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 04th October 2023

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Conduct Roundup for Late Summer and September

1. FCA / PRA - Consultation Papers on Diversity and Inclusion ("D&I") – a deeper dive

- Some two and a half years after the Discussion Paper was published in July 2021, the FCA and the PRA have finally published Consultation Papers on D&I. We were eagerly awaiting their arrival following the FCA's commitment to publication when discussing non-financial misconduct with the Treasury Select Committee. We published a Flash SMCR+ View covering some of the highlights of the papers, which you can find here.

- In order to set out some more detail here and some views on the:
  - Changes proposed relating to non-financial misconduct and fitness and propriety assessments – do these resolve existing issues or create more?
  - The reporting and disclosure requirements: whether the regulators' proposals are achievable in practice or simply add uncertainty and legal risk;
  - Challenges where the regulators proposals diverge from established employment law protections and definitions;
  - Issues around accountability for D&I (particularly for dual regulated firms).

- Responses to the Consultation Papers are due by 18 December 2023, with the rules becoming effective one year after the Policy Statement is published which is expected in 2024 (TBC as to whether this date gets pushed out further).

2. European Central Bank ("ECB") Speech - How culture drives risk in banks and what supervisors can do about it

- There was no mention of the UK SMCR in this latest ECB speech on *how culture drives risk in banks and what supervisors can do about it* - despite it pointing to other international approaches to supervising behaviour and culture in bank. However, the language used within this speech has a familiar pitter patter to it and mirrors much of what we have seen the FCA and PRA say before.
- Whilst the ECB has previously looked at the culture-risk linkage, this speech has a laser focus on the importance of culture in driving the right behaviours and managing risk. It does feel like a line in the sand from the ECB – it makes it clear that culture can be a prudential concern and therefore it must supervise it. The speech addresses head on the concerns around whether it is the role of the ECB to assess behaviour and culture in banks (very similar to some of the Edinburgh Reform SMCR discussions that have been ongoing) - the ECB is very clear in its position that overseeing governance, risk culture, tone from the top and cultural values are all part of its mandate.
- The speech suggests that there has been a misunderstanding of the purpose of supervisors attending board meetings, which we found interesting. They state the purpose of such attendance is to assess board dynamics and the board's ability to challenge management. It isn't to participate in or influence board decisions.
- The ECB is currently reviewing its *Guide on governance and risk culture*, which sets out the ECB's expectations on governance, risk management and risk culture (including a set of good practices), although this is not expected to be published until the end of 2024.

3. FCA - changes to Form As accessed via Connect

- The FCA has updated its webpage announcing that it is reviewing and updating its application forms, starting with the Form A (application to perform senior management functions).
- Some of the key changes to the Form A include a checklist of information required to complete the application, less duplication in the employment history section (solo-regulated firms will be able to input ten years of employment history instead of uploading a CV), and integration of the statement of responsibilities into the form, avoiding the need for a second application. The FCA also promises improved guidance, easier navigation and an improved layout… let's wait and see!
- Public testing of the new Form A is expected to begin at the end of September 2023, and once the rollout of the new Form A is complete, firms will be required to use this version. If you're really keen you can sign up to test the new forms here.

4. FCA/PRA – the murky world of non-financial misconduct ("NFM")

- Following the recent buzz surrounding this area, S&S will be hosting a 45-minute session on Thursday, 12th October, starting at 2:30pm UK time, focused on the murky world of non-financial misconduct as part of our Global Legal and Business Outlook events. This session will examine the emerging legal, regulatory and best practice approaches to managing NFM and will include practical tips and common pitfalls based on recent experience and market events.

5. FCA - Multi-firm review findings on Authorised Fund Managers ("AFMs") assessments of funds value

- Following its review of liquidity management of AFMs the FCA has now published its findings on the processes used by different AFMs when carrying out assessments of value ("AoVs") for the funds they operate. There are a couple of governance and iNED related matters to specifically highlight that the FCA found:
- AFM Boards and AoV committees had higher quality management information ("MI") but some boards/committees were not reading it / using it effectively – i.e. they sometimes reached conclusions that didn't seem to account for or be supported by the MI.
- Most AFMs' iNEDs did not provide sufficient challenge, with some too involved in the collection and analysis of information to be able to challenge findings. Some iNEDs thought they shouldn't challenge AoV methodologies and accepted findings at face value, and most iNEDs didn't understand the firm's AoV process or its objective.
- Relevant firms should ensure that their iNEDs sufficiently understand the AoV process and their role – this might involve specific training. Firms should also ensure there's an appropriate balance for the iNEDs' role in the AoV process and their oversight and challenge of it / its findings. Challenge provided by iNEDs should be documented appropriately.

6. HM Treasury - Response to consultation on payments regulation and systemic perimeter

- Back in July 2022 the FCA's indication was that the SMCR should be extended to payment service providers and e-money firms – we now have HM Treasury's position via it's consultation response on payments regulation and the systemic perimeter.
- In relation to whether systemic payments firms should be subject to the SMCR, HM Treasury confirmed that the responses were largely supportive, provided that a proportionate approach based on an entity's structure, size and existing governance arrangements is taken. However, HM Treasury noted that it will not set out its position on the proposed extension of the SMCR until after the review of the SMCR as part of the Edinburgh Reforms has concluded. It is likely to be a while before any further proposals are received.

7. FCA - Report on UK Payment Accounts: access and closures

- The FCA published its report on its data exercise on bank account access and closures. The paper specifically talks about the SMCR within the context of credit institutions and states that the FCA would consider enforcement action against Senior Managers in cases of serious systemic misconduct for customer account closures when these breach applicable legislation. It says that its general approach to taking enforcement action under the PARs or PSRs will reflect its general approach to taking enforcement action under FSMA 2000.

8. FCA Decision Notices and Final Notices

- The FCA has published Decision Notices and Final Notices against individuals involved in unsuitable Pension Transfer advice.
- All of the Notices are against former directors for their roles in operating a flawed pension advice process. For CFP Management Ltd ("CFP"), the FCA imposed a fine of £681,536 on Ms Toni Fox (an SMF 3 and SMF 16), and a fine of £632,594 on Mr David Price (an SMF 3 and SMF 17) and withdrew their SMF approvals (noting however that both individuals are appealing the decisions to the Upper

Tribunal). For Mansion Park, the FCA fined Mr Andrew Allen £25,606 and Mr Keith Dickinson £245,914 (both CF1s (Directors) and CF30s (Customer)) and prohibited them from performing any function in relation to a regulated activity of advising on Pension Transfers.

- Ms Fox was found to have failed to act with integrity in carrying out her role by recklessly designing, implementing and overseeing the flawed advice process with regards to the transfer of clients' safeguarded pension arrangement – note we saw the Upper Tribunal specifically talk about "recklessness" within the context of integrity findings in FCA vs Seiler, Raitzin and Whitestone. This breach was seen as especially serious given Ms Fox's role in designing the process, and that she benefitted substantially as a result of the breach. Mr Price was also found to have failed to act with integrity by recklessly overseeing and participating in the flawed advice process, which was also seen as serious given the significant financial benefit Mr Price received together with the number of clients impacted, especially given that some of these clients were vulnerable due to their age or financial situation.
- Both Mr Allen and Mr Dickinson were found to have acted without due skill, care and diligence, with Mr Allen failing to conduct adequate second level reviews of Pension Transfer advice given by other advisors, and Mr Dickinson giving unsuitable Pension Transfer advice. The FCA also found these failings to be serious, on the basis that the impacted customers were in a vulnerable position.

9. FCA Dear CEO Letter: Wholesale banks portfolio analysis and strategy forum

- The FCA has published a Dear CEO letter to CEOs of wholesale banks active in the UK, in order to set out its supervisory work programme over the next two years. Some of the key points to highlight are:
- Risk Management: This is an area which the FCA indicates it will be increasingly engaging in, and will look to senior management to evidence how they are delivering better risk management and oversight across the business 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 any improvements are lasting.
- Standard of control: The FCA pointed to blurring of responsibilities between the first and second lines of defence, and particularly call out ESG-related activities as an area where there is a lack of clarity as to who is responsible for delivering against public commitments. Something for those with ESG related responsibilities to consider.
- Operational Resilience: The FCA will be engaging with Senior Managers with responsibility for operational resilience to assess how they have learnt lessons from operational resilience events (even if their firm has not been directly impacted).
- Diversity equity and inclusion: The FCA confirmed that its focus will be to understand how wholesale banks are playing a role in accelerating the pace of meaningful change in this space (even more relevant with the publication of the D&I Consultation Papers this week).
- Non-financial misconduct: The FCA confirms that it expects firms to have effective systems in place to identify and mitigate risks, to take any allegations or evidence of NFM seriously, deal with these through the appropriate internal procedures and act according to the "established" facts. We think this use of "established facts" is quite unhelpful!
- The FCA expects all CEOs to have discussed this letter with their boards within two months of its publication (i.e. by 8th November) and agree any actions to align with the FCA's expectations.

10. FCA – Dear CEO letter – supervisory strategy for principal trading firms

- The FCA's Dear CEO letter regarding its supervisory strategy for principal trading firms ("PTFs") over the next two years. Some of the key risks associated with PTFs the FCA is focussed on include inadequate controls (specifically in the context of third-party suppliers and operational resilience) and leadership combined with poor market abuse policies that may result in market manipulation and disruption.

- The FCA stated that some firms needed a "mindset change" to improve their governance and control infrastructure… Specifically in relation to algorithmic trading controls, the FCA reiterates that senior management are ultimately responsible and accountable, with Boards also playing an important role in providing effective challenge. This is an area within which the FCA indicates it intends to conduct further work.
- SMF 1s (CEOs) of PTFs must discuss this letter with the Board and agree any actions or next steps by the end of September 2023. The letter is also relevant to senior management as they are also responsible for ensuring their respective areas of oversight and control are compliant with the FCA's expectations and fully resourced.

ESG Roundup for Late Summer and September

Global Developments

1. Africa Climate Summit (multi-sector)

- **What:** The first week of September saw the international conversation on climate restart following the brief summer hiatus, with the Africa Climate Summit and Africa Climate Week. There were more than 10,000 participants from governments, multilateral organisations, the private sector and civil society, looking both at the impacts and opportunities that climate change holds for the continent.
- The Summit culminated in the signing of the Nairobi Declaration giving voice to African leaders in international climate negotiations and calling for greater action, particularly in finance. This included calls for greater investment into Africa, for example, in scaling Africa's renewable energy capacity to 300 GW by 2030 (from 56 GW in 2022), and increasing Africa's share of carbon markets. Momentum was also built on the agenda for a New Global Financial Pact (as covered in our July ESG View), with calls for agreement on a global carbon taxation regime, and action to reform the multilateral financial system, including debt relief interventions.
- **Looking ahead:** the Africa Climate Summit has offered a helpful lead into New York Climate Week and the road to COP28. We expect to see the Nairobi Declaration used in negotiations by leaders at future international summits.

2. Blue Economy update (multi-sector) *Guidance on Blue-Themed Bonds*

- **What:** 6 September saw the publication of the long-awaited *Bonds to Finance the Sustainable Blue Economy: A Practitioner's Guide* (the "Guide") by the International Capital Market Association (ICMA) together with the International Finance Corporation, UN Global Compact, UN Environmental Programme Finance Initiative, and Asian Development Bank. The Guide provides practical advice on how to structure and issue "blue bonds" using existing green bond and sustainability-linked bond principles supported by ICMA. The Guide helps to define blue economy typology and eligibility criteria, suggests key performance indicators, and showcases relevant case studies to illustrate how the guidance can be used. The Guide also includes exclusions for blue bonds, notably excluding deep-sea mining activities.

- *Global Plastics Treaty*
- On 4 September, the UN Environmental Programme published the first draft text of the internationally binding treaty on plastics pollution. It aims to end plastic pollution in order to protect human health and the environment, in particular the marine environment. This would mean reducing the absolute level of plastics production globally. The draft focuses on targets related to the full lifecycle of plastic production, it prioritises phase out of plastics that are the most difficult to recycle and phased in bans on single-use and short-lived plastics. Parties to the treaty will be responsible for developing and implementing their national plans and reporting against them publicly. The text will now be negotiated, with the aim for the final text to be agreed in 2024.

European Developments

1. Network for Greening the Financial System climate-related litigation guidance (multi-sector)

- **What**: This month, the Network for Greening the Financial System (NGFS) has published two complementary reports, building on their previous report on growing sources of risk (November 2021):
- *Climate-related litigation: recent trends and developments:* This report offers a useful categorisation of existing litigation and disputes data that can impact the financial sector, corporates, central banks and supervisors. It notes that litigation is likely to grow in parallel to new legislation, particularly relating to greenwashing, climate disclosures and corporate due diligence. This trend may be particularly relevant for the financial sector, which is increasingly being required to disclose under new regulation.
- *Report on micro prudential supervision of climate-related litigation risks:* This report offers insight on the current supervisory landscape on climate-related litigation risk (CLR) and notes the challenges of reliably evaluating and predicting the evolution of these risks. NGFS takes the position that CLR are a subset of physical and transition risks rather than a stand-alone risk category. The report outlines that CLR manifest within existing prudential frameworks for supervision and is oftentimes treated as a subset of operational risk by international standard-setting bodies. There is still a long way for supervisory approaches to go to appropriately capture CLR, both with regards to defining it, adopting supervision methodologies and filling data gaps, to name just a few areas. The report goes on to explore possible supervisory approaches and emerging practices, whist noting that this area will likely only grow in importance.

2. EBA occasional paper on climate stress testing (financial institutions)

- **What**: On 6 September, the European Central Bank (ECB) published an occasional paper (no 328) setting out the results of its second economy-wide climate stress test, following its first economy-wide stress test exercise, published in September 2021.
- **Details**: The paper introduces three short-term transition scenarios (i.e. an accelerated transition, a late push transition and a delayed transition) and sets out the impact of these scenarios on euro area financial institutions over the next eight years. The EBA notes that by comparing different transition scenarios, the results show that acting immediately and decisively would provide significant benefits, not only by maintaining the optimal net zero emissions path (and therefore limiting the physical impact of climate change), but also by limiting financial risk.
- **Observations:** In this latest paper, the EBA have also calculated the investment needed to successfully transition towards net zero emissions in a more granular way. Firms are encouraged to engage and to consider fast tracking to net zero, as summarised in the EBA's blog.

UK Developments

1. UK Government's new net zero plan (multi-sector)

- What: On 20 September, the government announced amendments to the UK's net zero policy. The announcement signals a departure from the green ambitions of the UK COP26 presidency in 2021. Some of the notable policy shifts that have received the most vocal criticism include:
  - Delay of the ban on the sale of new diesel and petrol cars from 2030 to 2035.
  - Delay of the ban on installing oil boilers, and new coal heating, for off-gas-grid homes to 2035, instead of phasing them out from 2026.
  - Inclusion of an exemption to the phase out of fossil fuel boilers, including gas, in 2035.
  - Abandoning of policies requiring landlords to upgrade the energy efficiency of their properties.

- Observations: These developments show a growing divide and politicisation of net zero in the UK. It will remain to be seen whether these divides deepen at COP28 and as we move closer to the 2024 general election.

2. UK FCA upcoming ISSB consultation (listed companies)

- What: On 10 August, the Financial Conduct Authority (FCA) published its Primary Market Bulletin 45, in which it reconfirmed its support for the International Sustainability Standards Board (ISSB) sustainability disclosure standards (IFRS 1 and IFRS 2) and announced its intention to consult on updating its TCFD-aligned disclosure rules for listed companies to refer to the UK-endorsed ISSB standards.

- Details: The current regime requires listed entities (other than closed-ended investment entities) to report against the TCFD framework on a 'comply or explain' basis, whereas the new regime would involve mandatory disclosures. The FCA encourages listed companies to start considering the new ISSB Standards now and consider building them into future reporting plans. Specifically, the FCA recommends listed companies:
  - voluntarily engage with the ISSB Standards ahead of any endorsement decision to identify opportunities to improve their processes and prepare for the introduction of the new framework;
  - continue to improve their climate reporting by considering the TCFD recommendations and accompanying guidance; and
  - engage with the UK Sustainability Disclosure Technical Advisory Committee call for evidence (see further information in our "consultation round-up" below).
- Next steps: The FCA is planning to consult in the first half of 2024 on this proposal and aims to finalise its policy position by the end of next year, with a view to bring new requirements into force for accounting periods beginning on or after 1 January 2025. The first reporting would begin from 2026.

3. GTAG paper on the UK Taxonomy (multi-sector)

- What: On 1 September, the Green Technical Advice Group (GTAG) has issued two papers of advice to the UK government on issues relevant to developing a UK Green Taxonomy.
- Details: The first paper considers scope, coverage and reporting considerations in the short and medium term and provides advice on the value and implications of expanding coverage of the UK

Taxonomy to include more UK sectors and economic activities. The second paper explores use of key performance indicators (KPIs) and provides recommendations on approach to reporting for fund managers and corporates. Further detail on content of the GTAG papers can be found in our recent insight article.

- Next steps: Following a series of delays preventing its publication this year, the government is intending to consult on the UK Taxonomy this autumn.

1. Biodiversity net gain rules for new developments in the UK (real estate sector)

- What: Mandatory biodiversity net gain (BNG) rules are set to apply to applications for developments submitted after November 2023 (with certain 'small' sites following in April 2024) per new requirements under the UK Environment Act (2021). There are only very limited minor exemptions to the new rules.
- Details: The government has described BNG as '*making sure the habitat for wildlife is in a better state than it was before development*'. In short, complex metrics will be applied to calculate how much habitat needs to be provided to achieve the 10% net gain required by the legislation. BNG can be delivered through a combination of on-site and off-site units and statutory credits.
- Although detailed secondary legislation is still outstanding, the government has announced £9 million of funding to support BNG and to help local authorities recruit additional ecologists and specialists. It has also published the criteria for being a responsible body for those organisations wishing to enter into conservation covenants with landowners. Conservation covenants are a key tool in delivering the off-site units required as part of the new mandatory BNG regime. The government has also published indicative statutory biodiversity credit prices. Statutory credits will be purchased from the government and will be available as a 'last resort' where developers are unable to use on-site or off-site units to deliver BNG.
- Follow these developments and others in our quarterly horizon-scanning ESG tracker for the built environment.

North America Developments

1. New corporate climate disclosure rules passed in California (multi-sector)

- What: On 11 September, the California Assembly passed landmark climate disclosure rules, SB-253 the "*Climate Corporate Data Accountability Act*" and SB-261, "*Greenhouse gases: climate-related financial risk*" (as covered in our ESG View May edition). Summary of requirements under the Bills:
  - SB-253 will require companies with more than $1 billion in annual revenues that do business in California to publicly disclose their scope 1 and 2 emissions from 2026 and their scope 3 from 2027.
  - SB-261 will require companies with more than $500 million in annual revenues that do business in California to report climate-related financial risks using the TCFD framework from 2026. Notably, the compliance date was extended from the initially proposed 2024, and reporting will be required every two years rather than annually.
- Key observations: These disclosure requirements are the first of their kind in the US and are set to have a huge impact given the size of California's economy and the cross-sectoral scope of the rules. We've already seen growing critiques from financial institutions, for example, the California Bankers Association challenged the inclusion of scope 3 reporting given the methodological challenges for banks. Criticism is only set to increase given the political fragmentation of ESG in the US ahead of the 2024 presidential election.

- **Next steps:** Governor of California, Gavin Newsom, has until 14 October to sign the Bills into law and has already committed to do so. California is a State to watch in the climate conversation, as only a few days after the Bills' passing the State sued five large oil companies for misleading the public about the dangers of fossil fuels and claiming damages for climate adaptation and disaster relief.

2. **The SEC adopts amendments to the funds "Names Rule" (asset management)**

- **What:** On 20 September, the US Securities and Exchange Commission (SEC) adopted amendments to the Investment Company Act "Names Rule" in order to tackle misleading and deceptive practices in the funds industry. The updated rules include a requirement for US investment funds to have an "80 percent investment policy", aligning 80 percent of the value of their assets with their fund name and characteristics. The amendments also include governance, reporting and recordkeeping requirements, for example, they require funds to review their 80 percent investment policy quarterly and give specific compliance dates if there are any departure from the policy.
- **Timing:** The amended rules will be in effect 60 days after their publication in the Federal Register and large fund groups (net assets of $1 billion or more) will have 24 months to comply and smaller fund groups (net assets of less than $1 billion) will have 30 months.

APAC Developments

1. **Hong Kong Monetary Authority (HKMA) issues principles on net zero transition (financial institutions)**

- Following the Hong Kong Monetary Authority's (HKMA) two-year plan to integrate climate risk into its banking supervisory processes, the HKMA has outlined six high-level principles to assist Authorised Institutions (AIs) in planning for a net zero economy transition. These principles aim to assist banks in maintaining safety and soundness during the transition planning. These six principles are:
  - Setting clear objectives and targets;
  - Establishing a robust governance framework and embedding transition considerations into internal processes;
  - Devising appropriate initiatives and actions to achieve the objectives;
  - Engaging with clients;
  - Performing reviews and updates; and
  - Maintaining transparency.

2. **GFANZ announces Hong Kong Chapter to Support Asia-Pacific Net Zero Transition (financial institutions)**

- **What:** On 31 August, the Glasgow Financial Alliance for Net Zero (GFANZ) announced the creation of a GFANZ Chapter in Hong Kong, joining the GFANZ APAC Network. The Hong Kong Chapter will engage and collaborate with financial institutions in Greater China on net zero efforts, transition planning, and scaling transition finance. It will also facilitate knowledge sharing, provide input on local perspectives into GFANZ's global work and collaborate with domestic initiatives such as the Hong Kong Green Finance Association.
- Hong Kong's role as a global financial centre and its link to regional capital and transition finance opportunities help to position it to drive net zero outcomes. The GFANZ Hong Kong Chapter marks a significant step in GFANZ's mission to drive the global net zero transition and leverage Hong Kong's unique position for sustainable future developments.

3. New Zealand new Climate Disclosure Standards (asset management)

- What: On 29 August the External Reporting Board (XRB) of New Zealand published its finalised guidance for fund managers on its approach for making its mandatory climate disclosure reports under the XRB's disclosure requirements.
- Key observations: The final guidance, which has some key changes from previous drafts, is relevant to all managers of registered investment schemes (MIS Managers) that are "large" (with greater than NZD1 billion in total assets under management) or for MIS Managers who intend to publish climate-related disclosures voluntarily. Having industry specific guidance emphasises the fundamental differences in what MIS managers are required to do in meeting standards, such as, the requirement to disclose climate-related risks and opportunities in relation to the fund or scheme, rather than the entity itself. In practice, MIS Managers have the challenge of producing data, and the ongoing work to be done will be substantively different to what other climate reporting entities will be doing to meet the climate disclosure standards.
- Next steps: Managers in scope should consider any differences to its current approach to meeting the standards based on the guidance. Given that the standards are based on the TCFD framework, global managers may find the disclosures published by NZ firms in scope, a helpful comparison as to how disclosures are made across different financial sectors.

4. India SEBI minimum ESG equity fund requirements (asset management)

- What: On 20 July, the Securities and Exchange Board of India (SEBI) introduced a sub-category for ESG investments under the "equity schemes category" reflecting the increasing demand of green financing in the region and the need for harmonised disclosure to avoid greenwashing risks.
- Key observations: The new ESG schemes proposed can be launched under one of several categories, such as "best in class", "impact investing" and "sustainable objectives" and the scheme name must clearly disclose which of these strategies is being adopted. Mutual funds could previously launch only one ESG scheme under the thematic category of "equity scheme" but are now permitted to invest under multiple ESG schemes with varying ESG strategies. The ESG schemes are required to invest at least 80% of the total assets under management in equity and equity-related instruments relating to the scheme's strategy, with the remaining portion of the investment being consistent with the scheme's chosen strategy.
- Next steps: The SEBI has required asset management companies to obtain independent reasonable assurance regarding the compliance of ESG schemes with their stated objectives and certify the schemes compliance with regulatory requirements based on comprehensive internal ESG audits. These items must be included in the annual report of the ESG scheme.

ESG Litigation Round-Up

- Momentum on climate litigation has not slowed over the summer months, and while we can't cover all the developments globally, it is worth mentioning a few. August saw a ground-breaking decision in the US, upholding the right to a clean environment in the Montana Youths case. There are also three international cases we will be watching closely in the coming months, including the Portuguese Youth case in the European Court of Human Rights, the Small Island States Climate Change case at the International Tribunal for the Law of the Sea, and the complaint against the World Bank for providing support to coal-fired power plants in Indonesia.

- To help you stay up to date on the latest global developments in contentious ESG matters, this month we are launching our ESG Disputes Radar. It comprises email briefings which aim to keep you up-to-date by delivering key updates – when they happen – to help you adapt to developments likely to impact your organisation. Our radar coverage spans the globe, keeping you updated on litigation, ground-breaking investigations, and complaints brought before international bodies. If it's on our radar, rest assured, it's on yours too. Read more and sign up today here.

1. UN warns Saudi Aramco and its financiers regarding contributions to climate change related human rights breaches (multi-sector)

- What: On 25 August, following a complaint filed by ClientEarth in 2021, the UN issued a Communication to Saudi Aramco warning that the state-run oil company's alleged contributions to the climate crisis could be in violation of international human rights law. In addition, the UN issued Communications to Saudi Aramco's financiers, noting the contributions that financial institutions and asset managers can make to adverse human rights impacts through the provision of financing. The various Communications, issued on 27 June 2023, can be found here using the search term "Saudi".
- The UN has no enforcement powers in this regard, nor do the Communications constitute legal judgments. However, Communications may be cited in other legal actions or used to inflict reputational damage.
- Our view: This the first time that the UN has targeted the oil industry in relation to the adverse impacts on human rights caused by contributions to climate change, adding to the ever-increasing pressure being placed on the industry in relation to the climate crisis. Further, the Communications to Saudi Aramco's financiers will add to the growing expectation being placed on financial institutions and asset managers to take responsibility for human rights issues in their value chains, particularly in relation to who they finance and which projects they facilitate.

2. Belgian Court strikes down €3bn INEOS plastics project (multi-sector)

- What: The Court of the Council of Permit Disputes in Belgium has ruled that INEOS's €3 billion plastics project in the Port of Antwerp is not legal. As a result, the project is now suspended.
- The Court ruled that INEOS failed to tell Flemish authorities the full extent of the project's predicted impact on the surrounding environment. These crucial omissions meant the authorities failed to fully assess the environmental impacts of the project and should not have granted its approval. The Court also held that the nitrogen pollution created by the project would breach the EU Habitats Directive, which aims to protect over a thousand species of animals and plants, and 230 habitat types.
- Our view: As greater public scrutiny is placed on new environmentally detrimental infrastructure projects, companies will need to ensure that they have completed their environmental due diligence thoroughly in order to mitigate the risk of any last-minute challenges.

3. ClientEarth's Shell derivative action refused again, and ClientEarth ordered to pay Shell's costs

- What: On 24 July 2023, following an oral hearing at which ClientEarth asked Mr Justice Trower to reconsider several points made in his earlier judgment, the English High Court maintained its decision to refuse to give permission for ClientEarth (as a minority shareholder) to bring its ground-breaking application for a climate-related derivative action against the directors of Shell. See our article for full analysis and key takeaways. ClientEarth subsequently sought permission to appeal from Mr Justice

Trower, who refused on 31 August 2023. It remains to be seen whether ClientEarth applies for permission to appeal again – they have the option to do so to the Court of Appeal.

- In the meantime, following the July 2023 refusal, Shell sought its costs of the proceedings to date, which Mr Justice Trower awarded (also on 31 August 2023) on the standard basis (i.e., Shell may recover its reasonable and proportionate costs). In English litigation, the general rule is the unsuccessful party will be ordered to pay the costs of the successful party. However, in its submissions, ClientEarth argued that Shell was not entitled to its costs, relying on the derogation from the general rule provided by CPR PD 19A para 2 in relation to derivative claims. Mr Justice Trower rejected this argument, concluding that "*it was appropriate and proportionate for Shell to*" voluntarily attend the oral hearing and make written and oral submissions.
- Our view: As noted by ClientEarth in its submissions, this decision could "*stifle future attempts to pursue board members of large well-resourced companies for breach of duty*" given the costs risk posed to the litigant. Certainly, this decision will give potential litigants pause for thought before pursuing this type of actions, as well as other types to which the general costs rule could apply. The level of Shell's costs has not been publicised but will likely be substantial.

4. ASIC commences greenwashing case against Vanguard Investments Australia (financial institutions)

- What: The Australian Securities and Investments Commission (ASIC) has commenced civil penalty proceedings against Vanguard Investments Australia at the Federal Court of Australia. ASIC alleges that Vanguard Investments Australia made false and misleading statements and engaged in conduct liable to mislead the public when it represented that all securities in the Vanguard Ethically Conscious Global Aggregate Bond Index Fund were screened against certain ESG exclusionary criteria. However, according to ASIC a significant proportion of the bonds were from issuers that were not researched or screened and that the index and fund included issuers that violated those criteria.
- Our view: These proceedings are the latest in a string of actions brought by ASIC in respect of potential greenwashing. The regulator has committed to continue to monitor asset managers' marketing of supposed 'green' or 'sustainable funds' to ensure that investors are not misled.

Australian government to acknowledge risk of climate change on bonds in landmark settlement (financial institutions)

- What: The Australian government has agreed to settle a class action brought against it for failing to disclose the climate change related risks of investing in its bonds. As part of the settlement, a statement will be published by the Australian government acknowledging that climate change was a systemic risk that may affect bond value. This will be the first formal acknowledgment by a country with an AAA credit rating.
- The statement will outline some of the government's plans in relation to the climate crisis, including sustainable finance reforms and the addition in the federal budget of fiscal impacts of climate change. In contrast, at the time the case was filed in 2020, the budget did not even mention climate change.
- Our view: This is the first time that legal action has been used by a bond investor to hold the government accountable in this way. It has been described as a world-first court case, a landmark settlement and an important step towards recognising the risks of climate change on investments. Attention has been drawn to how climate change may impact the wider bond market with the hope that action to reduce those risks will now be prioritised.
- Next steps: The terms of the settlement are due to go to the Federal Court for approval on 11 October.

5. UK's First Environmental Collective Action (multi-sector)

- What: The Proposed Class Representative (PCR) (Professor Carolyn Roberts, an environmental and water consultant) has issued a claim against the first of six water companies which, she alleges, each hold a monopoly position for providing water and sewerage services to household customers in their geographic area. The PCR alleges that the water companies have been misleading their regulators by underreporting the number of pollution incidents, which has resulted in higher customer bills.
- The PCR seeks to represent 8 million customers who have paid a water bill to Severn Trent Water since April 2020. The claim is being brought as an opt-out class action, meaning customers will be automatically included within the class, and entitled to their share of any awarded damages, unless they explicitly opt-out of the proceedings. The combined value of all six claims is expected to be around £800 million in total.
- This is the first time an environmental collective action is being brought in the UK's Competition Appeal Tribunal (CAT) – it will be interesting to see how the Tribunal responds. There is a risk that the Tribunal may see this as an attempt to shoehorn an environmental claim into the remit of the collective action regime in the CAT. The first hurdle will therefore be 'certification', meaning the claim will need to pass the gatekeeps of the Tribunal before it is allowed to proceed.
- You can read more about collective proceedings issued in the CAT here.

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. EU Commission consults on SFDR implementation (multi-sector)

- What: On 14 September the European Commission (Commission) launched two consultations on the implementation of the Sustainable Finance Disclosure regulation (SFDR).

- Details: The first consultation forms part of the Commission's overall review of the functioning of the SFDR and intends to address several issues identified since its application. Specifically, the Commission seeks stakeholders' views on: disclosure of principal adverse impacts (PAIs)
- the cost of disclosure under the SFDR
- the ability of financial market participants to fulfil their ESG transparency requirements
- the SFDR's interaction with other sustainable finance legislation (including the Taxonomy Regulation, the CSDR, MiFID, and the PRIIPs Regulation)
- The second publication is a targeted consultation aimed at identifying potential shortcomings with the regulation and exploring possible options to improve the framework. The main topics covered are:
  - Current requirements of the SFDR
  - Interaction with other sustainable finance legislation
  - Potential changes to the disclosure requirements for financial market participants
  - Potential establishment of a categorisation system for financial products

- Next steps: The consultations set out a series of open questions seeking views as to how far stakeholders agree with a statement (on a scale of 1 to 5) and is open until 15 December. More details on the consultation can be found in our client note.

2. TNFD Sector Guidance and Sector Disclosure Metrics open for feedback (multi-sector)

- **What:** On 18 September, the Taskforce on Nature-related Disclosures (TNFD) published its final recommendations for nature-related disclosures. In addition, it published additional guidance that is open to response and feedback, these include:
    - Additional guidance for financial institutions: guidance on the TNFD recommendations and metrics architecture for financial institutions. TNFD encourages financial institutions to pilot the metrics and share feedback, with an expectation to finalise guidance in 2024.
    - Discussion paper on proposed sector disclosure metrics: a guidance document on recommended metrics for multiple sectors including: consumer goods, extractives and mineral processing, food and beverage, infrastructure and renewable and alternative energy. Feedback can be provided prior to 29 February 2024.
    - Discussion paper on proposed approach to value chains: TNFD recognises the challenges of collecting data across value chains and provides guidance on where it is appropriate to seek full traceability and where secondary data can be used. Feedback on the guidance can be provided prior to 30 November 2023.

3. **UK TAC call for evidence on the IFRS disclosure standards (multi-sector)**

- **What:** The UK Sustainability Disclosure Technical Advisory Committee (TAC) has published a call for evidence seeking views on the IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures* standards in the context of the UK. The TAC is looking for insight on whether the disclosure standards in the context of the UK:
    - will result in disclosures that are understandable, relevant, reliable and comparable for investors;
    - are technically feasible to prepare;
    - can be prepared on a timely basis and at the same time as general-purpose financial reports; and
    - are expected to generate benefits that are proportionate to the costs that are likely to be incurred.
- **Timing:** The consultation is open until the 11 October.

4. **NZAOA Public Consultation Target Setting Protocol Version 4 (asset owners)**

- **What:** The Net Zero Asset Owner Alliance (NZAOA) has opened a public consultation on its fourth edition of its Target Setting Protocol. The purpose of the protocol is to guide members on how to set their science-based intermediate targets. The fourth edition expands coverage of asset classes, and the consultation invites feedback on the additions of:
    - Target-setting methodologies for private debt funds;
    - Target-setting methodologies for real estate debt funds and residential mortgages (including approaches on embodied carbon and energy efficiency);
    - Performance assessment of sovereign debt holdings through qualitative indicators (such as those provided by ASCOR).
- **Timing:** The consultation is open until 29 September.

5. **IAASB public consultation on proposed global sustainability assurance standard (assurance practitioners)**

- **What:** On 2 August, the International Auditing and Assurance Standards Board (IAASB) published a consultation for a proposed global sustainability assurance standard called the *International Standard on Sustainability Assurance (ISSA) 5000, General Requirements for Sustainability Assurance Engagements* (ISSA 5000). ISSA 5000 is a principles-based assurance standard for sustainable reporting that is intended to be used globally and across multiple reporting frameworks. The IAASB encourages all stakeholders to share feedback on the suitability and potential effectiveness of the proposal either using a detailed response template or a more high-level survey.
- **Timing:** The proposal is open for comment until the 1 December and final standards will be issued before the end of 2024.

6. Japan's FSA consults on impact investing framework (asset management)

- **What:** On 31 July, the Japanese Financial Services Agency released a consultation on a set of guidelines for impact investing. The proposal is not unlike the Global Impact Investing Network (GIIN) standards, with principles of intentionality, additionality, identification, measurement and management and support for novelty all underpinning the guidelines for impact investment.
- **Timing:** The consultation is open until 10 October.

7. International Impact Accounting Methodology (multi-sector)

- **What:** The International Foundation for Valuing Impacts (IFVI) in partnership with the Value Balancing Alliance (VBA), has published a consultation on *General Methodology 1: Conceptual Framework for Impact Accounting*. This is the first of multiple statements, intended to create a globally applicable, open-source impact accounting methodology. The guidance includes the key purpose of impact accounting, defines key terms and concepts, and clarifies how impact accounting is connected to topics such as materiality assessments.
- The consultation invites interested parties to respond to 5 questions, on; the delineation between preparers of impact accounts and users of impact information; the inclusion of the principle of conservatism; the proposed logic of impact pathways; the approach to impact materiality and qualitative characteristics of relevance; and any additional comments on the proposal.
- **Timing:** The consultation is open until the 16 October.

Focus	Key Activities for 2023 / 2024
Reducing and preventing serious harm.	i. **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. ii. **Improve appropriate and efficient redress** — by issuing new guidance for redress calculations, review FOS eligibility rules for SME firms and improve complaints reporting.

	iii. **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. iv. **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. v. **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 proactive assessments of firms' controls, and reviewing the oversight of firms communicating and approving financial promotions including qualifying cryptcassets (once regulated). vi. **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 and testing higher standards.	i. **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. ii. **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. iii. **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. iv. **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.	i. **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. ii. **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.
	iii.	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.

Regulatory Outlook and Diary

Forward Regulatory Calendar: Updated 03rd October 2023		
Q3 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. 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.
October 02, 2023	Japan	Deadline for response to revised Guideline on the JFSA reporting rules.
Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.

Q4 2023	EU	Targeted BMR legislative proposal amending the scope of the third country regime.
October 18, 2023	UK	Deadline for response to PRA/FCA CP13/23: Equity options margin requirements and initial margin model pre-approval.
October 30, 2023	US	Comment Deadline: SEC re-opening of comment period for the proposed rule "Safeguarding Advisory Client Assets." (See 88 Fed. Reg. 59818-59820 (August 30, 2023)).
December 04, 2023	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45 and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023.
December 04, 2023	US	Compliance date for CFTC Block and Cap reporting amendments. Expiry of relief in CFTC Staff Letter No. 22-03.
December 31, 2023	EU	The amended Benchmarks Regulation that entered into force on February 13, 2021 extends the BMR transition period for non-EU benchmark administrators until December 31, 2023 and empowers the European Commission (EC) to adopt a delegated act by June 15, 2023 to prolong this extension by maximum two years until December 31, 2025. It also enables the EC to adopt delegated acts by June 15, 2023 in order to create a list of spot foreign exchange benchmarks that will be excluded from the scope of Regulation (EU) 2016/1011.
December 31, 2023	UK	Expiry of the temporary Intragroup Exemption Regime (TIGER) from clearing and margin requirements. *(this will change subject to HM 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 EU	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)

	Switzerland UK	EU: Initial margin requirements apply to counterparties with an average (monthly) aggregate notional amount from March, April, and May 2023 exceeding EUR 8 billion. Switzerland: Initial margin requirements apply to counterparties whose average (monthly) aggregate notional amount from March, April, and May 2023 exceeds CHF 8 billion. 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	Australia	Basel III: Expected implementation of FRTB framework.
January 1, 2024	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
January 1, 2024	EU	Application of the Delegated Acts (DAs) with respect to the four remaining environmental objectives on the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystem.
January 1, 2024	EU	Disclosure of Article 8 Taxonomy reporting KPIs and accompanying information for financial undertakings.
January 1, 2024	EU	The requirements under the EU taxonomy in relation to the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems enter into force.
January 1, 2024	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
January 1, 2024	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
January 2024	Australia	Expected effective date of APRA prudential standard for IRRBB (APS 117).
January 4, 2024	EU	The three-year derogation from margin rules in respect of non-centrally cleared over-the-counter derivatives, which are single-stock equity options or index option where no EMIR Article 13(2) equivalence determination is in place, was due to expire on January 4, 2021.
January 4, 2024	Hong Kong	Expiry of the SFC exemption from margin requirements for non-centrally cleared single stock options, equity basket options and equity index options.
January 4, 2024	UK	Expiry of the derogation from margin rules in respect of non-centrally cleared over-the counter derivatives, which are single-stock equity options or index options.
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.

February 12, 2024	EU	CCP R&R (Article 96): ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.
March 01, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil 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. In Mexico, the corresponding compliance date is December 31, 2025 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). 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	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. For revised market risk and CVA standards, only compliance with supervisory reporting requirements will come into effect from 1 July 2024. 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)).
August 31, 2024	Korea	Expiry of the FSS exemption from margin requirements for non-centrally cleared equity options.
September 1, 2024	US Australia	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). 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.

	Canada	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.
	Hong Kong	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.
	Korea	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.
	Singapore	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.
	Japan	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.
	Brazil	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.
	Saudi Arabia	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).
September 30, 2024	EU	Go-live of UK EMIR Refit reporting.
Q4 2024	Singapore	Expected go-live of the updated MAS reporting regime.
October 1, 2024	US	Expiration of temporary CFTC relief regarding capital and financial reporting for certain non-US nonbank swap dealers (See CFTC Staff Letter No. 22-10 and CFTC Staff Letter No. 21-20) *relief would also expire upon the Commission's issuance of comparability determinations for the jurisdictions in question.
October 21, 2024	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.

December 31, 2024	UK	The FCA direction under the temporary transitional powers allowing UK firms to execute certain trades with EU clients on EU venues (even though there is no UK equivalence decision in respect of those venues) expires at the end of 2024
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 EU Switzerland 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). Initial margin requirements apply to counterparties with an average (month-end) aggregate notional amount from March, April, and May 2024 exceeding EUR 8 billion. Initial margin requirements apply to counterparties whose average (month-end) aggregate notional amount from March, April, and May 2024 exceeds CHF 8 billion. Initial margin requirements apply to counterparties with an average (month-end) aggregate notional amount from March, April, and May 2024 exceeding EUR 8 billion.
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. The output floor transitional arrangement of 55% will commence from 1 January 2025.
March 1, 2025	Australia US EU Canada Hong Kong	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.

	Korea Switzerland Singapore Japan Brazil South Africa UK Mexico Saudi Arabia	
Q4 2024/Q1 2025	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
January 1, 2025	UK	Expected implementation of the Basel 3.1 standards
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.
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 Australia Canada Hong Kong Korea Singapore Japan Brazil 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 2025 exceeding USD 8 billion). 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. 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. 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 2025 exceeding HKD 60 billion. 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. 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. 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. 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. 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.
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: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 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
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 Jan/Mar 2023 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 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	H	Jan/Mar 2023 April / June 2023

		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 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

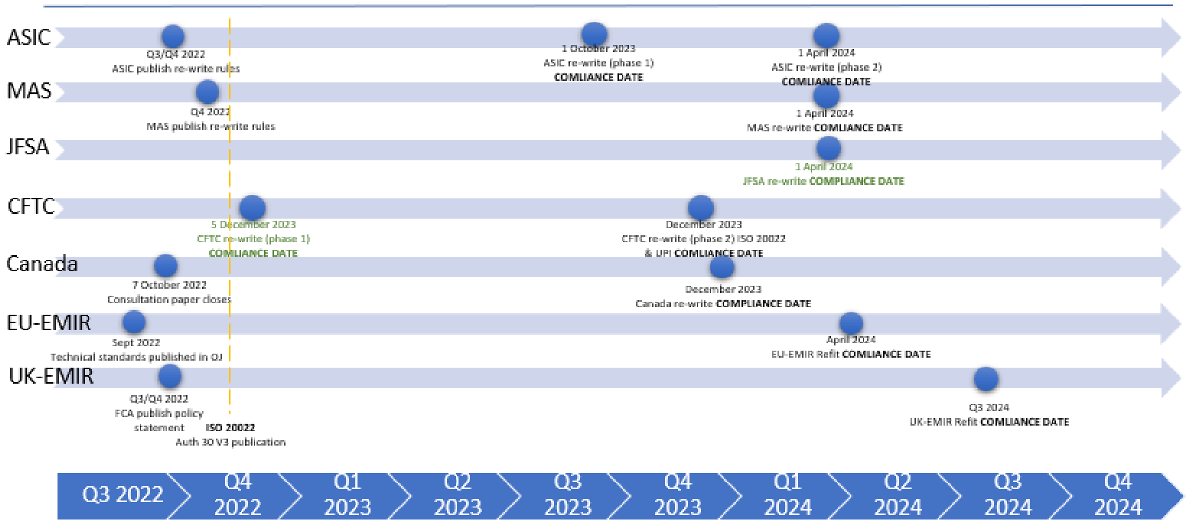
HMT	Review of the short selling regulation - including a Call for Evidence Repeal and replace the retained EU regulation of short selling to reduce burdens on market participants and ensure it is appropriate for UK markets	5 March 2023: Consultation closes	L	Timing Updated Jan/Mar 2023
HMT	Wholesale 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. 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. 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. 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. 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 Jul - Sep 2023 Oct – Dec 2023
HMT (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 Consultation Paper sets out our initial policy proposals for regulating cryptoassets in the UK. **UK regulatory approach to stablecoins;** Treasury consultation on the broader	01 February 2023: publication of Consultation Paper. The consultation will close on 30 April 2023. The Government has now responded to this consultation. The Government has now introduced legislation - the Financial Services and Markets Bill - that will give effect to the measure. Treasury is consulting on a future regulatory regime for cryptoassets (see 'Future	H	Timing Updated April / June 2023

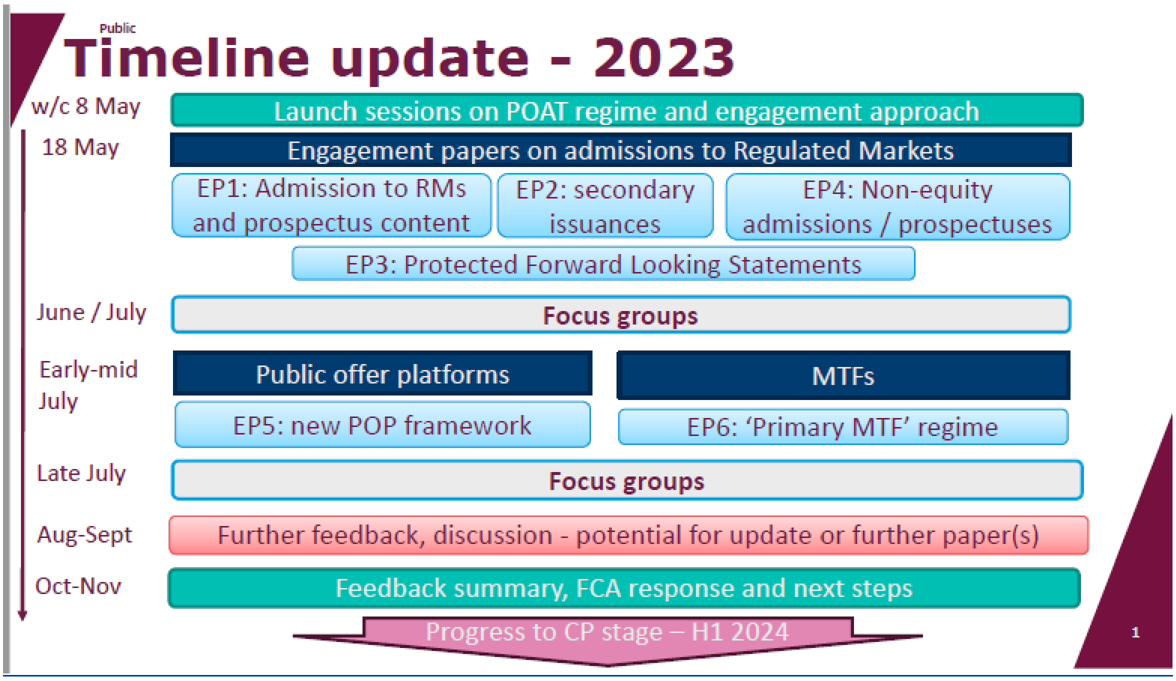
	regulatory approach to cryptoassets, including new challenges from so-called stablecoins. Further detail on the regime will be communicated in due course.	regulatory regime for cryptoassets - consultation' under 'Payments and cryptoassets').		
BoE/ FCA/ HMT	FMI Sandbox; Legislation to create a Financial 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 ill 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 (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 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 change announced in 2022 will come into effect in April 2023	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
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.	L	Timing Updated April / June 2023

		Potential Consultation Paper in Q2 2023, including feedback to DP22/2.		
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. This power will reinforce that reputation and help us maintain the UK's status as a world-class destination for listings	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 of the responses to this consultation	L	N/A
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 December 2021: Treasury report on the review published and laid in Parliament	L	Timing Updated Jul - Sep 2023 Oct – Dec 2023

		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. 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. 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

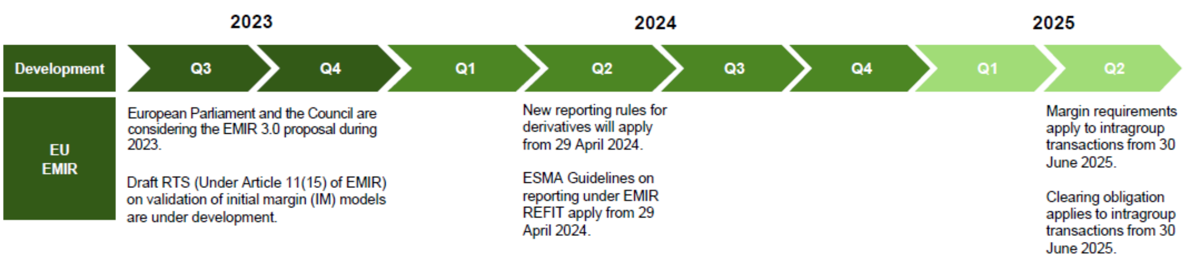




Benchmarks, RFRs & LiBOR Transition

Capital Markets and Market Structure

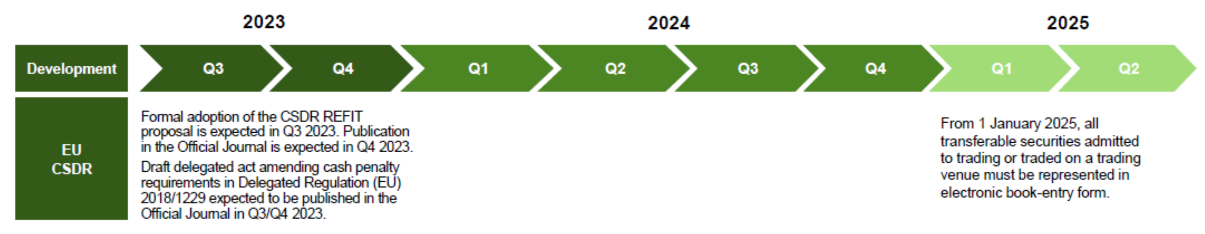
EU EMIR



- 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

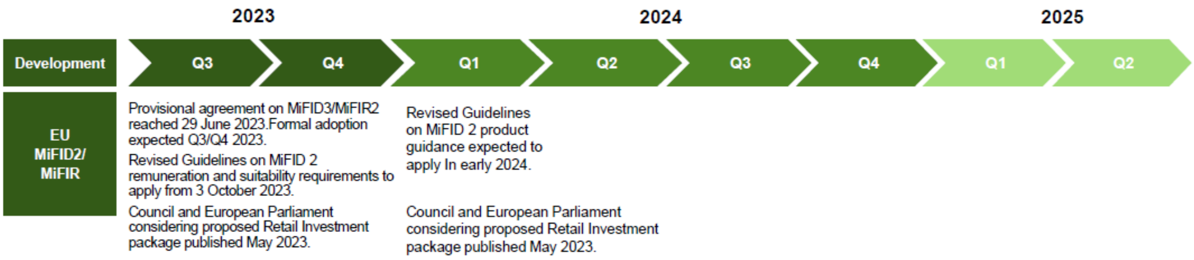


- The major phase of implementation, the introduction of a mandatory buy-in regime, was intended to come into effect on 1 February 2022, but has been suspended and will now take effect from 2 November 2025. In the meantime, in March 2022 the Commission published a legislative REFIT proposal with proposed 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

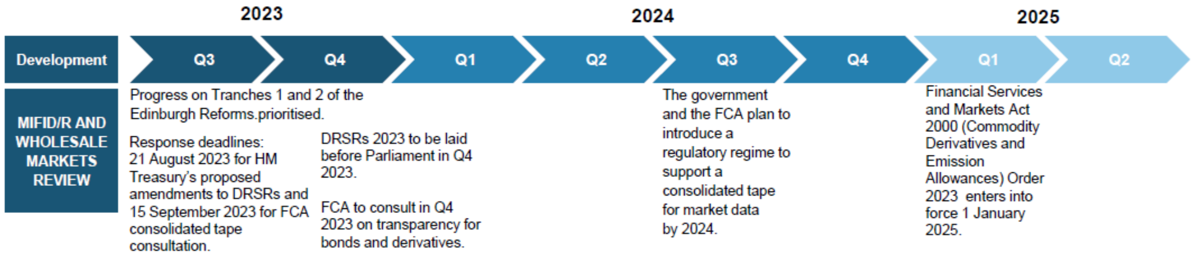
regulation will enter into force 20 days after its publication in the Official Journal of the European Union and apply 12 months later.

- 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

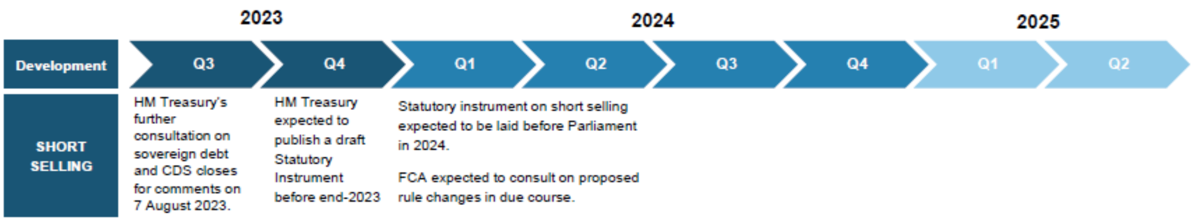


- The MiFID 2 'Quick Fix' measures in response to Covid-19 have applied since February 2022 and measures to integrate sustainability into the package were introduced in August and November 2022.
- In addition, new legislative measures following a review of the framework (sometimes referred to as 'MiFID3/MiFIR2') 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

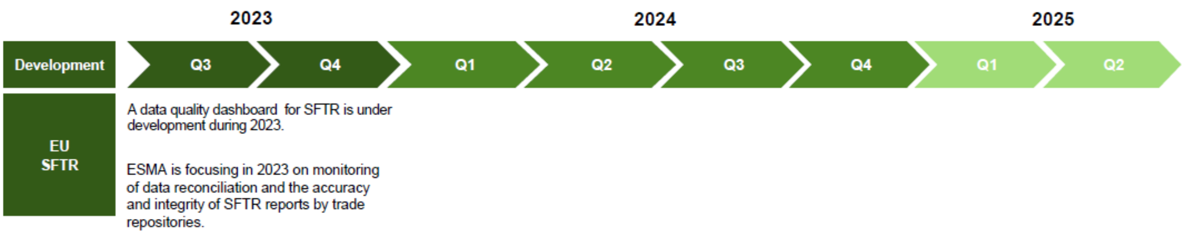


- The Financial Services and Markets Act 2023l (FSMA 2023), enacted on 29 June 2023, will repeal retained EU law on financial services and will give HM Treasury powers to amend, restate and replace that law.
- IHM Treasury is exploring how, on repeal of the UK short Selling Regulation (UK SSR) the UK 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

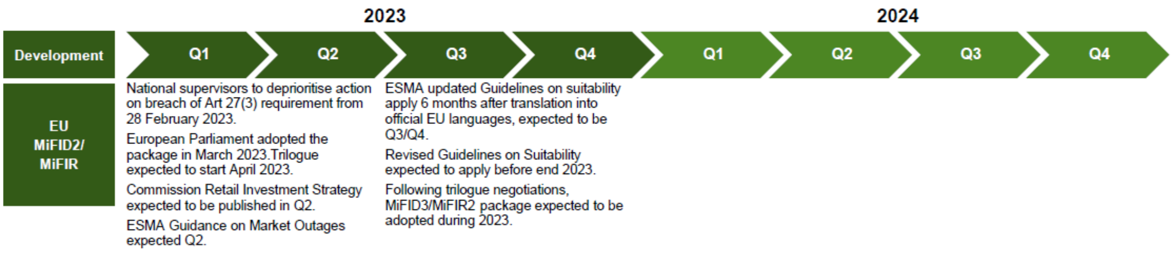
specificities of UK markets, continuing to facilitate the benefits of short selling, whilst also protecting market participants and supporting market integrity.

- 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



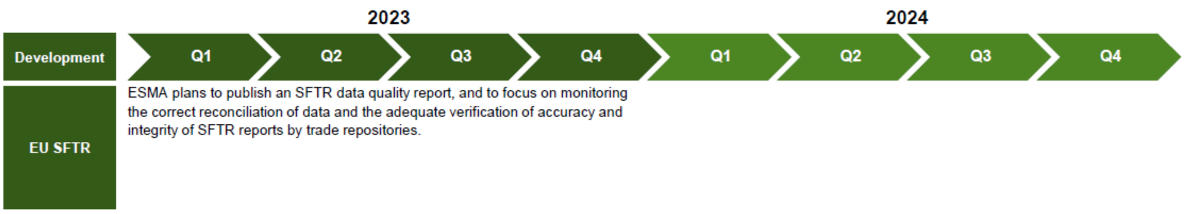
- ESMA Guidelines for the transfer of data between trade repositories under EMIR and the SFTR were published in March 2022 and have applied since October 2022.
- ESMA informed the European Commission in June 2022 that it has deprioritised the following EU SFTR deliverables: (a) a report on the efficiency 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.

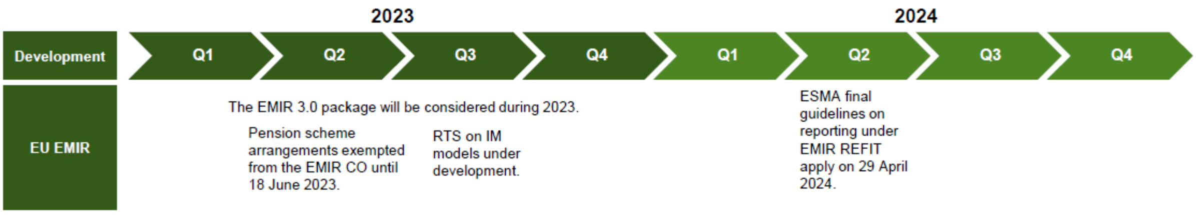
EU SFTR



- 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.

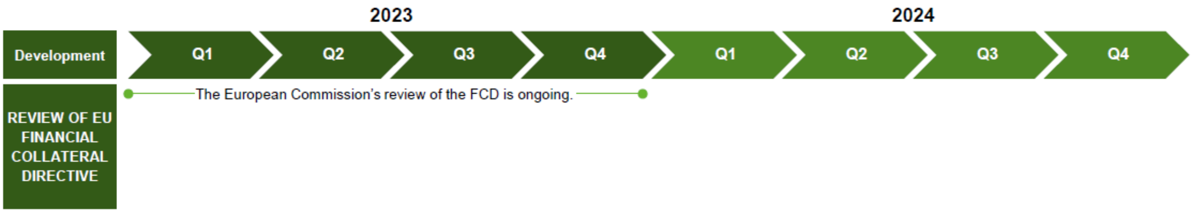
- Commission Delegated Regulation (EU) 2022/1671 exempts pension scheme arrangements from the EMIR Clearing Obligation (CO) until 18 June 2023.
- •On 1 February 2023, in view of IBOR transition ESMA published a Final Report submitting to the European Commission draft RTSs: (i) under Article 5(2) of EMIR 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.

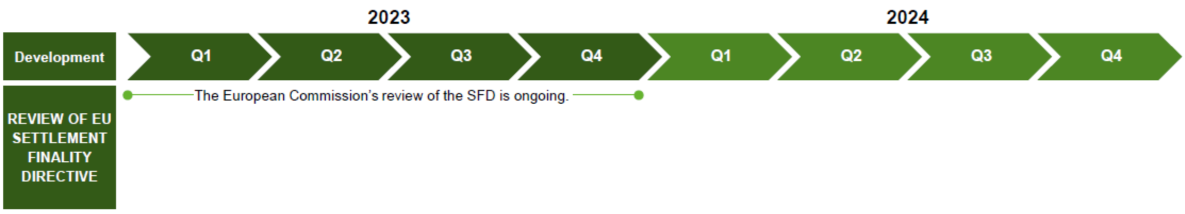
- •The CSDR's mandatory buy-in regime was intended to apply from 1 February 2022. The application of the relevant rules has been delayed until 2 November 2025.

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:
    - orevising the types of entity and collateral types that are in scope of the FCD;
    - oclarifying the requirements of "possession" and "control" and the concept of "awareness of pre-insolvency proceedings"; and
    - oachieving 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 acounterparty.

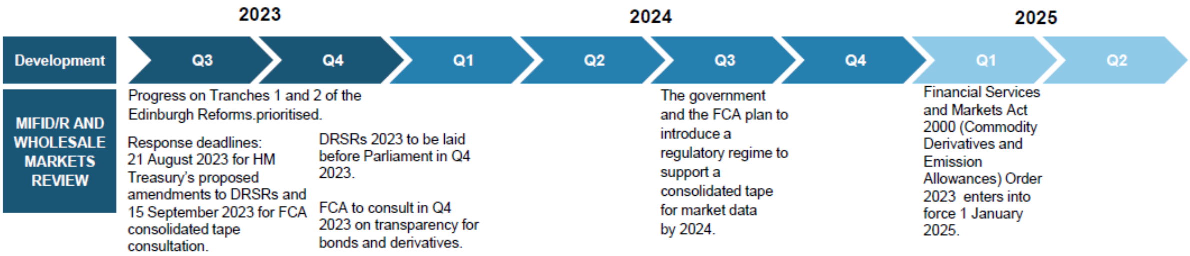
SETTLEMENT FINALITY DIRECTIVE



- 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

- o clarifying and/or revising the concepts of irrevocability and the point in time at which an order enters thesystem.

UK Divergences



- 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.

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

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.
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.

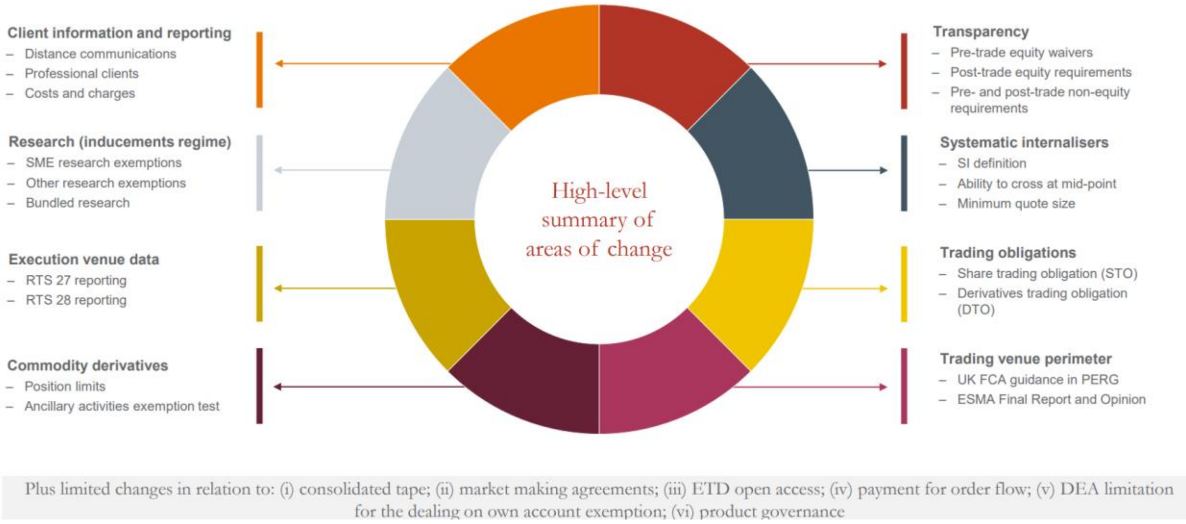
Ends.

Key UK developments timeline

MiFID II/MiFIR changes since Brexit

In the UK…	In the EU…
Brexit changes 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 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 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 In response to Covid-19, the EU implemented changes to the MiFID legislation and rules to accommodate the pressures on firms
Review In 2021, HMT carried out the Wholesale Markets Review (WMR), which proposed changes to the MiFID legislation and rules	Review In 2022, the Commission launched a review which resulted in a proposed directive and regulation amending the MiFID regulatory framework
WMR rule changes 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 In June 2023 the Parliament and the Council reached political agreement on the amending proposals
WMR legislative changes 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 Currently technical trilogues are ongoing, and publication in the OJ is not currently expected to be earlier than Q1 2024

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-bycase 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.*

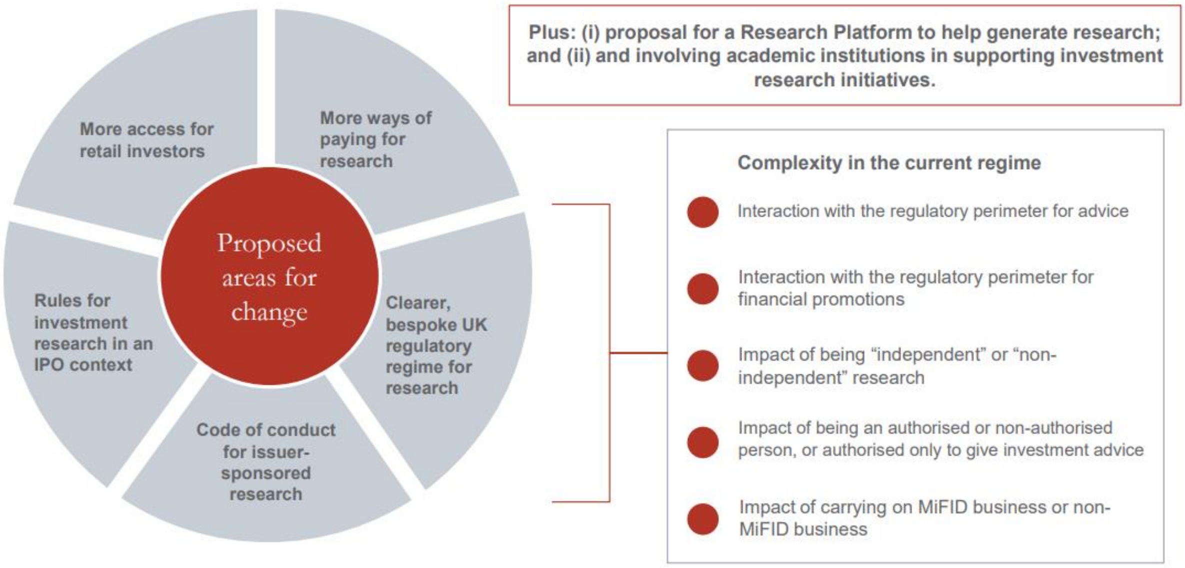
- *Systematic internalisers – possibility of moving to designated reporter status and no longer electing to be an SI*
- *Firms using research providers – restructuring commission arrangements if the FCA proceeds with the Investment Research Review recommendations*
- *Technology and light-touch activities 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

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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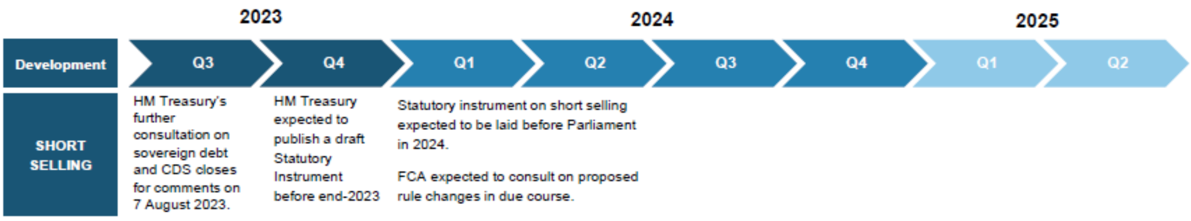
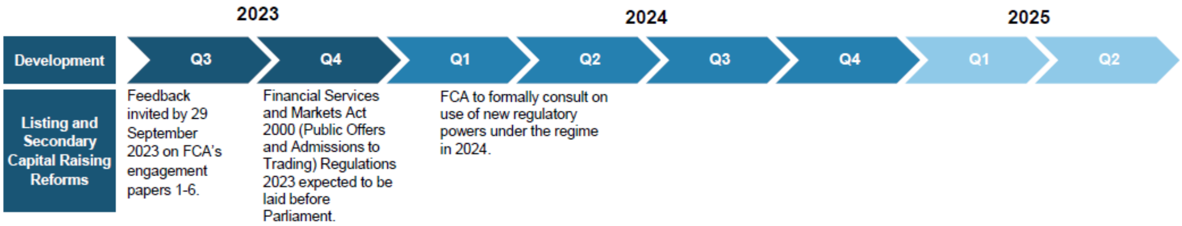
SHORT SELLING



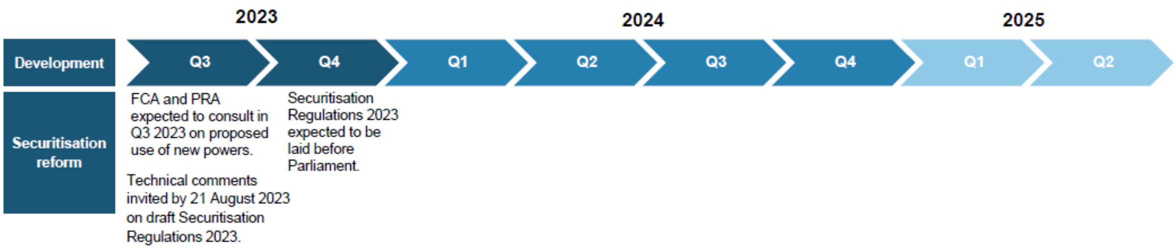
- The Financial Services and Markets Act 2023l (FSMA 2023), enacted on 29 June 2023, will repeal retained EU law on financial services and will give HM Treasury powers to amend, restate and replace that law.
- IHM Treasury is exploring how, on repeal of the UK short Selling Regulation (UK SSR) the UK 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

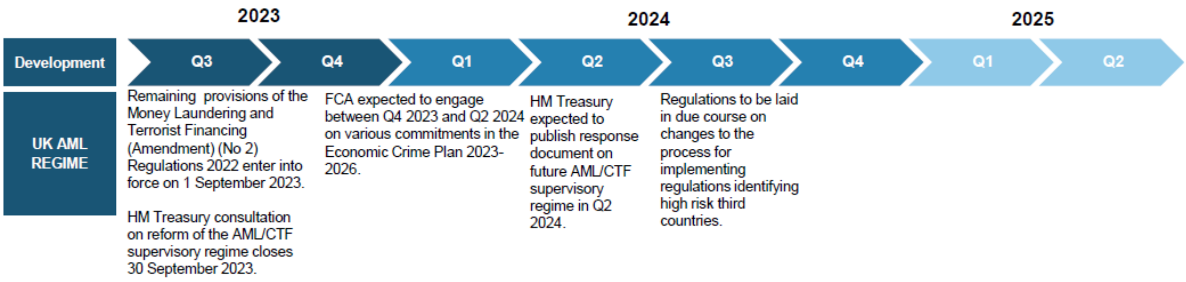


FSMA 2023, 2023, enables the government to reform the UK's securitisation regime and deliver the recommendations of the 2021 Securitisation Review with the aim of:

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

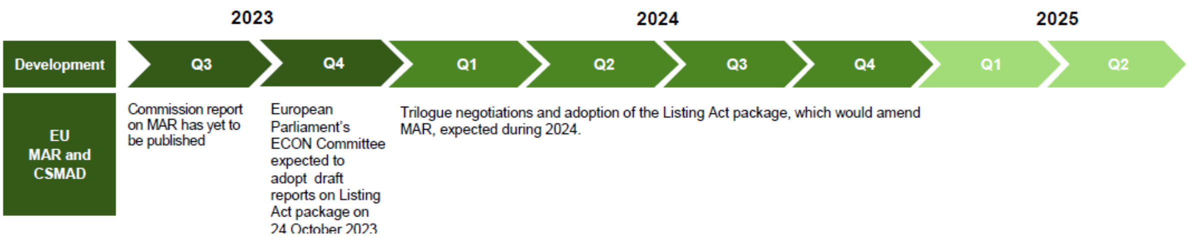
AML & MAR

UK AML REGIME



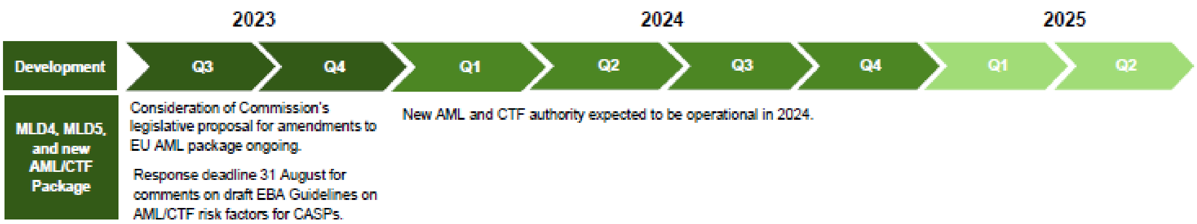
- On 21 July 2022, the UK's Money Laundering and Terrorist Financing (Amendment) (No 2) Regulations 2022 were passed. These set out specific amendments to the UK's AML regime, which have now largely been phased in, with the remaining provisions taking effect on 1 September 2023.
- Alongside the consideration 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 crytpoasset 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

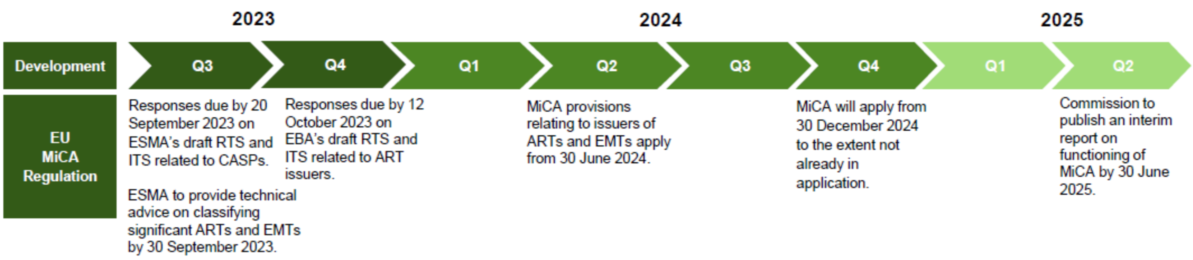


- MLD4 contains the EU's anti-money laundering framework. MLD5 made targeted amendments to MLD4 to increase transparency around owners of companies and trusts through the establishment of public beneficial ownership registers, prevent risks associated with the use of virtual currencies for terrorist 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

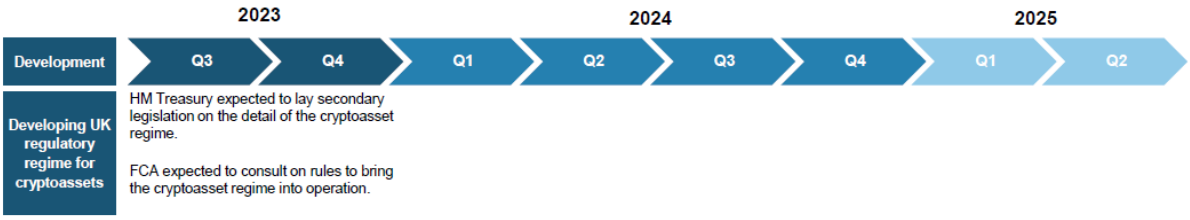
EU MICA REGULATION



- 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.

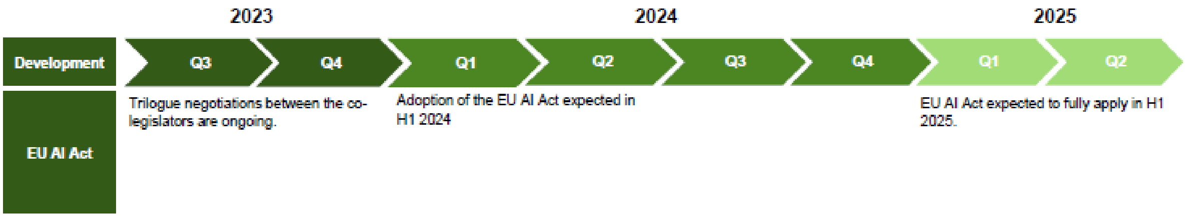
DEVELOPING UK REGULATORY REGIME FOR CRYPTOASSETS



- 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).

Digital finance, SupTech, RegTech & FinTech

EU AI ACT



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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6. Whether or not tokenization is at an inflection point, there are a few steps companies could consider, ranging from simple preparedness to shaping the path for tokenization

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Sanctions

Consolidated Sanctions List: 03Oct2023

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

- XML (Based on XSD) - v.1.0

Financial sanctions, Cyber UK financial sanctions are in place for persons, entities or bodies involved in certain cyber activity. This page contains the current list of designated targets.

- Current list of designated persons: Cyber

HMT; Who is subject to financial sanctions in the UK? A guide to the current consolidated list of asset freeze targets, and a list of persons named in relation to financial and investment restrictions under the Russia regulations

- Financial sanctions targets: list of all asset freeze targets
- Russia: list of persons named in relation to financial and investment restrictions
- Search the consolidated list of financial sanctions targets

Russian Oil Services ban; Guidance, General Licences and reporting forms in relation to the Maritime Services Ban and Oil Price Cap Exception.

FCA review of Sanctions systems and controls; *On 6 September 2023, the UK Financial Conduct Authority (the* ***FCA****) published the findings of its review of the sanctions systems and controls in place at over 90 financial services firms operating in a range of sectors (the* ***Review****).*

- This briefing summarises the FCA's findings on good practices currently being followed by firms, as well as several areas for improvement identified in the Review.
- **Good practices identified;** The Review identified a number of good practices, including:

1. **Proactive approach to identifying sanctions exposure to Russia** – as part of their risk management procedures, some firms had conducted risk exposure assessments and scenario planning in advance. The FCA found that those firms were better placed to implement UK sanctions at speed.
2. **Sanctions screening systems** – the FCA found that several firms were able to clearly articulate and demonstrate that their sanctions screening tools had been calibrated to ensure they were appropriate for the sanctions risks that the firm was exposed to. They were also able to demonstrate the controls they had in place to measure the effectiveness of their sanctions systems thresholds and parameters which included, for example, sample testing and tuning. Having a mechanism in place to measure the effectiveness of sanctions screening capabilities ensures that risks within the business are appropriately managed.
3. **Tool calibration** – most firms had sanctions screening systems which were able to help identify name variations for sanctioned entities and individuals. Firms should be continually seeking ways to enhance these systems to ensure that they are developing new ways to identify sanctions evasion.

- The FCA is encouraging firms to consider these examples in the context of their own business, to assess whether enhancements can be made to systems and processes.
- **Areas that need improvement;** The Review also identified a number of areas that would benefit from enhancement, including:

1. **Senior management oversight of sanctions risk** – the FCA noted instances where senior managers were not provided sufficient management information (**MI**). The FCA also saw a lack of quantitative and qualitative MI to enable effective oversight, identification of risk, and trend analysis. A failure to provide adequate MI impacts senior managers' understanding of the sanctions risks that the firm is exposed to as well as their ability to fulfil their responsibilities.
2. **Global sanctions policies** – the FCA identified misalignment in some firms' UK and global policies and instances of poor communication between global and regional sanctions teams. Firms need to be globally coordinated, so that all business and individuals fully understand the sanctions regimes to which they need to comply.

3. **Over-reliance on third party sanction screening tools** – the FCA found several instances where firms lacked understanding of how their sanctions screening tools were calibrated and how frequently lists where updated. This led to a failure to understand if screening was being done against the correct lists and therefore if the firm was effectively complying with its obligations.
4. **Skills and resources** – the Review identified that resource constraints led many firms to have significant backlogs in the assessment, escalation, and reporting of alerts from the screening of names and payments. These issues were compounded by a lack of governance and appropriate internal service level agreements. A lack of adequate resourcing has also led to a lack of clarity on prioritisation of alerts, due diligence reviews and greater reliance on external legal and consulting resources. It is important for firms to ensure that they are adequately resourced to allow for timely action to true positive alerts.
5. **Screening Capabilities** – whilst some firms were identified as having effective sanction screening tools, there were instances where calibration had not been adequately tailored and this resulted in the systems either being too sensitive (causing a high number of false positive names) or not sensitive enough (resulting in sanctioned individuals not being adequately detected). The FCA's testing of firms' sanctions screening systems also found that some firms' systems failed to generate alerts against certain names on the Office of Financial Sanctions Implementation's (**OFSI**) consolidated list of persons subject to sanctions. This could lead to firms breaching sanctions requirements.
6. **Customer Due Diligence (CDD) and Know Your Customer (KYC)** – the FCA were concerned that the low quality of CDD and KYC assessments increased the risk of firms not being able to identify sanctioned individuals. It is important that firms gather sufficient information and undertake sufficient KYC and CDD to ensure they are screening all relevant parties and do not breach relevant sanctions requirements.
7. **Breach reporting to OFSI and the FCA** – the FCA identified ineffective reporting practices – both long delays between identifying an issue and reporting that issue, and failures to report in some cases. Firms need to ensure that they are appropriately reporting sanctions breaches to the FCA and OFSI.

- **Next steps;** There are a number of key takeaways from the Review, with the issues identified by the FCA regarding adequate governance and alignment of global policies being particularly important in a sanctions context. To address this, firms should continue to evaluate their approach to identifying and assessing the global sanctions risks they are exposed to. They should actively strengthen the processes and systems that are in place to prevent sanctions breaches and evasion, adapting to the evolving sanctions landscape and changing risk exposures. This is crucial in ensuring control frameworks remain effective and aligned with the current requirements.

How sanctions created new markets; *Sanctions on Russia were meant to stop trade and coerce Vladimir Putin into a U-turn on Ukraine. Instead, Russia continues to bide its time in Ukraine, and Russian oil in particular continues to flow into world markets. The buyers may have changed, and the way markets operate. What was transparent before all of a sudden turned opaque.*

- The west did also not completely cut themselves off from Russia despite all rhetoric. Western firms and banks are still operating in Russia, even if the numbers have dwindled. Russian gas is still flowing into Europe, albeit at much-reduced volumes, and could even increase thanks to a recent deal between Bulgaria and Turkey. Russian crude oil is still exported into the world, avoiding sanctions by trading below the price cap of $60 per barrel. Western companies can even make profits thanks to the war in Ukraine. It is not only the military equipment industry which is booming thanks to the war.
- Elisabeth Braw, writing for *Foreign Policy*, has a cracking story about how Greek shipowners made a fortune selling their oil cargo ships second hand. Since the war in Ukraine started, Greece sold 290 ships. They do not sell at a discount. On the contrary, the story gives examples of where the ship price has doubled or tripled compared to the original price the Greek owners paid. In markets like these where money is not a limiting factor, tankers are a desired object that cause a hike in prices. A whole new tanker market has come alive as a result of the war.

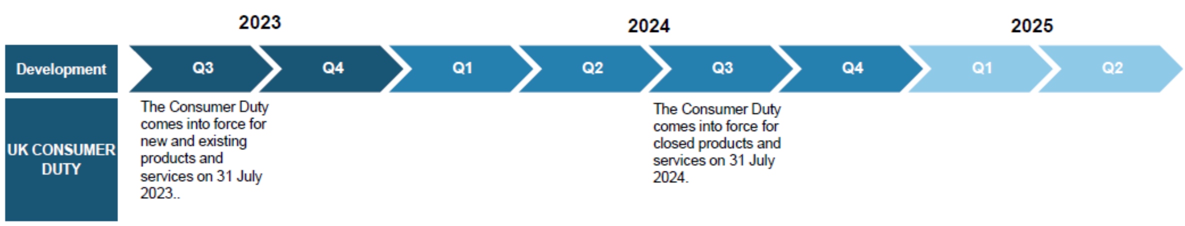
- The buyers are much more mysterious than the sellers. Companies based in the United Arab Emirates bought most of the tankers, followed by buyers in China, Turkey and India. In 2022, a stunning 864 new maritime companies with an association or link to Russia emerged according to S&P Global Market Intelligence. Sometimes there is not even an email address linked to those companies. The role of the UAE is not surprising, as Dubai has emerged as the new Geneva for Russian oil trading companies. China and India both have stepped up their imports in Russian oil and need tankers for transport.
- But those tankers, and cheap oil, come at the peril of predictability. Second-hand tankers enter the sea with unclear insurance, and take roundabout routes, and use technical tricks, to avoid being spotted. What happens if one of those tankers leaks or catches fire may not be a concern in the sale. Once such an incident occurs though, it has implications not only for people onboard, but for the oceans and maritime wildlife.
- What is happening with Russia should not be a surprise to anyone. The tricks it is using are right out of Iran's sanctions-avoiding playbook. But Russia produces roughly three times as much oil as Iran does on average, meaning that it has a materially larger impact.

Frozen Assets Reporting 2023; *Every year HM Treasury carries out a review of frozen assets to update its records and to capture any changes during the reporting period.*

- All persons that hold or control funds or economic resources belonging to, owned, held, or controlled by a designated person are required to submit a report to OFSI by Friday 10 November 2023.
- Your report must include details of all funds or economic resources frozen in the UK as well as those overseas, where these funds or economic resources are subject to UK financial sanctions legislation. Your report to OFSI must include the value of all such assets as of close of business on **Friday 29 September 2023.** Please ensure no reports are submitted before this date.
- Where the funds or economic resources relate to shares, securities, or other debt or payment instruments, the GBP value should be provided in your report.
- If you have previously reported information related to frozen assets to OFSI you are still required to submit a return to OFSI as part of the 2023 Frozen Asset Review.
- All returns need to be made in the form of a completed template from the GOV.UK website to ofsi@hmtreasury.gov.uk. Please note that the reporting template has been updated since last year.

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*

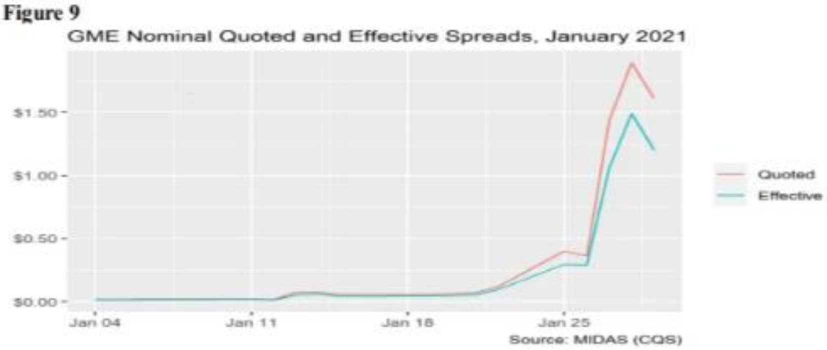
- During the meme-stonk craze of 2021, everyone had one question: Is a working-class revolution happening in the stock market? The answer was self-evident: No. Some people made money in a speculative bubble, which was nice for them! Some more people lost money, which was less nice for them, but they 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, that 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.

- o 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.
  - o Included on the webpage is information on:
  - o How to find out whether a firm is exempt.
  - o The 3-month window for applying for approver permission.
  - o 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 proactive 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.

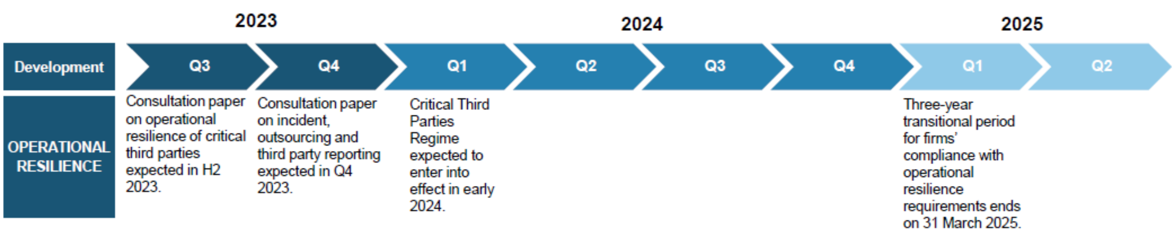
- The FCA notes that all other financial promotion rules will still apply from 8 October 2023.
- Further details on the FCA's modified expectations of firms in relation to the crypto marketing rules are set in a related press release.

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

Financial Stability, Operational Resilience

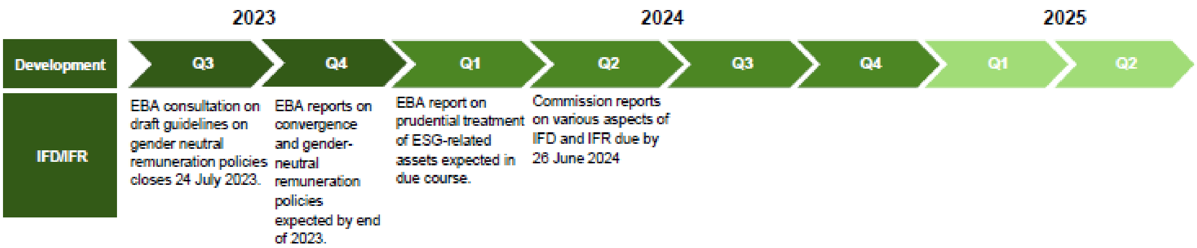
UK new operational resilience regime in 2021



- 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:

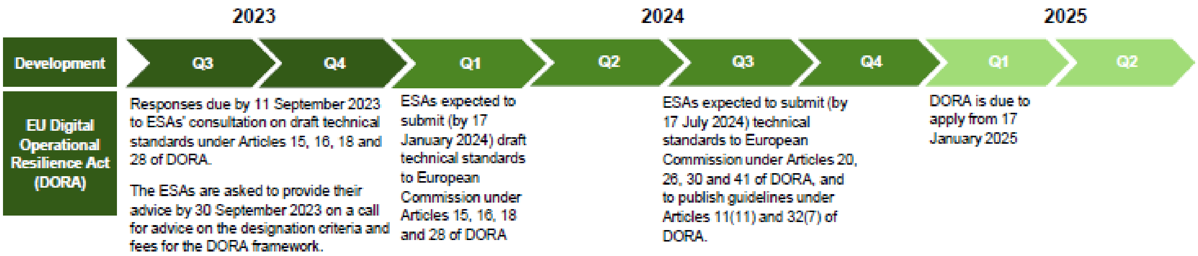
- The Financial Services and Markets Act 2023 (FSMA 2023) received Royal Assent on 29 June 2023. FSMA 2023 includes proposals to regulate cloud service providers and other designated 'critical third parties' providing services to UK regulated firms.
- In July 2022, the FCA, PRA and Bank of England published 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



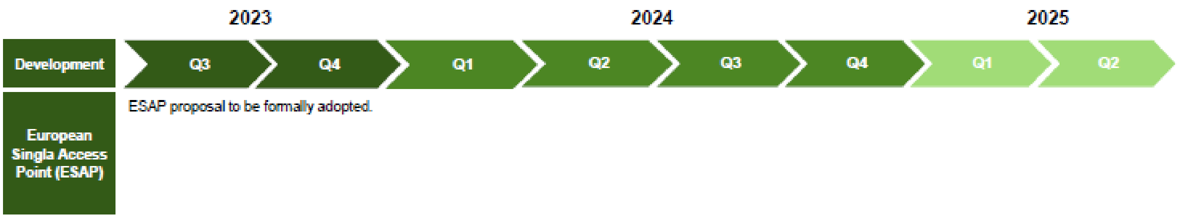
- While certain larger investment firms remain treated as credit institutions and subject to the capital regime under CRDIV, firms that are not subject to CRDIV are subject to the new IFD and IFR prudential regime. The IFD/IFR regime includes requirements on capital, consolidation, reporting, governance 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)

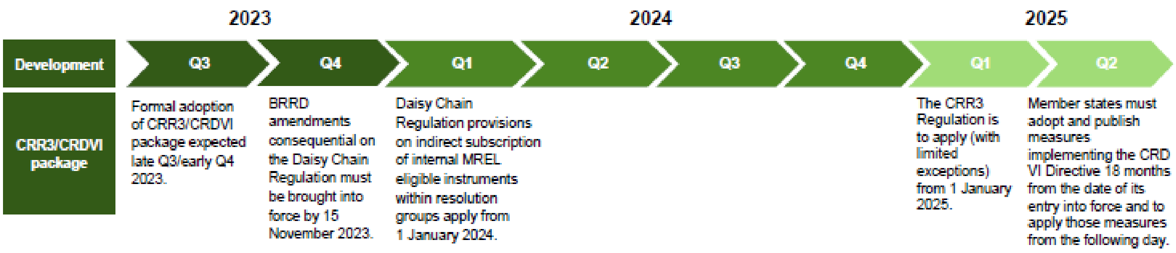


- The Commission is proposing a new Regulation enabling ESMA to create and maintain a single access point to financial and non-financial company data for investors. This data is currently fragmented across EU member states, in many access points, in different languages and in various digital formats. 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.

Prudential & Risk

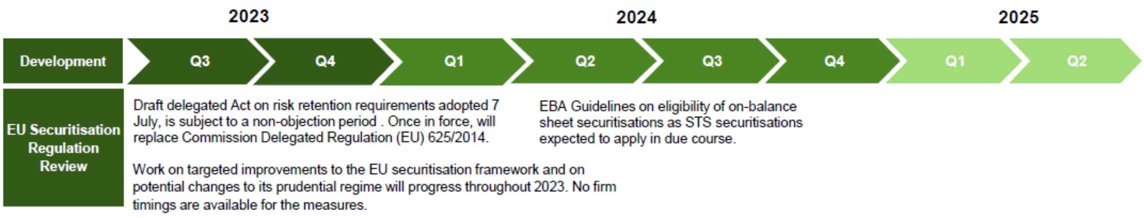
CRR3/CRDVI



- 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.

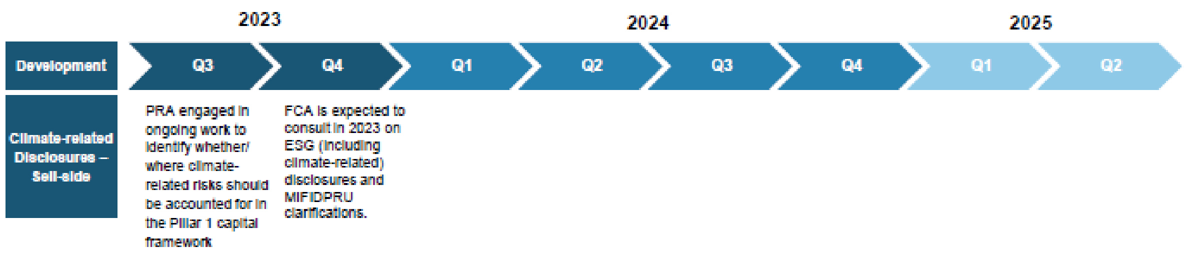
EU SECURITISATION REGULATION REVIEW



- 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.
    - 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.

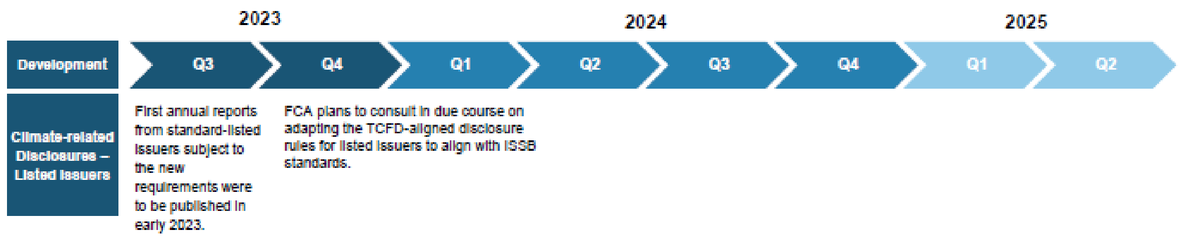
Carbon Emissions, Green finance, ESG & Disclosures

CLIMATE-RELATED DISCLOSURES – SELL-SIDE



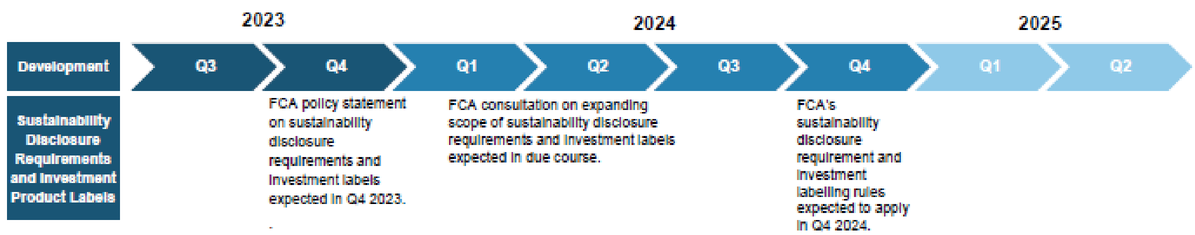
- The UK formally committed in 2017 to using the recommended disclosures from the Task Force on Climate-related Financial Disclosures (TCFD) as a basis for mandatory climate related financial disclosures in the UK.
- Sell side firms are subject to an expanding range of climate-related disclosures obligations. 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.

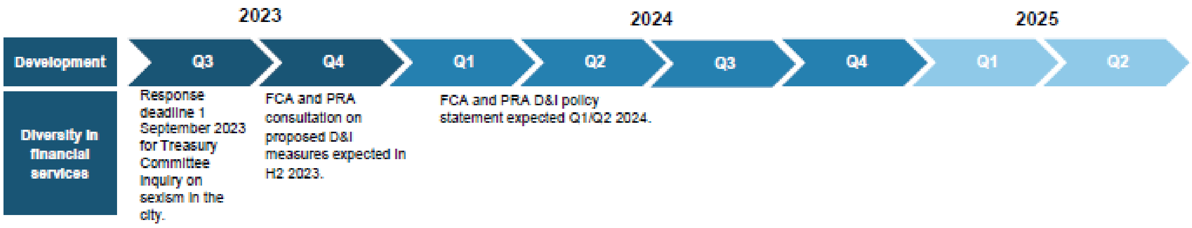
SUSTAINABILITY DISCLOSURES AND INVESTMENT PRODUCT LABELS



- 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).

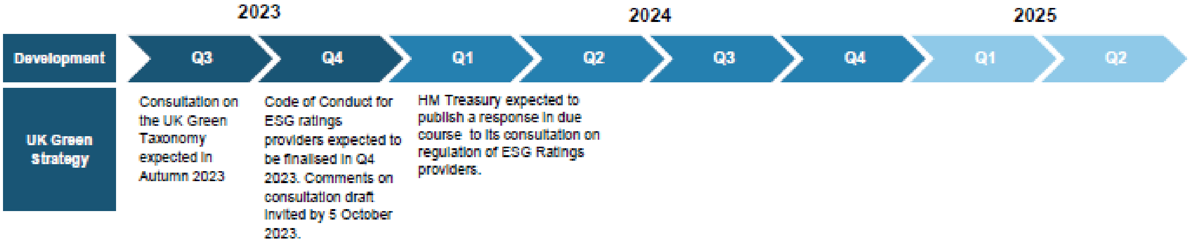
- On the forward horizon
- The FCA has indicated that it expects to publish its policy statement, containing its final rules on sustainability disclosure requirements and investment labels, in Q4 2023. The FCA is currently proposing that a new anti-greenwashing rule would come into effect immediately 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



- 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)

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

EU TAXONOMY REGULATION

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

EU REGULATION OF ESG DATA AND RATINGS PROVIDERS

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

CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CS3D)

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

EU GREEN BOND REGULATION

Development	Q3 2023	Q4 2023	Q1 2024	Q2 2024	Q3 2024	Q4 2024	Q1 2025	Q2 2025
EU Green Bond Regulation		Adoption by Council and European Parliament expected.				Green Bond Regulation expected to enter into application 12 months after entry into force.		

HM Treasury publishes draft Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 202; *On 19 September 2023, HM Treasury published the [draft Greenhouse Gas Emissions Trading Scheme (Amendment) (No.2) Order 2023](#) (the* ***draft SI****).*

- The draft SI amends the Greenhouse Gas Emissions Trading Scheme Order 2020 (also known as the UK ETS Order), Commission Delegated Regulation (EU) 2019/331, Commission Implementing Regulation (EU) 2019/1842 and the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021.

A new EU carbon trading scheme is being created for heating and transport fuel supply

- Fuel providers must acquire and surrender allowances by 31 May annually for carbon emissions from burning fuel that they supply
- Auctions of allowances to start in 2027 (unless delayed a year for exceptional energy prices in 2026)

Overview

- The EU is establishing a stand-alone emissions trading system (which, for want of a better name, is currently known as 'EU ETS 2'[1]). It will target reductions of carbon dioxide emissions from the combustion of fuel used in sectors that are not currently required to comply with the existing EU emissions trading system, with the objective being to extend the success of the existing EU ETS scheme (in this alert, EU ETS 1) to 75 per cent of EU industry and thereby contribute to the achievement of the EU's 2050 net zero target.
- The amending directive creating the new scheme came into force on 8 June 2023. The activities that will fall within EU ETS 2 are the release of numerous types of fuel destined for combustion in the road transport sector, buildings, energy, manufacturing and construction industries.
- Trading in allowances under the new scheme will be possible after the first auctions begin in 2027. This is unless the Commission uses its right to delay the start of auctions by a year if there are exceptionally high energy prices (mindful of the energy price impacts of the war in Ukraine). This brake on launch has been included because the new scheme will increase costs for fuel suppliers, and those costs will likely be passed on to fuel users.

Highlights

- "Regulated entities" will be required to obtain a permit by 1 January 2025 and to monitor, report and verify emissions from fuel supplied to users within the in-scope sectors.
- Auctions of allowances by Member States will commence in 2027.
- Permit holders will be required to surrender sufficient allowances to match the associated emissions by 31 May each year.
- Allowances will be fully tradable and held at the EU Registry in the same manner as allowances issued under EU ETS 1.
- The two schemes (1 and 2) are initially separate, though they may later be amalgamated.
- Permit holders must report how much of the cost they have passed on to their customers in fuel prices, and the Commission reserves the right to take action if there is evidence of profiteering.
- Since EU ETS 2 is created as a new chapter of the existing Emissions Trading Directive, under the Markets in Financial Instruments Directive, allowances would constitute financial instruments on the same basis as allowances under EU ETS 1.

Scope

EU ETS 2 will apply to the following activities:

Release of fuel for consumption in any of the following sectors:

1. Road transportation, excluding the use of agricultural vehicles on paved roads
2. Commercial/institutional buildings
3. Residential buildings
4. Combined Heat and Power Generation and Heat Plants, providing heat to buildings in 2 and 3 above
5. Energy Industries[2]
6. Manufacturing Industries and construction[3]

- Member States have the option to bring further sectors into the scheme within their own jurisdictions, subject to the Commission's approval.

Regulated entities

- The scheme does not seek to impose obligations on individual vehicle and buildings owners who use the fuel and create the emissions, as this was felt to be unworkable, but instead the person responsible for compliance (the regulated entity) is generally the person liable to pay excise duty on the fuel, rather than the final fuel consumer.
- The definition of "regulated entity" is a broad one. This makes it somewhat difficult to determine who exactly the regulated entity is and involves the application of EU excise laws. Generally speaking, it will be (in priority order): (i) the warehouse keeper (if the fuel is taxed at a tax warehouse), (ii) the person storing or holding the goods outside a tax warehouse, (iii) the producer or the importer, (iv) the person who would have been liable to pay excise duty if the goods were not exempt or (v) failing any of the above, any person the relevant Member State designates to be liable.
- The regulated entity therefore could be, for example, a refiner dispensing fuel at its road loading terminal or the person importing ready-made fuel into the country for distribution to petrol station forecourts, depending on the circumstances. Excise can, however, also become payable due to certain infringements, for example, during a movement of excise goods under a duty suspension arrangement. In that instance, even a transporter of fuel can become liable.
- Member States also have the ability to designate who should be liable if there is more than one person within the relevant category.
- There is also an important distinction to be made between natural gas for heating and fuels for road transport – the distinction being that the moment excise duties become due is not the same. For natural gas, the excise duty arises at the moment of delivery to the final customer. The regulated entity will be the one who supplies the gas to the end-user. For road fuels, the release for consumption takes place when the fuel is sent from the tax warehouse to the fuel station. The regulated entity will be the tax warehouse.

Which fuels are included?

- The types of fuel covered by the EU ETS 2 are many and varied. They include certain listed fuels as well as any product that is intended for use, offered for sale or used as motor fuel or heating fuel, including where the fuel is used to generate electricity. They specifically include:
  - Leaded and unleaded petrol
  - Gas oil
  - Kerosene
  - LPG
  - Natural gas

- Heavy fuel oil
- Coal and coke
- Electricity

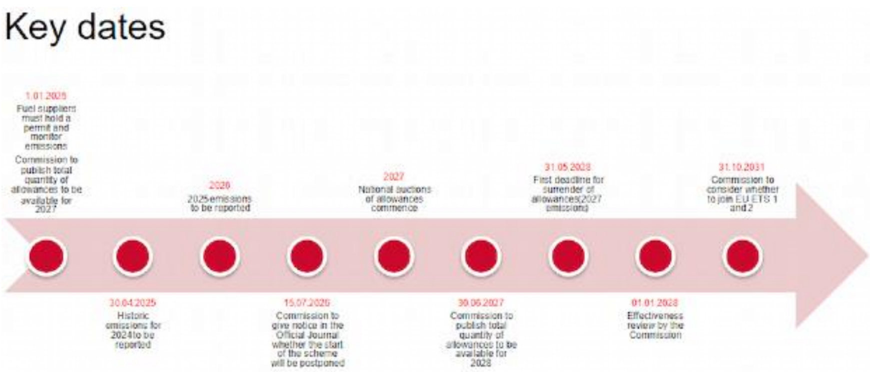
- They also include certain categories of biofuel. However, certain categories of fuel are exempted:

1. Those used in activities that are already regulated under EU ETS 1 (e.g., fuel combusted at any facility with a thermal input generating capacity of 20MW or more, such as a power station[4]), except:

   a. If used for transport of greenhouse gases for geological storage
   b. If used in an installation notified by a Member State that in each of the three years preceding the notification either:
      i. Has reported emissions of less than 2,500 tonnes of carbon dioxide equivalent, disregarding emissions from biomass or
      ii. Is a reserve or backup unit that did not operate more than 300 hours per year

2. Fuels for which the applicable emission factor is zero, e.g., biomass
3. Hazardous or municipal waste used as fuel

Figure 1: Key dates for implementation of EU ETS 2



Compliance

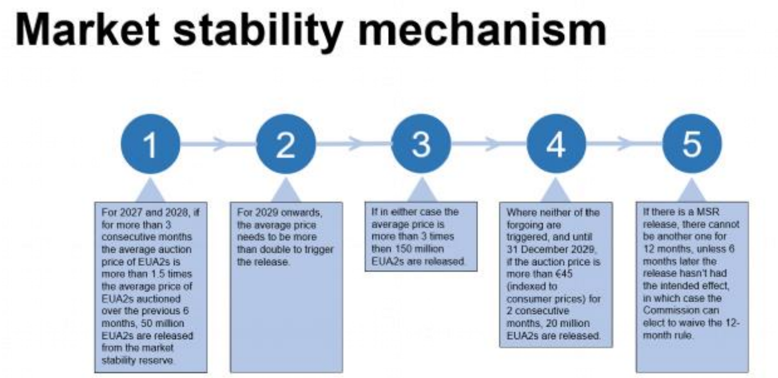
- Requirement for a permit
- From 1 January 2025, it will be illegal for a regulated entity to dispense fuels that are subject to EU ETS 2 without a permit obtained from its competent authority. Applications for a permit have to include information regarding the end use to which the fuel will be put. This may require applicants to gather this information from the persons they supply, who may in turn need to obtain information from further down their own supply chain. This could be onerous where a fuel has multiple potential uses and many categories of buyer. Guidance is likely to be needed to clarify this.
- Penalties for non-compliance, such as dispensing fuel without a permit, will be contained in Member State domestic legislation.
- Monitoring, reporting and verification
- The monitoring, reporting and verification procedures laid down for EU ETS 1 also apply to EU ETS 2 emissions, with certain small modifications. Permit holders must record emissions corresponding to the quantities of fuels they dispense, including precise quantities of each type of fuel supplied and its final use, and they must report them to their competent authority in the following year beginning with 2026.
- The obligation to monitor starts from 2025, with the first monitoring reports being due in 2026. However, before then, permit holders are under a separate requirement to report their 2024 emissions on 30 April

2025. In practice, therefore, this would appear to mean that they must have 'up and running' a system in place to identify precisely the quantities of fuel being sold for uses falling within the EU ETS 2 scheme from as early as 1 January 2024.

- From 2028, permit holders must also report (by 30 April each year) how much of the cost of buying EU ETS 2 allowances they have passed on to their customers (the precise requirements and format for this are to be set out in secondary legislation). The Commission will be checking for 'improper practices', which might potentially include the fuel supplier seeking to profiteer by inflating the costs that are passed on.
- Monitoring reports must also be independently verified.
- Member States can, however, opt to allow simplified monitoring, reporting and verification where annual emissions are less than 1000tCO2e (in the same manner as for EU ETS 1).
- Surrender obligation
- Permit holders must surrender EU ETS 2 allowances for cancellation by 31 May each year to cover the emissions corresponding to the quantity of fuel they have "released for consumption" in the preceding calendar year. The first surrender date will be 31 May 2028.
- Member State penalties for non-compliance must include an excess emissions penalty for missing allowances, in the same way as for EU ETS 1.
- A derogation from the requirement to surrender allowances is available for fuel suppliers who are subject to national carbon taxes that are in force by the end of 2023 and have been notified to the Commission.
- Administration of the scheme
- Setting the cap
- The total quantity of allowances made available under EU ETS 2 is intended to decrease annually in a linear trajectory to reach the emissions reduction target for 2030, based on achieving 43 per cent emissions reductions from the buildings and road transport sectors by 2030 compared to 2005 and, combined with the additional sectors, a total contribution of 42 per cent.
- When auctioning starts in 2027, the cap will be set by the Commission by reference to the 2024 baseline year for the sectors covered in EU ETS 2. This will then be adjusted by a linear reduction factor of 5.1 per cent.
- From 2028 onwards, the baseline changes to the average emissions that have been reported within EU ETS 2 for 2024-2026 and the linear reduction factor becomes 5.38 per cent. However, the reduction factor changes if average emissions reported for 2024-2026 are more than 2 per cent higher than the cap set for 2025, so long as the increase does not result from a less than 5 per cent difference between the emissions reported and the 2025 inventory data for the EU ETS 2 sectors. If so, the reduction factor is determined according to a specific formula.
- From 2028, the cap is to be adjusted each year to compensate for allowances surrendered where there has been double counting or where allowances have been erroneously reported from non-EU ETS 2 sectors (including those within EU ETS 1).
- If a Member State opts to apply EU ETS 2 to further sectors, the cap for the following year will be increased accordingly, provided a report of the verified emissions for the new sector has been submitted to the Commission by 30 June.
- Auctioning
- Allowances under EU ETS 2 must be auctioned separately from EUAs issued under EU ETS 1, but the applicable auction conditions will be the same for both.
- In 2027, the number of EU ETS 2 allowances to be auctioned will be front-loaded, i.e., topped up by an extra 30 per cent. The allowances in that 30 per cent can only be used for surrendering and may be auctioned until 31 May 2028. This suggests they will not be available for trading to non-regulated entities, but it would still seem to allow trading among regulated entities.
- A corresponding number of allowances will be deducted from the number of allowances that are released for auction between 2029 and 2030.
- Deductions and use of proceeds
- In order to compensate low-income households against the potentially inflationary effect of the EU ETS 2 scheme on heating bills, the Social Climate Fund has been created, and the auction proceeds of 150 million

EU ETS 2 allowances will be contributed to it in 2027. Further contributions of auction proceeds over the period 2027-2032 are scheduled to raise the fund value to a maximum of € 65 billion, subject to annual caps.

- Learning from past instability in the EU ETS 1 market, there will also be a market stability reserve for EU ETS 2. This acts as a pressure valve on the price of an allowance. Figure 2 explains how the reserve will be triggered.
- In 2027, 600 million EU ETS 2 allowances will be set aside to fund the reserve.
- The remaining auction proceeds will be redistributed among the Member States in pre-agreed shares but must be used by Member States for authorised purposes only, e.g., to support decarbonisation of heating and cooling of buildings or to reduce energy demand in buildings.
- Figure 2: Key steps in triggering the the market stability reserve



Possible postponement to 2028; *The scheme could be pushed back to start in 2028 in the event of exceptionally high fuel prices, if one of two conditions is met:*

1. Average TTF gas prices for 1H 2026 are higher than the average in February and March 2022 or
2. Average Brent Crude prices for 1H 2026 are more than double the average during 2020-2025

- If the scheme is postponed, the start of auctioning will be in 2028, and the first surrender deadline will be 31 May 2029.

2. EU ETS 2 is contained in a new chapter IVa of the EU ETS directive (2003/87/EC) that was inserted by new [Directive (EU) 2023/959](#) adopted on 10 May 2023 and published in the Official Journal on 16 May 2023.
3. As defined in the 2006 IPCC Guidelines for National Greenhouse Gas Inventories. This includes (but is not limited to) electricity generation, petroleum refining and manufacture of solid fuels.
4. As defined in the 2006 IPCC Guidelines for National Greenhouse Gas Inventories. This includes (but is not limited to) iron and steel, chemicals, mining and quarrying, non-ferrous metals and wood and wood products.
5. As set out in Annex I of Regulation 2003/87/EC.

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Quarterly option expiry for EUAs once again offered no surprises and settlement ended calmly. There were many attempts in the past days to push market to the largest strike for September expiry at 80 EUR, however market found too much support and bottomed at 80.50 per tonne.

- Mid-term fundamentals for EUA remain bearish, which might be also confirmed by lack of aggressive buying today when CoT report was published. Investment funds increased net short position to nearly 22 million tonnes, which is the second largest net short position since 2019. Related markets, especially German power futures for calendar year 2024, also showed some signs of weakness in the past week. Price has been rejected from 130 EUR for MWh and it seems to be approaching 125 EUR as a next rounded level.
- Despite bearish sentiment and downward pressure seen in carbon and German power futures for 2024, front month gas and front month power prices started to trend to the upside recently, which might appear unusual. Extended outage of Norwegian pipeline has caused panic buying and pushed front month prices up a few euros, however underground storages are more than 94 percent full and weather forecast remains mild. At the moment it seems that EUAs are happy to trade between 80 and 85 EUR per tonne, however a major change in fundamentals could send prices in either direction.
- German power prices are down by 2.75 EUR since last week, with the front year contract trading at 125.75 EUR/MWh. API2 coal prices are up by 2.00 USD since last week, with the Cal-24 contract trading at 130.00 USD/tonne. Front year gas prices are down by 1.800 EUR since last week, with the TTF Cal-24 trading at 50.050 EUR/MWh. EUR/USD is down by 20 points since last week and is currently trading 1.0720.

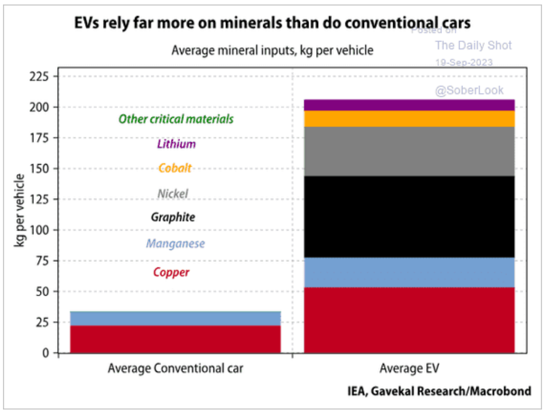
TomDispatch's Stan Cox highlights a potentially positive development on the climate change front emerging from the US state of Montana:

- The wording in Article IX, Section 1, of Montana's constitution couldn't be clearer: "The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Accordingly, in April, a district court judge in Yellowstone County voided a permit for a natural-gas-fired power plant under construction there. Over its lifetime, it would have released an estimated 23 million tons of planet-roasting carbon dioxide and that, ruled the judge, was incompatible with a "clean and healthful environment" in Montana or, for that matter, anywhere else.
- Within a week, the state legislature had voted to reinforce a 2011 law barring the consideration of climate change in policymaking and so allowing the construction of the power plant to resume. But that wasn't the end of the matter. Last month, the lawmakers were slapped down a second time when another district judge ruled in favor

of a group of 16 youthful Montanans in a suit filed in 2020 seeking to strike down that very 2011 anti-climate legislation.

- In her ruling, Judge Kathy Seeley wrote, "Montana's climate, environment, and natural resources are unconstitutionally degraded and depleted due to the current atmospheric concentration of [greenhouse gases] and climate change." She added that "every additional ton of greenhouse gas emissions exacerbates Plaintiffs' injuries and risks locking in irreversible climate injuries." The state, she made it abundantly clear, is obligated to correct such a situation.
- The plaintiffs, who were all in their teens or younger when their suit, *Held v. Montana*, was filed three years ago, are represented by a nonprofit group, Our Children's Trust. Since 2011, it has been pursuing climate action on behalf of this country's youth in the courts of all 50 states. The Montana case was simply the first to go to trial. The second, a climate case against the Hawaii Department of Transportation, is scheduled to begin next summer.
- For all I know this case will eventually get to the US Supreme Court and the conservative majority will rule against the plaintiffs and then order the state of Montana to create a giant coal bonfire just for shits and giggles. Still, it's encouraging that the reality of what's ahead is getting legal traction.

: Here is reliance on key minerals in vehicle production:



ICE readies airline carbon futures for Oct. launch Intercontinental Exchange will launch its first carbon credit futures on Oct. 9 to complement the carbon credit futures regime for airlines. "Underpinned by a policy framework provided by the International Civil Aviation Organisation (ICAO), and with a natural pool of buyers in the form of airline operators, we believe this contract will appeal to a wide range of market participants," said Gordon Bennett, ICE's managing director of utility markets. Full Story: Global Investor (subscription required)

Climate graphic of the week: Catastrophic Libyan flooding fuelled by warming oceans An intense cyclone known as a 'medicane' led to more than 400mm of rain falling in 24 hours

TNFD v1.0: The (r)evolution of nature-related risk management and reporting; *The final release of the Taskforce on Nature-related Financial Disclosures (TNFD)'s risk management and disclosure framework (v1.0) provides new clarity and guidance on how organisations should approach nature-related risks. The framework presents an opportunity for them to benefit from taking action early to better understand and manage nature-related risks in their business.*

- On September 18th 2023, the TNFD released its complete disclosure recommendations, alongside several guidance documents covering its nature-related risk management and disclosure framework – collectively referred to as v1.0 of the TNFD framework.
- This blog focuses on the key components of the v1.0 framework and its alignment with global sustainability reporting standards. The key points include:
- Organisations have the option to use different materiality assessment approaches, but are recommended by TNFD to use the ISSB's definition of materiality as a baseline.
- The TNFD has provided accompanying guidance on how organisations can assess and manage nature-related issues via a LEAP approach, as well as which disclosure indicators and metrics companies should disclose and how organisations can conduct scenario analysis.
- We think the TNFD will provide the market with an instrument to respond to growing expectations in global (mandatory) nature reporting.
- The blog also provides an overview of the initial steps that organisations – companies and financial institutions – can take. Early action, catalysed by the release of the TNFD framework, can result in benefits for organisations

EU CBAM Implementing Regulation on the reporting obligations has been officially published; *With less than two weeks until the start of the Carbon Border Adjustment Mechanism (CBAM) transitional period (1 October 2023 – 31 December 2025), the European Commission published the CBAM Implementing Regulation on the reporting obligations in the Official Journal of the European Union on 15 September 2023. During the transitional period, declarants are required to submit quarterly CBAM reports to the CBAM Transitional Registry no later than one month after the end of the relevant quarter. Below, we explain the key elements of the CBAM Implementing Regulation.*

- Background
- The CBAM Regulation entered into force on 17 May 2023. During the transitional period (1 October 2023 – 31 December 2025), declarants must submit quarterly CBAM reports that include: (i) the total quantity of imported goods; (ii) the direct and indirect emissions embedded in the imported goods; and (iii) any carbon price effectively paid in the country of origin for the embedded emissions.
- On 13 June 2023, the European Commission communicated a draft Implementing Regulation on reporting obligations and conducted a public consultation until 11 July 2023. After reviewing comments from interested parties, on 17 August 2023, the Commission published the final text of the Implementing Regulation, two CBAM guidance documents, and an Excel template for reporting embedded emissions. On 15 September 2023, the Implementing Regulation was officially published in the Official Journal of the European Union.
- Key elements of the Implementing Regulation
- General comments: Compared to the draft Implementing Regulation, there are no major changes in the final text. However, with respect to the calculation of embedded emissions, the Commission deleted references to the "weighted average across all used production routes". This means that operators can calculate actual embedded emissions by separating production processes without the weighted average of the embedded emissions.
- Quarterly reports: Declarants placing CBAM goods on the European Union (EU) market must submit quarterly CBAM reports. Those reports must be submitted by a reporting declarant, who could be one of the following persons: (i) the importer lodging the customs declaration to release CBAM goods for free circulation; (ii) the

person with authorisation to lodge a customs declaration who declares the import of CBAM goods; or (iii) the indirect customs representative.

- Reporting elements: The CBAM report must include the following information:
- Imported goods: (i) the total quantity of imported goods; and (ii) the type of goods, as identified by the EU Combined Nomenclature code.
- Embedded emissions: (i) the country of origin of the imported goods; (ii) the installation where they were produced; (iii) the production route used and information on specific parameters qualifying the indicated production route chosen; (iv) for steel goods, the identification number of the specific steel mill; and (v) the amount of specific direct emissions of the goods (see Annex III).
- Indirect emissions: (i) electricity consumption; (ii) confirmation of whether the declarant is reporting actual emissions or default values; (iii) the corresponding emissions factor; and (iv) the amount of specific indirect emissions (see Annex IV).
- Carbon price paid in the country of origin for the embedded emissions: (i) the form of carbon price; (ii) the country of origin; (iii) any rebate or other form of compensation available in the country that would have resulted in a reduction of that carbon price; (iv) reference to the legal provisions that form the basis for the carbon price, the rebate or any other form of compensation; (v) the type of product, as identified by the CN code; (vi) the quantity of embedded emissions covered by the carbon price; (vii) the quantity of embedded emissions covered by any rebate or other form of compensation, including free allocations, if applicable; and (viii) the monetary amount.
- Calculation of embedded emissions: The Implementing Regulation provides flexibility regarding the methods that can be used to calculate embedded emissions of CBAM goods during the transitional period. Reporting declarants will have the choice of reporting in one of the following three ways (but as of 1 January 2025, only the EU method will be accepted):
- Reporting according to the EU method (see Annex III), using (i) the calculation-based approach or (ii) the measurement-based approach (the mandatory approach as of 1 January 2025);
- Reporting based on equivalent third country national systems, which can be used until 31 December 2024; or
- Reporting based on another method (e.g., default values to be published by the Commission), which can be used until 31 July 2024.
- Default values: Default values, or estimations by non-EU operators, may be used for precursors of complex goods contributing up to 20% of the total for complex goods. At the time of writing this alert, the Commission has not published the default values, but it is expected that they will be published in the coming days before the transitional period starts.
- Review of CBAM reports: The Commission may review CBAM reports to assess compliance with the reporting obligations within three months after the last CBAM report is submitted. Further, the competent authorities of EU member states where a reporting declarant is established must review and assess the data, information and list of reporting declarants. After 31 December 2025, the competent authorities may initiate a correction procedure in cases of incomplete or incorrect CBAM reports or failure to submit a CBAM report.
- Penalty: A penalty will be imposed if the reporting declarant has not taken the necessary steps to comply with the reporting obligations or to correct the CBAM report. The penalty for each tonne of unreported embedded emissions will be between €10 and €50. This is significant, especially when compared with the price paid by EU producers for actual emissions: the price for a tonne of carbon under the EU Emission Trading Scheme is around €100, but most allowances are given out free of charge.
- CBAM Transitional Registry: The Commission will establish an electronic database, the CBAM Transitional Registry, to collect the information reported during the transitional period. The CBAM Transitional Registry will enable communication, checks and information exchange between the Commission, the competent authorities, the customs authorities of the member states and reporting declarants.
- Guidance documents and webinars
- On 17 August 2023, the Commission published two guidance documents on the reporting obligations for EU importers of CBAM goods and non-EU installation operators, as well as a reporting template. The guidance documents explain the CBAM requirements for EU importers and non-EU operators of installations producing CBAM goods during the transitional period. Further, while the use of the reporting template in Excel is voluntary, the Commission stresses that the use of a common template greatly simplifies the communication.

- Additionally, the Commission will host six online webinars in the coming weeks, which will cover general and sector-specific features of the CBAM. Interested stakeholders can register to participate in the webinars and will be able to ask questions, which will be answered live. The registration links, when active, will be available here.
- Cement: 15 September 2023, 10am-11:30am (CET)
- Aluminium: 21 September 2023, 2pm-3:30pm (CET)
- Fertilisers: 26 September 2023, 11:30am-1pm (CET)
- Electricity: 28 September 2023, 9:30am-11am (CET)
- Hydrogen: 3 October 2023, 3:30pm-5pm (CET)
- Iron and steel: 5 October 2023, 4pm-5:30pm (CET)
- Looking ahead
- When the transitional period starts on 1 October 2023, non-EU manufacturers of products currently in the CBAM scope will have to calculate accurately the emissions embedded in the goods they import and submit this information to EU importers. Using this information, EU importers will have to submit a quarterly CBAM report by 31 January 2024 for the period of October 2023 – December 2023.

New York Climate Week kicking off this week with thousands of people marching in NYC calling for an end to fossil fuel use. *The urgency of the message was felt globally, with new data from the Stockholm Resilience Centre earlier this month showing that six of the nine planetary boundaries have been crossed as a result of human activity, risking irreversible harm. In an ironic twist, the UK government chose the very same week to announce a dramatic and dismal U-turn on several of its green policies as detailed in our UK update.*

Against this backdrop, there are some positive developments from the New York summit already, particularly for nature and biodiversity. Earlier this week, we saw the launch of the final recommendations from the Taskforce on Nature-related Disclosures (TNFD). This has been broadly well received, with the likes of the environmental disclosure platform, CDP announcing its intention to align its disclosure platform with the new framework, capturing nearing 20,000 companies globally

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Energy & Commodities

Ends. 02 Oct 2023