnover on venues and SIs, EUR trillion, in shares with an issuer from the same country (domestic), from another EEA country (other EEA) or outside the EEA (non-EEA), for 2019/2022 and 2021/22.

Share of domestic shares trading by country

Domestic trading of shares increased




Note: Domestic share trading on domestic infrastructures, in % of total domestic share trading on all venues and SIs, for 2019/2020 and 2021/2022.
Lecture: In 2019/2020, 18% of trading volumes in Irish shares were traded on Irish venues or SIs. In 2021/2022, 38% of the Irish share volumes on all venues and SIs were traded on Irish venues or SIs.
Sources: FIRDS, FITRS, ESMA.

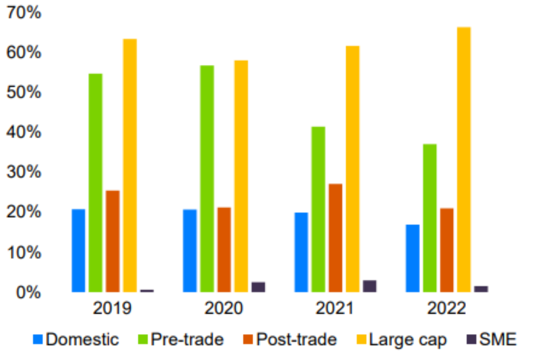
Average number of instruments available to trade

**Far higher number of shares available on MTFs**


Note: Average number of shares available for trading (lhs) and share of traded stocks by market type (rhs).
Sources: FIRDS, FITRS, ESMA.

MTF share trading by characteristics

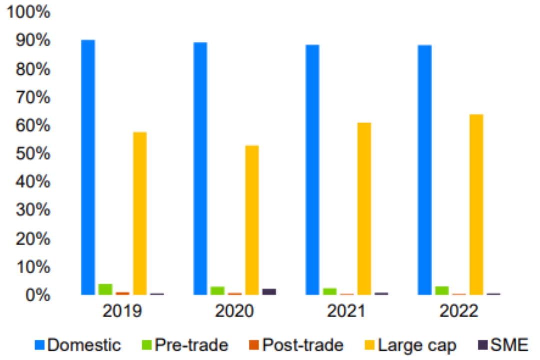
**MTFs specialised in foreign, SME, dark trading**




Note: Annual turnover in shares on multilateral trading facilities. Domestic = turnover in 'domestic' shares. Large cap = turnover in shares with a market capitalisation larger than EUR 20bn. SME = turnover in shares with a market capitalisation smaller than EUR 200mn. Pre-trade = turnover under pre-trade waiver. Post-trade = turnover under post-trade deferral.
Sources: FIRDS, FITRS, ESMA.

RM share trading by characteristics

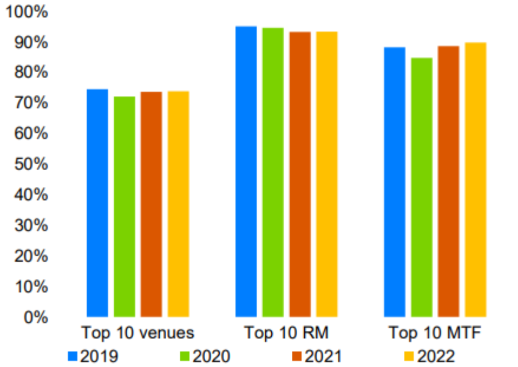
**RMs specialised in domestic, large-cap. trading**




Note: Annual turnover in shares on regulated markets. Domestic = turnover in 'domestic' shares. Large cap = turnover in shares with a market capitalisation larger than EUR 20bn. SME = turnover in shares with a market capitalisation smaller than EUR 200mn. Pre-trade = turnover under pre-trade waiver. Post-trade = turnover under post-trade deferral.
Sources: FIRDS, FITRS, ESMA.

Share trading concentration by market type

**Very high trading concentration, especially on RMs**




Note: Share of on-exchange share trading on first 10 venues, RM and MTF by turnover volumes, in % of each market type by turnover volumes.
Lecture: In 2022, the first 10 RMs concentrated 93% of share turnover volumes traded on all EEA RMs.
Sources: FITRS, FIRDS, ESMA.

Focusing on Article 26, these amendments will require significant detail to be developed in RTS 22 over the following 9-18 months, meaning that it will not be possible to fully comply until the RTS is in place. *ESMA is expected to consult on the likely changes to the RTS in Q1 2024.*

- Earlier in the year we explained what we might expect to see in the revised Article. We can now confirm the changes that will impact firms reporting to EU NCAs under the new regulations in what will be the first "real legislative" divergence between EU and UK reporting rules.

Broadening the scope of firms caught by the obligation to report

- MiFIR Article 52 now includes a requirement that the Commission will, in close cooperation with ESMA, assess the possibility of extending the requirements of Article 26 to Alternative Investment Fund Managers (AIFMs), and management companies which provide investment services and activities and which execute transactions in financial instruments. They have 12 months to do so from publication.

Strengthening the obligation on NCAs; *ESMA has added three additional requirements on NCAs to distribute the reports to not only;*

- the competent authority of the most relevant market in terms of liquidity for those financial instruments;
- But also,

  - the competent authorities responsible for the supervision of the transmitting investment firms
  - the competent authorities responsible for the supervision of the branches which have been part of the transaction, and
  - the competent authority responsible for the supervision of the trading venues used.

- We can't be 100% certain whether this obligation will mean any additional data will be required from firms in their reports or whether there is sufficient detail already to enable NCAs to comply with this.

Instruments in scope

- The OTC derivatives transactions in scope has been amended. All OTC derivatives trades executed on venue will be in scope of transaction reporting – no change. Also in scope will be off-venue OTC trades which fall within the transparency requirements.
- The amended transparency obligation has removed the link to the "traded on a trading venue"/TOTV concept and now covers OTC derivatives which are denominated in major currencies (Euro, Yen, US Dollar or Pound Sterling) and which are subject to the clearing obligation. Where these OTC derivatives are interest rate swaps, only the most liquid tenor combinations are included.

TvTIC in Level One; The TvTIC is now included in Level 1 legislation:

- *"Reports on a transaction made at the trading venue shall include a transaction identification code generated and disseminated by the trading venue to both buying and selling members of the trading venue."*
- We are not convinced that bringing the requirement into Level 1 legislation will solve the implementation challenges associated with it.
- Farewell to the short selling flag… As expected, the obligation to report the short selling flag has finally been removed which aligns EU legislation with UK Supervisory priority.

Branch Reporting

- No change to the substance but some of the text from RTS 22 covering third country firm branch reporting has been moved up into Level 1 text.
- *'An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm. The branch of a third country*

*firm shall submit its transaction reports to the competent authority which authorised the branch. Where a third country firm has set up branches in more than one Member State, those branches shall define the competent authority that is to receive all the transaction reports.;'*

Pre-Trade Waiver

- The obligation to report the "applicable waiver under which the trade has taken place" has also been removed. This also aligns EU legislation with current UK FCA Supervisory priority.

Linking

- Of potential concern is the addition of the following requirement – the details of which won't be fully realised until we see the amended RTS 22:
- '(j) the conditions for linking specific transactions and the means of the identification of aggregated orders resulting in the execution of a transaction;' and
- '(k) the date by which transactions are to be reported.'
- This could result in significant implementation challenges for firms when we fully understand which "specific transactions" they mean and how they are to be linked. With MTCH capacity not solving the problem of linking market-side to client-side fills, it may be that paragraph (j) is ESMA's solution.
- Paragraph (k) doesn't seem to add much for regulators, but firms will have to build complex logic to determine when exactly is T+1 – over weekends and ever shifting bank holidays.
- Much of the content has been anticipated for a while and although some of these changes will reduce the reporting burden on firms, others are likely to prove more challenging to implement and report accurately.
- The implementation timeline has not yet crystallised, and the changes will also likely require a revision of the reporting guidelines.

*25) Article 26 is amended as follows:*

- in paragraph 1, the second and third subparagraphs are replaced by the following:
- 'The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the following competent authorities also receive that information:
- the competent authority of the most relevant market in terms of liquidity for those financial instruments;
- the competent authorities responsible for the supervision of the transmitting investment firms;
- the competent authorities responsible for the supervision of the branches which have been part of the transaction; and
- the competent authority responsible for the supervision of the trading venues used.
- The competent authority referred to in the first subparagraph shall without undue delay make available to ESMA any information reported in accordance with this Article.;'
- paragraph 2 is replaced by the following:
- 2. The obligation laid down in paragraph 1 shall apply to:
- financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made, irrespective of whether or not such transactions

are carried out on the trading venue, with exception of transactions in OTC derivatives other than those referred in Article 8a(1a), to which the obligation shall apply only when executed on a trading venue;

- financial instruments where the underlying is a financial instrument traded on a trading venue, irrespective of whether or not such transactions are carried out on the trading venue;
- financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue, irrespective of whether or not such transactions are carried out on the trading venue;
- OTC derivatives referred to in Article 8a(2), irrespective of whether or not such transactions are carried out on the trading venue;
- paragraph 3 is replaced by the following:
- '3. The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the effective dates, the transaction prices, a designation to identify the parties on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the entity subject to the reporting obligation, and means of identifying the investment firms concerned. Reports on a transaction made at the trading venue shall include a transaction identification code generated and disseminated by the trading venue to both buying and selling members of the trading venue.
- For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3), point (a), and Article 21(5), point (a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.';
- paragraph 5 is replaced by the following:
- '5. The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by any member, participant or user which is not subject to this Regulation in accordance with paragraphs 1 and 3.';
- in paragraph 8, the following subparagraph is inserted before the first subparagraph:
- 'An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm. The branch of a third country firm shall submit its transaction reports to the competent authority which authorised the branch. Where a third country firm has set up branches in more than one Member State, those branches shall define the competent authority that is to receive all the transaction reports.;'
- paragraph 9 is amended as follows:
- the first subparagraph is amended as follows:

  - point (c) is replaced by the following:

- '(c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the effective dates, the transaction prices, the information and details of the identity of the client, a designation to identify the parties on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields necessary for the processing and analysis of the transaction reports in accordance with paragraph 3;'

- point (d) is deleted;
- point (e) is replaced by the following:

- '(e) the relevant categories of indices to be reported in accordance with paragraph 2;';

- the following points are added:

- '(j) the conditions for linking specific transactions and the means of the identification of aggregated orders resulting in the execution of a transaction; and
- (k) the date by which transactions are to be reported.;'
- the second and third subparagraphs are replaced by the following:
- 'When developing those regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and the consistency of those draft regulatory technical standards with the reporting requirements laid down in Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365.
- ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Regulation].
- Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';
- (g) the following paragraph is added:
- '11. By [four years after the date of entry into force of this amending Regulation], ESMA shall submit to the Commission a report assessing the feasibility of more integration in transaction reporting and streamlining of data flows under Article 26 of this Regulation to:
- reduce duplicative or inconsistent requirements for transaction data reporting, and in particular duplicative or inconsistent requirements laid down in this Regulation, Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365, and in other relevant Union law;
- improve data standardisation and efficient sharing and use of data reported within any Union reporting framework by any relevant Union or national competent authority .
- When preparing the report, ESMA shall, where relevant, work in close cooperation with the other bodies of the European System of Financial Supervision and the European Central Bank.;'

*(26) Article 27 is amended as follows:*

- in paragraph 1, the first and second subparagraphs are replaced by the following:
- 'With regard to financial instruments admitted to trading or traded on a trading venue or where the issuer has approved trading of the issued instrument or where a request for admission to trading has been made, trading venues shall provide ESMA with identifying reference data for the purpose of transaction reporting under Article 26 and of the transparency requirements under Articles 3, 6, 8, 8a, 10, 14, 20 and 21.
- With regard to OTC derivatives, identifying reference data shall be based on a globally agreed unique product identifier and on any other relevant identifying data.

- With regard to OTC derivatives not covered by the first subparagraph that fall within the scope of Article 26(2), each designated publishing entity, , shall provide ESMA with the identifying reference data.';
- paragraph 3 is amended as follows:
- the following point is added:
- '(c) the date by which reference data are to be reported.;'
- the following subparagraph is inserted after the first subparagraph:
- 'When drafting those draft regulatory technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and the consistency of those draft regulatory technical standards with the reporting requirements laid down in Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365.';
- the following paragraph is added:
- '5. By ... [three months after the date of entry into force of this amending Regulation], the Commission shall adopt a delegated act in accordance with Article 50 in order to supplement this Regulation by specifying the identifying reference data to be used with regards to OTC derivatives for the purposes of the transparency requirements set out in Articles 8a(1a), 10 and 21.';
- The Commission is empowered to adopt delegated acts in accordance with Article 50 in order to supplement this Regulation by specifying the identifying reference data to be used with regards to OTC derivatives for the purposes of Article 26.

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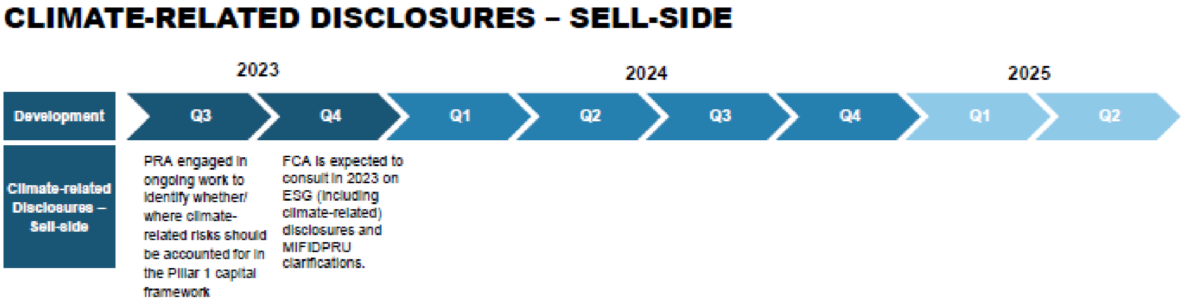
## Carbon Emissions, Green finance, ESG & Disclosures

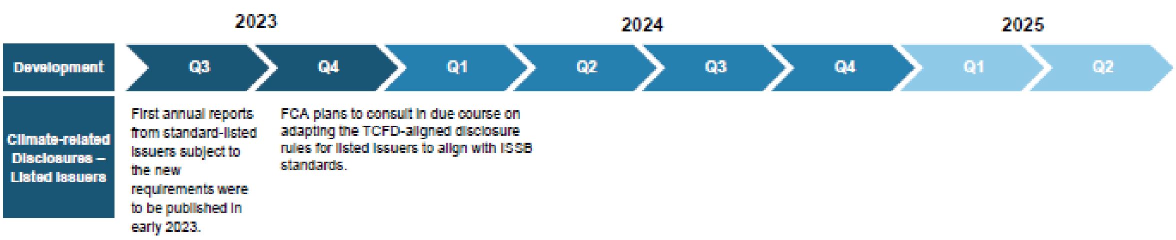



- The UK formally committed in 2017 to using the recommended disclosures from the Task Force on Climate-related Financial Disclosures (TCFD) as a basis for mandatory climate related financial disclosures in the UK.
- Sell side firms are subject to an expanding range of climate-related disclosures obligations. For banks and PRA regulated investment firms, this includes Pillar III disclosures under the prudential framework, obligations arising under the PRA's expectations as set out in SS3/19, the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and the Listing Rules. FCA-only regulated MiFID investment firms are not currently required to make specific disclosures under the FCA's MIFIDPRU rules, but the FCA is expected to consult in 2023 on ESG (including climate-related) disclosures and MIFIDPRU clarifications.
- On the forward horizon
- FCA is expected to consult during 2023 on ESG disclosures under the Investment Firms Prudential Regime (IFPR). This will affect firms subject to MIFIDPRU.
- The PRA is continuing in 2023 with active supervision of PRA-regulated firms' compliance with its expectations under SS3/19, including its to expectations for disclosures (qualitative and quantitative) against

the TCFD framework. The PRA will continue to support international and domestic efforts to promote the implementation of consistent and comparable disclosure standards for climate risks, including by the International Sustainability Standards Board (ISSB). The ISSB issued its first IFRS Sustainability Disclosure Standards in June 2023: (i) IFRS S1 (General requirements for disclosure of sustainability related financial information); and (ii) IFRS S2 (Climate related disclosures).

- The UK's revised Green Finance Strategy was published on 30 March 2023. Developments arising from the UK's Green Strategy are likely to have a bearing on disclosure obligations, for example one impact of the proposed code of practice for ESG data and ratings providers (see Slide 54) is that it may help address some of the data gaps which impair firms' ability to make quantitative disclosures.
- In a March 2023 report on climate related risks and the regulatory capital framework, the PRA explained it is engaged in ongoing work to establish if there are 'regime gaps' in the capital framework, including with the Basel Committee on Banking Supervision (BCBS) to establish whether climate related risks should be accounted for in banks' Pillar 1 capital framework.

## CLIMATE-RELATED DISCLOSURES – LISTED ISSUERS




- On 17 December 2021, the FCA published its final rules on extending the application of its climate-related disclosure requirements from equity issuers with a premium listing to issuers of standard listed shares and standard listed issuers of (GDRs), in each case excluding standard listed investment entities and shell companies.
- On the forward horizon
- In line with the UK Government's commitment to introduce mandatory TCFD-aligned disclosure requirements across the UK economy by 2025, the FCA first introduced climate-related disclosure rules for listed issuers with a premium listing in 2020, followed by extension of the requirement to standard listed issuers in 2021.
- For issuers with a premium listing, the new rules took effect for accounting periods beginning on or after 1 January 2021, with the result that the first annual financial reports subject to the new rule were to be published in early 2022.
- For issuers with a standard listing, the new rules took effect for accounting periods beginning on or after 1 January 2022, with the result that the first annual financial reports subject to the new rule were to be published in early 2023.
- The International Sustainability Standards Board (ISSB) launched the first of its IFRS Sustainability Disclosure Standards in June 2023: (i) IFRS S1 (General requirements for disclosure of sustainability related financial information); and (ii) IFRS S2 (Climate related disclosures).
- In its response to exposure drafts of IFRS S1 and IFRS S2, and again in its October 2022 consultation on the UK's future Sustainability Disclosure Reporting (SDR) Framework (CP22/20), the FCA confirmed that it intends to consult on adapting the TCFD-aligned disclosure rules for listed issuers to reference the ISSB's standards, once finalised and made available for use in the UK. This is consistent with the UK Government's expectation that the ISSB standards will form the 'backbone' of the corporate reporting element of SDR.

## SUSTAINABILITY DISCLOSURES AND INVESTMENT PRODUCT LABELS

| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| Sustainability Disclosure Requirements and Investment Product Labels | | FCA policy statement on sustainability disclosure requirements and investment labels expected in Q4 2023. | FCA consultation on expanding scope of sustainability disclosure requirements and investment labels expected in due course. | | | FCA's sustainability disclosure requirement and investment labelling rules expected to apply in Q4 2024. | | |

- In November 2021, the FCA published a discussion paper (DP21/4) on sustainability disclosure requirements and investment product labels. In the discussion paper, the FCA sought views on the introduction of a standardised product classification and labelling system to help consumers understand the sustainability characteristics of different financial products. In October 2022, of the FCA's published its consultation paper on these requirements (CP22/20).
- On the forward horizon
- The FCA has indicated that it expects to publish its policy statement, containing its final rules on sustainability disclosure requirements and investment labels, in Q4 2023. The FCA is currently proposing that a new anti-greenwashing rule would come into effect immediately upon publication of this policy statement.
- In its consultation paper on sustainability disclosure requirements and investment labels (CP22/20), the FCA indicates that it intends in future to expand the scope of investment products captured under the regime to include, for example, overseas products. Consultation on this expansion is expected in due course.
- The FCA has indicated that rules for labelling, consumer-facing disclosures, pre-contractual disclosures and naming and marketing rules would apply one year after publication of the policy statement referred to in the bullet point above (i.e., by the end of Q4 2024).

## DIVERSITY IN FINANCIAL SERVICES

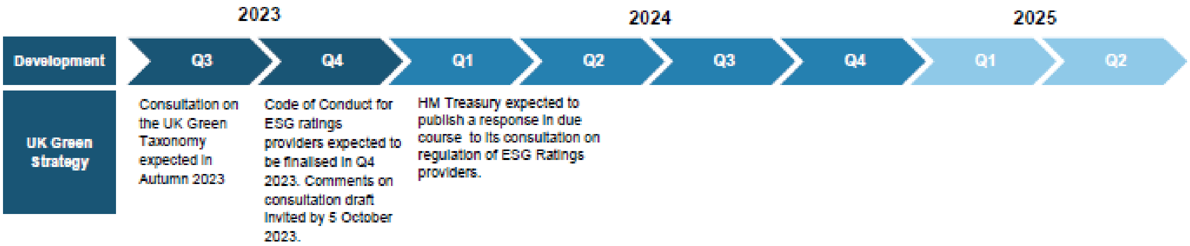
| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| Diversity in financial services | Response deadline 1 September 2023 for Treasury Committee inquiry on sexism in the city. | FCA and PRA consultation on proposed D&I measures expected in H2 2023. | FCA and PRA D&I policy statement expected Q1/Q2 2024. | | | | | |

- On 7 July 2021, the FCA, PRA and Bank of England published a joint discussion paper (DP21/2) on diversity and inclusion in the financial services sector. The discussion paper sought views on how to accelerate the rate of change in diversity and inclusion in the financial services sector. It set out the roles of the regulators in this context, steps that the regulators have taken to promote diversity and inclusion, the regulators' existing requirements and expectations, and a series of questions intended to seek views on ways of improving diversity and inclusion measures.
- On the forward horizon
- 
- The FCA and PRA are continuing their focus on culture and diversity & inclusion (D&I). For financial years starting on or after 1 April 2022, FCA rules for public company boards and executive committees require firms to meet 'comply or explain' targets on gender and ethnic diversity and make annual disclosures.
- As a follow-up to the 2021 joint discussion paper, ajoint FCA-PRA consultation on draft measures to support diversity and inclusion in the financial sector was expected in H1 2023, with a Policy Statement to follow in Q4 2023/Q1 2024. This follows the FCA's publication of feedback in December 2022 on its study of how

financial services firms are designing and embedding D&I strategies. The joint consultation was not published in H1 2023 and is now expected in H2 2023.

- Measures to drive change that the regulators may include in the forthcoming joint D&I consultation include: greater collection and monitoring of D&I data; making senior leaders directly accountable for D&I in their firms; linking remuneration to D&I metrics; measures to achieve diversity at board level; and embedding non-financial misconduct into fitness and propriety assessments to support an inclusive culture across the sector.
- In July 2023, the House of Commons Treasury Committee launched an inquiry into Sexism in the City, looking at the barriers faced by women in finance. The Inquiry is accompanied by a call for evidence inviting responses by 1 September 2023.

## UK GREEN STRATEGY




- The UK is reforming its financial services regulation outside the EU and working towards a 'Smarter Regulatory Framework' for UK financial services.
- The three key elements for the reforms are: (i) the Financial Services and Markets Act 2023 (FSMA 2023), which will revoke EU-derived financial services and markets legislation; (ii) the Retained EU Law (Revocation and Reform) Act 2023, which will revoke other EU-derived legislation; and (iii) the December 2022 Edinburgh reforms, a package of reforms that aim to modernise and improve UK financial services regulation. The Edinburgh Reforms have been further supplemented by the Mansion House Reforms published in July 2023.
- This slide tracks the key ESG-related developments that form part of these workstreams.
- On the forward horizon
- In February 2023, the FCA published a discussion paper (DP23/1) on 'Finance for positive sustainable change: governance, incentives and competence in regulated firms'. DP23/1 aims to encourage dialogue on firms' sustainability-related governance, incentives and competencies. The feedback will be used by the FCA to consider the direction for evolution of its future regulatory approach. DP23/1 closed for feedback in May 2023.
- The government published a revised UK Green Finance Strategy on 30 March 2023, which included an update on the production of a UK Green Taxonomy. A consultation will be launched in Autumn 2023. As announced in the UK Spring Budget, the UK green taxonomy is expected to include nuclear energy.
- HM Treasury launched a consultation on 30 March 2023 on bringing ESG ratings providers within the scope of regulation. The consultation sets out proposals for the scope of a regulatory regime for ESG ratings providers with the aim of improving transparency on providers' methodologies and objectives and improving conduct in the ESG market. This is likely to need changes to the Regulated Activities Order and –for a subset of firms –legislation under the Designated Activities Regime introduced under FSMA 2023. The consultation closed on 30 June 2023 and HM Treasury is expected to provide feedback in due course.
- A draft Code of Conduct for ESG ratings providers was published for consultation in July 2023. Responses are invited by 5 October 2023, with the aim of finalising the Code of Conduct to be finalised in Q4 2023.

## EU SUSTAINABLE FINANCE DISCLOSURE REGULATION (SFDR)

| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| EU SFDR | ESMA final guidelines on fund names expected Q3 2023. | Commission consultation on assessing the SFDR expected in Autumn 2023.<br>ESAs to report to Commission on PAI and financial product disclosures by 28 November 2023. | | ESAs expected to provide final reports to European Commission on greenwashing risks and supervision of sustainable finance in May 2024. | | | | |

## EU TAXONOMY REGULATION

| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| EU Taxonomy Regulation | Commission published EU Sustainable Finance Package on 13 June 2023. | Draft delegated acts expected to be scrutinised by European Parliament and Council | Certain key performance indicators need to be disclosed by financial undertakings subject to Article 8 from 1 January 2024. | | | | | |

## EU ANTI-GREENWASHING DIRECTIVE: AMENDMENTS TO UCPD

| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| EU Anti-Greenwashing Directive | Trilogue negotiations on the proposed Directive ongoing. | | | | | | | |

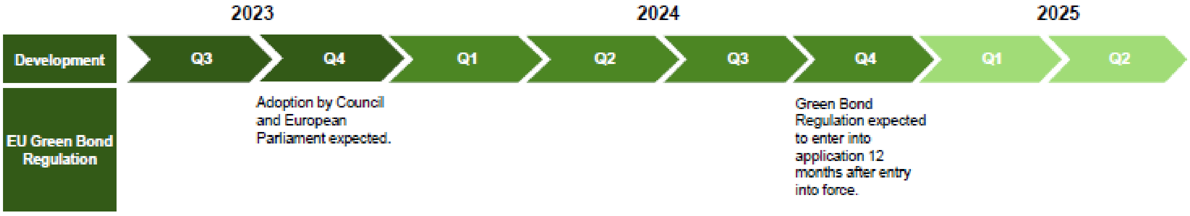
## EU REGULATION OF ESG DATA AND RATINGS PROVIDERS

| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| EU ESG Ratings Regulation | European Parliament and Council considering the proposed ESG Ratings regulation during H2 2023. | | | | | | | |

## CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CS3D)

| Development | 2023 Q3 | 2023 Q4 | 2024 Q1 | 2024 Q2 | 2024 Q3 | 2024 Q4 | 2025 Q1 | 2025 Q2 |
|---|---|---|---|---|---|---|---|---|
| CS3D | Trilogue negotiations on the CS3D proposal ongoing. | Co-legislators aim to finalise the CS3D text by end-2023. | | | | | | |

## EU GREEN BOND REGULATION

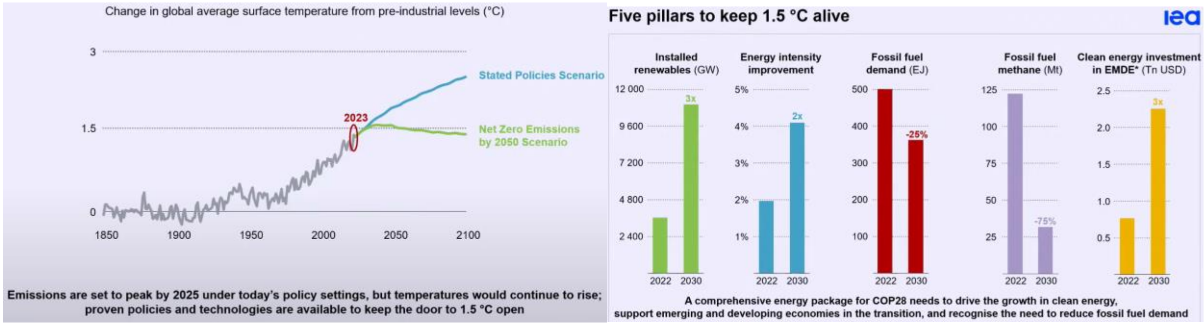



Dec 23 EUA 79.90

- EUAs continue to exhibit a persistent downward trend, with December 2023 futures contracts hitting a three-week low at 79.75 EUR. This ongoing trend can be attributed to bearish market fundamentals and short selling by investment funds. In just a week, these funds have expanded their net short exposure from approximately 10 million tonnes to nearly 14 million tonnes. However, it is worth noting that the current CoT data reveals a much lower figure compared to three weeks ago when investment funds had built a net short exposure of over 22 million tonnes.


- Bearish market fundamentals have limited any short-term buying activity, as buyers are met with numerous willing sellers after any significant price rally. EUAs appear to have limited upside potential at the moment and might continue trading on a slow and steady downward trajectory.
- This slow and steady movement has persisted for several weeks, resulting in near-record low implied volatility. Despite these factors, the bearish thesis might be running out of time, as EUAs consistently find support at nearly every downward tick. The bearish sentiment has been prevalent since late August, and even with increased auction supply, prices have not stayed below 80 EUR for an extended period.
- This resilience could be interpreted as a rather bullish signal, particularly if market fundamentals shift in a positive direction before the winter. November and December have been historically bullish months for EUAs most of the time and one must consider this factor as well. Option activity for December expiry has also been gaining some momentum. The strike with the largest open interest, of more than 21 million allowances, remains at 70 EUR. However, the 80 EUR strike is not far behind, with an open interest of just over 20 million allowances.
- German power prices are down by 4.10 EUR since last week, with the front year contract trading at 126.50 EUR/MWh. API2 coal prices are down by 10.75 USD since last week, with the Cal-24 contract trading at

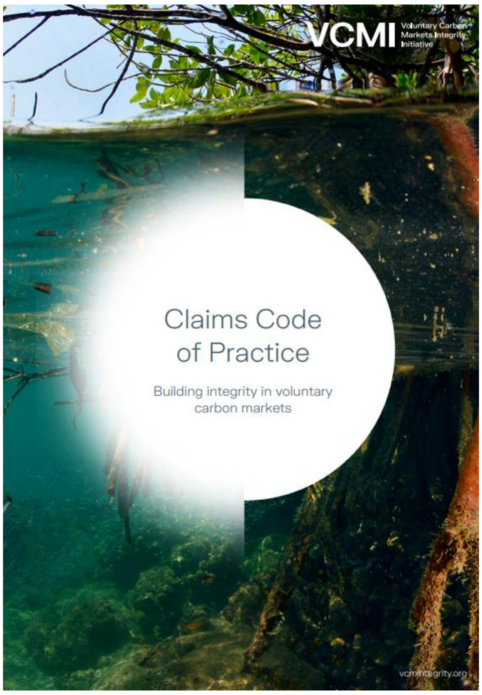
127.00 USD/tonne. Front year gas prices are down by 1.180 EUR since last week, with the TTF Cal-24 trading at 53.920 EUR/MWh. EUR/USD is up by 40 points since last week and is currently trading 1.0580.




**Citigroup CEO Jane Fraser Says the 'New S' in ESG Is Security**; The escalating tensions between Israel and Hamas are prompting global business chiefs to think more about security issues, according to Citigroup Inc. Chief Executive Officer Jane Fraser. "There is a new S in ESG which is security, be it food security, energy security, it could be defense, or financial security," Fraser said on the first day of Saudi Arabia's flagship investment conference. "That's certainly a theme for all CEOs around the world - how to build more resilient companies and countries." /jlne.ws/3SbyL7u

**It is time we paid nature back; New financial tools are at hand to help us invest in the value of the economic benefits the natural world provides**; Nature is history's most exploited underpaid labourer, so has the time come to make good? It would seem so. "Nature needs money," said the president of Brazil, Luiz Inacio Lula da Silva, at the Amazon summit in early August. It's time, he declared, for the world to "create a mechanism to fairly remunerate the environmental services that our forests provide to the world". There's nothing new in that assertion. I heard a similar challenge at the landmark Earth Summit in 1992, when a Brazilian woman asked: "If the north cares so much about the rainforest, why don't they rent it from us?" /jlne.ws/46JGUEq

The Voluntary Carbon Markets Integrity Initiative (VCMI) has announced the publishing timetable for the release of additional guidance to supplement its Claims Code of Practice (Claims Code). *This follows successful engagement and further research since the launch of the Claims Code in June.*




THE PURPOSE OF THE CLAIMS CODE

Voluntary carbon markets have the potential to help fill gaps in financing for climate mitigation, enhance corporate efforts to transition to Net Zero and support the achievement of countries' Nationally Determined Contributions and sustainable development objectives. They can also support and accelerate the introduction of robust, well-designed climate policies.

However, this potential can only be realized if voluntary carbon markets operate with high integrity. This means that carbon credits must be generated by activities that truly go beyond business-as-usual and benefit host communities - the supply side - and that their use increases overall greenhouse gas mitigation rather than substituting for existing actions - the demand side. Without clear high integrity rules for both aspects, voluntary carbon markets will rightly continue to be viewed with suspicion, companies will be afraid to invest, and their potential will be lost.

*The Claims Code addresses 'integrity on' the demand side by guiding companies and other non-state actors on how they can credibly make voluntary use of carbon credits as part of their climate commitments and on the associated claims they can make regarding the use of those credits. It provides clarity, transparency and consistency on what these commitments and claims mean and will give confidence to all those engaging with voluntary carbon markets.*

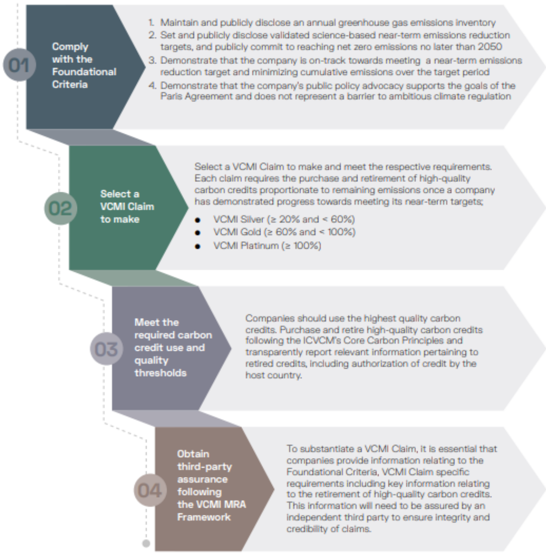
The Claims Code is the result of two years of research and engagement with stakeholders across all sectors and regions, including road testing of a provisional version published in 2022 and two public consultations. This work has taken place in the context of an emerging coherent governance framework across voluntary carbon markets and corporate accountability. The Claims Code has deliberately been designed in coordination with existing standard setters to align with and complement their work, thereby increasing clarity for businesses, their stakeholders and the wider public.

WHO THE VCMI CLAIMS CODE OF PRACTICE IS FOR

The Claims Code of Practice is designed for:

- companies seeking to make credible, voluntary use of carbon credits and receive validation in the form of a VCMI Claim;
- individuals, businesses, and other buyers of goods and services seeking to make climate-friendly purchases;
- investors and other stakeholders who want to judge the credibility of a company's climate ambition and its actions, including its use of carbon credits alongside broader decarbonization efforts; and
- governments and their regulatory agencies considering how to incentivize non-state actors to use carbon credits credibly and structure claims to be truthful, clear and informative, through government-developed or endorsed corporate reporting requirements, advertising and consumer protection standards and other policies, and measures or guidance on the use of carbon credits.

- VCMI has also announced that the additional guidance for its Claims Code will be released on the 28th of November. The launch of this guidance will enable companies to begin the process of making Claims in line with VCMI's Claims Code. This will promote high-integrity on the demand-side, giving credibility to corporate climate claims and boosting trust and confidence in the voluntary carbon markets (VCMs).
- The additional guidance will facilitate and expand implementation of the Claims Code. This will include:
    - The VCMI Monitoring, Reporting and Assurance (MRA) Framework
    - Additional claim tiers and an "on-ramp" to provide a pathway to high-ambition Claims
    - Launch of the branded Claim/Mark and associated branding guidelines
    - VCMI has also initiated an Early Adopters Program, with the intent to highlight and support a select group of corporate climate leaders ready to be recognized for raising their ambition by being one of the first to make a VCMI claim.




**SILVER**

**This tier is the most accessible, but still represents a significant investment in carbon credits. Companies making a VCMI Silver Claim must:**

- Meet the Foundational Criteria;
- Purchase and retire high-quality carbon credits of an amount equivalent to or greater than 20% and less than 60% of their remaining emissions in the most recent reporting year, with credits only used to finance additional climate mitigation beyond these targets.
- The percentage of carbon credits to be purchased and retired must increase in each subsequent year a company makes a VCMI Claim.

**GOLD**

**This tier is designed to be more achievable than Platinum but still requires retirement of a significant volume of high-quality carbon credits. Companies making a VCMI Gold Claim must:**

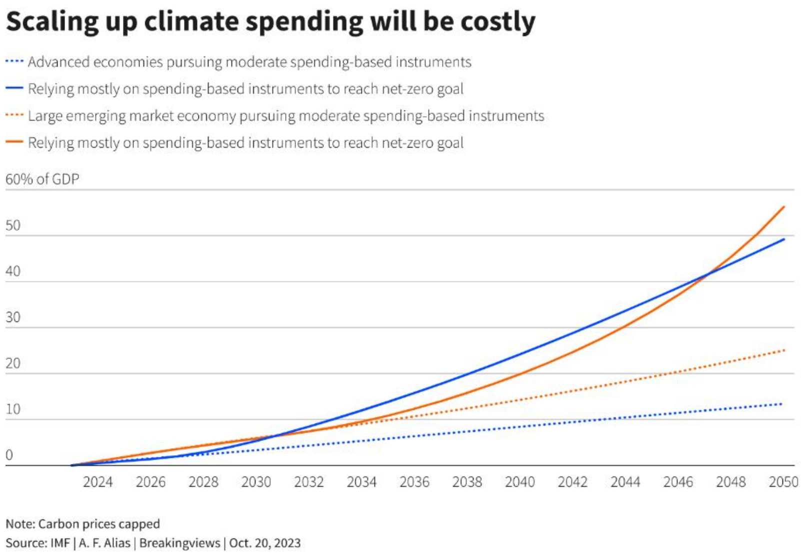
- Meet the Foundational Criteria;
- Purchase and retire high-quality carbon credits of an amount equivalent to or greater than 60% and less than 100% of their remaining emissions in the most recent reporting year, with credits only used to finance additional climate mitigation beyond these targets.
- The percentage of carbon credits to be purchased and retired must increase in each subsequent year a company makes a VCMI Claim.

**PLATINUM**

**This is the most aspirational tier. It sets the vision that companies should aim towards. Companies making a VCMI Platinum Claim must:**

- Meet the Foundational Criteria;
- Purchase and retire high-quality carbon credits of an amount that is equal to or greater than 100% of the remaining emissions in the most recent reporting year, with credits only used to finance additional climate mitigation beyond these targets.

Time is ripe for another push on carbon pricing; *Green subsidies can help fight climate change but are fiscally unsustainable on their own. Regulations that ban dirty activities are also useful but can prove politically unfeasible. Meanwhile, doing nothing is ecologically untenable – and is storing up massive economic costs.*




- Carbon taxes are also politically controversial. But they raise cash. The more governments use them, the more money they will have to ease the mounting public backlash against necessary green policies. They can, for example, give cash to the most vulnerable members of society to cushion the blow of the transition to a carbon-free economy.
- There's no cost-free approach to the transition. Some green energy sources, such as solar and wind power, are already cheaper than fossil fuel alternatives. But that's partly because governments subsidised them in their infancy until they achieved economies of scale. Other technologies, such as green hydrogen and carbon capture, are still a long way from maturity.
- What's more, rolling out these new technologies involves huge upfront costs. Clean energy investment needs to triple to $4 trillion a year by 2030 if the world is to hit its climate goals, according to the International Energy Agency. While the private sector will fund the lion's share of this, governments need to provide incentives to make the money flow.
- Fiscally Unsustainable; Subsidies have been a favourite tool to provide such incentives. U.S. President Joe Biden's $430 billion Inflation Reduction Act is one example. China has also poured subsidies into making solar panels, while the European Union has promised a Green Deal Industrial Plan, with tax breaks and subsidies.
- There's a strong case to subsidise research into new technologies because firms would otherwise do too little of it, knowing that their competitors would also benefit. There's also a case for aid to roll out early-stage technologies so that they become economically viable more quickly.
- But subsidies can be inefficient if they prop up innovations that don't work or end up with companies and individuals that don't need them. Aid can also distort competition. Many non-American governments complain that the IRA is unfair to their producers.
- An even bigger problem is that few governments can afford such mega subsidies. Global public debt is high and rising in most countries. What's more, 10-year interest rates are now at 5% in the United States and much higher in developing economies. Governments also need to find more cash to pay for bigger defence budgets and look after ageing populations.

- If countries relied mainly on spending measures and moderate carbon taxation to meet the climate goals set out in the Paris Agreement, their debt to GDP ratios would rise on average by around 50 percentage points by 2050, according to the International Monetary Fund.
- Politically Unsustainable; Governments can also phase out dirty technologies by banning them. These regulations come in various forms. Authorities can set dates beyond which consumers can't buy new petrol cars or gas-fired boilers. They can also require ships and planes to switch gradually to cleaner fuels or tell steelmakers to cut the carbon intensity of their emissions.
- Such rules give entire industries a clear mission to switch to cleaner technologies. That can encourage early investment, lowering the costs.
- The snag is that regulations which tell consumers what they can't do risk provoking a backlash. That's particularly true when the new products are more expensive than the old dirty ones. Public unhappiness this year forced the German government to delay a plan to roll out heat pumps, while British Prime Minister Rishi Sunak postponed a ban on the sale of new petrol cars by five years.
- Ideologues have spotted an opportunity to whip up discontent. While most voters across the world accept that climate change is a serious threat, voters on the right of the political spectrum aren't so sure, according to polling by the Pew Research Center.
- Part of the answer is for governments to push back against false narratives, says Michael Jacobs, a professor of political economy at the University of Sheffield. While electric vehicles and heat pumps cost more than their fossil fuel equivalents today, rules that phase out the old technologies don't take effect for several years. Besides, the whole point of setting deadlines is to drive down the costs by the time the ban takes effect.
- However, it's also important not to set unrealistic deadlines, as these can be sitting ducks for campaigners against climate change measures.
- Tax And Cushion; If governments cannot afford to bribe people to switch to greener technologies, and voters sometimes reject regulations that force them to do so, what's the alternative? Most economists like carbon taxation. Putting a price on carbon emissions will force firms and households to pay if they pollute the planet. It gives them a financial incentive to change their behaviour. And it harnesses market forces to encourage people to make different choices.
- Carbon pricing now covers a quarter of global emissions, according to the IMF. Around 50 countries have some form of carbon price, double the number 10 years ago, and another 23 countries are planning to introduce one. The inaugural Africa Climate Summit earlier this year called for a global carbon tax.
- The snag is that China's carbon price is low, and the United States doesn't have a federal levy. These are the world's two biggest carbon polluters. The European Union is the only significant economic bloc which puts a highish price on carbon, currently 86 euros ($91) a tonne.
- One benefit of a carbon tax is that it generates revenue which governments can redeploy. Some bodies, such as the U.S. Climate Leadership Council, argue that all the money raised should be handed back to citizens in the form of a carbon dividend. Others argue that governments should combine carbon pricing with financial support for the most vulnerable and targeted subsidies for fledgling technologies.
- The IMF has modelled a scenario where governments give back 30% of the money they raise. To hit climate targets, the carbon price would need to be $135 a tonne in advanced economies and $45 a tonne in large emerging ones by 2030. Even then, debt ratios would rise another 10-15 percentage points of GDP by 2050 because governments would still be spending on subsidies and public sector investment.
- A policy mix like this is probably the best the world can manage. Fiscal and political realities may increasingly drive governments in this direction – whether they like it or not.

ESMA publishes summary of findings from fact finding exercise on corporate reporting practices under the Taxonomy Regulation; *On 25 October 2023, the European Securities and Markets Authority (ESMA) published a summary of the findings from a fact-finding exercise on corporate reporting practices under the Taxonomy Regulation (Regulation (EU) 2020/852).*

- As part of its objective to coordinate European supervision and enforcement activities related to disclosures under the Taxonomy Regulation, ESMA collected information from national enforcers with respect to the Fiscal Year 2022 non-financial statements published by European nonfinancial undertakings listed in regulated markets. The aim of this fact-finding exercise was to evaluate the quality of the disclosures with which issuers have responded to the new requirements.

- The fact-finding exercise highlighted the following:
  - Almost all issuers, selected by the national enforcers among those being active in four main sectors covered by the Taxonomy Climate Delegated Act (Commission Delegated Regulation (EU) 2021/2139), disclosed the required Taxonomy alignment key performance indicators (**KPIs**) (96% of the sample).
  - The reporting templates have generally been used, but for 30% of the sample they were either modified or not fully completed, which may impact comparability and make access to the data more difficult for users. Full reporting using the complete templates is mandatory.
  - At least some of the mandatory qualitative information regarding the issuers' assessment of their compliance with transparency requirements in relation to the nature of their activities, the technical screening criteria, the Do No Significant Harm (**DNSH**) criteria, and the minimum safeguards was missing or insufficient for more than 40% of the assessed issuers. In addition, only 40% of the sample provided comments on their eligibility or alignment rates.
  - The operating expenditure (**OpEx**) alignment KPI was the KPI most often not reported (4% of the sample) or reported as zero (26% of the sample). Subject to conditions and specific disclosures, the Disclosures Delegated Act (Commission Delegated Regulation 2021/2178) makes it possible to claim a materiality exemption for the OpEx KPI. In the cases where such claim was made, however, the available information did not in general allow an external reader to assess whether the conditions for applying the exemption were met and/or some of the criteria attached to it were not respected.
  - In addition to the points mentioned above, areas of incorrect application were spotted in relation to transparency on the avoidance of double counting, the screening of activities against one climate objective only or the reconciliation with financial reporting.
  - Good reporting practices were also encountered, such as detailed explanations on the nature of activities or compliance tests, as well as links to the corporate sustainability strategy.
- Based on these findings, ESMA reminds issuers of the importance of providing all quantitative as well as detailed qualitative information as required by the Disclosures Delegated Act, so as to enable users of the non-financial statement, including financial institutions, to fully understand to which activities the quantitative information relates, how the different criteria were assessed, and to get the issuer's comments on its eligibility and alignment, where relevant.
- ESMA strongly encourages issuers to use the guidance and tools that the European Commission has published, including guidance on the interpretation and application of certain criteria and disclosures, and online tools to assist undertakings in their Taxonomy reporting. ESMA also notes that the European Commission's June 2023 Communication stresses the role of the Taxonomy as a "common language" which plays a key role in the EU's Sustainable Finance framework, and which can be further used by undertakings to plan investments and set targets for their transition.

**Proposed Regulation on ESG Ratings: overview and legislative process;** *On 13 June 2023, the European Commission (**Commission**) published a proposal for a Regulation on Environmental, Social and Governance (**ESG**) ratings. The legislative proposal lays out a regulatory framework for the provision of ESG ratings in the EU. The main aim of the proposal is to improve the transparency of ESG ratings characteristics and methodologies and by ensuring increased clarity on operations of ESG rating providers and the prevention of risks of conflict of interest at ESG rating providers' level. This is a high-level overview of the proposed Regulation, as well as an update on the legislative process in the European Parliament and the Council.*

- ESG ratings proposal: content
- *Scope and definitions*

- The proposed Regulation would apply to ESG ratings issued by ESG rating providers operating in the EU that are disclosed publicly or that are distributed to regulated financial undertakings in the EU. Several ratings, including private ESG ratings not intended for public disclosure, are excluded from the scope of the proposed Regulation. ESG ratings from an authorised ESG rating provider that are disclosed to users by a third party are outside the scope of the proposed Regulation as well. The Commission proposal defines an ESG rating as *"an opinion, a score or a combination of both, regarding an entity, a financial instrument, a financial product, or an undertaking's ESG profile or characteristics or exposure to ESG risks or the impact on society and the environment, that are based on an established methodology and defined ranking system of rating categories and that are provided to third parties, irrespective of whether such ESG rating is explicitly labelled as 'rating' or 'ESG score'"*.
- *Main requirements for the provision of ESG ratings in the EU*
- The proposed Regulation will require legal persons established in the EU to be authorised by the ESMA (ESMA) to be able to provide ESG ratings in the EU. The Regulation provides for an authorisation process, as well as the procedure that ESMA should follow for authorising an ESG rating provider. Third-country ESG rating providers can provide ESG ratings in the EU without authorisation, under the condition that the third country is subject to an equivalence decision by the Commission and if the ESG rating provider has notified ESMA that it wishes to provide ESG ratings in the EU. In the event that the Commission has not adopted an equivalence decision for that third country, a third-country ESG rating provider can apply for ESMA recognition. The third-country ESG rating provider applying for recognition must, among other things, show that its annual net turnover for ESG rating activities has been below EUR 12 million for three consecutive years. A third option for the provision of ESG ratings by third-country ESG rating providers is by obtaining endorsement by an EU-authorised ESG rating provider. ESMA would be provided with a mandate to establish a register that containing information on ESG rating providers.
- *Organisational requirements, transparency and independence*
- The proposed Regulation contains a list of general principles that ESG rating providers must adhere to. These principles include the independence of their rating activities, the regular review of their rating methodologies, the monitoring and evaluation of the effectiveness of the systems and resources, and the maintenance of effective accounting and control systems. ESMA can exempt providers from one or more principles following a reasoned request. ESG rating providers must separate the provision of ESG ratings from other business activities, such as consulting activities, the issuance and sale of credit ratings, the development of benchmarks and investment activities. ESG rating providers must ensure that their employees have the necessary knowledge, experience and independence. The proposal also provides for record-keeping requirements and a complaints-handling mechanism. ESG rating providers would not be allowed to outsource important operational functions if such outsourcing would materially impair the quality of the ESG rating provider's internal control policies and procedures.
- ESG rating providers would be required to disclose on their website the methodologies, models and key rating assumptions they use in their ESG rating activities. Separate disclosures are required for subscribers to the ESG rating and the rated entities.
- *ESMA supervision*
- As discussed above, ESMA will be responsible for the authorisation and supervision of ESG rating providers. The proposed Regulation provides for powers with regard to requests for information, general investigations and on-site inspections. ESMA will be able to impose administrative fines on ESG rating providers that do not comply with the proposed Regulation.
- Legislative process – European Parliament

- The legislative review of the proposed Regulation in the European Parliament is ongoing. On 6 October 2023, the European Parliament's rapporteur Aurore Lalucq (S&D, FR) published her draft report on the proposal, which will be discussed by the European Parliament's Economic and Monetary Affairs (ECON) Committee. The draft report contains proposed amendments including those to:
  - Scope and definitions: Lalucq proposes to exclude from the scope of the proposed Regulation non-profit civil society organisations that put together scoreboards or rankings for non-commercial purposes and who make these rankings freely accessible, to ensure that these

entities do not require authorisation. In addition, the rapporteur proposes to explicitly exclude several disclosures made under the Sustainable Finance Disclosure Regulation and the Sustainable Finance Taxonomy Regulation to avoid possible conflicts of rules or unintended consequences. The exclusion from the scope of the proposed Regulation of ESG ratings produced by regulated financial entities in the EU that are used for internal purposes has also been expanded to ensure that services to other entities from the same group are also included.

  - Separation of business and activities: Under the Commission's proposal, ESG rating providers are not allowed to provide a number of professional activities, such as consulting services. Lalucq proposes to expand this prohibition by laying down that ESG rating providers, and any other entity from the same group, cannot provide consulting activities or audit activities to rated entities. In addition, Lalucq proposes to provide ESMA with a mandate to develop draft regulatory technical standards that would detail the safeguards that ESG rating providers must adhere to in the context of separating their ESG ratings business from other activities that may generate conflict of interests.
  - Legislative review: The rapporteur proposes to delete the mandate in Article 46 for the Commission to amend the Annexes to the proposed Regulation, which contain the information to be provided in the application for authorisation (Annex I), the organisational requirements for ESG rating providers (Annex II), and disclosure requirements (Annex III), through the adoption of a Delegated Regulation. The proposed amendment would ensure that amendments to the Annexes would have to go through a full legislative process with more powers for the European Parliament and the Council. To compensate for this, the rapporteur proposes to shorten the Commission's review mandate on the entire text of the proposed Regulation, including the Annexes – the review would, under the amendment proposed by the rapporteur, take place three years following the entry into force of the proposed Regulation.
- The draft report will be discussed in the ECON Committee in the coming weeks.
- Legislative process – Council; In the Council, Member States have held Council Working Group meetings on the proposed Regulation. We understand that the Council is still in the first stages on its review and is focusing on selected aspects. The last Council Working Group meeting that discussed the proposed Regulation took place on 18 October 2023. In terms of content, we understand that Member States discussed the following:
  - Third-country regime: Under the Commission's proposal, third-country firms would have three ways in which ESG ratings could be provided in the EU: through equivalence, endorsement, and recognition (see overview above). The Spanish Presidency of the Council has acknowledged that currently, only a few jurisdictions have introduced regulatory frameworks for ESG rating providers, but that equivalence may be granted in the future as jurisdictions may shape their own ESG ratings framework in a way that resembles the EU framework. Regarding endorsement however, Member States have raised concerns that the proposed framework may be used to circumvent the EU ESG ratings framework. The regime is meant for larger ratings providers that have a subsidiary located in the EU and which would endorse ESG ratings provided by a third-country provider belonging to the same group. Under the framework however, a small sister company located in the EU could endorse ESG from all of the third-country companies within the same organisation, without EU supervision of these third-country providers. We understand that the Council Presidency has proposed to remove the endorsement regime.
  - Proportionality: In essence, the proposed Regulation would introduce the ESG ratings framework to all ESG rating providers, regardless of their size. In its explanatory memorandum the Commission writes that, at present, 75 percent of ESG rating providers in the EU are small- or medium-sized undertakings (SMEs). To ensure that the ESG ratings framework would not become too burdensome for smaller companies, the Commission proposed to provide ESMA with the power to exempt SME ESG rating providers from certain organisational requirements. We understand that the Council Presidency believes that ESMA's powers are too extensive and instead proposes to lay down a list of requirements that could be subject to exemptions for SMEs in the text of the proposed Regulation.

- Next steps; The legislative review of the proposed Regulation, which was published in June this year, is expected to take at least one year. We expect the Council and the European Parliament to adopt their respective negotiating positions on the file in Q1 2024. That said, the European Parliament elections taking place in June 2024 are likely to significantly delay the legislative process: the European Parliament will go into recess at the end of April 2024 and is expected to restart its work on legislative files in July 2024 at the earliest. Should the constitution of the ECON Committee change significantly because of the election, the European Parliament may decide to change its negotiating position on the file.

A study published in the journal *Nature Climate Change* earlier this week suggests that significant glacier melting in western Antarctica may now be "unavoidable" because of warming ocean water. If true that means that substantial sea level rise is now likely locked in even if humanity abruptly decides to start taking climate change seriously—and, spoiler alert, we're not going to do that. Western Antarctica is home to the Thwaites glacier, affectionately known as the "Doomsday Glacier" because if it melts completely, it alone will raise global sea levels by about ten feet.

## Energy & Commodities

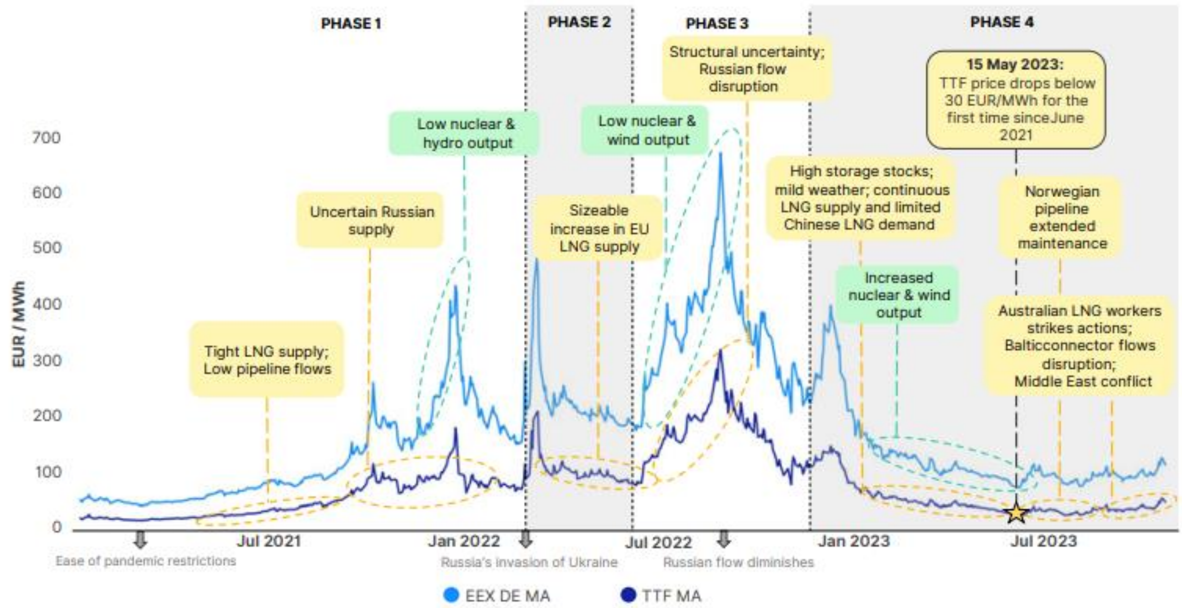
ACER-CEER "Market Monitoring Report on European gas market trends and price drivers" is published; *This ACER-CEER report provides an overview of the latest developments in European gas markets and examines the drivers of the gas price spikes in summer 2022.*

- The EU's integrated gas system has had to adapt in order to overcome the Russian supply shock. However, gas supply overall is still overall tight, exposing EU prices to unexpected developments.
- Multiple factors will shape the future resilience of EU gas markets, including:
  - increased reliance on LNG;
  - reducing gas demand;
  - revenue redistribution; and
  - the role of underground storage
- The report draws some recommendation for the future around the EU gas markets' future resilience factors.
  - Member States should maintain political commitments to reduce gas consumption;
  - Transmission System Operators and Regulatory Authorities should extensively coordinate and jointly maximise the availability of capacities;
  - Regulatory Authorities should promote transparent access regimes to LNG infrastructure, not to endanger the EU gas market integration and competition levels.


## Contents



Figure 1: EU gas and electricity prices and relevant market fundamentals (EUR/MWh) - May 2021 - October 2023




- *ACER lists six primary conclusions on the gas market developments during the summer of 2022.*
    - 1. The disruption of Russian supply was the primary driver affecting EU gas prices.
    - 2. EU gas consumption fell over 50 bcm in 2022. However, additional demand in summer months, driven by larger storage injections and rising gas-fired power generation contributed to the record-high prices.

- 3. **The implemented storage measures** managed to attract substantial gas volumes ahead of winter 2022/2023, but in some instances incurred high injection costs.
- 4. **LNG** played a crucial role in safeguarding EU gas supply, but costly spot LNG imports drove hub prices up. The rapid development of LNG infrastructure was overall effective.
- 5. **The EU's integrated gas system** demonstrated resilience. Yet, the severe supply shock led to highly congested access to LNG terminals and pipelines, causing price disparities and trading disruptions.
- 6. **Hub trading volumes** remained robust despite the surge in trading margins caused by the record-high prices. However, the trading environment was more challenging.

- **Forward-looking implications;** *The Russian supply shock prompted a major rebalancing of the EU energy market that will have a lasting impact. There are valuable lessons and conceptual forward-looking implications to be considered for enhancing the resilience of the EU internal energy market in the future.*
  - **1. Implications related to a higher EU dependence on LNG supply;** EU gas prices will be more exposed to global competition going forward. This circumstance stems from the EU's growing reliance on LNG supply. This situation will likely increase the volatility of EU gas prices, which might subsequently affect electricity prices. Moreover, considering the systemic impacts of energy prices on the EU economy, factors such as inflation, the international competitiveness of EU industries and the pace and scale of the investments aimed at decarbonizing the EU economy could all be influenced. Furthermore, as the gas market transitions towards an increased reliance on LNG, safeguarding its competitiveness and integration levels remains crucial. An important element in that respect relates to enhancing the transparency of the new LNG terminals' access regimes, to prevent any stifling of healthy competition.
  - **2. Implications related to the redistribution of collected revenue;** The actions taken to restore the EU's gas market balance in the summer of 2022 brought about challenges and opportunities for gas producers, suppliers, transmission system operators and traders, whilst overall having a substantial impact on energy-intensive consumers. Designing appropriate and targeted mechanisms for the redistribution of extra collected revenues to alleviate high costs, while at the same time fostering the large investments that the EU needs to meet decarbonisation goals is a complex challenge. Policy makers need to further reflect on this aspect3.
  - **3. Implications related to the evolution of gas demand;** A pressing challenge is finding the most efficient means to reduce the EU's conventional gas demand to adjust it to a tight supply market and assist the decarbonisation goals while preserving the economic activity and the security of supply that gas offers to the EU's energy system. The pace of gas demand reduction carries important near-term and long-term contractual implications. In this context, it is important to increase the flexibility of the less responsive segments of gas demand, as these segments will continue to influence short-term gas prices significantly. Furthermore, the substitution of conventional gas for alternative energy supplies could impact the competitiveness of energy-intensive industries relying on gas.
  - **4. Implications related to the role of underground storage;** Another area that has forward-looking implications relates to how engaging a sufficient market response that enables sufficient storage injections based on economic signals, whilst limiting public support interventions. It is important to extract lessons from the summer 2022 experience.
- **iii. Recommendations;** *Considering the market developments of the summer of 2022, and with awareness of the forward-looking implications discussed above, ACER highlights the following nearer-term recommendations:*
- **i. Recommendations pertaining to gas demand:**
  - 1. Member States to maintain political commitments to reduce gas consumption.
  - 2. National regulatory authorities to evaluate the efficiency of the demand reduction measures implemented in 2022 and share findings with political decision-makers.
  - 3. Member States to primarily direct financial support to promoting demand savings and efficiency
- **investments, instead of subsidizing final supply costs.**

- 4. Members States, Transmission System Operators, and industry associations to closely monitor risk preparedness to ensure an effective and swift response in case new market shocks materialise.

- ii. Recommendations pertaining to network congestion4:
  - 5. Neighbouring Transmission System Operators to extensively coordinate and jointly maximise the availability of firm and interruptible capacities.
  - 6. Neighbouring National regulatory authorities to extensively coordinate and remove any regulatory obstacles that prevent the optimal use of the existing network.

Figure 2: Front-month TTF, EU LNG spot and MCM Reference Price evolution (EUR/MWh) – January 2022 – September 2023

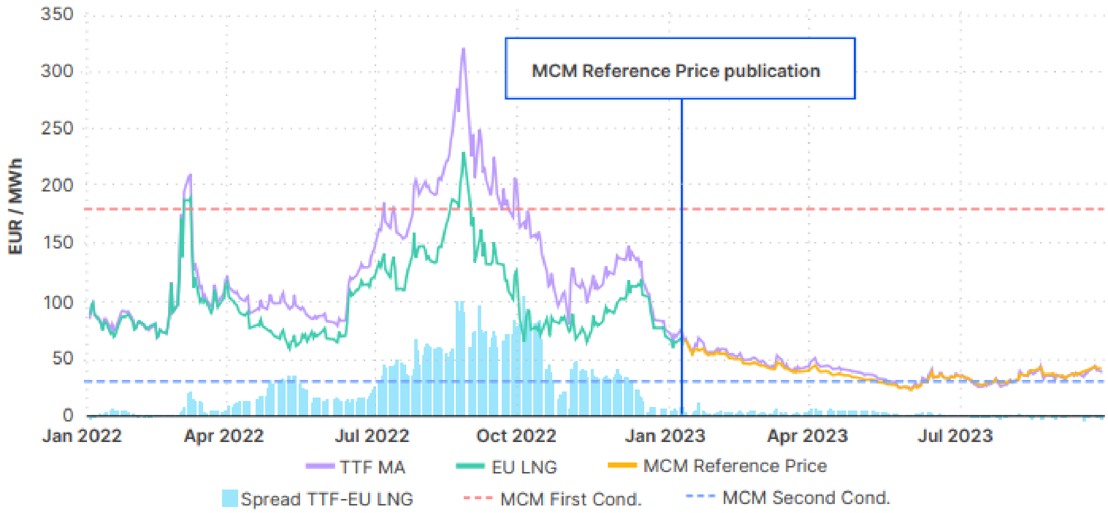
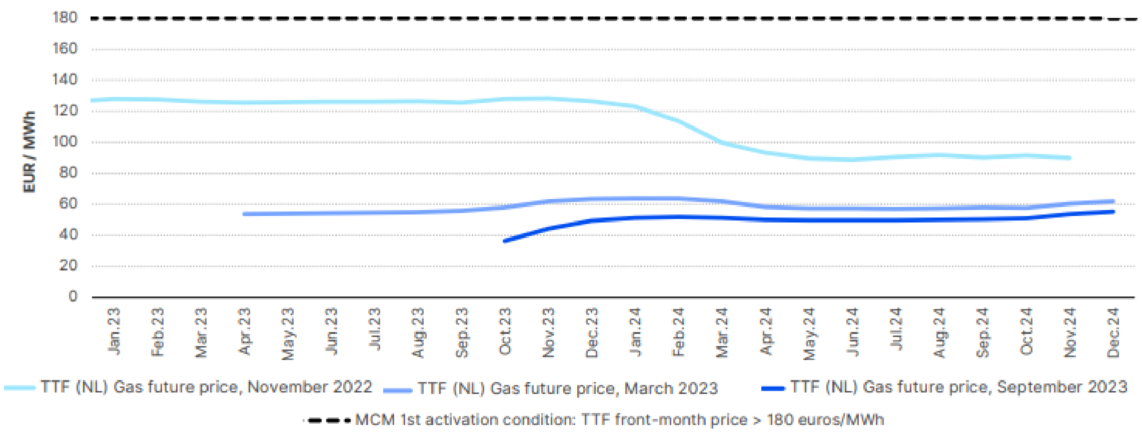



Figure 3: Evolution of gas TTF future prices across 2023 and 2024 (EUR/MWh) – contracts negotiated in November 2022, March and September 2023




Hub price convergence

Figure 4: Day-ahead convergence between TTF and selected EU hubs (EUR/MWh) – January 2022 - August 2023

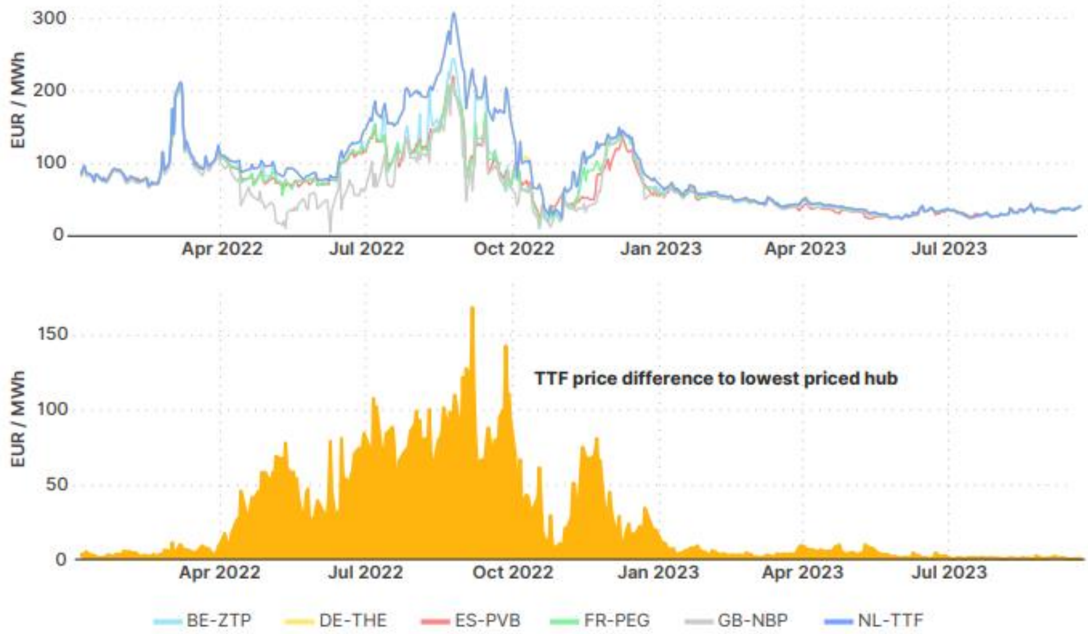
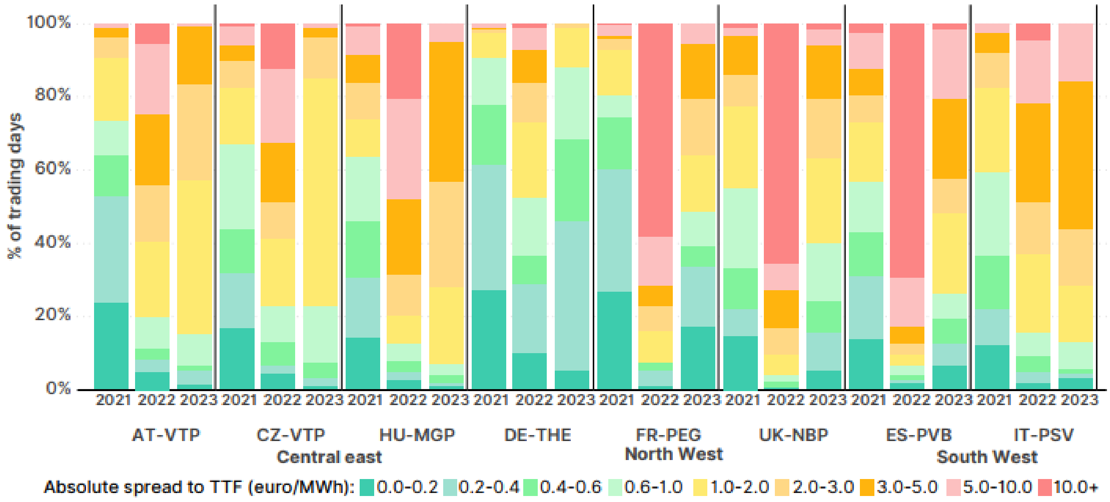



Figure 5: Day-ahead convergence between TTF and selected European hubs (EUR/MWh) – January 2021 - August 2023




Demand evolution

Figure 6: Comparison of monthly demand evolution (bcm/month) – January 2021 – August 2023

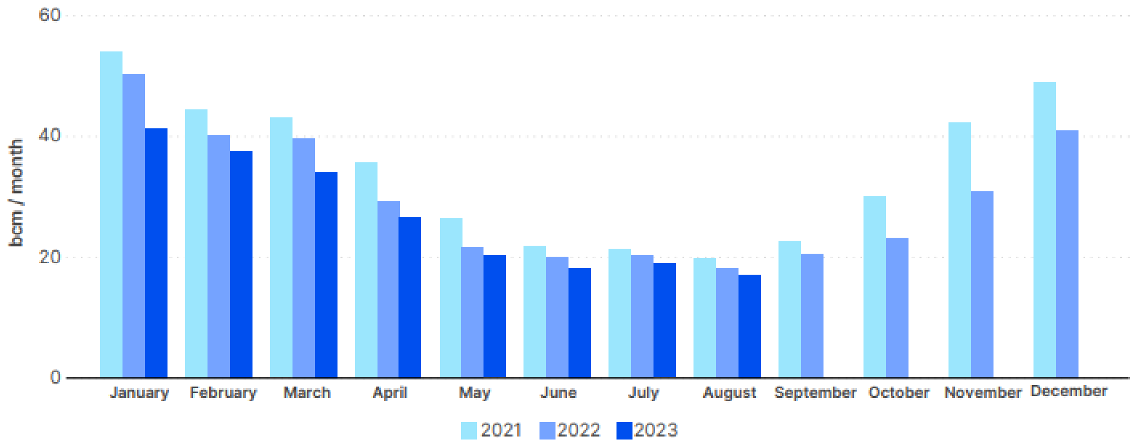



Figure 7: Percentage and absolute change of total and sectorial demand evolution in selected Member States (% and bcm) – Q2 2023 compared to average values in 2019-2022

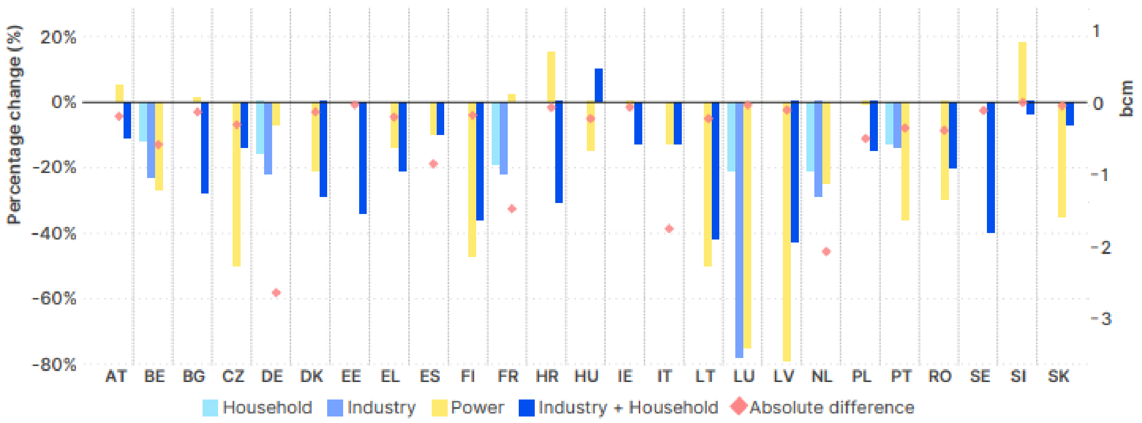
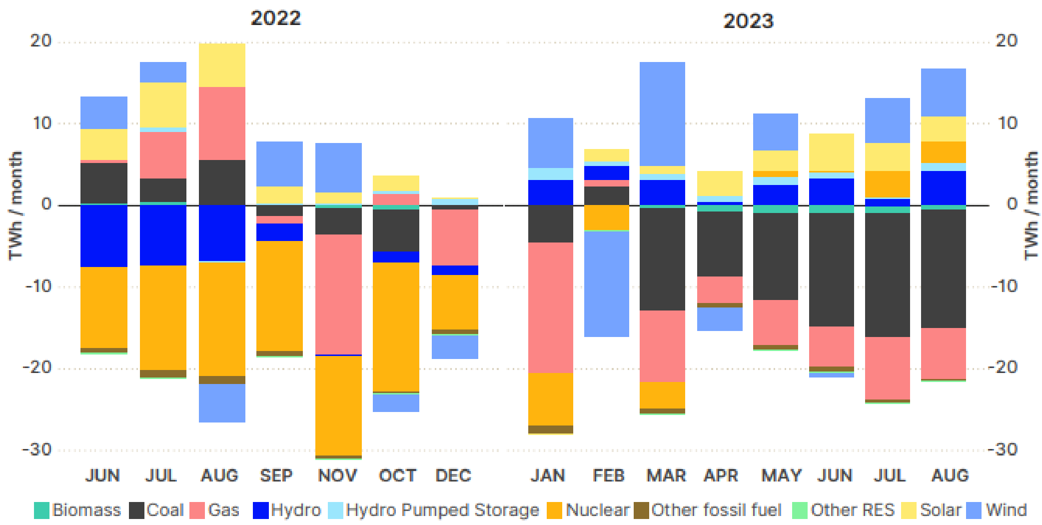


Figure 8: EU electricity generation year-on-year changes per month and per production technology (TWh/month) - June 2022 - August 2023



Supply evolution

Figure 9: Monthly evolution of gas deliveries into the EU by supply route (bcm/month) - January 2021 - August 2023

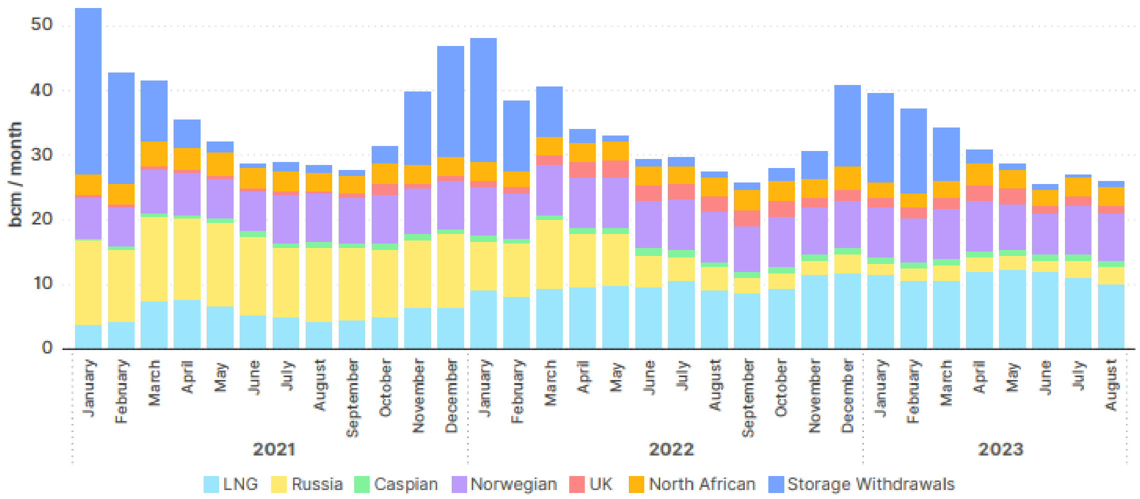



Figure 10: Monthly evolution of EU LNG send-out by Member State (bcm/month) - January 2021 - August 2023

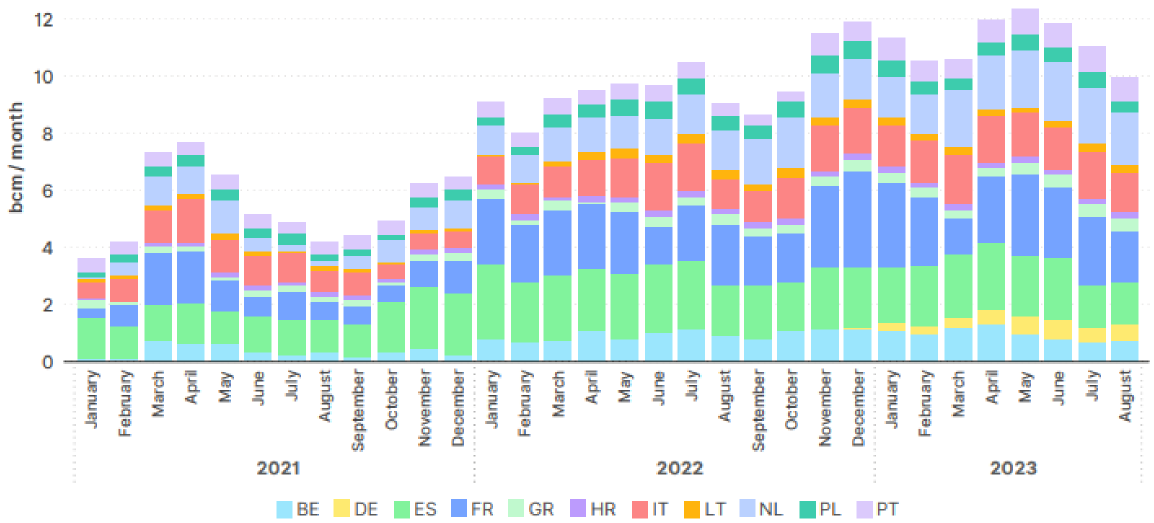


Figure 11: Share of EU + UK LNG imports by supply origin (%) – Total EU + UK LNG imports (bcm) - January 2021 – August 2023

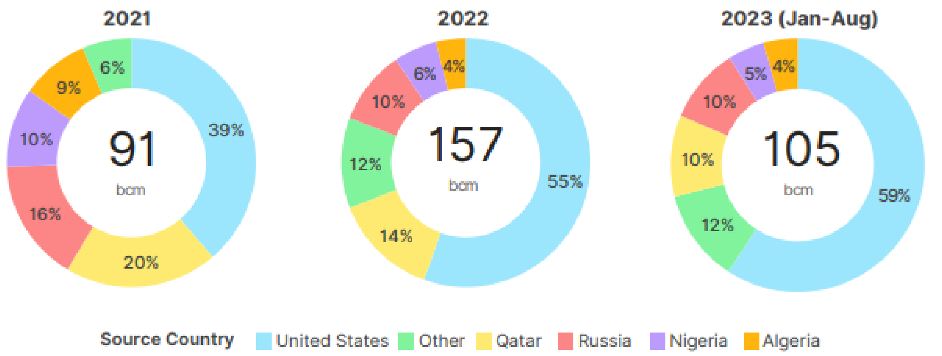



Figure 12: Evolution of gas flows across the interconnectors linking the EU and the United Kingdom (bcm/day) – January 2021 – August 2023

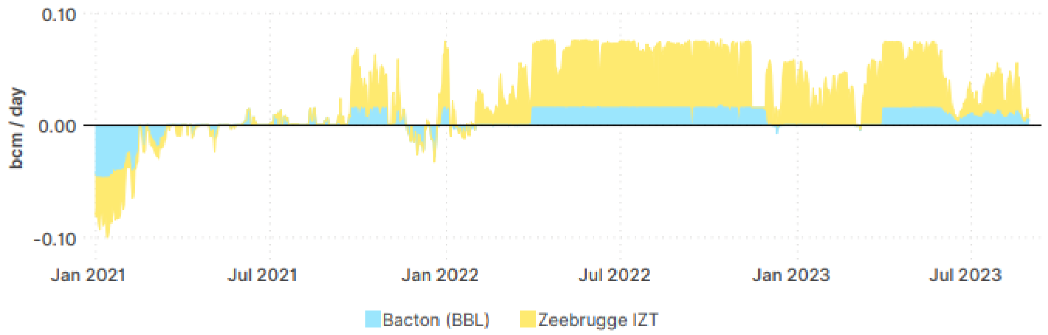



Figure 13: Estimated EU gas supply and demand differences in 2022 in comparison to 2021 (bcm)

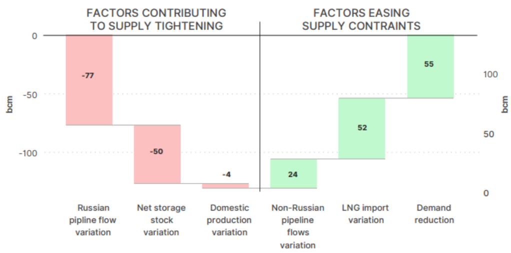



Figure 14: Estimated EU gas supply and demand differences in 2023 in comparison to 2022 from January to June (bcm)

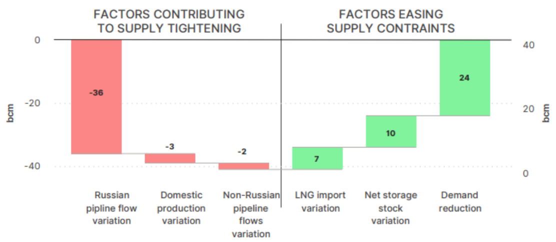
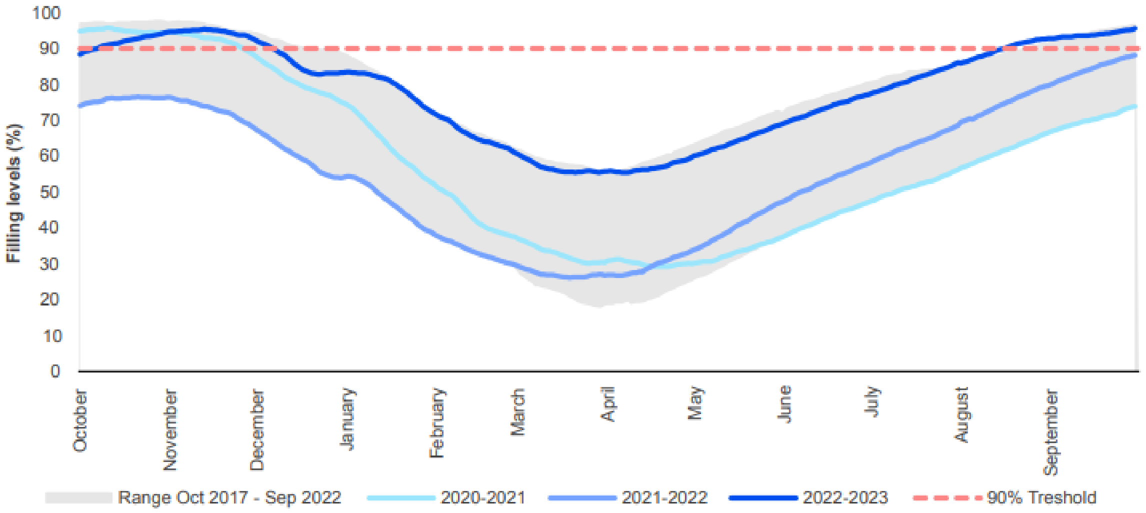


Figure 17: EU gas storage levels evolution (% of total capacity) – October 2017 – August 2023




## Gas trading indicators

Figure 18: Exchange and brokered traded volumes at the EU gas hubs (TWh/day) – January 2021 – July 2023

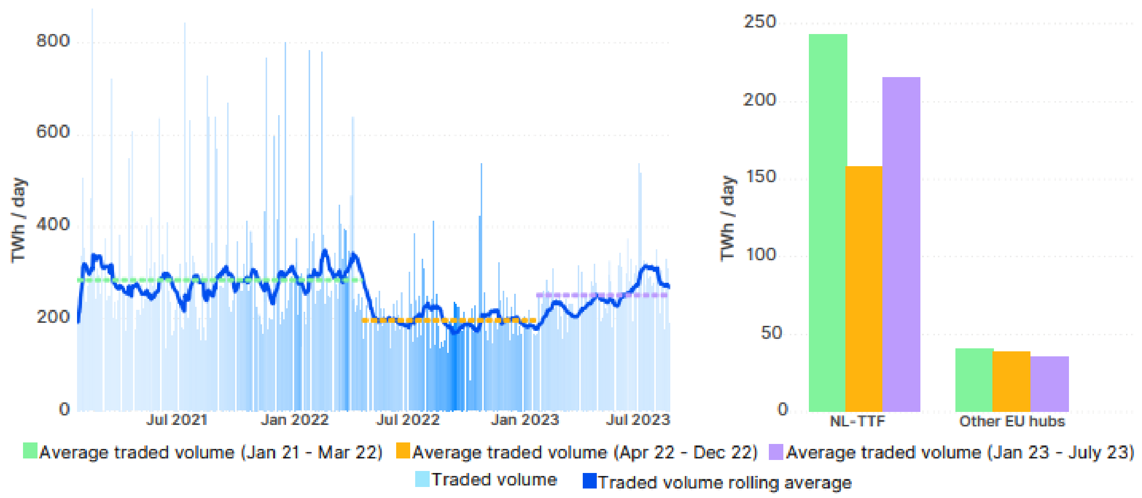
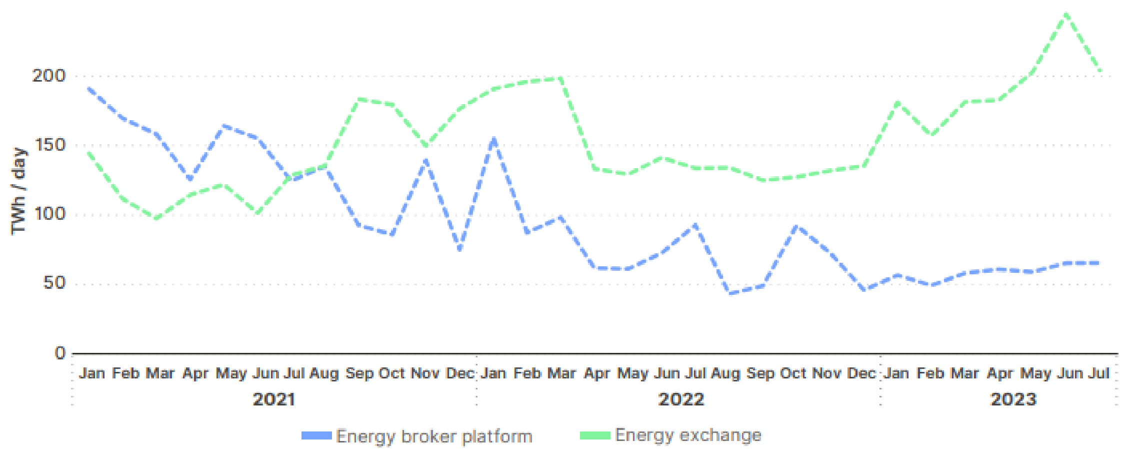


Figure 19: Brokered and exchange traded volumes at EU gas hubs (TWh/day) – January 2021 – July 2023




- Source: ACER calculation based on REMIT. Note: Results do not include data on options and swaps

## Disruption of Russian supply

Figure 20: Estimated number and share of supply sources in terms of the contractual origin of gas in EU MSs (% of actual volumes purchased) – 2023 (top) vs 2021 (down)

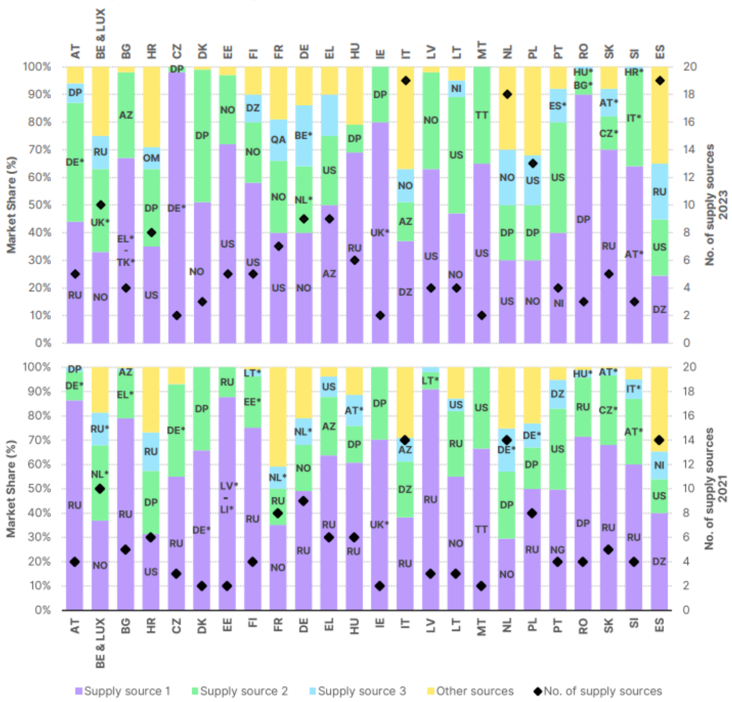


Figure 21: Overview of aggregated Russian supply into the EU per supply corridor (bcm/day) and correlation to TTF front-month prices (EUR/MWh) - 2020 – September 2023

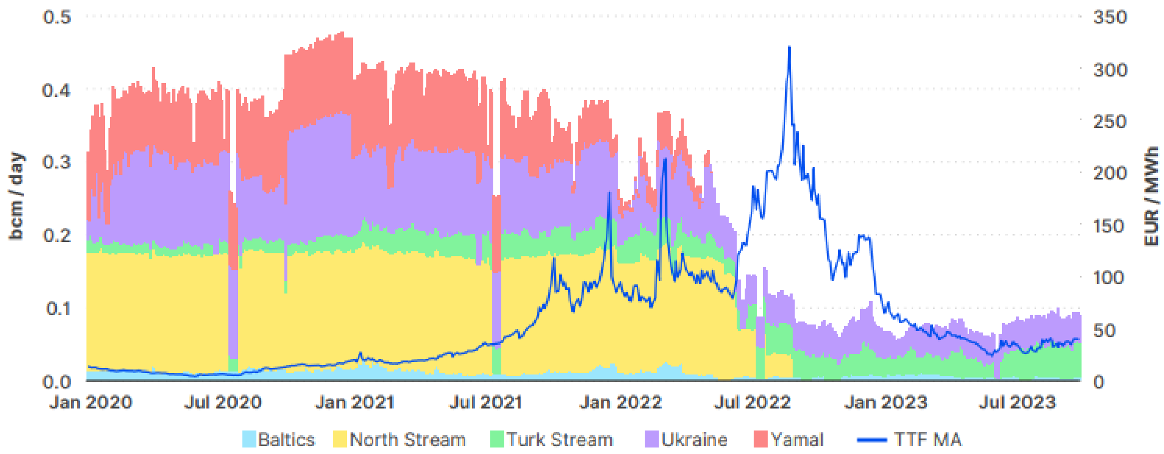



Figure 22: Overview of aggregated Russian supply into the EU (bcm/day) and evolution of TTF front-month prices (EUR/MWh) – January 2022 – December 2022

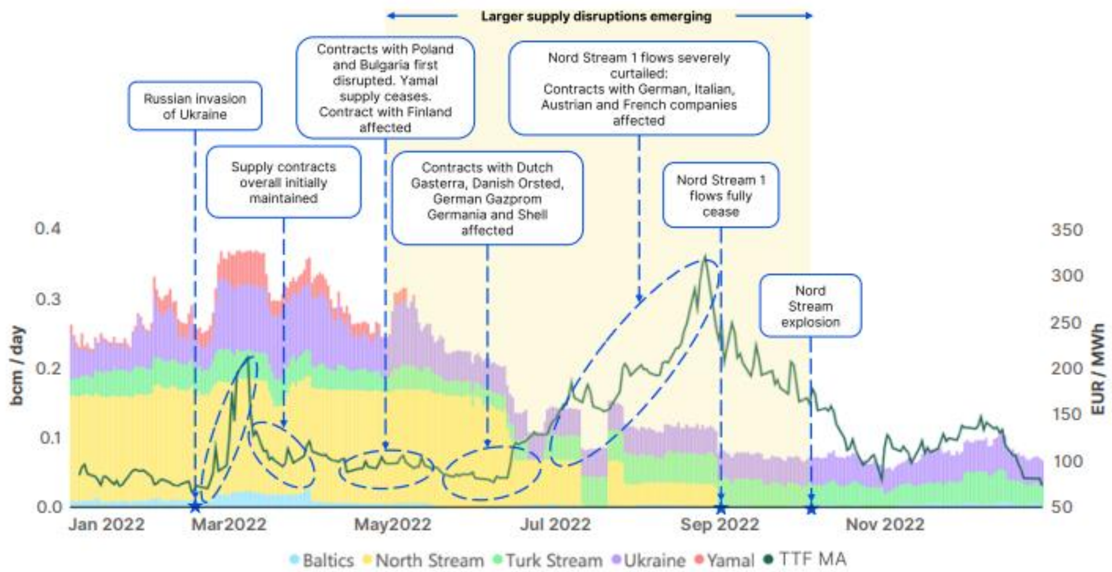
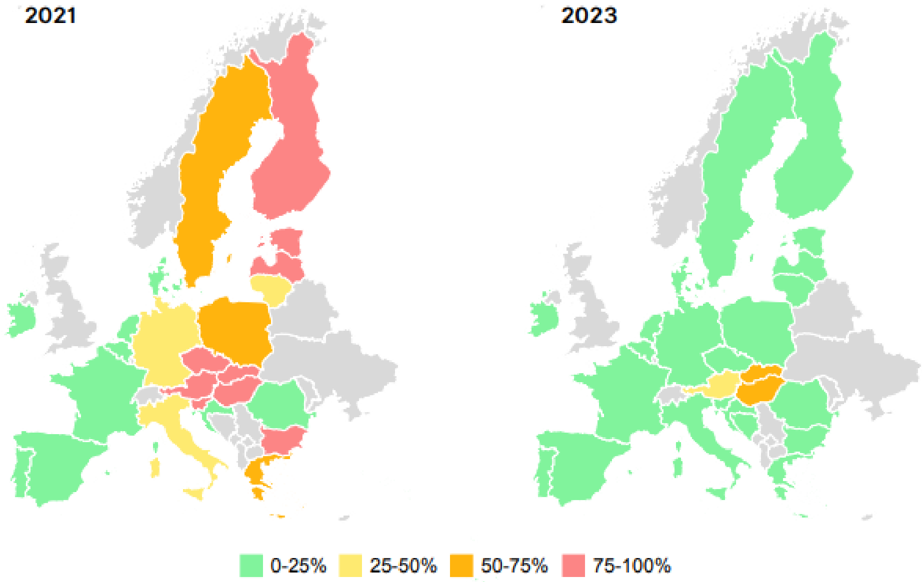


Figure 23: Estimated share of Russian gas supplies in terms of the contractual origin of gas in EU MSs (% of actual volumes purchased) – 2021 vs first semester 2023




## Demand developments

Figure 24: Overview of EU gas consumption per sector plus net storage injections (bcm/month) – January 2021 – July 2023

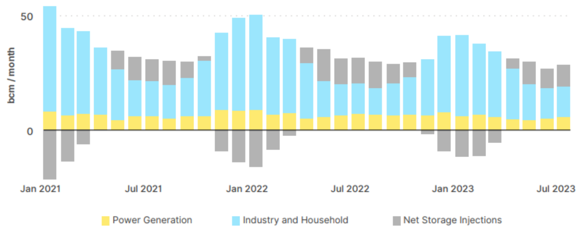



Figure 25: Overview of EU final consumption, storage injections/withdrawals and external EU monthly supply (bcm/month) relative to TTF front-month prices in 2022 (EUR/MWh)

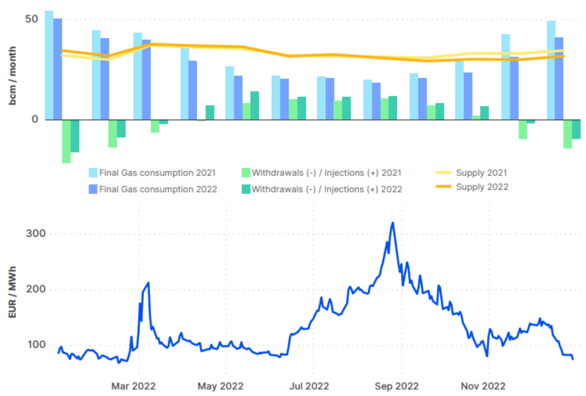


Figure 26: Residential and industrial gas demand changes (%) for selected Member States in 2022 in comparison to 2018 – 2019 average

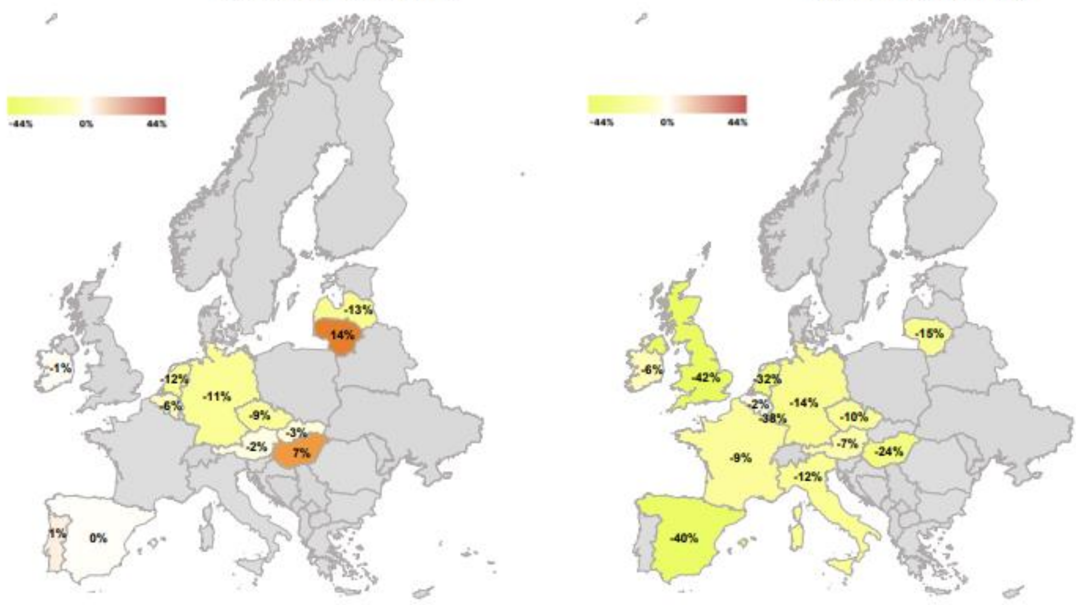



Figure 27: Overview of monthly power generation changes by production technology in France and Germany (TWh/ month) – 2021 vs 2022

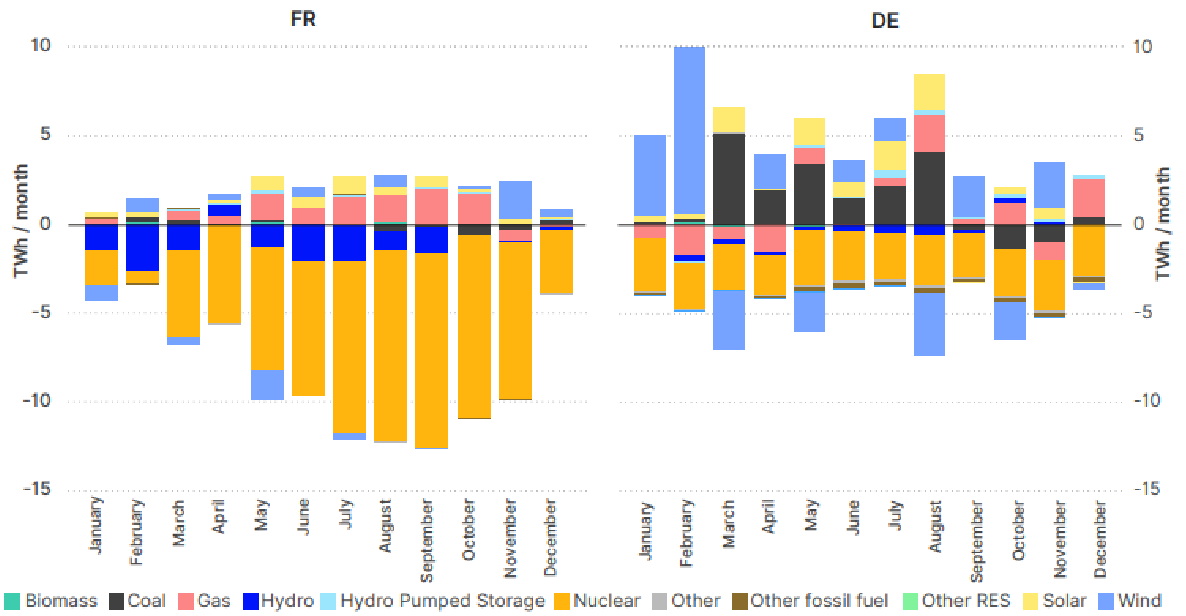


Figure 28: Adoption of retail price interventions for typical residential consumers across EU Member States[61] (total number of measures) and average TTF day-ahead price evolution (EURcent/kWh) – June 2021 - March 2023

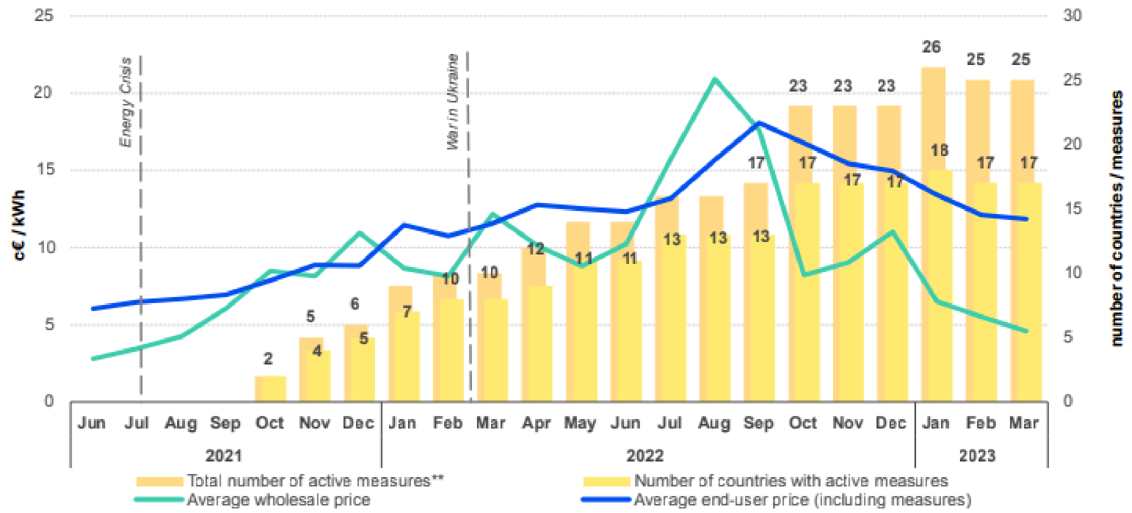
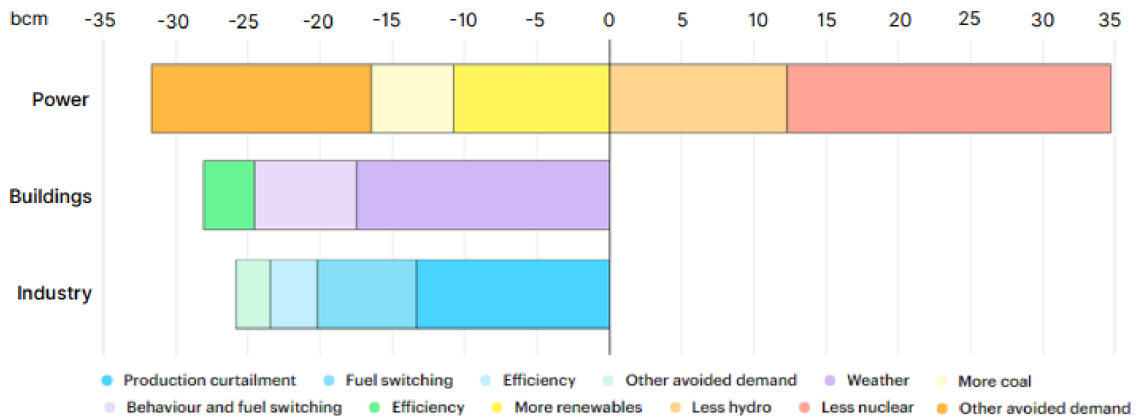



Figure 29: Estimated drivers of change in natural gas demand in power, buildings, and industry in the European Union (bcm) - 2021 vs 2022




Storage analyses

Figure 30: Evolution of TTF summer-winter hub price spreads (EUR/MWh) related to gross injections into EU gas storages during the summer season and storage stock levels (bcm) - 2017 - 2023


Figure 31: Overview of EU storage injections and withdrawals across 2022 in comparison to the average of five preceding years (GWh/day) and TTF day-ahead price evolution (EUR/MWh) – 2017-2021 and 2022

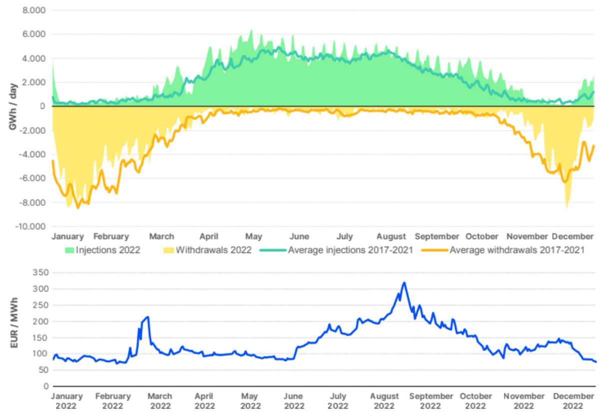
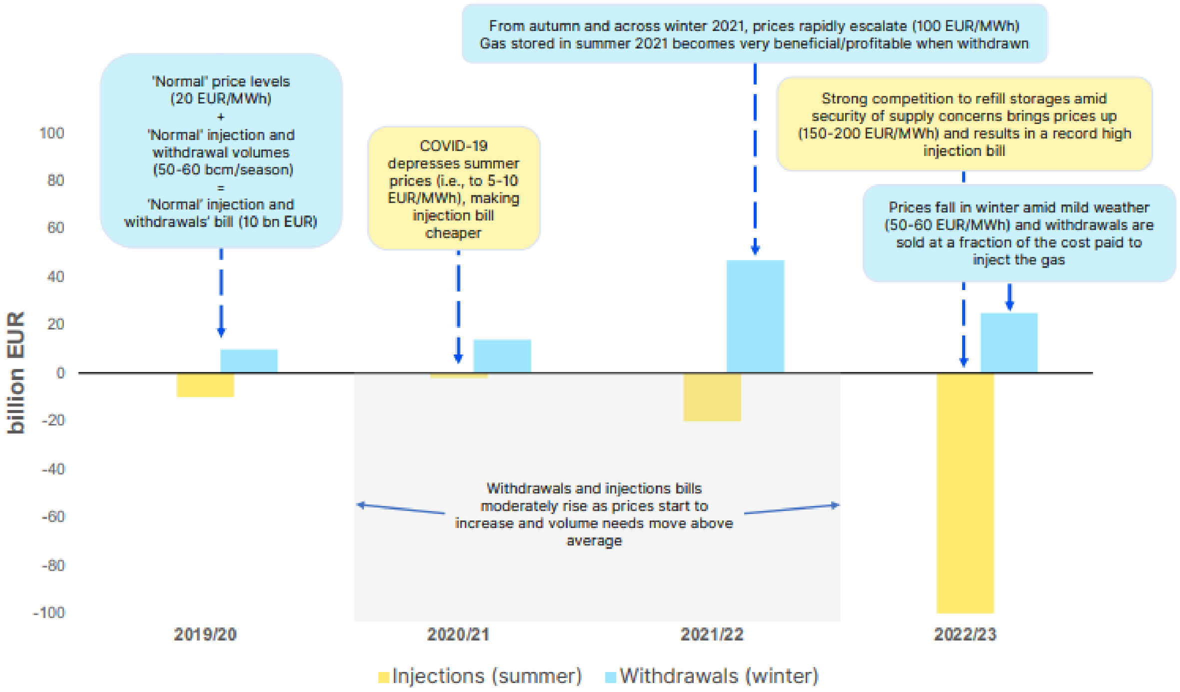



Figure 34: Storage withdrawal and injection costs at EU storage sites (billion euros) - 2019 - 2023




*Source: IEA and ACER considerations. The assessment considers that all the storage injections and withdrawals during a month were priced at the average cost of the preceding month-ahead TTF price.*

## LNG price developments

Figure 35: Evolution of LNG liquefaction volumes per producer (bcm) - 2015 - 2022 (left), and incremental LNG imports to the EU and UK by supply origin (bcm) - 2022 vs 2021 (right)

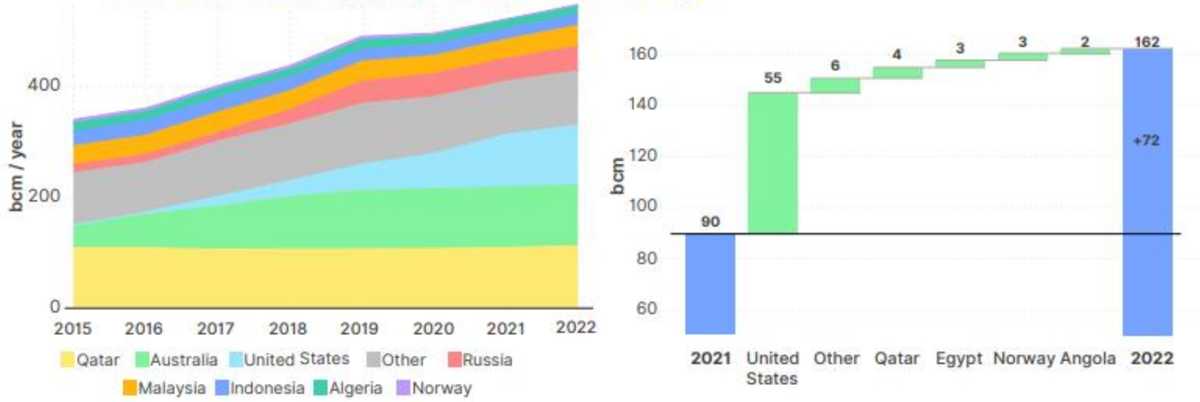



Figure 36: Overview of global LNG liquefaction capacity developments (bcm/year) - 2017 - 2030

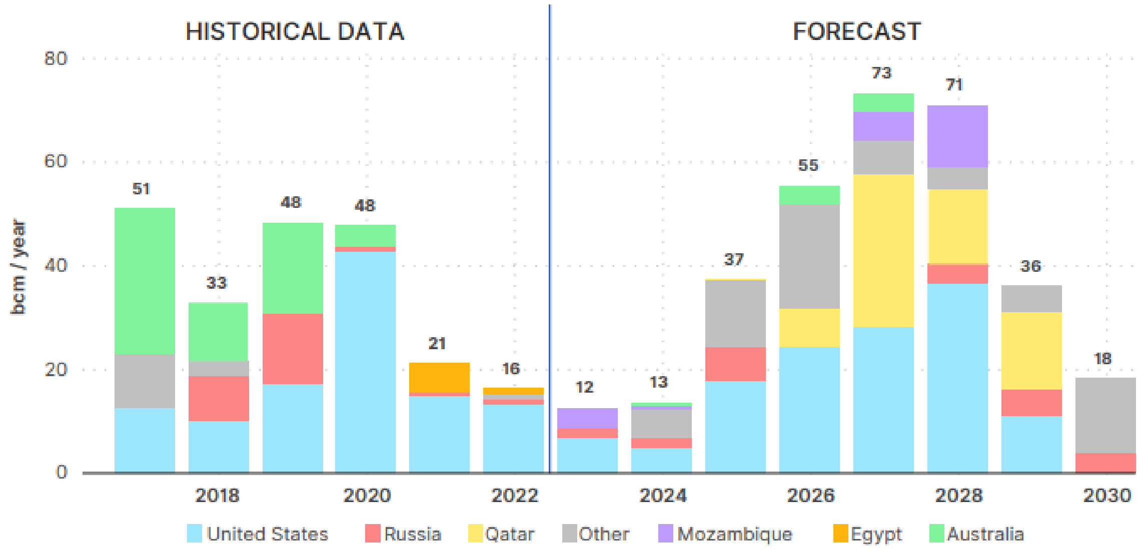



Figure 37: LNG demand per country of destination (bcm) - 2017-2022 (left), and incremental 2022 LNG imports by market relative to 2021 (bcm) (right)

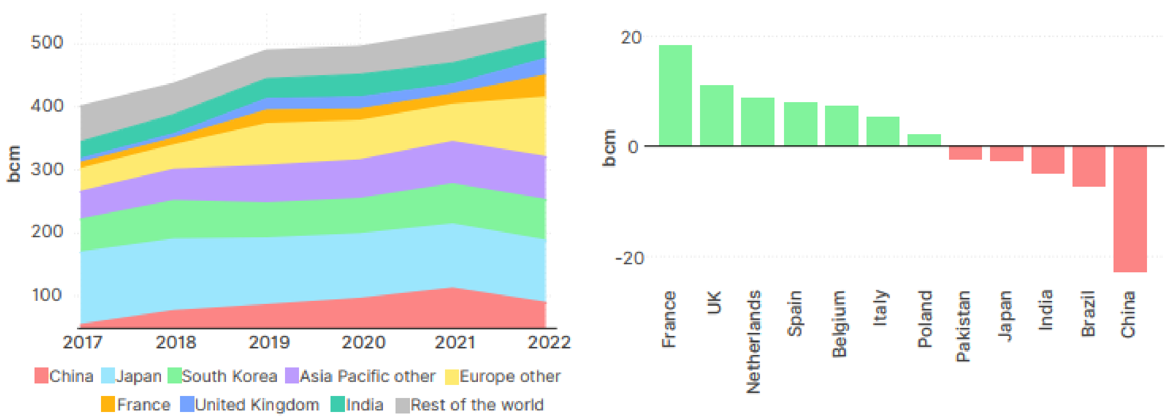


Figure 38: Overview of EU and Asian spot LNG prices and of TTF front-month hub prices (EUR/MWh) – January 2019 – August 2023

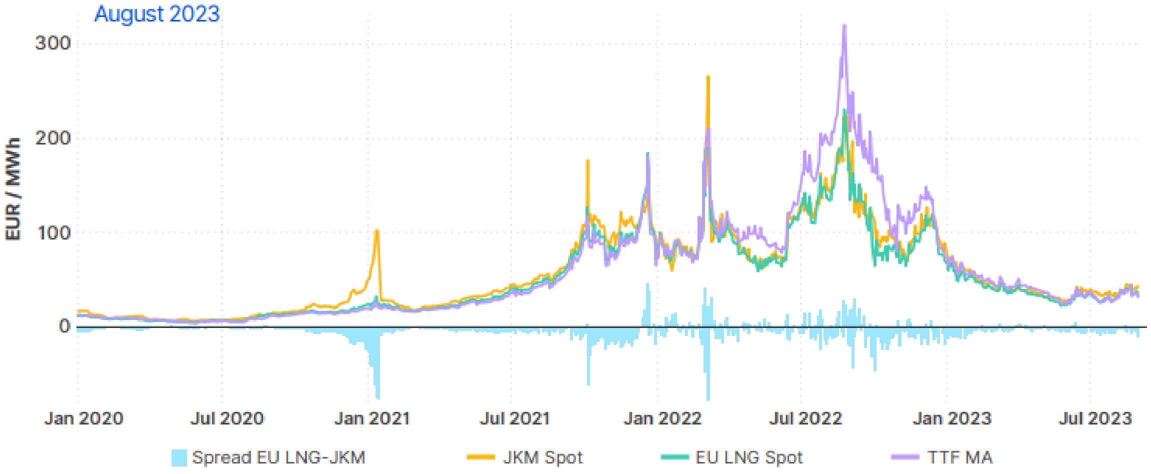



Figure 39: Overview EU LNG send-outs (bcm/day) in comparison to TTF month-ahead vs JKM spot price spreads (EUR/MWh) – January 2021 – August 2023

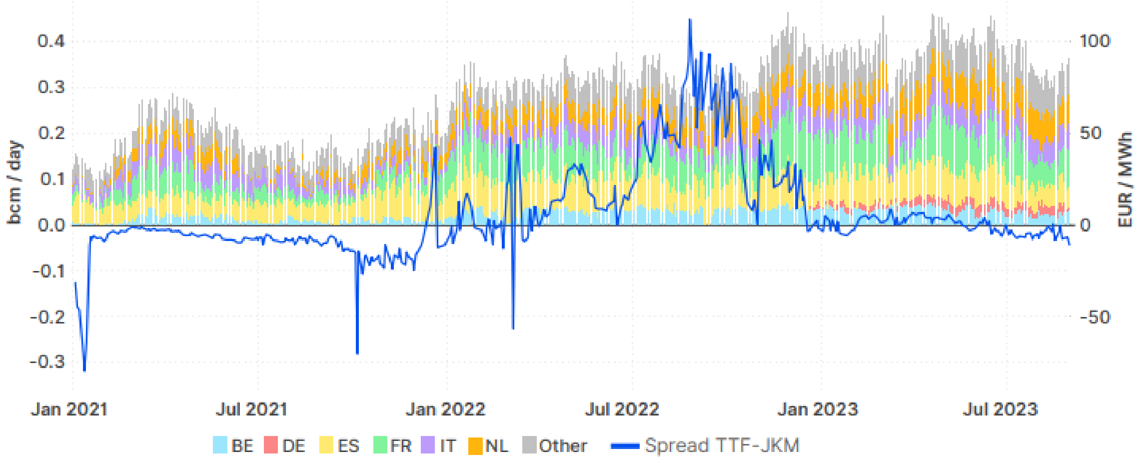


Figure 40: Comparison between LNG freight rates (USD/day) and TTF MA - JKM prices (EUR/MWh) - January 2019 - July 2023

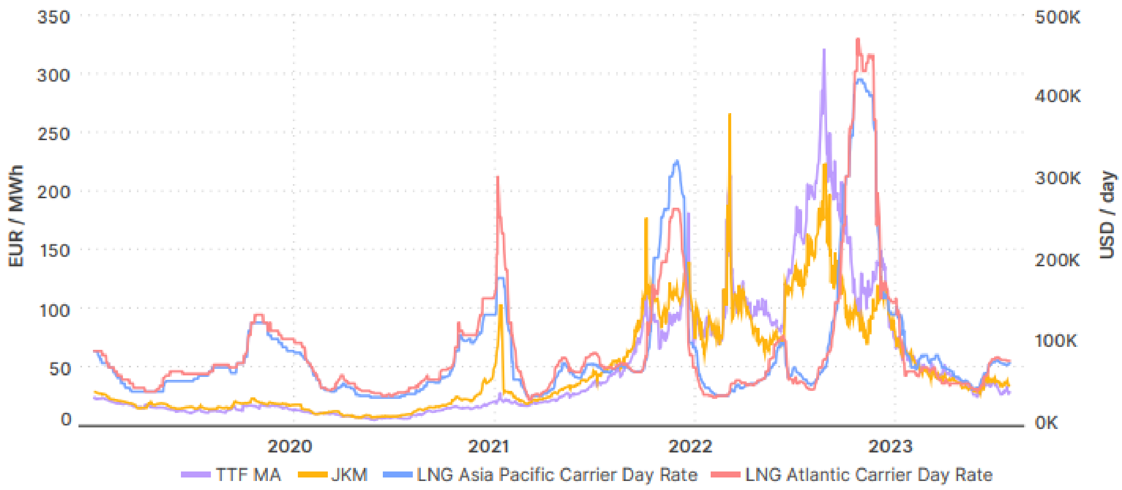



Figure 45: Day-ahead hub spread between TTF and ZTP hubs and levelized cost of day-ahead transmission capacity from Belgium to the Netherlands (EUR/MWh) - 2022

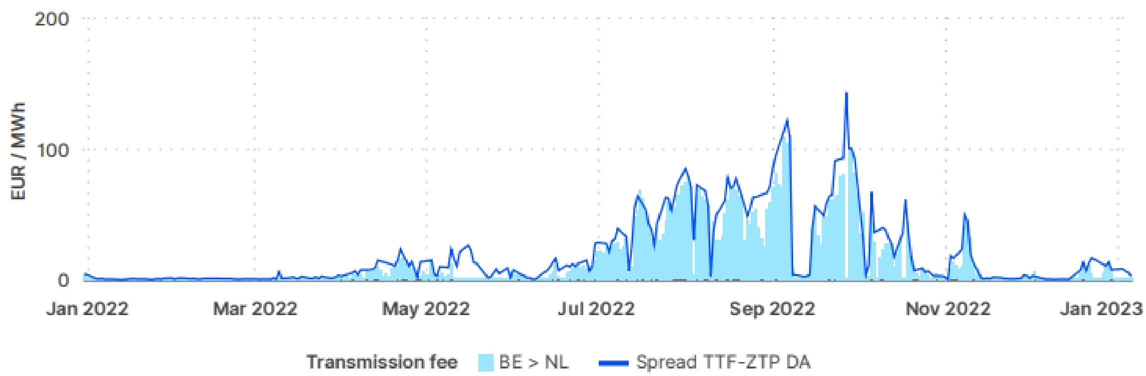



Figure 46: Day-ahead hub spread between TTF and PVB hubs and levelized cost of day-ahead transmission capacity from Spain to the Netherlands, via France and Belgium (EUR/MWh) - 2022

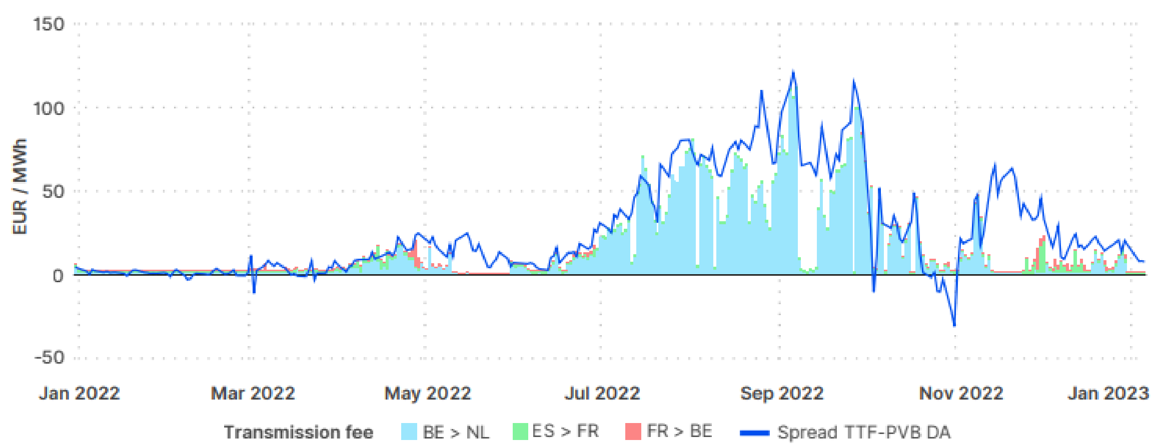


Figure 47: Day-ahead hub spread between THE and ZTP hubs and levelized cost of day-ahead transmission capacity from Belgium to Germany (EUR/MWh) - 2022

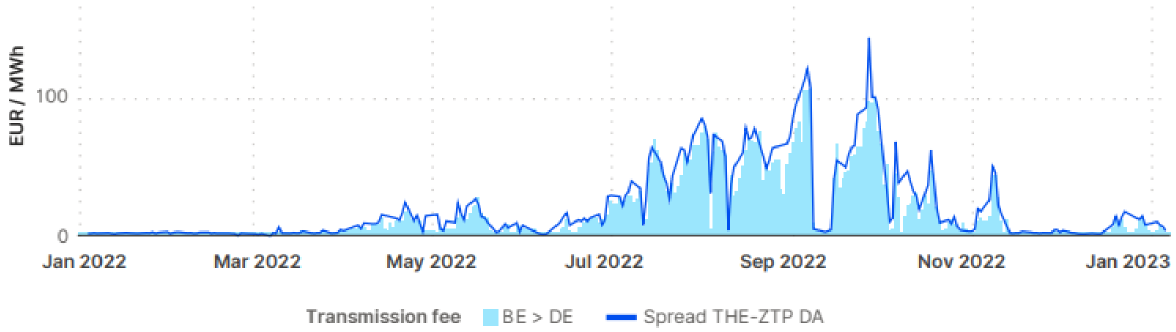
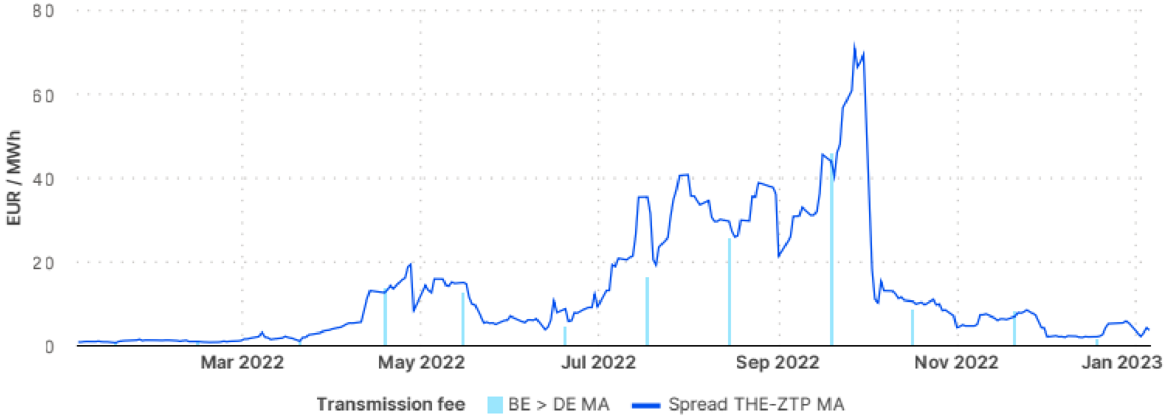
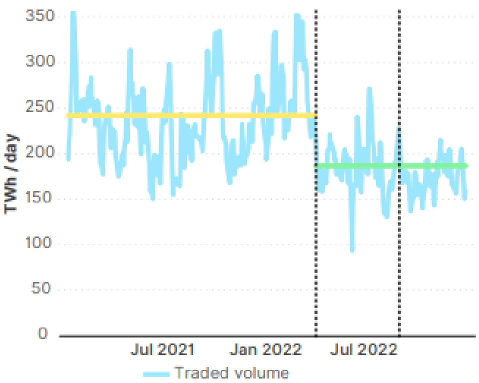



Figure 48: Month-ahead hub spread between THE and ZTP hubs and levelized cost of month-ahead transmission capacity from Belgium to Germany (EUR/MWh) - 2022




## Trading developments

Figure 53: European natural gas volumes traded at exchanges and brokers (TWh/day) - 2021 - 2022 (left), and European natural gas volumes traded at exchanges and brokers and TTF month-ahead price (TWh/day) (EUR/MWh) (right) – April 2022 – August 2022



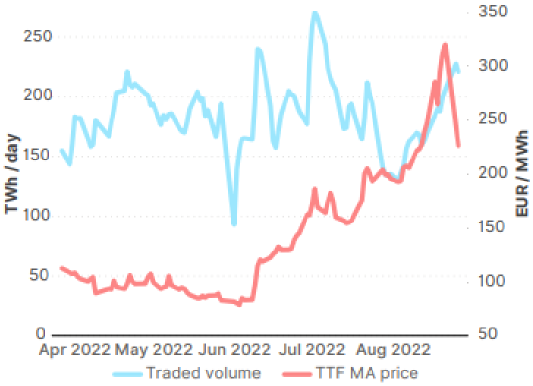



Figure 54: Evolution of brokered and exchange natural gas traded volumes (TWh/day) (left) and the relative share (%) of brokered and exchange natural gas traded volumes (right) – all EU gas hubs - June 2021 – August 2022

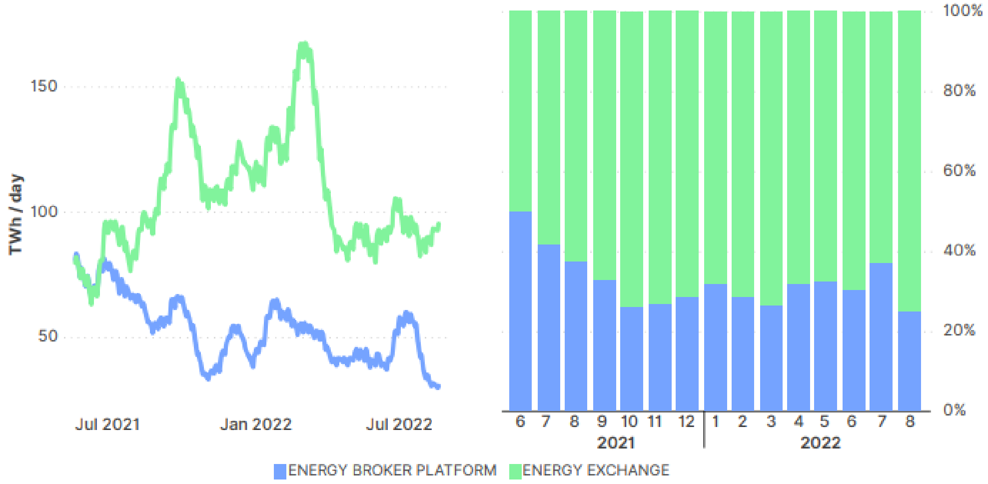



Figure 55: TTF month-ahead price and bid-ask spread (left) and the estimated split between electronically and voice brokered over-the-counter trading volumes (right) – July 2021 – August 2022

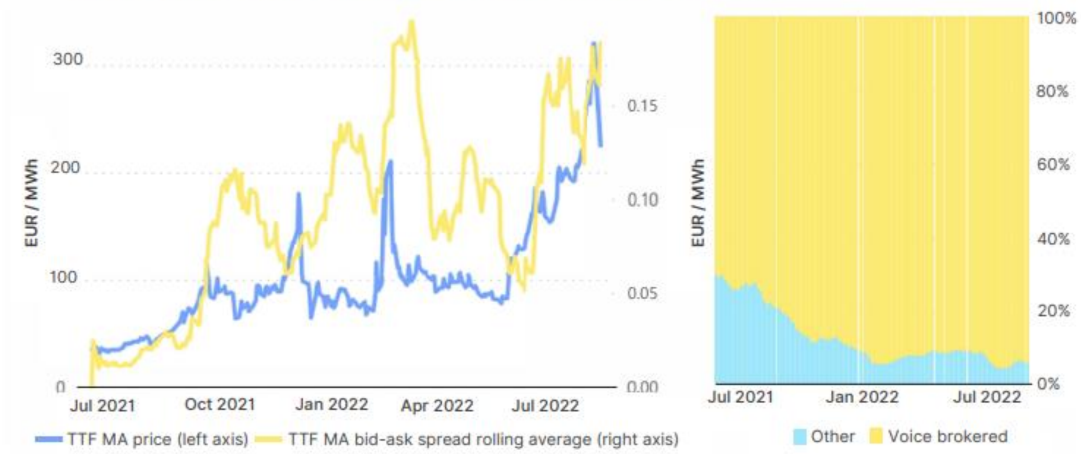
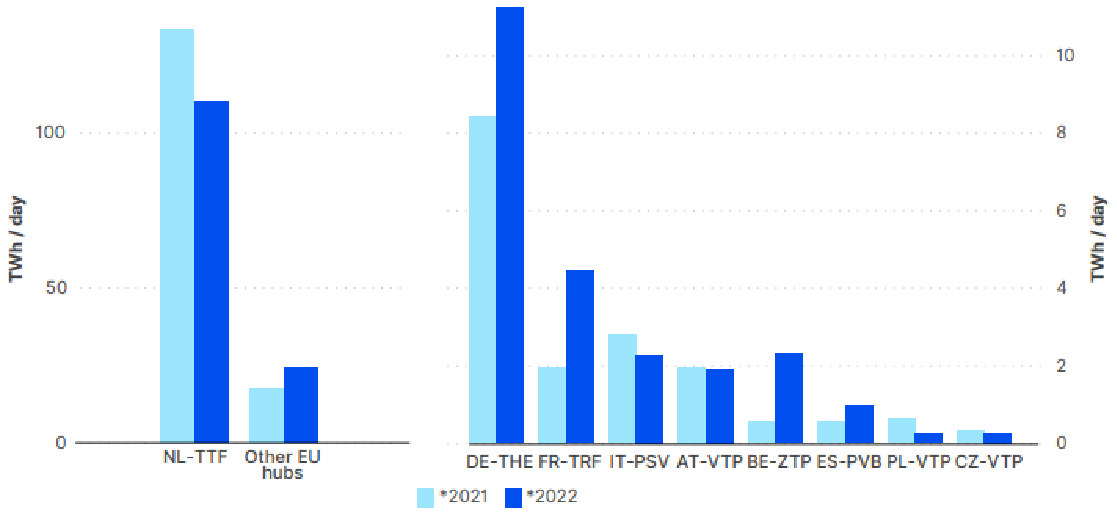
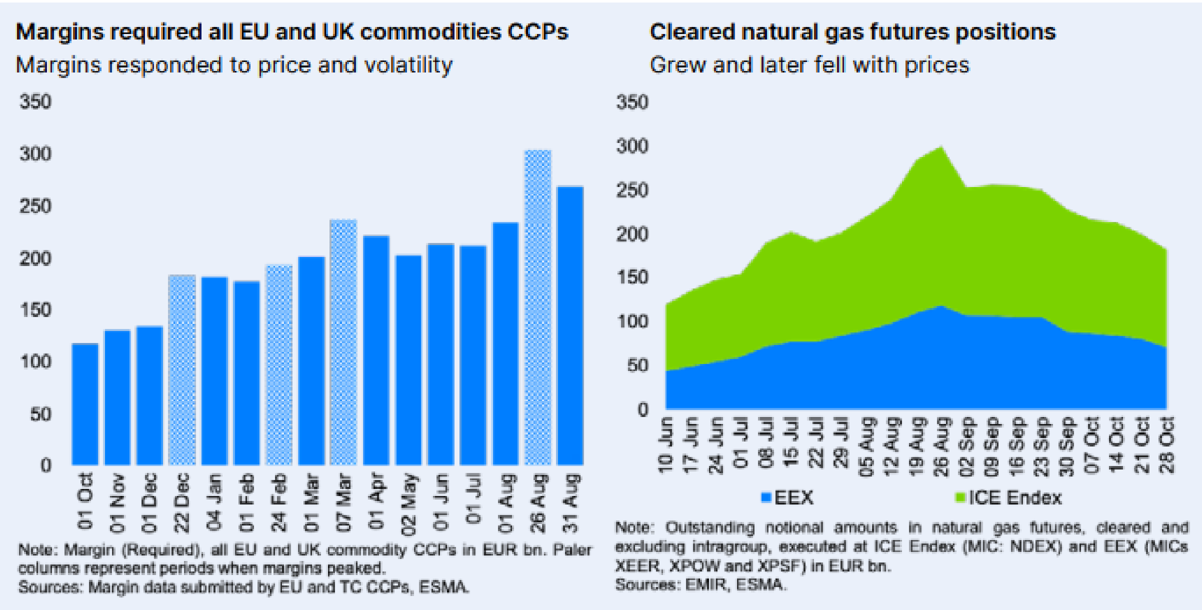


Figure 56: Average Summer* daily trading volumes – 2021 - 2022




ESMA: Europe gas market resilient to energy price rises; The European natural gas derivatives market held up in August 2022 when energy prices increased significantly after the Russian invasion of Ukraine, the ESMA said in a report. The drop in Russian gas supplies increased pressure on the derivatives market, but "there were no signs of reduction in positions in TTF contracts," ESMA said. Global Investor (10/25), Funds Europe

Paper by ESMA on TTF Futures mid 2021 – mid 2023; *Charts below & Couple of caveats:*

- The sizeable section on "OTC" is pretty misleading because the revised ESMA definition excludes all WEPs, and all Blocks (I think) – so for market reports best stick to the ACER work, which indeed is prominently referenced by ESMA. I suppose we would argue that by not taking into account the forward market, most of the position and volume related conclusions made in the report are pretty blind.
    - *Under EMIR, OTC covers derivatives that are not exchange-traded, that is, those not executed in a regulated market or third-country equivalent. As such, OTC derivatives under EMIR include derivatives traded in venues such as OTFs and MTFs which are not considered as regulated markets. In addition, there are some derivative transactions that are not reported under EMIR, such as wholesale energy products traded on an OTF that must be physically settled, that are not classified as financial instruments as per Annex I Section C(6) of MiFID II, see ESMA 2023(c). As a result, transactions in those instruments are not reported under any financial regulation in ESMA's remit and so do not figure in analyses presented here.*
- ESMAs charts, extensive though they are, are all very selective on their start and finish dates. A modus usually deployed to ensure the picture follows the text rather than vice-versa

The Evolving Landscape of Global Natural Gas Markets; Recorded: October 18th, 2023; *Watch our webinar from October 18 to hear expert speakers from LSEG and CME Group explore the everchanging aspects of the natural gas market. During this exclusive webinar our subject matter experts covered an array of topics:*

- US LNG Exports and their impact on global gas pricing
- The energy transition and the role of US natural gas
- European gas outlook for the macroeconomy

ESMA finds natural gas futures markets functioned appropriately during the August 2022 price surge: *published a study on the record surge in prices in European natural gas futures markets in August 2022. Natural gas derivative markets came into the spotlight with the Russian invasion of Ukraine, which drove uncertainty and later led to falls in Russian supplies.*

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

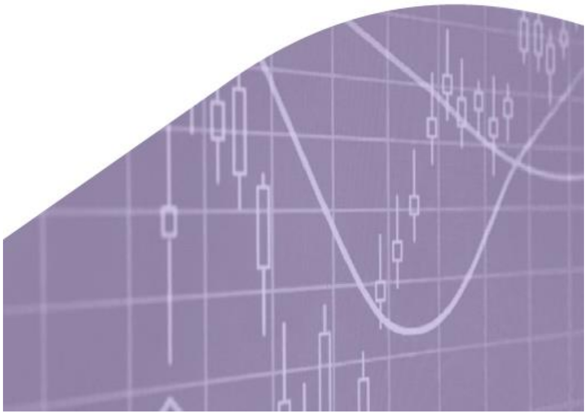
ESMA European Securities and Markets Authority

24 October 2023
ESMA50-524821-2963

ESMA TRV Risk Analysis

Orderly Markets

## The August 2022 surge in the price of natural gas futures



2022/2023, but in some instances incurred high injection costs.

4. LNG played a crucial role in safeguarding EU gas supply, but costly spot LNG imports drove hub prices up. The rapid development of LNG infrastructure was overall effective.
5. The EU's integrated gas system demonstrated resilience. Yet, the severe supply shock led to highly congested access to LNG terminals and pipelines, causing price disparities and trading disruptions.
6. Hub trading volumes remained robust despite the surge in trading margins caused by the record-high prices. However, the trading environment was more challenging.

### Approach and limitations

The analysis that follows is focused on the natural gas derivatives market and in particular the price surge observed in August 2022. Given the data available to us and ESMA's remit, our **focus is on EU natural gas derivatives and CCPs**. Developments in gas spot markets (including LNG vs pipeline gas provision) and electricity markets, while relevant, are not a central focus. Developments in these affect natural gas derivative prices by impacting supply and demand for natural gas derivatives and it is by focusing on the latter that we take these into account. In places, where relevant we touch on these other drivers.[8]

The analysis is also specifically focused on the **Dutch natural gas futures market (TTF)** as this is the largest and most liquid EU natural gas market and a reasonable proxy for the European gas futures market as a whole. As these TTF contracts are exchange-traded, we supplement this with a brief discussion of the OTC market, and specifically the extent to which higher prices may have driven a shift to OTC, such as to forward contracts, during the price surge.[9]

Our **primary focus is on the month of August 2022**, the period when the record price was reached, with a view to assess potential drivers of prices then, rather than focusing over a longer period. In places, particularly the trading analysis, we also compare August 2022 with August 2021, using the latter as a benchmark period that is comparable to August 2022, except for the exceptional developments related to the invasion.[10]

The analysis also attempts to distinguish between **end-clients**, who are at the end of the wholesale chain of purchases, such as electricity utilities, gas distributors, and gas producers, and non-end clients who act as intermediaries. Given limits in data, the split is done by treating CCPs and clearing members as 'non-end clients' and other firms as end-clients. This approach is not perfect in that some non-end clients will act as intermediaries and some non-end clients that act as clearing and exchange members will also engage in some trading on their own account. However, when complemented by knowledge about the firm's activities, it helps to identify the overarching patterns of demand and supply of physical natural gas to European counterparties using futures. Discussion of counterparties is also anonymised to ensure confidentiality.

The analysis we present makes use of EMIR trading activity and trade state data and uses data gathered by ESMA from CCPs. There are several important limitations relating to the **EMIR data** used. First, as EMIR data is only reported where at least one counterparty is domiciled in the EEA, much of the analysis that follows is based on a partial sample of counterparties in the market because it does not include trades that involve two non-EEA counterparties, for example, those between a UK-domiciled exchange member and a US counterparty. Second, the trade activity data we use is that of the net daily position (either 'long', where the participant enters into a contract to purchase gas or 'short', where the participant enters into a contract to supply gas) reached between two counterparties,[11] as it is more reliable than reported intraday data. However,

[8] For a more comprehensive overview on developments in natural gas spot markets and developments in LNG, please see ACER 2023(b).

[9] Under EMIR, OTC covers derivatives that are not exchange-traded, that is, those not executed in a regulated market or third-country equivalent. As such, OTC derivatives under EMIR include derivatives traded in venues such as OTFs and MTFs which are not considered as regulated markets. In addition, there are some derivative transactions that are not reported under EMIR, such as wholesale energy products traded on an OTF that must be physically settled, that are not classified as financial instruments as per Annex I Section C(6) of MIFID II, see ESMA 2023(c). As a result, transactions in those instruments are not reported under any financial regulation in ESMA's remit and so do not figure in analyses presented here.

[10] Since august 2021 is also before the TTF price surges observed in October and December 2021, it avoids these late 2021 price surges affecting the comparison.

[11] In the analysis that follows we analyse in terms of net positions i.e. whether the accumulated positions in a contract with a given maturity commits the counterparty in aggregate to sell (net short) or buy (net long) natural gas when contracts mature.

- Despite the record prices during August 2022, the findings presented in the study do not show correspondingly high illiquidity. CCP margins rose and fell with prices and volatility in line with expectations, with margin calls met on time. There were no signs of reductions found in derivative positions during this period. Taken together, these elements suggest that markets continued to function appropriately during the August 2022 market events.
- Strong demand was found among end-clients, with traded volumes only slightly lower than a year earlier despite the much higher prices. The focus was particularly on contracts delivering in the autumn and over the winter. Trading patterns also varied by type of market participants, such as natural gas producers, electricity utilities and banks. Findings overall are consistent with the pressing need to replenish winter reserves among European end-clients driving demand and fuelling prices, given the sharp drop in Russian pipeline supplies.
    - This paper investigates the record surge in prices on European natural gas markets in August 2022. It looks at the main market, the Dutch TTF, and finds CCP margins rose and fell with prices and volatility in line with expectations, with margin calls met on time.
    - There were no signs of reductions in positions in TTF contracts in our data, with TTF positions in fact slightly higher during this period.
    - The OTC share also did not change significantly during the March and August 2022 market events.
    - In terms of trading behaviour, it finds highly inelastic demand, reflected in only slightly lower traded volumes from a year previously, despite prices being many times higher.
    - This was likely driven by the need to replenish reserves for the winter given the drop in Russian pipeline supply. End-clients in EU member states also accumulated net long positions through the month. At points in the month there was positive correlation between volumes and prices, indicative of demand rising with prices. Demand also focused primarily on futures for delivery in the autumn/winter period.

- Different trading patterns are discernible among the largest end-clients. Some gas producers were significantly net short across maturities, showing their role in bringing supply to the market. Electricity utilities also showed two patterns, a first group who were long on maturities for winter delivery while short on others, and a second group that tended to build long positions across maturities, sometimes building positions rapidly, thus more liable to fuel price increases and reduce liquidity. Non-end clients, financial entities that act as clearing (and exchange) members, generally accumulated net short positions serving strong demand from end-clients.

- Background; ESMA analysed the record price surge by looking at market prices, volatility, CCP margins and how these related to cleared positions, available liquidity and to the trading behaviours of the larger market participants. The regulatory data were used to assess the orderly functioning of EU natural gas derivatives markets in August 2022 and complements other analyses published earlier this year (January report | March report | May article).
- The study was carried out in coordination with the Agency for the Coordination of European Energy Regulators (ACER) and complements its analysis of the summer 2022 events looking at the wholesale market fundamentals and gas spot markets, as presented in ACER's annual report monitoring the internal gas market.

Summary of ACER's findings; Given the wide interest in the summer 2022 natural gas price surge, both ESMA and ACER agreed to publish analyses of the events of last summer, where ACER would focus on European gas wholesale market fundamentals and gas spot markets and ESMA on derivative markets, with both reports to be published at the same time.

- ACER's analysis of EU gas markets presents six primary conclusions on the gas market developments during the summer of 2022:

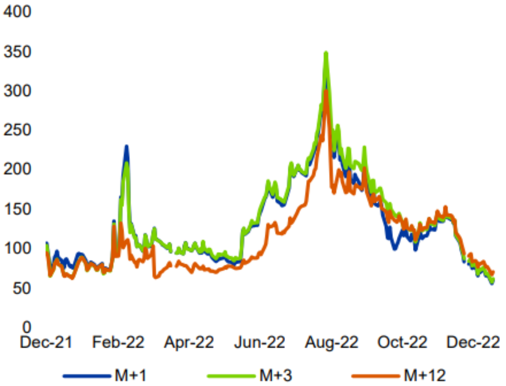
1. The disruption of Russian supply was the primary driver affecting EU gas prices.
2. EU gas consumption fell by over 50 billion cubic metres in 2022. However, additional demand in summer months, driven by larger storage injections and rising gas-fired power generation contributed to the record-high prices.
3. The implemented storage measures managed to attract substantial gas volumes ahead of winter 2022/2023, but in some instances incurred high injection costs.
4. LNG played a crucial role in safeguarding EU gas supply, but costly spot LNG imports drove hub prices up. The rapid development of LNG infrastructure was overall effective.
5. The EU's integrated gas system demonstrated resilience. Yet, the severe supply shock led to highly congested access to LNG terminals and pipelines, causing price disparities and trading disruptions.
6. Hub trading volumes remained robust despite the surge in trading margins caused by the record-high prices. However, the trading environment was more challenging.

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

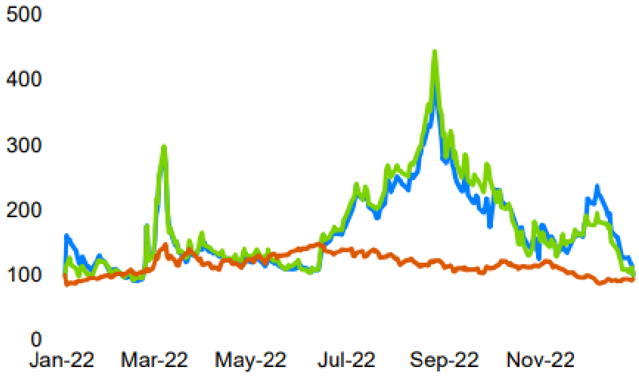
European natural gas futures prices (Dutch TTF)

## Surges in February and August 2022



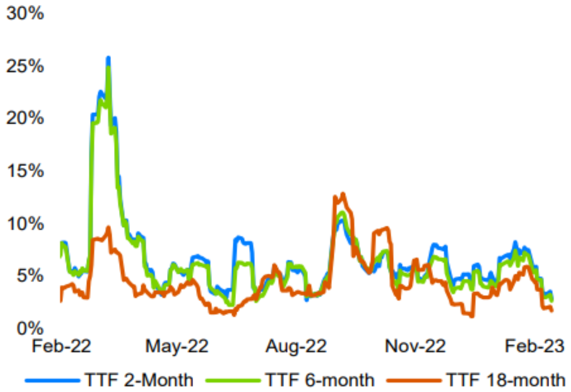

Power, natural gas and oil prices

## Power and gas surge, unlike oil price



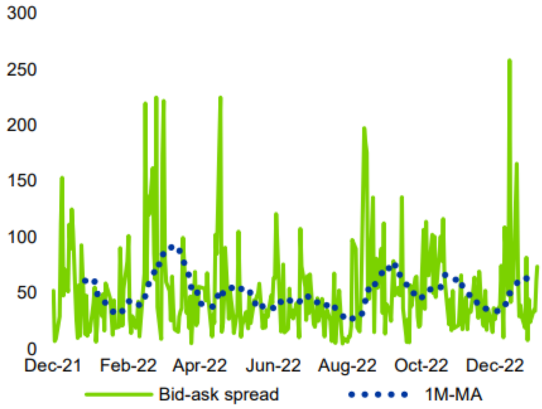

TTF price return volatility for 2, 6 and 18-month

## Volatility increase greater in March than August




Bid-ask spread liquidity measure (Dutch TTF)

## Drop in liquidity in February and August 2022

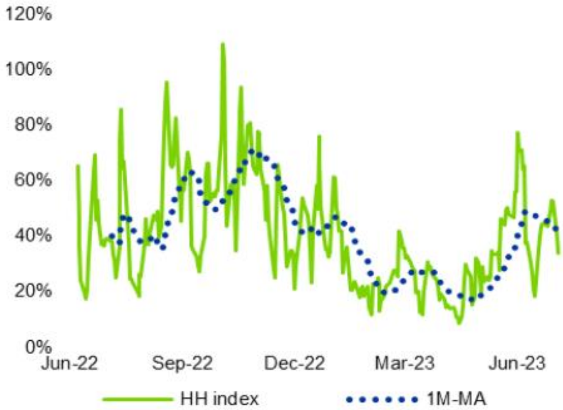


EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

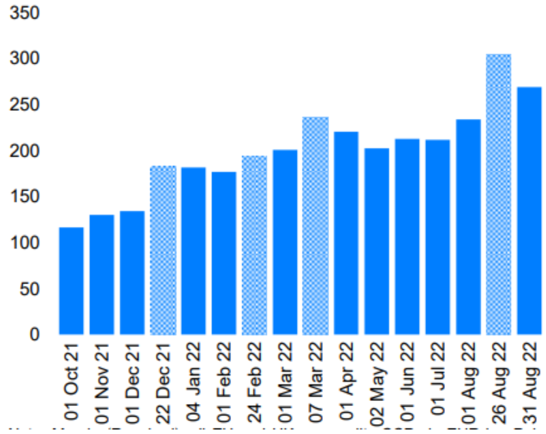
Dutch TTF liquidity Hui-Heubel ratio

## Drop in liquidity in late summer and autumn



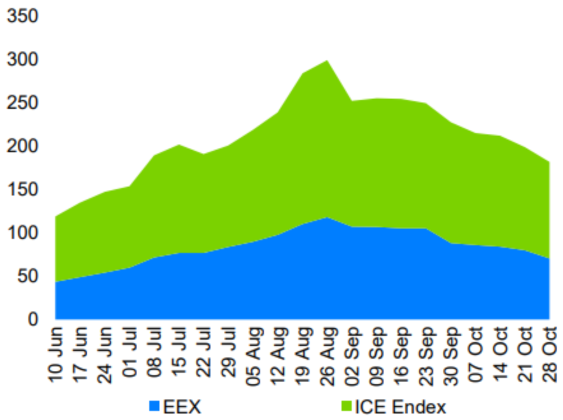

Margins required all EU and UK commodities CCPs

## Margins responded to price and volatility



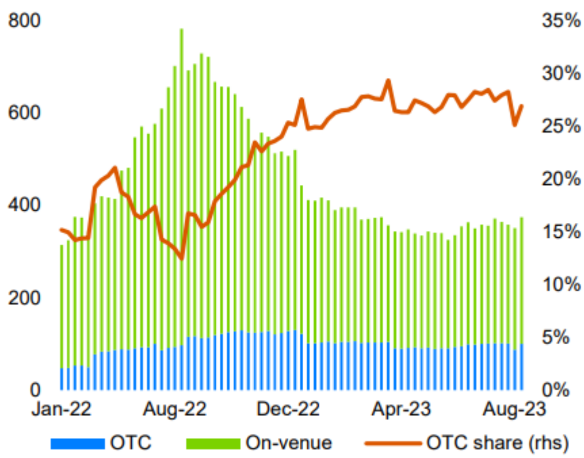

Cleared natural gas futures positions

## Grew and later fell with prices



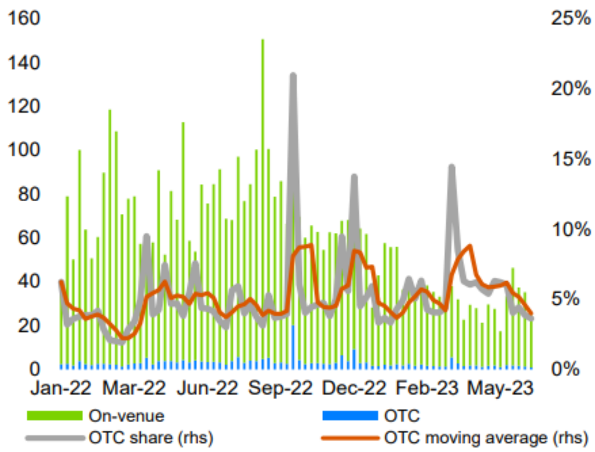

OTC share outstanding in natural gas derivatives

## OTC share did not increase in August



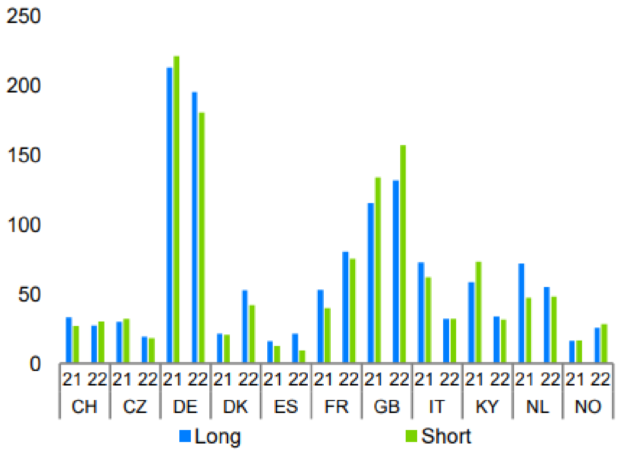

OTC share in trading flows in natural gas derivatives

## OTC share of flows did not grow in August



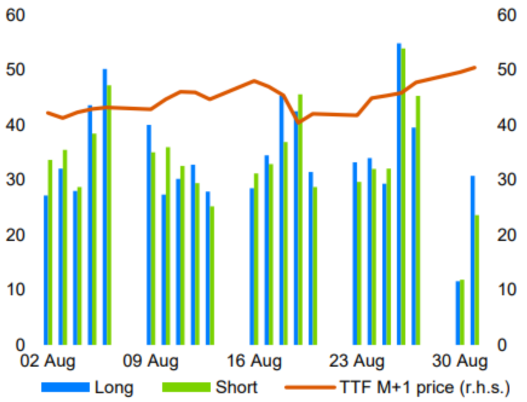
Long and short volumes in August 2021 vs 2022

## Distinctive long-short pattern in 2022



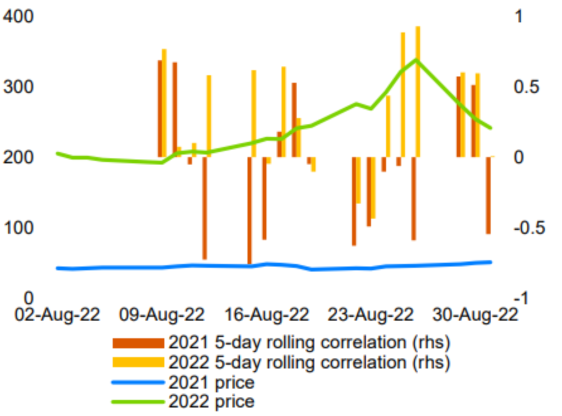

TTF daily long and short positions for end-clients 2021

## Higher volumes, little sign of bias to long or short



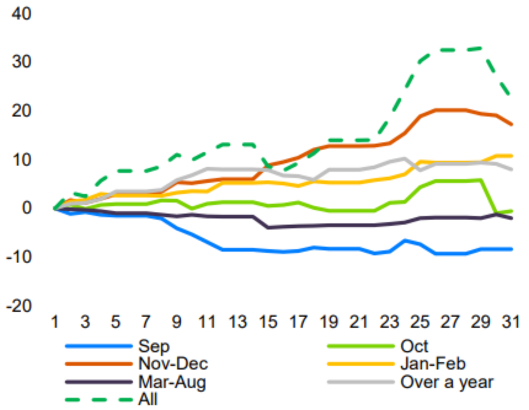

Prices and correlations with volumes, 2022 vs 2021

## Positive correlation through much of August 2022



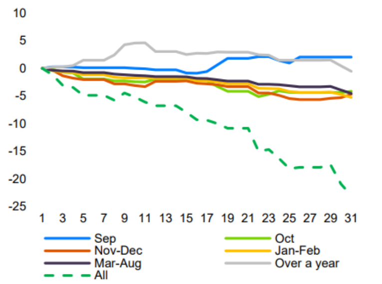

Accumulated net positions by maturity in August 2022

## Demand focused on maturities covering winter



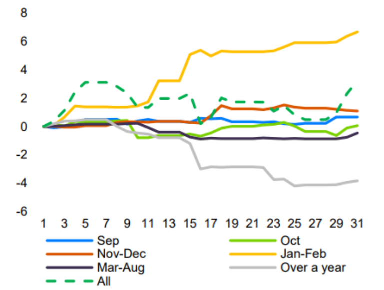

Accumulated net positions by maturity in August 2022

### Natural gas producer: short in most maturities



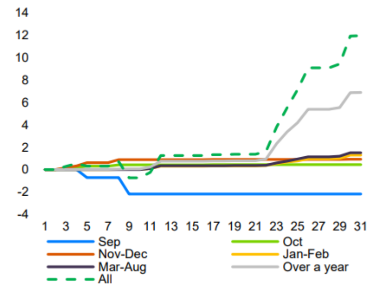

Accumulated net positions by maturity in August 2022

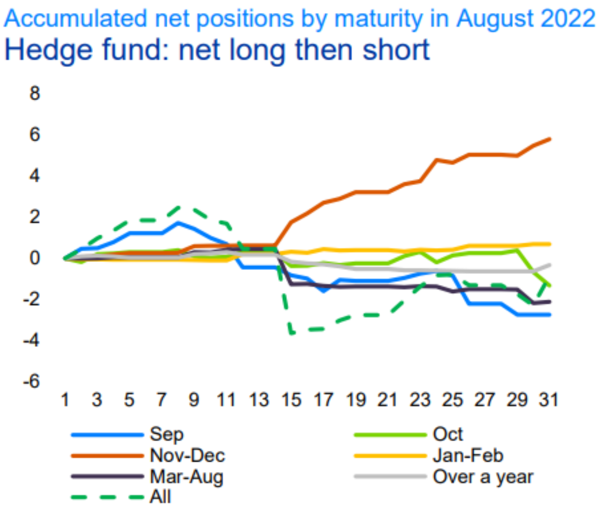
### Electricity utility type 1: long on winter maturities

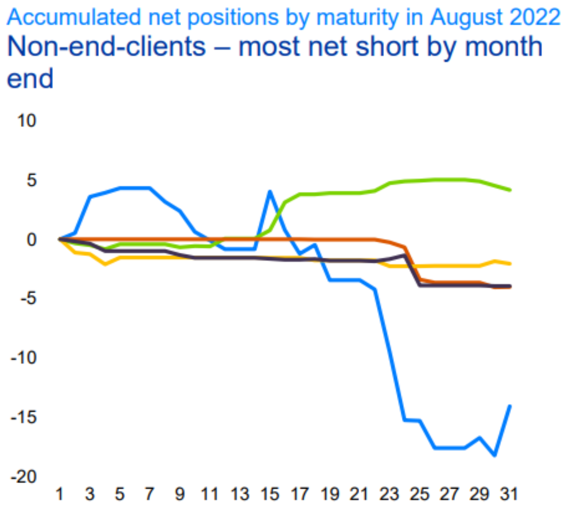



Accumulated net positions by maturity in August 2022

### Electricity utility type 2: long on most maturities





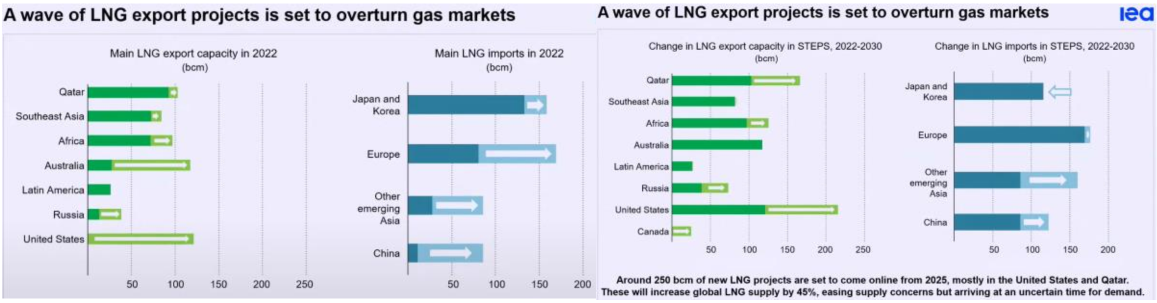



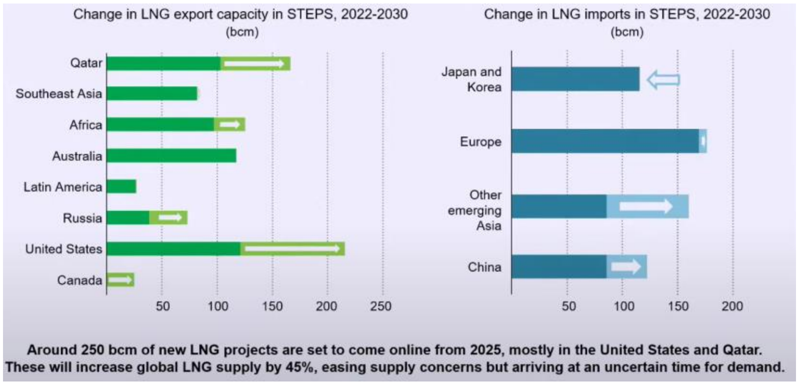

ESMA concludes that this analysis of events of August 2022 in natural gas derivative markets has found:

i. Prices surged in 2022, first in late February/March and later with record peak prices in August 2022, with reduced impact on TTF futures liquidity and volatility in August 2022 compared to March 2022.
ii. CCP margins rose and fell with prices and volatility in line with expectations. CCP margin calls were met on time. Several public support measures were taken, but after the August price peak.
iii. There are no signs of reductions in positions in TTF contracts in our data for August and September 2022. TTF positions were actually slightly higher during this period.
iv. The OTC share did not significantly change during March and August 2022: while increases in OTC share could in theory have arisen from higher margin requirements, only in September 2022, after prices fell back, did the OTC share grow markedly.
v. Volumes in August 2022 were only slightly down from August 2021 despite much higher prices; showing the inelasticity of demand with pressures to secure winter deliveries and fill reserves.
vi. Positive correlation between end-client volumes and prices shows demand grew even as prices surged.
vii. EU-domiciled end clients generally accumulated long positions over August unlike in 2021, with demand focused on maturities before and in winter.
viii. The big gas producers in our data were net sellers across most maturities over the month, indicative of their role in bringing supply to the market.
ix. Electricity utilities that were among the most active firms showed two main patterns over August, a first group buying maturities for the winter delivery while selling others, a second group accumulated long positions across maturities, sometimes in large jumps.
x. The price surge appears driven by strong demand among EU end-clients and the need to secure winter reserves, in the context of the fall in Russian supply

Is Natural Gas About to Become a Buyer's Market? It's not too soon for Europe to plan for a world flush with LNG supplied by the US and Qatar. For the second straight winter, Europe's energy strategy is based largely on hopes for mild weather and reduced industrial demand, with gas prices still hovering at about 50 euros ($53) per megawatt-hour, more than double the average in the decade before Vladimir Putin's invasion of Ukraine. /jlne.ws/45Rf3ku

[Cap redux](): EU countries are weighing whether to extend the gas price cap over fears the Israel Hamas conflict could push up energy prices again this winter



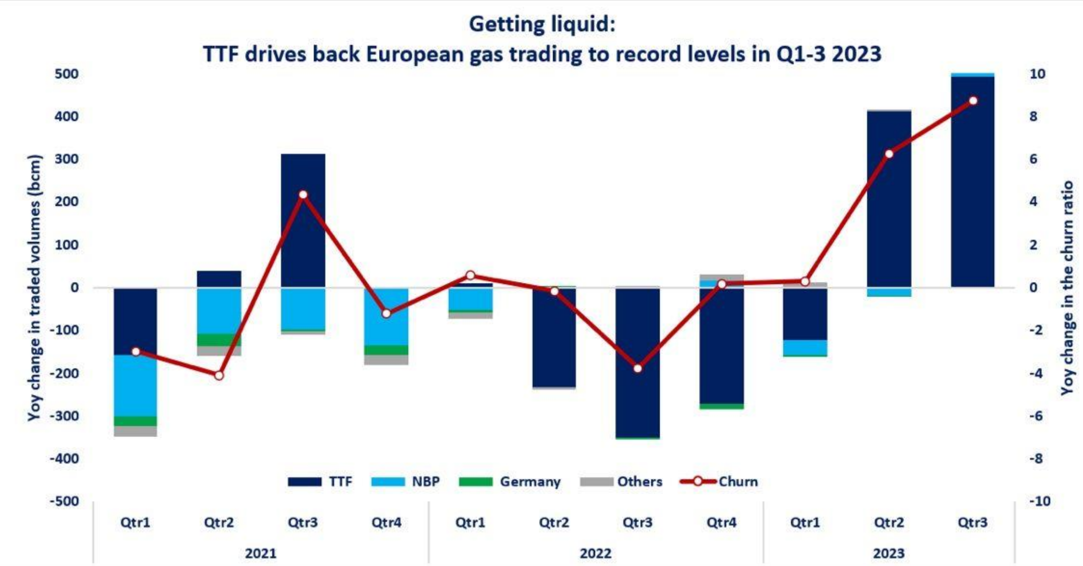

- A wave of new LNG export projects is set to remodel gas markets; *Starting in 2025, an unprecedented surge in new LNG projects is set to tip the balance of markets and concerns about natural gas supply.* In recent years, gas markets have been dominated by fears about security and price spikes after Russia cut supplies to Europe. Market balances remain precarious in the immediate future but that changes from the middle of the decade. Projects that have started construction or taken final investment IEA. CC B 4.0. Executive Summary 7 decision are set to add 250 billion cubic metres per year of liquefaction capacity by 2030, equal to almost half of today's global LNG supply. Announced timeline suggest a particularly large increase between 2025 and 2027. More than half of the new projects are in the United States and Qatar.
- This additional LNG arrives at an uncertain moment for natural gas demand and creates major difficulties for Russia's diversification strategy towards Asia. The strong increase in LNG production capacity eases prices and gas supply concerns but comes to market at a time when global gas demand growth has slowed considerably since its "golden age" of the 2010s. Alongside gas contracted on a longer-term basis to end-users, we estimate that more than one-third of the new gas will be looking to find buyers on the short-term market. However, mature markets – notably in Europe – are moving into stronger structural decline and emerging markets may lack the infrastructure to absorb much larger volumes if gas demand in China slows. The glut of LNG means there are very limited opportunities for Russia to secure additional markets. Russia's share of internationally traded gas, which stood at 30% in 2021, is halved by 2030 in the STEPS.

- Affordability and resilience are watchwords for the future; *A tense situation in the Middle East is a reminder of hazards in oil markets a year after Russia cut gas supplies to Europe.* Vigilance on oil and gas security remains essential throughout clean energy transitions, and our projections highlight how the balance of trade and potential vulnerabilities shift over time. In the STEPS, the share of seaborne crude oil trade from the Middle East to Asia rises from some 40% of the total today to 50% by 2050. Asia is also the final destination for almost all of additional Middle East LNG supply.
- The global energy crisis was not a clean energy crisis, but it has focused attention on the importance of ensuring rapid, people-centred and orderly transitions. Three interlinked issues stand out: risks to affordability, electricity security and the resilience of clean energy supply chains. Sheltering consumers from volatile fuel prices in 2022 cost governments USD 900 billion in emergency support. The way to limit such expenditures in the future is to deploy cost-effective, clean technologies at scale, especially in poorer households, communities and countries that struggle to finance the upfront investments required. As the world moves towards a more electrified, renewables-based system, security of electricity supply is also paramount. Higher investment in robust and digitalised grids needs to be accompanied by a role for batteries and demand response measures for short-term flexibility and lower-emissions technologies for seasonal variations, including hydropower, nuclear, fossil fuels with carbon capture, utilisation and storage, bioenergy, hydrogen and ammonia.
- Diversification and innovation are the best strategies to manage supply chain dependencies for clean energy technologies and critical minerals. A range of strategies are in place to strengthen the resilience of clean energy supply chains and reduce today's high levels of concentration, but these will take time to bear fruit. Exploration and production investments are rising around the world for critical minerals like lithium, cobalt, nickel and rare earths, but the share of the top three producers in 2022 is either unchanged or has increased from 2019 levels. Our tracking of announced projects suggests concentration levels in 2030 are set to remain high, especially for refining and processing operations. Many midstream projects are being developed in today's major producing regions, with China holding half of planned lithium chemical plants and Indonesia representing nearly 90% of planned nickel refining facilities. Alongside investments in diversified supply, policies encouraging innovation, mineral substitution and recycling can moderate trends on the demand side and ease market pressures. They are vital components of critical minerals security.
- We need to go much further and faster, but a fragmented world will not rise to meet our climate and energy security challenges; *Proven policies and technologies are available to align energy security and sustainability goals, speed up the pace of change this decade and keep the door to 1.5 °C open.* The STEPS sees a peak in energy-related CO2 emissions in the mid-2020s, but emissions remain high enough to push up global average temperatures to around 2.4 °C in 2100. This outcome has improved over successive editions of the Outlook but still points towards very widespread and severe impacts from climate change. The key actions required to bend the emissions curve downwards to 2030 are widely known and in most cases very cost effective. Tripling renewable energy capacity, doubling the pace of energy efficiency improvements to 4% per year, ramping up electrification and slashing methane emissions from fossil fuel operations together provide more than 80% of the emissions reductions needed by 2030 to put the energy sector on a pathway to limit warming to 1.5 °C. In addition, innovative, large-scale financing mechanisms are required to support clean energy investments in emerging and developing economies, as are measures to ensure an orderly decline in the use of fossil fuels, including an end to new approvals of unabated coal-fired power plants. Every country needs to find its own pathway, and it needs to be inclusive and equitable to secure public acceptance, but this package of global measures provides crucial ingredients for any successful outcome from the COP28 climate change conference in Dubai in December.
- No country is an energy island, and no country is insulated from the risks of climate change. The necessity of collaboration has never been higher. Especially in today's tense times, governments need to find ways to safeguard co-operation on energy and climate, including by embracing a rules-based system of international trade and spurring innovation and technology transfer. Without this, the chance to limit the rise in global temperatures to 1.5 °C will disappear. The outlook for energy security will also look perilous

if we lose the benefits of interconnected and well-functioning energy markets to ride out unexpected shocks.

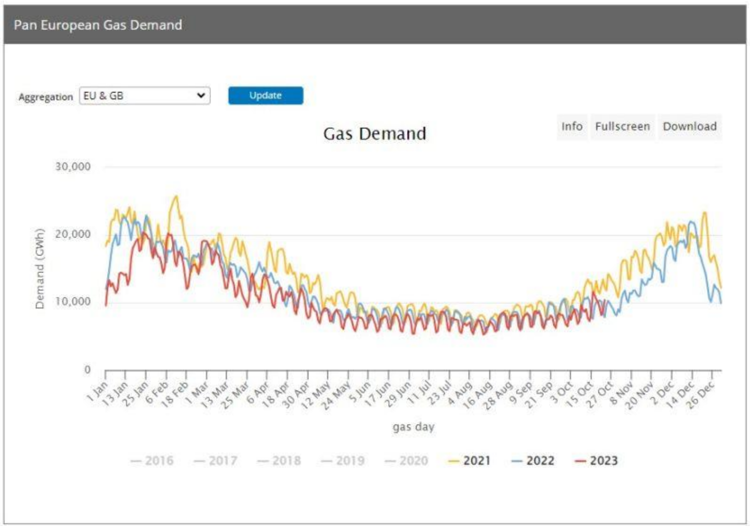
- **Fifty years on from the first oil shock, the world has lasting solutions to address energy insecurity that can also help tackle the climate crisis.** The first oil shock 50 years ago brought two crucial policy responses firmly into play: energy efficiency and low-emissions power, led at the time by hydropower and nuclear. Today's energy decision makers are once again facing geopolitical tensions and the risk of energy shocks, but they have a much broader range of highly competitive clean technologies at their disposal, and an accumulated wealth of policy experience on how to accelerate their deployment. The crucial step is to put these readily available solutions to work

**Nat Gas getting liquid: following the steep drops recorded in 2022, TTF drives the recovery in European gas trading to new record highs, with traded volumes surging by 30% yoy in Q1-3 2023 on the Dutch gas hub.** last year's record high gas prices drove up significantly margin requirements, increasingly rapidly the costs related to holding positions, especially for market players with more limited financial capabilities. this in turn led to a sharp declined in traded volumes (-15% yoy) and ultimately weighed on the liquidity of the European market. TTF borne the brunt of the decline, with its traded volumes plummeting by close to 20%.

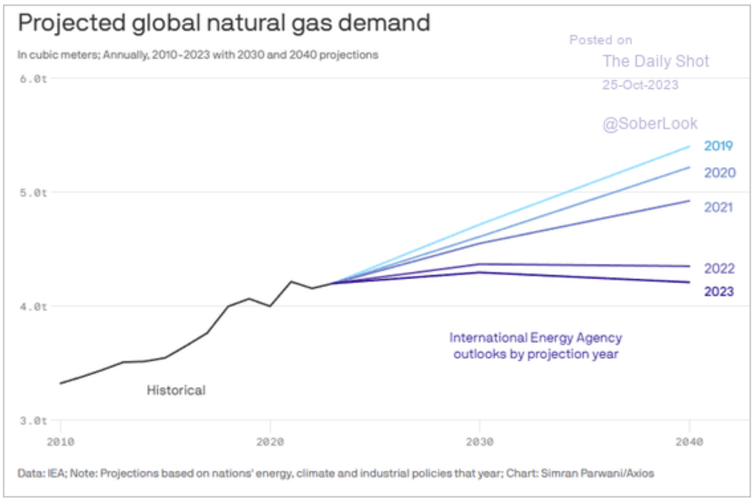



- lower gas prices in 2023, together with the need to hedge positions in an increasingly uncertain market environment led to rapid recovery in European gas trading: overall traded volumes rose by 17% yoy in Q1-3 2023, with the recovery almost entirely led by TTF where traded volumes rose by 30% yoy.
- in terms of liquidity, the churn ratio for EU+UK rose from 13 in 2022 to over 18 in Q1-3 2023.
- this strong recovery shows the resilience of Europe's traded gas market following the 2022 gas supply shock triggered by Russia. it also highlights the growing role of TTF, which now accounts for around 80% of EU gas trade and is increasingly used as a hedging venue by global portfolio players and trading houses.

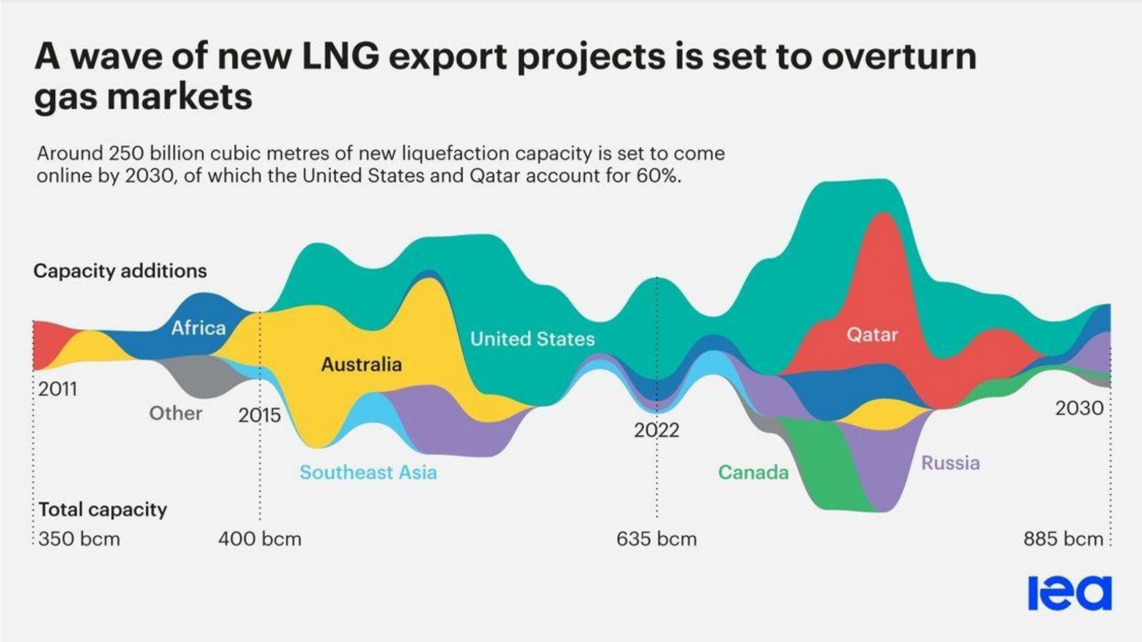
**European Natural Gas demand over 23 days of October so far, 25% below 2017-2021 average. Vs 2022 down 4%. - Not temperature adjusted.**




Analysts have been downgrading their forecasts for global natural gas demand.




Hydrogen headache: Environmental campaigners have attacked the EU's plans to green its energy supply as a "wish list" for oil and gas majors.




Ends. 01 Nov 2023