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 05th July 2023

The wider economic and political environment; *Across the board, authorities continue to emphasise potential financial stability risks. In their spring report, the three European Supervisory Authorities (ESAs) pointed to recent bank failures, liquidity pressures, high interest rates and volatile asset prices, and called for `vigilance in the face of mounting risks'.*

- Other firms continue to be in focus too. EIOPA's Risk Dashboard highlighted macro and market risks as being of top concern to insurers, while all other risk categories remained at medium levels. The ESRB's Non-Bank Financial Intermediation Risk Monitor flagged credit risk, liquidity risk and excessive leverage as the three main vulnerabilities for investment funds, and, for the first time, extended its monitoring to include cryptoassets. Also for the first time, the Bank of England has launched a system-wide exploratory stress test to improve its understanding of the behaviour of banks and non-banks in stressed market conditions. And the ECB's latest financial stability review warned of further disorderly adjustments from rate rises on `non-banks', and evaluated potential spillovers between the bank and non-bank sector.
- The ECB's review acknowledged that rising rates are revealing "fragilities and fault lines" for banks, which have been under scrutiny recently following recent stresses in the sector. While euro area banks have remained resilient, the ECB notes that higher funding costs and lower asset quality may weigh on profitability.

- Against this backdrop, following agreement on the Windsor Framework in February, the European Commission (EC) and the UK Government signed an MoU for structured regulatory cooperation.

Progressing the regulatory agenda; *EU authorities and regulators continue to progress new and existing initiatives across various files.*

- After several years of delay, the EC has presented renewed proposals for a **Crisis Management and Deposit Insurance** (CDMI) scheme, in an attempt to stop Member States utilising public funds to support smaller failing banks — significant pushback is expected. The EC has also set out ambitious proposals for a **retail investment strategy** (see article below) and other developments are imminent, including a bill setting out the legal framework for the **digital euro**.
- Some frameworks have now been finalised. MEPs voted through both the finalised Markets in Cryptoasset (**MiCA**) and **Transfer of Funds** legislation, which will both apply from 30 December 2024. The former sets governance standards for crypto companies and introduces key demands on stablecoins, while the latter ensures that crypto transfers can always be traced, and suspicious transactions can be blocked.

Progress on other initiatives remains mixed:

- **Trilogues on the EU Banking Package (including CRR3 and CRD6) have now finally concluded**, resolving deadlocks on the application of the output floor, fit and proper checks on bank directors, third country branches and supervisory independence. The deal also introduces new additions that go beyond the original Basel proposals, including transitional cryptoasset prudential requirements and ESG risk management.
- For capital markets, **MiFIR** trilogues are struggling to progress the political agreement into a technical framework for a consolidated tape despite agreeing a ban on retail equities payment for order flow, while **CSDR** trilogues have completed with ESMA responsibilities, tougher rules for foreign players and conditions around the use of mandatory buy-in.
- For asset management, **AIFMD** trilogues have focused on finalising details on various topics including delegation of portfolio management and liquidity management tools.
- MEPs' version of the **AI Act** has been agreed and trilogues can now begin. The rules, which would become the first law on AI by a major jurisdiction, classifies systems by risk and mandates various development and use requirements.
- **Solvency II reforms** continue to be stalled in the European Parliament over capital relief and sustainability. Meanwhile the International Association of Insurance Supervisors (IAIS) has released three consultations on 23 June, looking at valuation, capital adequacy and the global Insurance Capital Standard (ICS) as a Prescribed Capital Standard (PCS). This is a key step towards setting the expectations of how the ICS should be used by the supervisors once the monitoring period has concluded.
- The ESAs are considering how they will operate the joint-oversight model for the **Digital Operational Resilience Act** (DORA), which is set to come into force in mid-January 2025. A joint DP seeks stakeholder input, in particular on the criteria for critical ICT third-party providers (CTPPs) and the oversight fees to be levied against them.

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Governance
Design & process
Staffing & expertise
Behaviour & escalation
Tools, analytics & monitoring
Near misses & failures

	Risk management framework issue	Potential impact	Discussion of control & mitigation measures
	Governance		
1	Board awareness & understanding The firm's overall risk management frameworks, including use of the 3 Lines Model overview, may not be well or consistently understood at senior levels.	Boards and senior management are responsible for but may not be sufficiently aware of specific problems thereby allowing unwanted risks to persist or propagate.	• 3 Lines Model reviews could be a standing agenda item with regular presentations to board and senior management on efficacy, completeness and other matters. • Risk agenda items could include 3 Lines Model considerations (e.g., metrics on escalations, overrides, process complaints). • Firms could consider inclusion of a periodic review of the 3 Line responsibilities in allocated SM&CR responsibilities. • An external Audit perspective could be sought on the effectiveness of the Model as a whole rather than current issues between lines or the speed of resolution of past issues raised. • The Board could ensure that staff at all levels in all functions have a basic working knowledge of the 3 Lines Model. Without it, risk management may be ineffectively implemented or 2nd Line staff doing 1st Line work.

2	Design reviews Risk framework design or proposed changes may be inefficient or ineffective.	Insufficient consideration and challenge on proposals may allow weaknesses to remain undetected or under-managed.	• Periodic and rigorous analysis of risk infrastructure using the 3 Lines Model as a helpful reference may highlight areas of actual or potential weakness. •Thorough reviews could include deep dive analyses of a selected number of business units and operational processes. • Design decisions can be actively challenged by boards and/or senior management. • Practical examples could include efforts to understand the rationale for decisions driven by historical preferences ("we have always done things this way") or bias ("this is what our infrastructure can deliver"). • Ensure continuing alignment with business strategies supported by a potentially flexible operating model. • Escalation can help resolve areas of outstanding and especially prolonged disagreement between units within and/or between the 1st and 2nd Line. • Significant changes in the 3 Lines Model deserve high visibility/transparency as well as senior management oversight. • Engage the 3rd Line in design and implementation of significant changes to infrastructure and/or the Model.
3	Legal entity complexity Complex organisational design may overlook or de-emphasise structural weaknesses in checks, balance and assurance.	Complex, multiple entity legal structures or geographic jurisdictions can compromise independence and oversight directly or via multi-dimensional reporting matrices.	• Risks arising from initiatives owned by two or more legal entities should be specifically addressed to ensure direct, non-duplicative oversight is in place and understood. • Risks by definition must reside in one legal entity where the ultimate loss would be booked; but attention must also be paid to the role and risks in inter-affiliate service provision to the booking entity. • Senior governance structures that can undermine the desired checks and balances of a 3 Lines Model should be specifically identified and addressed (e.g., where 1st and 2nd Line staff could both report to the same regional head, two or three-dimensional reporting matrices). • Take care to note that a governance structure is not the same as a reporting line. • Awareness of local requirements at group HQ may not match the local legal entity expectations/needs. Escalate to resolve. • Adaptation of the Model to meet local large exposure rules may undercut the efficient or consistent application of the Model. [e.g., French 'Permanent Controls' construct].

4	**Business changes** Risks are treated as static or at least insufficiently dynamic and evolving.	Business expansion can give rise to new or increased levels of risk.	• Proposals to expand/grow the business should be specifically reviewed to ensure resourcing in each line is adequate. • Growth can lead to unwanted duplication. Consider periodic reviews of resourcing decisions line by line and/or layer by layer including the creation of new roles and cessation of unwanted duplicate roles, processes or reporting. • Assumptions around risks being consistent between locations/activities or over time may mean that new risks are not properly calibrated in a business growth scenario.
5	**Escalation** Material issues are not escalated to board or senior management level or become lost in the noise of excessive escalation.	A lack of clear, working escalation channels may delay or obviate senior awareness and timely action.	• Policies for escalation must be clear, understood, followed and monitored for use or lack of use. • Caution is needed where senior forums are heavily represented by 1st Line executives which can thereby introduce an unwanted bias. • Clear escalation from internal stakeholders, if additionally framed in a 3 Lines Model context, can provide useful insight into Model effectiveness. • Clear and common awareness of official escalation and challenge processes is necessary, particularly as the business grows in scale, scope and complexity. Notwithstanding that risks, issues and losses are owned by the 1st Line, escalation can be via 2nd or 3rd Line staff or channels.
6	**Tone from above** Boards and senior management may not consistently display high standards in their roles.	Poor 'Tone from the Top/Above' in words or behaviour can undermine culture at all levels.	• Boards and senior managers should be mindful of their actions as well as what they espouse in terms of values and behaviours in their roles as it can undermine the effectiveness of 3 Lines Model objectives as well as the risk management framework more generally. • Frequent, clear and consistent messaging should support the organisation's approach to risk a management including the important contribution of the 3 Lines approach. • Top managers could proactively identify areas of weakness or specific improvement needs and then speak out in support of positive change.

7	Conduct & culture MI Assessment of the efficacy of risk management frameworks and infrastructure and the 3 Lines Model itself may be misinformed or ill-judged due to weaknesses in Conduct MI.	Boards, management and staff can be or remain misinformed on the effectiveness of the 3 Lines Model across the organisation if not provided with robust and effective MI.	• Specific information addressing the health and effectiveness of the risk management framework as examined using the 3 Lines Model lens, particularly during periods of change, should be developed and provided to senior level assessment. • MI metrics could include excessive use of overrides, escalations activity on positive and negative outcomes, complaints and whistle-blowing information, delays in agreement over severity or requirements of Audit-raised issues, staff evaluation/feedback surveys on the 3 Lines.
8	Regulatory engagement Regulators could be misinformed if preliminary reports and assessments are not adequately challenged.	Regulators can be misinformed about the conclusions regarding the 3 Lines Model and the effectiveness of risk management framework and infrastructure across the organisation.	• Regulatory engagement should be proactive and based upon an accurate 3 Lines assessment of the risk management framework in place and/or proposed and should include regular updates on the evolution and advancement of the framework using the 3 Lines Model as a reference.
	Design & process		

9	Firmwide framework completeness Risk, controls and assurance do not cover all businesses, products, risks or locations in an effective or efficient manner or at all.	Adverse events can occur or go unrecognised due to incomplete oversight and application of the 3 Lines Model or divergence from risk appetite across businesses, products, legal entities or geographies.	• Risk management frameworks need to cover all activities of an organisation where risk in some form can arise and using the 3 Lines Model can help identify gaps. • Consistent data management, taxonomy, processing and formatting is essential for enabling sensible aggregation across the framework. • Enterprise-wide reporting of risks can support the reporting of risk on a like-for-like basis (per risk type) and provide global profiles against risk appetite. • Controls are generally a 1st Line responsibility and the presence of adequate controls should be cross checked against a live and comprehensive risk register. This review can be undertaken within each of the 1st and 2nd Line as well as between them. • Alignment with risk appetite and how it is measured and monitored is essential. • It is important to ensure that individual responsibilities are fully defined and that the 2nd Line is widely inclusive of supporting units (Compliance, Risk Management, Legal, HR, Information Security, Finance, etc.) • Some large firms note that organising the 2nd Line by risk type can be very effective; others suggest alignment by business type, knowledge and/or expertise.
10	Policy & process gaps Policy & process design is incomplete or lacks clarity.	Gaps in documented policies, procedures and controls can lead to higher levels of unwanted risk and adverse outcomes.	• Using the 3 Lines Model as a lens can help identify gaps or flaws where further risks can be identified and controls implemented in the appropriate place across the full range of businesses and products and their life-cycles. • Clear change management protocols should be in place to ensure proper handovers and continued coverage as changes occur over time. • Regular reviews of the policy library and associated procedures and controls are necessary as is good hygiene to identify any gaps as the activities covered are dynamic. • The 3rd Line can play a useful role in policy design and implementation.

11	Alignment of purpose and outcomes Failure of the 1st and 2nd Lines to be fully aligned on purpose and intended outcomes will result in sub-optimal firm performance if not adverse consequences.	Above and beyond their separate mandates, the 1st and 2nd Line need to share a commonality of purpose, culture and organisational goals that inform behaviour and decision-making.	• Consider joint sessions to articulate the commonality of purpose between the lines. • Actively discuss how organisational purpose manifests in the activity of teams and individuals in Lines 1 and 2. • Collaborate on the development of operating mandates for their respective teams and activities. • Seek leadership engagement from team members who exercise influence due to experience and/or high income generation. • Alignment should fully extend across strategy and risk appetite.
12	Mandate clarity Operating mandates across functional units or lines are unclear or dysfunctional.	Mandates may become incomplete or unclear leading to gaps in coverage and clarity about responsibilities.	• Establishing and promoting a common organisational purpose and the achievement of clear outcomes can drive better coordinated engagement, communication and hybrid working models across and within lines but also with external parties including regulators. • A well-embedded statement of purpose can serve as a useful foundation for mandates at all levels across an organisation. • Staff in each line should have a clear and consistent statement of their collective and individual roles and responsibilities, ideally reflecting the values that underpin them. • Ways of working (in office vs remote) should be noted so as to reduce strain or eliminate gaps. • Beware of overly narrow mandates or prioritisation that can curtail the provision of essential services (e.g., the shift away from provision of advice by the 2nd Line to the 1st Line is a recent example of unhelpful constraint).
13	Mission creep Operating mandates shift without adequate cross-functional or managerial transparency and/or approval.	Mission creep can result in over or under-stepping responsibilities, for example, in intervening or reporting on controls, leading to unwanted risk or duplication of activity.	• Roles and responsibilities should be agreed and periodically reviewed and reaffirmed across lines and functions. • There should be formal governance where monitoring or oversight of a risk is relinquished by one line or unit thereof to ensure (a) it is appropriate to do so and (b) that responsibility is picked up by another unit where necessary to ensure no unwanted gap in coverage.

14	Split lines: complexity impact Implementation of split lines (e.g., 1.5 or 1B) or application of such labels can introduce additional organisational complexities sometimes with adverse consequences.	Changes to ensure role segregation and independence within a line may lead to confusion of responsibilities.	• Tone from the top should be aligned to the 3 Lines Model as implemented and reinforce specific mandates. • Clear mandates are equally important for staff in 1.5/1B units so that responsibilities are not deferred, appropriated or over-stepped. • A step-by-step process review should identify the controls needed, address where in the overall process they sit and then determine and document who takes responsibility for them. • Mediated remuneration processes for 1.5/1B units should reflect independence from but responsibility to 1st Line leadership. • Creation of 1.5/1B units can affect design, implementation and headcount but not the continuing need for investment and refinement in 2nd Line infrastructure, skills and abilities.
15	Split lines: capabilities' impact Significant reallocation of responsibilities to the 1st Line can lead to loss or degradation of responsibilities or effectiveness elsewhere.	The shift in overall accountability to the 1st Line can result in reduced ability or capacity of the 2nd Line to act as advisor to the 1st Line who would value more direction (i.e. the opposite of what would naturally be expected).	• 1st Line functions should ensure that their own staff step up to their accountabilities. • 1st Line committee structures can be helpful in ensuring adherence to strategy and risk appetite. • 1st Line units should take up accountability for processes such as operational risk, scenario analyses, RCSA, loss event management to ensure that 2nd Line staff do not lean in beyond 'oversight' and start 'doing'. • 2nd Line functions should staff and train with the intent of satisfying broad organisational needs including specific requirements of the 1st Line (e.g., the need for advice and second opinions) and peer 2nd Line functions (e.g., Model selection in accordance with internal Risk policy).

16	**Drift or deference** Extra authority is ascribed to individuals based on tenure, reputation or bias rather than formal authority with potentially adverse consequences.	1st Line staff may over rely on individuals in 1.5 or 1B units for advice or feedback roles while excluding others in Compliance, Legal or Risk functions, potentially resulting in higher levels of unwanted risk and significant adverse outcomes.	• The creation of a compliance-like function in the 1st Line, and transfer of roles and responsibilities from 2nd to 1st Line, poses a threat to adequate challenge, oversight and control. This can be addressed, at least in part, by: - Clear job roles and descriptions including clarity on the boundary between Lines 1 and 2 and other units; - Flags in policy and process documentation on the limitations to roles and responsibilities; - Detailed training which sets out clear expectations around understanding and adhering to responsibilities; - Ensuring that responsibilities of individuals or units dovetail with those set out for the senior management thereof; and - Continuing development of experience and expertise among 2nd Line staff.
17	**Materiality** Control infrastructure can become burdensome without material benefit.	Controls may become excessive, duplicative and/or repetitive which is inefficient and costly while possibly lacking significant benefit.	• Independent oversight within a line or by another is not required for all activities. • Downside risks and control benefits should be carefully weighed across risk infrastructure. • Team heads should be accorded reasonable discretion to ensure that basic procedural steps are understood and followed. • Investment in oversight and attendant costs should reflect due consideration of the impact both positive and negative of its effectiveness as a check and balance or as a control.
18	**Design input lacks diversity** Risk framework design or implementation changes may not draw on a sufficiently wide range of expertise	Choices made or decisions taken on redesign and implementation changes to infrastructure from a 3 Lines standpoint would be incomplete without engagement across lines, processes, functions and/or disciplines.	• Full periodic reviews should be a collaborative effort with the involvement of all lines including intensive engagement where appropriate. • As it is often the 2nd Line (Risk or Compliance) that designs or redesigns risk frameworks and infrastructure, there is a danger that the results may fit more closely with policy or broader control structures than with the business models or products and the attendant risks which is a key success factor.

19	Review timing & prioritisation The frequency of reviews and process updates fail to keep pace with changes in markets and the operating environment.	Infrastructure may become less effective over time due to changes in business models, legal entities, products, staffing or culture leading to unwanted or unrecognised risk.	• Process reviews together with horizon scanning on potential new risks are key elements of a design and process review. However, review efforts should then be prioritised to address key risks and target material changes: - Changes to design and processes should more often be driven by a periodic, principles-based strategic review rather than just by external events and reactive gap analyses; - Specific roles in identifying, calibrating and preparing for new risks need to be coordinated across Lines to avoid inconsistency, duplication or gaps; and - Deteriorating functionality or obsolescence of technical infrastructure should also drive priority considerations.
	Staffing & expertise		
20	Skills & experience Skills & experience may be or become inadequate for the intended responsibilities.	Evolving responsibilities can lead to unwanted risks arising from gaps in technical skills and expertise in identification, calibration and management of risks.	• People resourcing plans should align closely with the role and responsibility of the position or the team. • Attention in the 1st Line can be given to ensuring seamless aggregation of local outputs with firmwide results. • Attention in the 2nd Line can be given to strengthening advisory skills as well as market, business model, product and other technical knowledge. • Career pathing could include a period of time in cross-over roles between the 1st and 2nd Line functions. • Career pathing could include cross-training within the 2nd Line between advisory versus monitoring and testing roles. • Cross-training should be encouraged and perhaps incentivised. • Recruitment should seek to attract those open to cross-over roles and activity and have an aptitude for it.

21	**Personal accountability** Individual roles and responsibilities may not be fully captured in model design or understood and adhered to.	The full spectrum of responsibilities may not be understood or embedded in day-to-day activity with some controls ignored or overlooked by key individuals.	• The post-2008 dramatic growth in 1st Line knowledge, capability, infrastructure and attendant changes in roles and responsibilities may not be fully embraced by all staff including those in managerial or influential roles. • Prior to committing to a transaction, consideration should be given, in the round, to the wide range of possible outcomes for each of the parties involved where practically possible - including explicit indications of where responsibilities and accountabilities lie in various scenarios. • Vigilance from all staff and a willingness to speak up is needed where behaviour from any line falls below expectations and risks arise or remain unaddressed.
22	**Secondary impacts of changes** The impact of change, design or implementation decisions in one area may not be adequately reflected in related changes needed elsewhere.	The shift in responsibilities to 1st Line staff can lead to gaps, duplication and/or overstaffing in the 2nd Line.	• Changes made in one line should routinely be examined for knock-on effects elsewhere. • Conduct timely end-to-end reviews of processes to consider design, efficacy, systems, data, timeliness, staff skills, experience and overall sufficiency of checks and balances across functions and lines. • Oversight of the Model overall can help identify inefficiencies and lost opportunities as well as rationalise the combined costs across the lines, especially where accountability has shifted. • Defined RACI (Responsible, Accountable, Communicated, Informed) should be clearly set out over processes that cover 1st Line and 2nd Line.
23	**Strained capabilities** Individuals or teams may be or become incapable of adequately fulfilling evolving 3 Line roles or responsibilities.	Organisational changes may exceed the ability of staff in role to keep pace or otherwise develop the necessary new skills needed.	• Managers in each line should be transparent about how evolving changes in role, objectives and accountability within their line can exceed the skills, experience and/or resources immediately available. • Shortfalls should be addressed expeditiously, ideally by way of training, or alternatively via staffing changes.
24	**Competence** Lack of technical knowledge in key roles may reduce abilities to manage risk.	Risk assessment processes can be undermined by lack of familiarity or competence of the staff performing the activity.	• Enhanced competence can help avoid adoption of overly conservative approaches and/or missed opportunities for improvements. • Inadequate levels of competence or experience at more senior levels can make this risk harder to identify.

25	**Behavioural development** Failure to invest adequately in behavioural aspects of conduct can undermine a healthy culture.	Tone from the top, training and change initiatives can over focus on organisational matters ignoring the importance of factors affecting behaviour or the support needed for behavioural change.	• Excess exercise of influence can be considered a positive manifestation of drive even when it may be bullying. Staff training to target such unwelcome behaviour. • Training could focus on developing judgement rather than just collating and assessing facts. • Proactive training on foresight capabilities rather than just reactive training on past events/incidents. • Support understanding and management of cultural and organisational dynamics as drivers of behaviour and outcomes.
26	**Career path mobility** Lack of experience in more than one role may reduce abilities to manage risk.	Lack of mobility between the lines can inhibit the development of cross-disciplinary expertise resulting in ineffective challenge.	• Firms can seek to ensure that career paths enable movement between the lines through exchange programmes or secondments. • Suitable available positions could be broadcast internally across all three lines. • Consider some experience in a Control function as an emerging pre-requisite for more senior 1st Line managerial roles.
27	**Juniorisation** Loss of experienced, senior staff may inhibit the abilities of less senior staff to perform or grow in their roles.	Cost control efforts can lead to juniorisation of staff where senior but more expensive staff are disproportionally reduced.	• Rationalisation initiatives need to ensure continuing efficiency and effectiveness of processes across all three lines. • Overall efficacy is improved by ensuring experienced managerial oversight in a 1st and 2nd Line review of proposed rationalisation plans. • An area sometimes overlooked is the skill for manual scrutiny of data - is the data correct? - who can assess the data before action is taken?
28	**Structural independence** Prioritising independence over all other considerations can compromise the ultimate effectiveness of the control.	The desire to ensure independence may result in responsibility residing with teams or individuals that lack the knowledge, experience or skills to identify potential problems quickly and accurately.	• The decisions to establish the process point for key controls, responsibility for monitoring, the escalation process and periodic testing should be undertaken in a fully collaborative forum across lines and functions. • Priority should reflect efficacy of the control in the proposed location and the overall outcome desired for the firm.

29	**Power balancing** Real or perceived imbalances in power adversely affect process outcomes between the 1st and 2nd Line.	Regardless of how well processes are designed and promulgated, imbalances in power or influence can undermine their effectiveness.	• While expertise is the more critical factor, working titles and seniority levels should be evenly weighted to ensure that one line does not over-rule the other to a disruptive level. • While, in the first instance, managers are more likely to rely on their own observation of the working effectiveness of challenge, discussion and information sharing, effective mitigants can include: formal escalation to management or relevant unit or committee, periodic reviews undertaken by management or relevant unit/committee or escalation to management one or two levels higher. • Significant and repetitive occurrences of one line exercising senior discretion or over-ruling another should lead to a deeper examination of the root causes by management one or two levels higher.
30	**Compensation** Compensation disparities can de-motivate and undermine effectiveness of staff.	Disparities in value attribution between 1st and 2nd Line roles that utilise similar technical skills can make compensation parity difficult to attain.	• Compensation reviews and market testing/benchmarking can clarify value of 1st Line technical competence and skills when required in other lines. • Career path mobility can also help alleviate the disparity as differences in roles and context are better understood.
	Behaviour & escalation		
31	**Purpose** Management and staff may lack a clear understanding of organisational purpose and how it manifests in 1st or 2nd Line functions.	Poor understanding and commitment to organisational purpose can lead to sub-optimal if not adverse consequences.	• Establishing and promoting a clear organisational purpose and the achievement of clear outcomes can drive better coordinated engagement across and within lines. • Translating broad statements into practical applications at team and individual level (e.g., how exactly does my team, process, service contribute to the organisation's purpose).
32	**Policy & process adherence** Failure to adhere to the spirit of organisational policy and process can undermine culture and lead to sub-optimal if not adverse consequences.	Risk behaviours may focus solely on avoidance of breaches rather than achievement of the broader positive outcomes intended.	• Actual or potential events should be monitored from a reputational risk perspective. • Process shortcuts or workarounds that can become an additional source of risk should be identified. • Exemplary behaviour should be recognised, acknowledged and promoted.

33	Cooperation Inappropriate, unprofessional or uncooperative behaviour can undermine the most robust framework and infrastructure and infect firm-wide culture.	Unidentified or undermanaged weaknesses in culture or misbehaviour can undermine good conduct outcomes.	• Individual misbehaviour, if ignored or unchallenged, can be interpreted as an acceptable norm. Robust, highly visible action should be taken to identify and address misbehaviour. • Senior oversight helps to detect imbalances in risk vs reward which can lead to adverse behaviour as can accountability not being adequately understood and lived day-to-day by key stakeholders. • Attitude/behaviour should be an additional focus/report area of all line reviews. • The 3 Lines Model can support locating and responding to marginal voices and surface misbehaviour such as bullying or suppression of dissent.
34	Policy effectiveness Policies may be poorly framed and fail to deter misbehaviour.	Policies should be clear, thorough and unambiguous and include a responsibility to seek guidance whenever there is doubt. Misbehaviour can not be justified by lack of clarity.	• Well documented policies, controls and procedures support a well-functioning organisation and gaps or poor quality can lead to adverse outcomes. • A healthy feedback loop on loss events, breaches, near misses or changes to risk appetite are essential for continuing policy effectiveness.
35	Abuse of discretion Decision-making should follow agreed processes for escalation and resolution with excessive use of overrides also requiring escalation and resolution.	Frequent exercise of managerial discretion to override policy and process can lead to weakening of adherence and self-discipline among staff.	• Policy and process should be reviewed regularly to update and reaffirm the limits to discretion. • The use of discretionary override authority should be escalated one level higher for each event and two levels higher as a periodic (weekly or monthly) summary or when overrides are occurring repeatedly. • It is important that the training on escalation and speaking up becomes or remains effective rather than being considered as noise.
36	Personal accountability Individuals, however capable, are perfunctory in their performance of assigned 1st or 2nd Line roles.	Failure to hold staff to account for their individual process responsibilities can result in unwanted risk exposure and process failures.	• Relevant staff should be held accountable for their oversight roles as part of standard performance management. • Significant failings in oversight, even in the absence of adverse events, should result in a reassessment of the capability of the individuals involved. • Periodic assessments should include the overall context staff operate within and the process infrastructure upon which they rely. • Staff training and support initiatives, including behavioural aspects, should be undertaken where needed with the support of all three lines.

37	Tolerating misbehaviour Policy and process breaches or adherence failures may not be escalated on a timely basis or at all.	Unwillingness to adhere to a particular policy or process can give rise to any or all of the risks they were designed to prevent. Escalation is essential.	• It is important to ensure that policies and related intentions or objectives are clearly explained and understood. • Escalate adverse events related to misbehaviour one or two managerial levels higher. • Recognise, acknowledge and promote exemplary behaviour. • Respond to - and highlight the response to - culturally inappropriate behaviour. • Bridge building between silos within or across lines can strengthen understanding of why certain rules are in place. • Develop 'safe-space' mechanisms (e.g., confidential mentorship or wellbeing partners) to discuss bullying and abusive behaviour.
38	Character strength Staff may fall short in the skills, experience and character disposition needed for their specific role.	Inability to mount adequate challenge can arise due to personal character elements (easily intimidated, deferential) rather than just a lack of knowledge or expertise.	• Ensure that challenge is delivered in teams of two rather than by an individual alone. • Recruit, train and coach with this downside risk in mind. • Provide coaching and mentoring so that individuals grow in their positions.
39	Diversity & inclusiveness Forums for discussion and decision-making on risk topics can lack diversity rendering them ineffective.	Discussions in risk committees may miss important observations that a more diverse group of attendees might identify.	• Apply a 3 Lines lens in conduct risk forums by always including all three lines as well as wider, rotating or guest representation to add diversity of thought and input. • Effective cooperation, collaboration and communication generally between the Lines displays key elements of diversity & inclusion.
40	Psychological safety Insufficient psychological safety can lead to individual and organisational underperformance.	A fearful culture works against problem identification or escalation.	• Strengthen the approach to addressing breaches by recognizing (acknowledging or even rewarding) staff who own up to a breach proactively and contribute to future prevention measures. • Encourage a culture of identification and mitigation rather than avoidance.

41	**Audit transparency** Lack of open communication with or by Internal Audit can undermine a collaborative, outcome-focused culture.	Lack of communication or timely discussion of audit findings can undermine timely resolution.	• Communicate Audit findings as soon as practically possible enabling maximum transparency, problem refinement and faster resolution (i.e. more than just a fast response with statements of intent to address the findings). • All three lines to apply 'read across' from Audit findings to other business activities and locations. • Potentially include observations on organisational or cultural drivers for adverse outcomes, rather than just procedural or systematic ones. Examples could be over-use of workarounds that become the accepted norm, or behavioural points.
42	**Reward & incentives** Insufficient reward, recognition or incentive for good behaviour discourages it.	Lack of visibility of or reward for good practice undervalues that behaviour and fails to encourage more.	• Align reward programmes to good practice metrics around risk culture and outcomes. • Make recognition of good practice a key feature of performance assessment discussions. • Challenge the mindset that good conduct is expected and so is not required to be additionally called out or rewarded.
	Tools, analytics & monitoring		
43	**Data sourcing** Lack of or inconsistent use of agreed 'golden source' data in analytics and reporting can lead to unwanted or unaddressed risk and/or to inefficiencies.	The use of different data, taxonomies, models or parameters by individual lines or teams can lead to inconsistent understanding of risks/issues or wasted time explaining/ reconciling items. Duplication of reporting can also to lead to more costs with little or no additional benefit.	• Single golden source data (including reference data) for risk analytics should be shared by all three lines for basic reporting. • Reporting of KRIs should be the responsibility of the 1st Line. Key aspects of reporting (e.g., data sources, methodologies and thresholds) should be subject to review and challenge from the 2nd Line. • Consistency of taxonomy and formatting is important to ensure accurate aggregation for reporting and to enable read across. • Calculations based on independently sourced or generated data should be disclosed as supplemental and reasonably reconcilable to golden source data. • Alignment of business strategy with risk appetite is very important. • Where possible, new or additional requirements (e.g., ESG, financial crime, sanctions) should be incorporated into existing primary golden source infrastructure quickly rather than being maintained long-term as separate, non-integrated data. • Data usage should be supported by common data models.

44	Efficacy of controls Functional independence is compromised by organisational structures and/or expertise.	Validity and effectiveness of controls can be undermined due to lack of independence or expertise, real or perceived.	• Validity and effectiveness of controls can be undermined if the design compromises the independence between users and testers. • Either the 2nd or 3rd Line to have access to test 1st Line controls and assess and report on their accuracy. However, assessment priorities should have a clear and shared rationale. • Designating separate 'operators' and 'testers' within a single line (e.g., within 1.5 or 1B) may not be sufficient where the downside risks are significant. Testing of 1st Line controls for significant risks can best be done by the 2nd Line subject to appropriate business/process understanding. • The 3rd Line can play a useful role as arbiter on questions of design.
45	Point of control The choice of location of controls and/or monitoring does not take full consideration of the risk being managed.	The effectiveness of controls or monitoring may be compromised.	• Firms should consider the location of controls or monitoring in the context of the risk being managed, the expertise required to do so, the likely outcome or effectiveness of the control at that point as well as the costs. • Staff performing the testing must have the knowledge, skills, experience and alertness to conduct the test and fully understand the results.
46	Risk identification Teams that design or maintain tools or analytics, especially if done remotely from the business, may lack adequate business knowledge to do so effectively.	Tools or analytics may be overly generic or may not adequately consider how numerous risks can arise in a particular business.	• Tools or analytics should be developed in conjunction with the 1st Line risk owner or an appropriate delegate. • Where a degree of separation is needed to manage specific risks (e.g., surveillance), individuals with adequate business understanding should be involved.
47	Technical competency Skills and experience may be technically inadequate for the operation of complex analytical tools and the related responsibilities of individuals.	Staff may lack understanding of the tools they work with and the relative meaning of the signals they generate or observe, including false positives.	• The design of monitoring tools needs to be a collaborative effort across the lines and areas of functional and technical expertise with a goal of clear, end-to-end understanding. • Regular training should be provided on the tools themselves to ensure mastery. • Explanatory notes on monitoring results should be expressed in jargon-free language and context.

48	Experience & familiarity Skills and experience may lack the breadth and depth for the specific oversight responsibilities of individuals.	Unwanted risk exposure can arise directly from the failure to assess risk events contextually and the potential for read-across to other products or businesses.	• Risk committee sessions should be convened across lines and functions so that individuals gain first-hand knowledge of a wide range of business models and risks that can arise. • Cross-training should be undertaken between the 2nd and 3rd Lines on assessment approaches and skillsets. • Training and support should include development of judgement skills, including under duress.
49	Duplication Duplication of infrastructure, process or reporting may not add to understanding or management of the risks.	Duplication can be ineffective where understanding of business models and behaviours is low, e.g., surveillance of complex products and markets.	• Effective testing should ideally be done once rather than be undertaken multiple times by different 'independent' parties. • 1st or 2nd Line managers should ensure that the outcome of reporting is validated for the use intended within their lines. • Testing should be placed at a key stage or stages in a business or product cycle for testing to be effective. • Duplicate reporting with weakly framed uninsightful commentary is a common failing that can undermine accurate commentary elsewhere.
50	Obsolescence Continued reliance is placed on infrastructure retained beyond its useful life in terms of accuracy, effectiveness, completeness or relevance.	Risk monitoring infrastructure is sometimes retained beyond its useful life and/or supplemented with an array of "workarounds'.	• Infrastructure should be updated to accommodate the data flows, analytics and reporting needs of evolving businesses across the lines. • Principal Risk Type (PRT) effectiveness reviews should be performed on an annual basis. • Investment spend for related risk types should be coordinated across the lines.
	Near misses & failures		
51	Framework gaps Risk registers are not updated thoroughly and quickly in reflecting a 3 Lines model assessment.	Failure to take steps to identify and learn from external or internal adverse events or near misses results in unrecognised or undermanaged risks in similar products or services on offer.	• Escalate ineffective tools rather than rely on them as a source of blame. • Oversight of an organisational level exercise to review effectiveness of controls and MI can help ensure appropriate prioritisation.

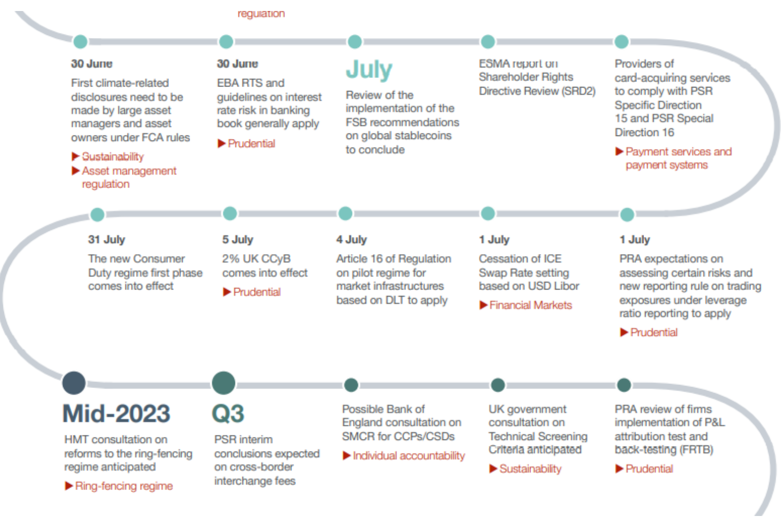
52	Policy responsiveness Policy and process updates arising from new risk register entries are not completed in a timely or effective manner.	Failure to explore read-across of external or internal adverse events to other products or business lines can result in avoidable breaches or mishaps.	• Ensure that remediation plans extend across all products and, where applicable, to other geographies. • Read across checks should be incorporated into reviews of procedures • Membership of review teams should be cross-product and/or inter-disciplinary to enhance diversity of views.
53	Risk relevance Near miss events that are not elevated and addressed can later lead to losses.	Additional or exacerbated losses could result from a failure to treat significant near-miss events as seriously as actual loss events (selection bias).	• Near-miss events should be reviewed and escalated to similar levels as crystalised events.
54	Risk Accountability Ownership and accountability for risk is weak.	Avoidance of responsibility or accountability by not dealing directly with issues arising (e.g., "not my fault", "not my problem") leads to persistence of undermanaged and unwanted risks.	• Senior 1st Line management and staff should act consistently in a manner that reflects full ownership of risks. • Senior management should ensure that finding and preventing misses is rewarded and celebrated (to ensure they are surfaced). • Senior management should ensure an equitable apportionment of responsibility and accountability for remedial work that benefits the organisation as a whole. • Allowing an excessive degree of mitigation responses via delegation or escalation to others (not my fault, not my problem) undermines the culture of accountability more generally. • Reward and recognition for identifying and resolving near misses should be emphasised as part of a culture of ongoing learning and awareness.
55	Metrics Near misses are not identified or escalated.	Lack of awareness of near misses leads to more of them as well as repetition.	• Where possible, separately captured 1st and 2nd Line interventions to stop adverse events can be useful as comparable metrics.

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.

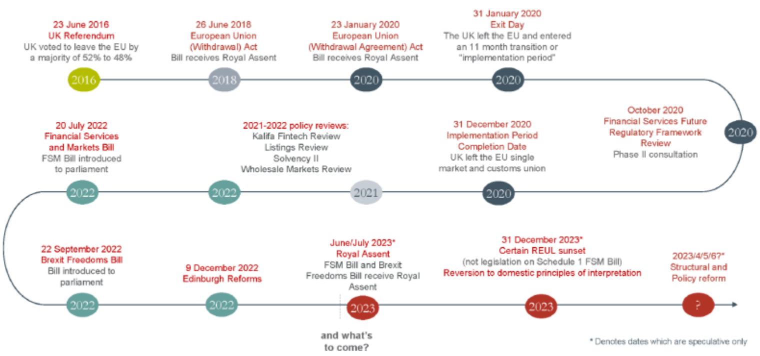
	ii. **Improve appropriate and efficient redress** — by issuing new guidance for redress calculations, review FOS eligibility rules for SME firms and improve complaints reporting. iii. **Reduce impact of firm failure** — by introducing a new regulatory return requiring 20,000 of its regulated firms to 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



Back to the future (regulatory framework)



Forward Regulatory Calendar: Updated 01 July 2023		
Q32023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
Q3 2023	Australia	Expected third consultation paper on over-the-counter (OTC) derivatives reporting and technical guidance by ASIC. Expected publication of final OTC derivatives reporting rules by ASIC
Q3 2023	EU	The European Commission shall review the minimum standards of carbon benchmarks (climatetransition and Paris-aligned benchmarks) in order to ensure that the selection of the underlying assets is coherent with environmentally sustainable investment as defined by the EU taxonomy.
Q3 2023	EU	The European Commission shall present a report to the co-legislators on the impact of an 'ESG benchmark', taking into account the evolving nature of sustainability indicators and the methods used to measure them. The report shall be accompanied, where appropriate by a legislative proposal
Q3 2023	EU	The European Commission (EC) to adopt a Delegated Act (DA) to further extend the suspension of the third-country benchmark regime until end of 2025 under the EU Benchmarks Regulation (BMR).
Q3 2023	Japan	Once the amended Comprehensive Guidelines for the Supervision of Agricultural Cooperative Financial Institutions (Guidelines) becomes effective, the Norinchukin Bank and its group entities will be required to incorporate contractual recognition of temporary stay under the Agricultural and Fishery Cooperatives Saving Insurance Act into existing and new non-Japanese law governed master agreements (the public consultation for the amendment to the Guidelines has launched on May 12, 2023 and the deadline for comments is June 12, and the implementation date is not fixed).
Q3 2023	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.

Q3 2023	EU	The European Commission shall adopt a Delegated Acts (DA) to designate exempted FX spot rates from the scope of the EU BMR.
Q3 2023	EU	The European Commission (EC) shall submit a report to the European Parliament and to the Council on the scope of the BMR, in particular with respect to the use of third country benchmarks. If appropriate, the EC shall accompany the report with a legislative proposal.
July 1, 2023	US	CFTC Effective Date for the Clearing Rules to Account for the Transition from LIBOR (See 87 Fed. Reg. 52182 (August 24, 2022)). The portion of the rule effective on this date removes the requirement to clear interest rate swaps referencing US dollar LIBOR and the Singapore Dollar Swap Offer Rate in each of the fixed-to-floating swap, basis swap and FRA classes, as applicable.
July 31, 2023	US	Expiration of a second extension of relief to Shanghai Clearing House permitting it to clear swaps subject to mandatory clearing in the People's Republic of China for the proprietary trades of clearing members that are US persons or affiliates of US persons (CFTC Letter No. 22-07).
Q3/ Q4 2023	EU	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.
Q3/ Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
August 21, 2023	US	Comment Deadline: Reopening of the comment period for the SEC's proposed rule "Position Reporting of Large Security-Based Swap Positions." (See 88 Fed. Reg. 41338- 41340 (June 26, 2023) and 87 Fed. Reg.6652-6706 (Feb. 4, 2022)).
August 28, 2023	US	Comment Deadline: CFTC Proposed Rule – Large Trader Reporting Requirements. (See 88 Fed. Reg. 41522-41540 (June 27, 2023)). Comment Deadline: CFTC Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on Behalf of Nonbank Swap Dealers Domiciled in the French Republic and Federal Republic of Germany and Subject to Capital and Financial Reporting Requirements of the European Union. (See 88 Fed. Reg. 41774-41813 (June 27, 2023)).

August/ September, 2023	US	Comment Deadline: CFTC advanced notice of proposed rulemaking on potential amendments to the Risk Management Program (RMP) requirements in CFTC Regulations 23.600 and 1.11 applicable to swap dealers and futures commission merchants.
September 1, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil Saudi Arabia	Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion. Hong Kong: Initial margin and risk mitigation requirements apply to HKMA AIs and SFC LCs with an aggregate notional amount exceeding HKD 60 billion. Korea: Initial margin requirements apply to financial institutions with derivatives exceeding more than KRW 10 trillion. Singapore: Initial margin requirements apply to MAS covered entities with an aggregate notional amount exceeding SGD 13 billion. Japan: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion. Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion.
September 1, 2023	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion. South Africa; Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding either ZAR 15 trillion or ZAR 8 trillion.
December 04, 2023	US	Swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), and reporting counterparties must comply with the amendments to the CFTC swap data reporting regulations found in Part 43, Part 45 and Part 49 by the compliance date of December 5, 2022; provided, however that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§43.4(h) and 43.6 by December 4, 2023.

December 04, 2023	US	Compliance date for CFTC Block and Cap reporting amendments. Expiry of relief in CFTC Staff Letter No. 22-03.
December 31, 2023	EU	The amended Benchmarks Regulation that entered into force on February 13, 2021 extends the BMR transition period for non-EU benchmark administrators until December 31, 2023 and empowers the European Commission (EC) to adopt a delegated act by June 15, 2023 to prolong this extension by maximum two years until December 31, 2025. It also enables the EC to adopt delegated acts by June 15, 2023 in order to create a list of spot foreign exchange benchmarks that will be excluded from the scope of Regulation (EU) 2016/1011.
December 31, 2023	UK	Expiry of the temporary Intragroup Exemption Regime (TIGER) from clearing and margin requirements. (*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 Switzerland UK	Under US Prudential Regulations only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). EU: Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion. Switzerland: Initial margin requirements apply to counterparties whose aggregate month-end average position exceeds CHF 8 billion. UK: Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion.
January 1, 2024	Australia	Basel III: Expected implementation of FRTB framework.
January 1, 2024	EU	Application of the Delegated Acts (DAs) with respect to the four remaining environmental objectives on the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystem.

January 1, 2024	EU	Disclosure of Article 8 Taxonomy reporting KPIs and accompanying information for financial undertakings.
January 1, 2024	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	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

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

	Singapore Japan Brazil Mexico	
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).
April 01, 2024	Japan	Go-live of revised JFSA reporting rules based on the CPMI-IOSCO Technical Guidance. JFSA finalized the Guidelines of the revised reporting rules on December 9, 2022.
April 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.
September 1, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil South Africa	Under CFTC rules only, initial margin requirements apply to covered swap entities with material swaps exposure (average aggregate daily notional amount exceeding USD 8 billion). Australia: Initial margin requirements apply to Phase 6 APRA covered entities with an aggregate notional amount exceeding AUD 12 billion. Canada: Under both OSFI and AMF guidelines, initial margin requirements apply to Phase 6 covered entities with aggregate month-end average notional amount exceeding CAD 12 billion. Hong Kong: Initial margin and risk mitigation requirements apply to HKMA AIs and SFC LCs with an aggregate notional amount exceeding HKD 60 billion. Korea: Initial margin requirements apply to financial institutions with derivatives exceeding more than KRW 10 trillion. Singapore: Initial margin requirements apply to MAS covered entities with an aggregate notional amount exceeding SGD 13 billion. Japan: Initial margin requirements apply to JFSA covered entities with an aggregate notional amount exceeding JPY 1.1 trillion. Brazil: Initial margin requirements apply to financial institutions and other entities authorized to operate by the Central Bank of Brazil which have an average aggregate notional amount exceeding BRL 25 billion. SA: Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
September 1, 2024	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 8 trillion (per amended rule pending finalization).
Q4 2024	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 aggregate daily notional amount exceeding USD 8 billion). Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding EUR 8 billion. Initial margin requirements apply to counterparties whose aggregate month-end average position exceeds CHF 8 billion. Initial margin requirements apply to counterparties with an aggregate average notional amount exceeding £ 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 Korea	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.

	Switzerland Singapore Japan Brazil South Africa UK	
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
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.
September 1, 2025	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion (per amended rule pending finalization).
November 15, 2025	EU	The CRR 2 IMA reporting requirements for market risk will be applicable from November 15, 2025, in the EU. As things stand currently in the CRR 3 political process, these IMA reporting requirements may become obsolete as we are still looking at a January 1, 2025, start date for the capitalization of market risk in the EU. However, IMA Reporting could still become live if the European Commission decides to enact the two-year delay mentioned under the CRR3 Article 461a FRTB delegated act. As this may still evolve in the CRR 3 negotiations, ISDA will keep monitoring developments in this area.

December 1, 2025	US	Expiry of extension of relief concerning swap reporting requirements of Part 45 and 46 of the CFTC's regulations, applicable to certain non-US swap dealers (SD) and major swap participants (MSP) established in Australia, Canada, the European Union, Japan, Switzerland and the United Kingdom, that are not part of an affiliated group in which the ultimate parent entity is a US SD, US MSP, US bank, US financial holding company or US bank holding company. See CFTC Staff Letters No. 20-37 and No. 22-14.
January 1, 2026	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
January 1, 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.
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR have to comply with real capital/large exposures/liquidity regime under Investment Firms Regulation (IFR) provisions on liquidity and IFR disclosure provisions.
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 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	H	Jan/Mar 2023 April / June 2023

		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	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	L	Timing Updated Jul - Sep 2023 Oct – Dec 2023

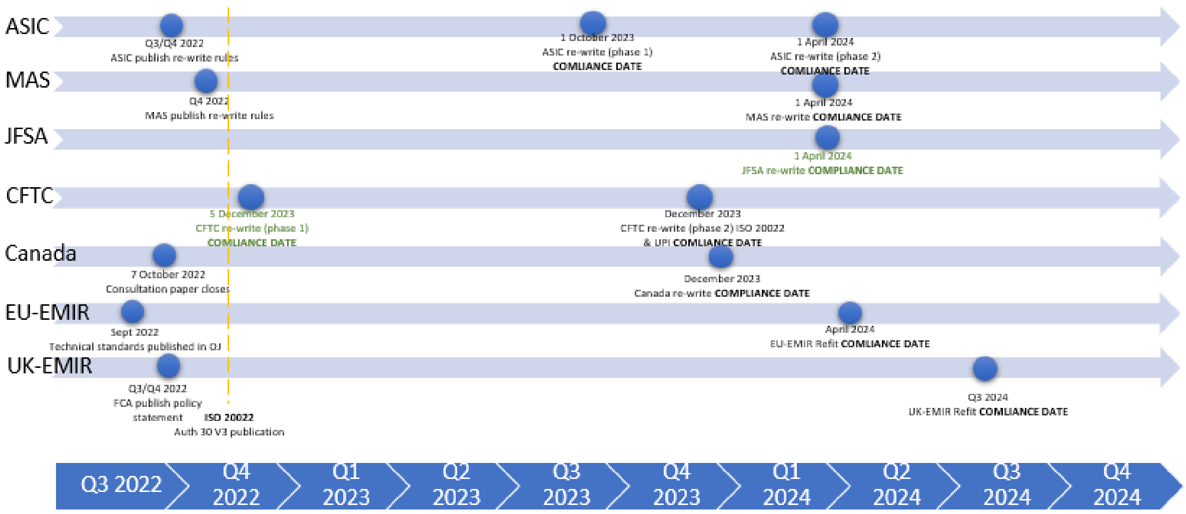
	the Policy Statements in Q1 and Q2 2023 respectively. The FCA plan to consult on changes to commodity position limits and the consolidated tape regime in Q2/Q3 2023. The FCA intend to consult on the transparency regime for bonds and derivatives in Q4 2023. The Government consulted on a number of amendments 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.	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.		
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 regulatory approach to cryptoassets, including new challenges from so-called stablecoins. Further detail on the regime will be communicated in due course.	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 regulatory regime for cryptoassets - consultation' under 'Payments and cryptoassets').	H	Timing Updated April / June 2023
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	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)

	started work with the Bank of England and the FCA on secondary legislation to deliver this.			
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. Potential Consultation Paper in Q2 2023, including feedback to DP22/2.	L	Timing Updated April / June 2023
FCA	**Implementing ISSB disclosure standards into FCA listing or transparency rules;** We expect the International Sustainability Standards Board to finalise international sustainability disclosure standards later in 2023. The FCA has previously indicated it will explore implementing those standards in its rules for listed companies once finalised, which would replace existing TCFD disclosure requirements. The FCA expects to consult towards the end of this year, with final rules in the first half of 2024 subject	Consultation Paper in Q4 2023 Policy Statement 2024	L	Oct -Dec 2023

	to feedback. Timing may be subject to the Government's response to the ISSB standards			
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 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.	L	Timing Updated Jul - Sep 2023 Oct – Dec 2023

		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

Just to reiterate earlier comments from our meeting with Toby Williams on Friday regarding the FCA position on matters consequent to USD Libor cessation over the weekend:

1. FCA could not thank the IDBs enough for their help throughout this process, noting that the detail in the SOFR process has been complicated and multifaceted…
2. FCA pushing back on any use of CSRs (but not in a rules-based, nor legal manner)

3. FCA would like to discourage Dealers from trading Term-SONIA, but will not make "ARRC-like" prohibitive practice statements to Trading Venues / IDBs, acknowledging the relative sizes of the markets
4. FCA would like to discourage Trading Venues / IDBs from offering/arranging Term SOFR in the UK, in support of the ARRC practice statements.
5. FCA making no comments/ practice statements on Term ESTR, neither to dealers nor to Trading Venues / IDBs
6. FCA want to publicise the LIBOR related statement published this morning (attached) on a "Required" synthetic 1,3,6's IBA $Libor based on the fixed spread adjustment (23d), for which, "*Firms must ensure they are prepared for these final synthetic LIBOR settings to cease at the end of September 2024*." They have also published a "Permitted Use" rule, (23c) wherein uncleared contracts may use the legacy synthetic for certain commonly accepted cases (such as noted in 4.20 (complexity) & 4.23 (term))

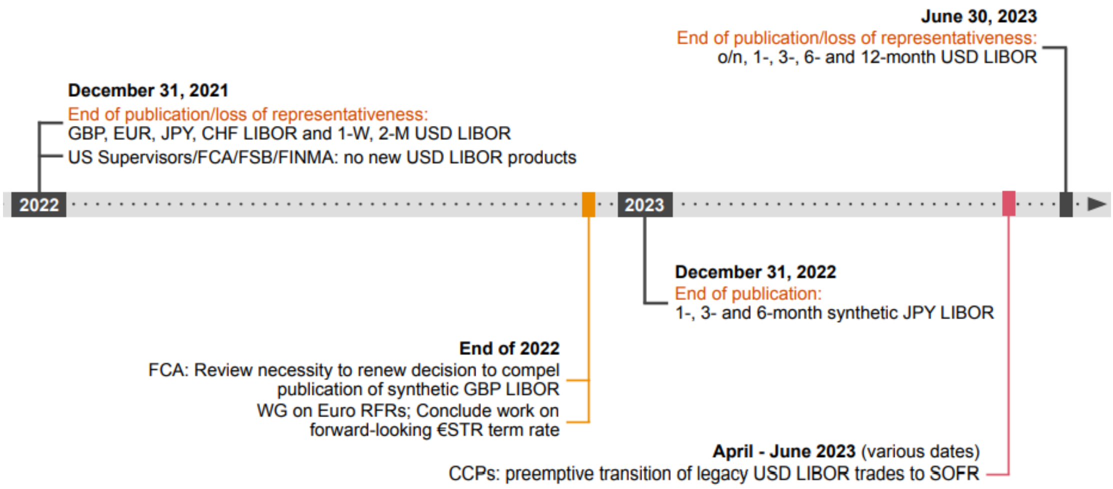
FCA Update: The US dollar LIBOR panel has now ceased. *The US dollar LIBOR panel ended on 30 June. The overnight and 12-month US dollar LIBOR settings have now permanently ceased. The 1-, 3- and 6-month US dollar LIBOR settings will continue to be published under a synthetic methodology. As we said in our 3 April decisions, we expect these settings to cease permanently at end-September 2024.*

- On 1 July, we published four legal notices to implement our decisions. We also published an announcement today to confirm the implementation of our decisions and reiterate our message that **we do not want to see transition to so-called 'credit sensitive' rates**.
- We would also like to emphasise that synthetic US dollar LIBOR is only a temporary measure to allow firms some extra time to complete transition; as above, we expect it to be wound down permanently at end-September 2024. Therefore, firms must continue to actively transition contracts to appropriate alternatives.
- The big question is does its replacement, the Secured Overnight Financing Rate, make the global financial system safer, or just exposed to different risks? The London interbank offered rate, set daily by panels of banks, was once dubbed the most important number in finance. It was a suite of borrowing costs, covering a range of maturities for the world's major currencies. Hundreds of trillions worth of everything was tied to Libor, from floating-rate notes to residential mortgages to auto loans. /jlne.ws/3NqALEV

Table 1: timeline of events relating to derivative products referencing USD benchmarks

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

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



Capital Markets and Market Structure

Regulatory reporting – a period of change; Transparency requirements in MiFIR/MiFID II; *Over the last ten years firms operating in wholesale financial markets have had to drastically increase the amount of their non-financial regulatory reporting with the introduction of EMIR and MiFID II/MiFIR. Firms trading in the US have also had to implement similar regulations. Regulators have introduced these requirements with the aim of gaining more transparency on risk within markets, identifying market abuse and increasing trade transparency to aid market efficiency*.

- In the EU, the review of MiFIR/MiFID transparency requirements was started by ESMA in 2019. Changes to the requirements contained in legislation (level 1) will not be finalised until the MiFIR Review has been agreed at the end of the trilogues (political) processes. However, the amendments to requirements set out in the delegated regulations or RTS 1 & RTS 2 have been published into the EU Official Journal and firms will need to start implementing ready for go-live in January 2024.
- In the UK, the FCA has released Policy Statement 23/4 on improving equity secondary markets — which it consulted upon in July 2022 (CP 22/12). It takes forward some of the changes that were originally proposed as part of HM Treasury's "Wholesale Market Review" (WMR) with the aim of tailoring the onshored MiFID II/MiFIR regime for the UK market.
- Equity markets transparency; In the EU, changes to RTS 1 include;
- Applying from 1 January 2024:
  - Measures to the reduce the non-price forming trade exemptions (to reporting) in RTS1 to be in line with RTS 22 (reporting of transactions to competent authorities)
  - Further specification on the content of the data requests, and in particular the details to be disclosed by trading venues, APAs and consolidated tape providers when they report reference data and quantitative data to ESMA and competent authorities

- Increasing the pre-trade large-in-scale (LIS) thresholds for ETFs from EUR 1,000,000 to EUR 3,000,000
- Increasing the minimum qualifying size threshold for deferred publications of ETFs
- The introduction of a definition of a hybrid trading system to ensure they are captured under pre-trade transparency requirements
- Bringing forward the deferral publication time from noon to 9am of the next trading day

In the UK, changes include:

- On pre-trade transparency:
  - Waivers — allowing UK trading venues to use reference prices from overseas venues, where those prices are robust, reliable and transparent — this will take effect immediately
  - The FCA will undertake a broader view of the most relevant market in terms of liquidity (MRMTL) calculation once it receives its new powers to operate the pre-trade transparency regime via the Financial Services and Markets Bill
  - The FCA will also remove size thresholds for orders benefiting from the order management facility (OMF) waiver by allowing trading venues to calibrate them according to the characteristics of their markets — this will take effect immediately
- On post-trade transparency from 29 April 2024
  - Non-price forming trades — modifying and expanding the list of exceptions from post-trade transparency — e.g. inter-fund transfers, expanding the exemption of give-up/give-in transactions, inter-affiliate trades, transactions arising in the context of margin or collateral requirements for the purposes of clearing
  - Improving the consolidation of trade reports from different source by deleting some flags and introducing some new flags, for example:
    - Deleting SI-related flags “SIZE”, “ILQD” and “RPRI”
    - Deleting the agency cross flag “ACTX”, the duplicate trade flag “DUPL”
    - Aggregating the flags applicable to different types of negotiated trades “NLIQ”, “OILQ” and “PRIC” into single flag “NETW”
    - The FCA is considering policy options to maintain alignment between trade and transaction reporting
  - Changes to formatting conventions of the “Price” and “Price currency” reporting fields and introduction of a new field — `Price conditions'.

Non equity markets transparency; *In the EU changes to RTS 2, that will apply from 1 January 2024, include:*

- Measures to align the reporting of non-price forming transactions between RTS2 and RTS22 (reporting of transactions to competent authorities)
- The introduction of a definition of a hybrid trading system to ensure they are captured under pre-trade transparency requirements
- Bringing into line with market conventions the reporting of bond and CDS prices
- Adding a flag to identify portfolio trades
- Further clarification and specification on the post-trade transparency data field and flag requirements
- Specifying the format under which certain characteristics of commodity and freight derivatives are reported

In the UK, the FCA is still considering the exact changes to non-equity markets transparency with a consultation paper expected at the end of 2024. Market feedback is that the current transparency regime for fixed income and derivatives markets, which is modelled on the one for equities markets, does not work, so changes proposed could be quite radical.

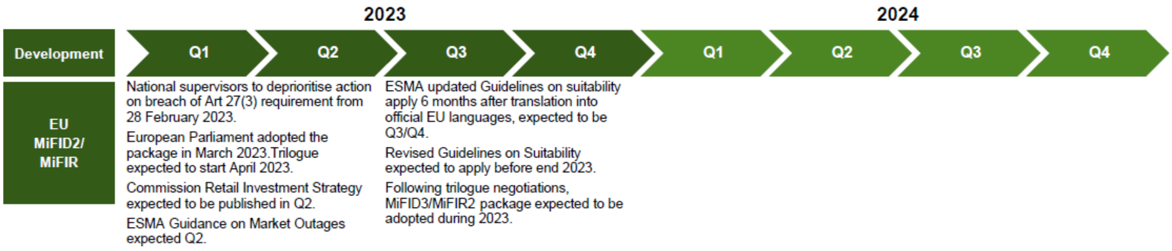
Designated Reporting; *In response to the WMR, there were calls to separate the ability to do post-trade reporting of OTC trades on behalf of clients from the other obligations of being a Systematic Internaliser (SI). Market participants also raised concerns that there is a degree of uncertainty about who should report OTC trades and that the current reporting regime creates operational complexity for firms.*

- The FCA is adopting a new designated reporting (DR) firms regime where firms will be able to register as designated reporters regardless of whether they are an SI in any instrument. Registration will apply at entity level — but DRs will be able to bilaterally agree for the other party to report the trade if a DR doesn't have the arrangements set up to report a particular type of asset or instrument.
- The FCA will announce further details on the registration procedure in due course. The concept of a designated reporting entity has also been introduced in the EU as part of the MiFIR review negotiations.

Implications; *Trading venues and investment firms, and data reporting service providers (DRSPs) consolidating trade reports by them, will need to update their systems to comply with the changes to trade transparency, including the changes to the reporting fields and trade flags. This may also impact on systems for transaction reporting.*

- Alongside these changes, both the UK and EU are addressing the lack of consolidated tapes of market data. Both jurisdictions are now looking to put place frameworks that would enable, for each asset class, a single private sector operated tape, that would be authorised and regulated.
- It is clear that these changes will result in a degree of divergence between EU & UK reporting standards. The FCA believes the benefits of the increased quality and clarity of post-trade reporting will outweigh the potential costs arising from the divergence from the EU on this matter.
- However, firms working in both jurisdictions will need to carefully review the differences when planning implementation. Enforcement actions when firms have not correctly implemented the requirements shows the value regulators place on this reporting.

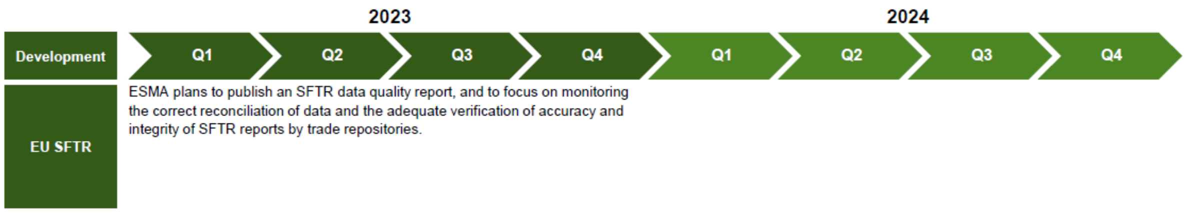
Admission to trading on a regulated market: The Government is in the process of creating a new legislative framework that will give powers to the FCA to set rules for what disclosures companies need to provide when seeking to admit securities to a regulated market — the new Public Offers and Admissions to Trading regime — which will adapt the on-shored EU Prospectus Regulation. In advance of this, through a series of engagement papers, the FCA is seeking views on how it might make these rules. Feedback on the papers is intended to create a dialogue which will inform further development of proposed rules which the FCA will consult on formally during 2024.



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

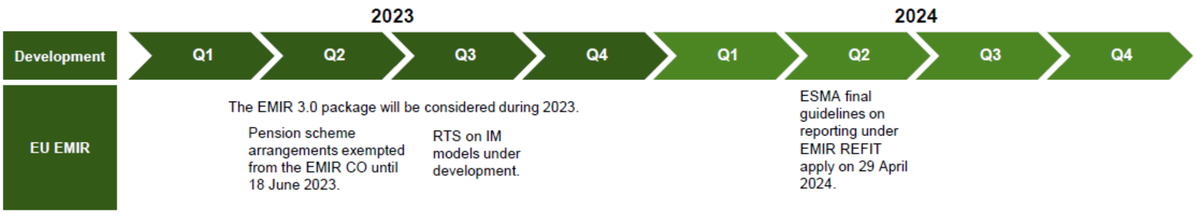


- During 2023, ESMA plans to publish an SFTR data quality report, and to focus on monitoring the correct reconciliation of data and the adequate verification of accuracy and integrity of SFTR reports by trade repositories.
- ESMA Guidelines for the transfer of data between trade repositories under EMIR 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.

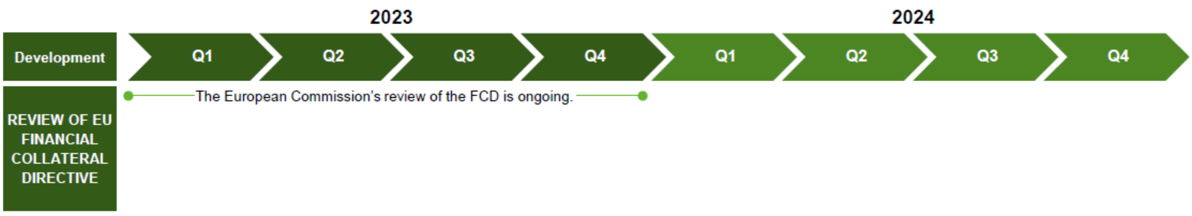
- Recently adopted Level 2 measures have deferred the application of some of EMIR's requirements.
- Commission Delegated Regulation (EU) 2022/1671 exempts pension scheme arrangements from the EMIR Clearing Obligation (CO) until 18 June 2023.
- •On 1 February 2023, in view of IBOR transition ESMA published 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

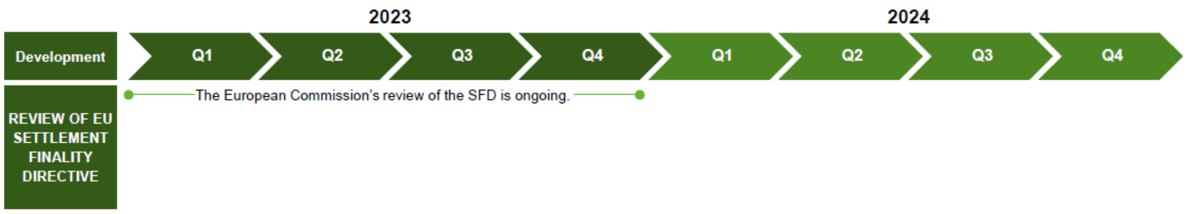
- The next major phase of implementation, the introduction of a mandatory buy-in regime, was intended to come into effect on 1 February 2022. This, however, has been postponed. In the meantime, in March 2022 the Commission published a legislative REFIT proposal with proposed amendments to the CSDR.
- 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
  - clarifying and/or revising the concepts of irrevocability and the point in time at which an order enters thesystem.

UK Divergences

5 July 2023, we will publish our consultation paper (CP) on the UK consolidated tape framework. Below is an embargoed press release to accompany tomorrow's publication.

- Financial regulator sets out further reforms to improve markets and bolster competitiveness. A series of measures to help strengthen the UK's leading position as a global and vibrant financial centre have been announced by The Financial Conduct Authority (FCA).
- To help all investors make better, more timely decisions, the FCA is proposing to set up a consolidated tape (CT), so they can get clear and low-cost trading data.
    - A CT combines multiple sources of trading data into one stream of information. This will increase transparency and access to trading data by lowering its cost and improving data quality.
    - The FCA is proposing a CT first for bonds, where the UK has a leading global market, followed by equities. The FCA intends to run a competitive tender process to appoint a single CT provider for bonds.
    - As part of the Edinburgh reforms, the FCA is working with the government with the aim of having the regulatory framework in place by 2024. By building a more complete picture of the market, a CT will reinforce the UK's position as a leading centre for the listing and trading of bonds.
    - The FCA will consult on further reforms to bond and derivative transparency requirements later this year, with the aim of creating a simpler and more effective regime which will enhance the content and delivery of trade data in UK markets alongside the CT.
    - Other announcements by the FCA today will support wholesale markets and wider competitiveness:
- Guidance on the trading venue perimeter; To further support innovation and the development of new technologies, the FCA has issued more guidance (link) which reconfirms the current rules, addressing queries that market participants have made, to level the playing field and let firms know when they may require authorisation as a trading venue. The guidance will come into force in October 2023.
- Support for firms expanding into and across the UK; Building on its existing support for new entrants to financial services, the FCA is launching a new pre-application support service (PASS) for overseas wholesale firms and their advisers wishing to expand into the UK, firms already in the UK but planning to set up in the devolved nations and outside the south-east, and those with innovative, complex or high-risk business models.
    - The service, starting in July, will see more support such as pre-application meetings and the opportunity for FCA speakers to talk about the wholesale firm authorisation process at industry events, roundtables and conferences.
- Sarah Pritchard, executive director of markets and executive director of international at the FCA, said:
    - "We are adapting our rules to make sure the UK market works well, providing certainty for firms and so providing a good environment for investment.
    - "The new consolidated tape will help reduce trading costs, increase transparency and improve data quality.

- "Our other measures announced today aim to further support the UK's thriving financial services sector."

Run off regime for overseas CCPs: Following EU exit, HM Treasury (HMT) established a Temporary Recognition Regime (TRR) to enable eligible non-UK CCPs to continue to provide clearing services to UK firms whilst equivalence and recognition assessments were ongoing. A "run-off" regime was also established to enable non-UK CCPs that exited the TRR without recognition to wind down relevant contracts and business with UK counterparties in an orderly manner for a maximum period of one year. The Financial Services and Markets Bill extends this run-off period to three years and six months. However, as timing is unsure around the Bill receiving Royal Assent. HMT has now introduced further technical amendments, that in the event of a gap between a CCP's exit from the run-off regime and Royal Assent, allow the BoE to determine that a CCP's run-off period is to be treated as not having expired, from the making of the determination onwards.

Notes from FCA TACC Meeting

1. Introduction Jon Relleen

Noted that this was the first in-person meeting of TACC since Covid. It was notable that most of the FCA staff presentations were on-line since the FCA has a work-from-home policy, whilst the industry was at the FCA.

JR noted that the Mansion House Dinner slated for mid/late July should mark the formal relaunch of the FRF and the enactment of the FS&M Bill as the "*Smarter Regulatory Framework.*" After onboarding the FCA may retitle this incentive for those parts under its control.

Noting also that UK Chancellor to sign financial services agreement with EU; 27June2023.pdf

2. LIBOR transition ahead of end of June milestone; Anne-Laure Condat

ALC noted that this was the final week of panel bank USD Libor, with the restricted synthetic versions of $ 1/ 3/ 6 month to operate until September 2024. $ o/n and $12m formally cease altogether. US dollar **LIBOR** panel – 1 month to go

The FCA had received no communications, problems or other issues around the cessation of £ 1/ & 6's at the end of March.

FCA will make some further press and website communications on 30th June both wrt USD Libor and the dissuading the role of Term Rates altogether. The FCA noted that they would ask firms for prior approvals to use Term SONIA over compounding SONIA RFR ["clear and specific use case]. We asked whether that was a change in approach for the operation of wholesale/ interdealer markets in the term RFRs given what was currently a difference in approach between the UK and the US. Dialogue ongoing.

ICMA noted that there should remain some narrow use cases for synthetic USD Libor wrt Bond market transactions. The ARRC has again recently written to the CFTC for formal NAR in certain use cases.

- ARRC_Letter_06142023.pdf
- ARRC-Readout-May-2023-Meeting.pdf
- ARRC-Readout-June-2023-Meeting.pdf

3. Future Regulatory Framework update; Alex Smith

Noting this background brief: UK Edinburgh Reforms six months on; 20June2023.pdf

FS&M Bill should resolve the outstanding 3 amendments this week and gain Royal Ascent imminently. The FCA will take this opportunity as the freedom to comment about getting these changes operationalised and intend to accompany such communications with a new web page resource.

- Regulatory framework reforms | FCA

Alex Smith particularly flagged the HMT Call for Evidence on the newly proposed subsidiary responsibilities for the FCA. "*Repeal and Replace*" forms the basis of the transfer of powers and the FCA will provide more specific dates and timelines upon Royal Ascent which will take the form of an interim update to the Regulatory Activities Grid.

- The FCA will host a conference or "gathering" in September as the basis for a Q&A on the onboarding of these new powers and the forward plans.
- A complete update will also be made in November, wherein the HMT activities and workflows will be included for the first time. The FCA will also publish their considered opinion as to what the end-state of the reforms process and the repurposed and interactive Handbook will look like.
- The FCA are **not** currently considering the composition and shape of Trances III & IV but would welcome industry input on how this set of priorities should be assembled.
- The meeting queried whether the rather high-level language around competitiveness would really make a difference to the operation of the FCA when there are 3 primary objectives already sitting in front of these considerations.
- The FCA are creating a new formal framework for the periodic reviews of the rules and powers being allocated to them by the FS&M Bill. A comment period will be launched upon the ascent of the legislation. The FCA will be required to publish effectiveness reports on subsidiary regards for each of the first two years of these powers
- The FCA also noted that they would be assembling a panel to govern the cost-benefit framework for the application of the Smarter Regulatory Framework, operational by year end.

Regulatory framework reforms

Corporate documents | First published: 09/12/2022 | Last updated: 19/05/2023 | See all updates

The Treasury has concluded its Future Regulatory Framework (FRF) Review, which aimed to ensure the UK's regulatory framework for financial services continues to be coherent, agile, and internationally respected.

On 9 December 2022, the Treasury published its Policy Statement on Building a smarter financial services framework for the UK. Together with the Government and the other financial services regulators, we will be implementing the outcomes of the FRF Review. Delivering these outcomes is a key part of our public commitments. We explain our approach and how we are delivering these. We will keep these pages updated.

See our approach to FRF implementation

About the FRF review

Post-Brexit, the FRF Review aimed to ensure the UK's financial services sector can have tailored rules to best suit UK markets.

The outcomes of the Review cover changes that:

- add to our objectives and regulatory principles
- build on our existing accountability arrangements, enhance scrutiny of our activities, and strengthen stakeholder engagement
- give powers to the Treasury and the financial services regulators to create a framework where the expert and independent regulators have greater responsibility for setting regulatory requirements that apply to firms

The draft legislation that will enable us to implement the outcomes of the FRF Review is in the Financial Services and Markets Bill. Once the Bill becomes law, the regulatory framework will change. The Treasury and the financial services regulators will then start to move firm-facing requirements from legislation into their rulebooks. In practice, this means the Treasury repealing retained EU law and replacing it with an appropriate UK framework, under which the financial services regulators will make detailed, firm-facing requirements in their rulebooks.

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On this page

- About the FRF review
- Our FRF work and delivering on our commitments
- Focusing our FRF efforts
- Outcomes we want to achieve
- New secondary international competitiveness and growth objective
- Feedback
- Related documents

Background information

- Treasury's Policy Statement on 'Building a smarter financial services framework for the UK'
- Treasury's FRF Review consultations

Drivers for the FCA

Driver	Contribution to international competitiveness and growth
1. Operational efficiency	We add value through smart regulation which promotes efficient and stable financial markets. By increasing the speed and efficiency of our decision-making and administrative procedures, whilst maintaining high standards, we can facilitate firms' productivity and the ease/attractiveness of doing business in the UK.
2. Proportionate regulation	We can drive proportionate regulation by seeking to ensure that regulatory costs or restrictions are proportionate to the expected wider regulatory benefits. This should make UK markets a more attractive place for firms to enter, thereby improving competition and the UK's competitiveness as a financial hub.

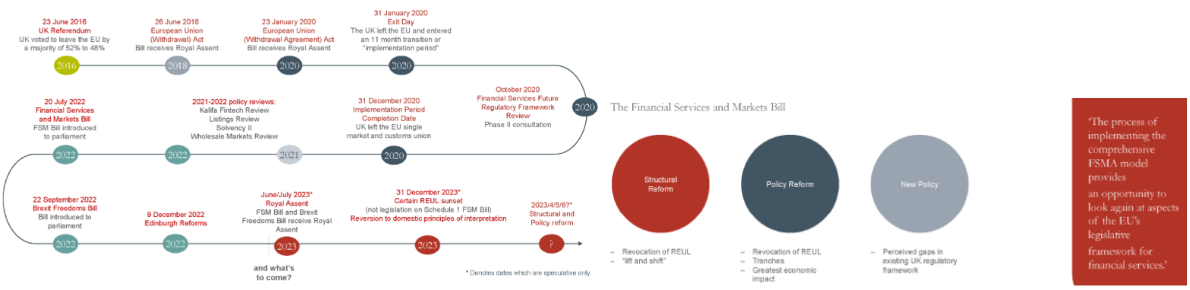
Drivers for UK financial markets

Driver	Contribution to international competitiveness and growth
3. Effective competition	Effective competition lowers prices for consumers and market participants, increases the quality of goods and services, provides greater product variety. Competition is also one of the key drivers of innovation. Effective competition drives firms to be more efficient.
4. Innovation	The commercial application and flow of ideas through innovation is key to long-term productivity growth and international competitiveness.
5. Trust and reputation in UK financial markets	This increases investment and confidence to do business in the UK, supporting productivity and growth, and making the UK more internationally competitive. Increasing trust can also enhance the depth and liquidity of UK financial markets, which helps market participants to optimise costs. Greater trust from consumers in financial services firms encourages take-up of appropriate financial services products and services, which helps underpin economic growth.
6. Market stability and effectiveness	This protects investors and consumers, and builds confidence in UK financial markets and institutions. This provides a stable platform for increasing investment in the UK, which, in turn, supports productivity and market size and depth.
7. International markets	Playing a leading role in setting international standards and enhancing the attractiveness of UK markets supports our position as a world-leading place to invest and for businesses to raise capital. The finance sector can also help facilitate efficient business investment in the wider economy, increasing capital formation and productivity.

FS&M Bill: *Repeal and Replace:*

i. Institutional and procedural foundations for repeal and replacement of REUL
ii. New Designated Activities Regime (DAR)
iii. Transitional changes in wholesale markets, insurance and securitisation regulation
iv. Regulatory frameworks for FMI
v. Central counterparties (CCP) recovery and resolution and insurers in difficulty
vi. Stablecoin regulation
vii. Critical outsourcing
viii. Financial promotions S21 'gateway'
ix. APP fraud and access to cash

Back to the future (regulatory framework)



Tranche 1; *Work is already underway to review, repeal, reform and replace the first tranche of REUL files:*

i. The Wholesale Markets Review (WMR)
ii. Lord Hill's Listing Review
iii. The Securitisation Review
iv. Solvency II Review

Tranche 2; *The government will take a 'twin-track' approach to the next phase involving the following REUL*:

i. Remaining implementation of the outcomes of the WMR
ii. Continue with Solvency II
iii. The Packaged Retail and Insurance-Based Investment Products (PRIIPS) Regulation
iv. The Short Selling Regulation
v. The Taxonomy Regulation
vi. The Money Market Funds Regulation.
vii. Payment Services Directive and the Money Directive.
viii. Insurance Mediation and Distribution Directives
ix. The Capital Requirements Regulation and Directive.
x. Long-Term Investment Funds Regulation
xi. The consumer information rules in the Payment Accounts Regulations 2015.

The substance of the Smarter Regulatory Framework will be set through FCA rules and these SIs:

i. The DAR SI: A single Designated Activity Regime SI, divided into parts, each dedicated to regulating a different activity
ii. Have Regards SI; To set out matters to witch the regulators must have regard when making rules in that particular area.
iii. Misc. SI; Shall contain REUL that needs to be preserved & does not inside FSMA or other primary regulations.

The FCA will have three aspects for its rulemaking:

i. Architectural Changes: Changes to legislative structure DAR, objectives and accountability of regulators, MRAs
ii. REUL and the FSMA'isation and Policy Changes; The repeal and restatement of EU law into UK rules will impact firms' substantive obligations. Approach is still unclear for most elements of the *Aquis*. Long term expect a medium/ high impact.
iii. New Policy Areas; Miscellaneous (financial promotions; APP; crypto). Likely to be of limited impact for most firms.

4. Secondary markets policy update; John Wu, David Mascarello and Robert Avery

Next Wednesday, on 05th July the FCA will publish both its Policy Statement on the Trading Venue Perimeter and the scope of Multilateral activities ("expect no surprises"); and a consultation paper on the creation of an Equities and a non-equities Consolidated Tape.

Firms will be given 3 months until 09th October to assess, confirm, comply and disclose with the multilateral perimeter requirements.

The FCA had no comments on the forthcoming non-equities transparency workstream, nor the Oct/Nov consultation paper as scheduled. They did remark that some outreach with certain individual firms was now underway, but without any more details. It was noted that the SMAC was feeding into the process, but under strict secrecy. The meeting discussed whether the non-public and non-disclosed approach to the SMAC was in fact beneficial, especially when set against the CFTC-MRAC, the ESMA-SMSC and the FISMA-ESC processes which were all more transparent. There is clearly a range of views inside the FCA on this matter. Non-one inside the FCA had any visibility on the new stakeholder committee on market reporting which is to sit in parallel with the SMAC.

In parallel to the recent ESMA paper on market outages and associated communications protocols, the FCA was proposing to mirror this in follow-up work to the Policy Statement on Equities Transparency. This means that non-equities outages will be subsumed into this workstream. A subgroup of the SMAC had been created to work up policy proposals for a framework for market outages, and David Mascarello had been appointed to chair that work.

5. Prospectus regime; Adam Wreglesworth

Listings Regime: FCA noted that there were now only 2 days remaining to respond to the open consultation on the Listings Reform. A further CP shall be published in the autumn which will set out the legal instrument & the CBA.

Prospectus Regime: a new timeline will be published very shortly in conjunction with HMT, together with a draft text of the SI legal instrument. The formal legal process should take effect in the autumn of this year with the date of admission to trading being launched on 10th April next spring.

AW noted the structure of the four “Engagement Papers” and set out the FCA timelines per the slide below and on the webpage: New regime for public offers and admissions to trading | FCA

- Engagement Paper 1 - Admission to trading on a regulated market
- Engagement Paper 2 - Further issuances of equity on regulated markets
- Engagement Paper 3 - Protected forward-looking statements
- Engagement Paper 4 - Non-equity securities

There will be two further engagement papers published shortly, one of which will be on the Primary market “Intermittent MTFs” or “*ITV*s” whereby firms making listings will not be required to publish a prospectus. The other will concern “crowdfunding platforms” for both public offers and for growth markets, and therefore make a close parallel with work underway at ESMA. AW noted that the FCA is deploying focus groups to steer all 6 workstreams.

6. AOB

i. Discussion on what FCA policy involvement there should be wrt the T+1 HMT and industry taskforces (none)
ii. Discussion as to whether next TACC should set out FCA approach to UPI and UTI where it goes live in Q4 2024 (will be at Q1 2024 TACC)
iii. Discussion on the UK-EU MoUs

UK Edinburgh Reforms six months on; *HM Treasury and the UK regulators have published over 20 new policy statements, consultations, discussion papers and calls for evidence on the proposals for the reform of UK financial sector regulation announced in Edinburgh last December*.

- Mapping those developments in the last six months to the list of 43 'core' EU financial services files in scope of HM Treasury's programme for the review, repeal, reform and replacement of EU derived legislation under the Financial Services and Markets Bill, and shows the expected timing of the reforms.

Edinburgh reforms package

- On 9 December 2022, the UK Government announced a package of over 30 proposals for financial services regulatory reform including:
  - some proposals directly relating to the "core" EU financial services files in scope of its implementation programme under the Financial Services and Markets Bill and
  - cross-cutting and other proposals to reform the UK financial system of financial regulation.
- These build on the Government's plans to create a 'smarter regulatory framework' for the financial sector.
- Edinburgh reforms
  - HMT policy statement, Building a smarter financial services framework for the UK (9 December 2022).
  - Chancellor of the Exchequer, Ministerial statement (9 December 2022).
  - HMT, Financial Services: The Edinburgh Reforms (9 December 2022).
  - PRA DP4/22,The PRA's future approach to policy (September 2022).
  - FCA Future Regulatory Framework Review (December 2022).
  - HMT, Financial Services Regulation: Measuring Success – Call for Proposals (May 2023).
  - UK Edinburgh Reforms Impact on Financial Services (December 2022)
  - UK Retained EU Law (Revocation and Reform) Bill: Impact on financial services (October 2022).

Financial Services and Markets Bill

- The Bill was introduced in July 2022 and is in its final stages in Parliament.
- The Bill provides for the review, repeal, reform and replacement of EU-derived financial services legislation .
- HM Treasury has identified 43 "core" files in scope of its implementation programme for the Bill: work has started on four files (Tranche 1) and ten other files have been identified as the next priority (Tranche 2).
- HM Treasury expects to make significant progress on both Tranche 1 and Tranche 2 by end 2023 (and will review and assess the prioritisation of the remaining files in due course).
- UK Financial Services and Markets Bill: enacting the future regulatory framework (July 2022).

Progress on the reform package

- Six months on, HM Treasury and the UK regulators have published over 20 new policy statements, consultations, discussion papers and calls for evidence on the proposals in the Edinburgh reforms package.
- However, the planned repeal and replacement of EU-derived legislation will only move forward after the Financial Services and Markets Bill receives Royal Assent.
- The following tables highlight developments in the last six months, mapped to the list of "core" files, and show the expected timing of the reforms.

Markets in Financial Instruments Directive and Regulation (MiFiD/R)

Tranche 1 file

- Delivering on Wholesale Markets Review (FSM Bill).
- Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022.
- Introduce consolidated tape (by 2024).
- Work on new class of trading venue (*Intermittent Trading Venue*).
- Work on boundary between regulated and other advice (with FCA).
- FSMA 2000 (Commodity Derivatives and Emission Allowances) Order 2023 (May 2023).
- Investment research review and Call for evidence (April 2023).
- FCA policy statement on secondary markets (May 2023).

Listings Directive (LD)

Tranche 1 file

- Delivering on Lord Hill listing review and Secondary Capital Raising Review
- Illustrative statutory instrument (SI) (policy note)
- FCA consultation on primary markets and FCA policy statement on secondary markets (May 2023).
- FCA engagement papers engagement papers on proposed public offers and admissions to trading regime (May 2023).

Market Abuse Regulation (MAR)

Tranche 3 file

- HMT/FCA statement on criminal market abuse regime (March 2023)

Short Selling Regulation (SSR)

Tranche 2 file

- HMT call for evidence on short selling review published

Securitisation Regulation (Sec Reg)

Tranche 1 file

- Delivering on Securitisation review
- Illustrative SI (policy note) published

Securities Financing Transactions Regulation (SFTR)

Tranche 3 file

Benchmarks Regulation (BMR)

Tranche 3 file

- ESG Data and Ratings Code of Conduct Working Group

Central Securities Depositories Regulation (CSDR)

Tranche 3 file

- Accelerated settlement taskforce launched
- Implementing FSM Bill changes (FMI sandbox planned for 2023).

European Market Infrastructure Regulation (EMIR)

Tranche 3 file

Settlement Finality Directive (SFD)

Tranche 3 file

Timing Of The Reforms

Q4 2022

- Investment Manager (Investment Transactions) (Cryptoassets) Regulations 2022 made (December 2022).

Q1 2023

- Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022 in force (18 January – some provisions).
- Response deadlines for:

    - HMT consultation on VAT treatment of fund management (3 February)
    - HMT consultation on information requirements in the Payment Account Regulations (17 February)
    - FCA consultation on broadening access to financial advice for mainstream investments (28 February)
    - HMT consultation on PRIIPs and UK retail disclosure (3 March)
    - HMT call for evidence on short selling review (4 March)
    - FCA discussion paper on the future disclosure framework (7 March)
    - HMT consultation on reforming the Consumer Credit Act (17 March)
- HMT revised Green Finance Strategy published (30 March).

Q2 2023

- Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022 in force (7 June – remaining provisions).
- Improved tax rules for Real Estate Investment Trusts (from April 2023).
- New regulations to remove well-designed performance fees from the pensions regulatory charge cap (in force 6 April 2023)
- Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 made (17 May).
- Response deadlines for:
    - HMT call for evidence on review of the Payment Services Regulations 2017 (7 April)
    - Investment research review call for evidence (24 April)
    - HMT call for evidence on aligning the ring-fencing and resolution regimes (7 May)
    - FCA discussion paper on the asset management regime (22 May)
    - PRA/FCA discussion paper and HMT call for evidence on reform of SM&CR (1 June)
    - PRA/Bank of England consultation on UK retail central bank digital currency (7 June)
    - PRA consultation on removing rules for the capital deduction of certain non-performing exposures (14 June)
    - FCA consultation on equity listing rule reforms (28 June)
    - HMT consultation on regulation of ESG ratings providers (30 June).
- Investment research review report expected (13 June).
- PRA consultation papers on rule changes to implement Solvency II reforms (expected June and September 2023)

Q3 2023

- Financial Services and Markets Bill receives Royal Assent.*
- Amendments to the Building Societies Act 1986 – legislation introduced.*
- SIs on public offers, securitisation and payments introduced.*
- ELTIF Regulation repealed.*
- Publication of Government consultation on near-term ring-fencing reforms (expected mid-2023).

- PRA consultation papers on rule changes to implement Solvency II reforms (expected June and September 2023).
- Response deadline for FCA engagement papers on public offers and admissions to trading regime (29 September).
- FCA to provide details on the scope and timings of the wider review (with HMT) of the boundary between its financial advice and guidance framework.*
- Consultation on proposed rules and guidance for supervising the operational resilience of CTPs (expected H2 2023).
- Consultation on new guidance on Local Government Pension Scheme asset pooling (was expected early 2023).

Q4 2023

- Substantial progress on review, repeal, reform and replacement of all EU-derived legislation covered by Tranche 1 and Tranche 2 files (by end 2023).
- Accelerated settlement taskforce publishes initial findings (December 2023).

Q1 2024

- Work starts on review, repeal, reform and replacement of EU-derived legislation covered by Tranche 3 files.*
- FCA consultation expected on rule proposals for public offers and admissions to trading regime*

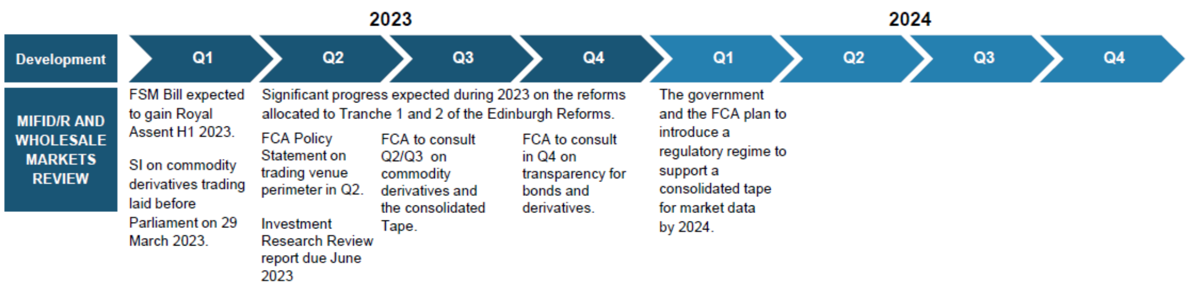
Q4 2024

- Introduction of consolidated tape (by 2024).
- Accelerated settlement taskforce publishes final report and recommendations (December 2024).

Q1 2025

- Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 in force (1 January).

MIFID/R AND WHOLESALE MARKETS REVIEW



- Delivering on a WMR recommendation, the government and the FCA plan to introduce a regulatory regime to support a consolidated tape for market data by 2024.
- As envisaged by the WMR, on 29 March 2023, the government laid before Parliament the draft Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023, to remove burdens from firms trading commodities derivatives as an ancillary activity. The Order will come into force on 1 January 2025.
- The independent Investment Research Review was launched on 9 March 2023 and is due to report by 13 June 2023.
- Timing not yet announced
    - the government will work with the regulators and market participants to trial a new class of wholesale market venue which would operate on an intermittent trading basis
    - the government has committed to work with the FCA to examine the boundary between regulated financial advice and financial guidance
    - regulation of the wholesale markets is also likely to be impacted by the outcomes of the Overseas Framework Review which was launched by HM Treasury in December 2020. The government is considering the impact of potential reforms before bringing forward concrete proposals on potential changes to the UK's regime for overseas firms and activities.

AML & MAR

HMT CP on reform of AML_CTF supervisory regime; AML_Reform_Consultation_Document; 30June2023.pdf

- In the most recent peer assessment of the UK by the Financial Action Task Force (FATF), the FATF identified inconsistencies and weaknesses in the UK's supervisory system - in particular in the professional services sector - that represent a significant vulnerability.
- This consultation sets out our objectives for this reform: to strengthen the effectiveness of the supervisory system, to improve co-ordination across the UK's AML/CTF system, and to ensure the chosen policy is feasible. There are four potential models set out in this document, ranging from new powers which would bolster the existing regime to making a public body responsible for some or all UK AML/CTF supervision. I hope all those in the AML regulated sector contribute to this consultation to enable us to identify and deliver the best route to strengthen our supervision of efforts to prevent money laundering and support the UK's overall fight against Economic Crime.

UK MAR implementation creates a CJA Insider Dealing Regime Overhaul; *The Insider Dealing (Securities and Regulated Markets) Order 2023, effective since 15 June, brings the scope of the criminal offence of insider dealing under the CJA 1993 in line with the civil regime set out in UK MAR. This change follows the joint HMT / BoE / FCA Fair and Effective Markets Review in 2015 into structural risks in the FICC markets.*

- How we got here. Both the CJA and MAR list the securities and markets on which the insider dealing offence can be carried out. Historically, the lists under the CJA have been much narrower than the UK MAR equivalents, leading to a gap in respect of securities or markets that the CJA didn't cover, and some markets that 'fell off' the CJA's list over time simply because they'd changed their name.

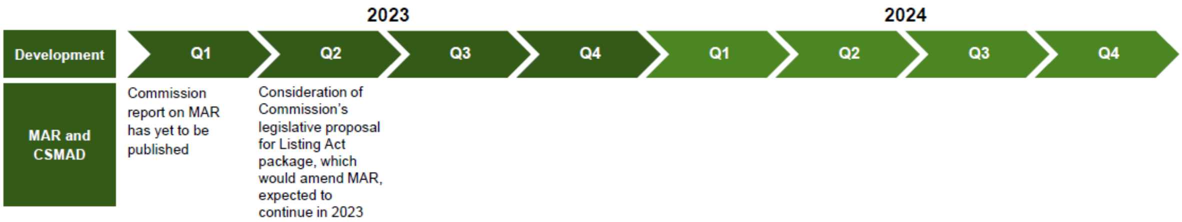
- Overall, following the changes, the CJA regime captures trading:
  - in MiFID financial instruments covered by MAR – previously, securities such as currency options, CDSs and units in collective investment undertakings were out of scope;
  - on trading venues covered by MAR, i.e. UK, EU and Gibraltar regulated markets, OTFs and MTFs – this replaces the CJA's previous reliance on a list of named venues; and
  - on 3 other venues (NASDAQ, SIX Swiss Exchange and NYSE) due to particular trends around UK insiders disclosing information relating to securities traded on them.
- *Key takeaways.* The Treasury has noted that, on the basis firms should already complying with UK MAR, this expansion of scope under the CJA should not impose any additional costs. However, firms should still bear in mind the possible need to update policies and procedures accordingly.

Cum-Ex Raiding – the FCA Issues its Biggest Fine to Date; *The FCA has come down hard on ED&F Man Capital Markets Ltd (MCM) for oversight failures in cum-ex trading, handing the firm a £17 million fine. Cum-ex trading, which exploits value differences between shares with and without dividends, has been under scrutiny in many jurisdictions for potential tax abuses.*

- MCM was found to have collected around £5 million in fees for trading strategies that facilitated illegitimate withholding tax ("WHT") reclaims from Danish authorities. The FCA found that WHT totalling £20 million had been reclaimed despite the fact MCM's clients had not owned or borrowed any shares, received any dividends, or paid any taxes.
- This case marks the largest fine meted out by the FCA to date in the cum-ex trading arena, considering the severity of the breaches and the significant revenue involved. It's important to note that the fine includes a 30% settlement discount, which brought it down from around £22.5 million.
- What happened? The FCA's account points to various shortcomings. While MCM possessed tax and legal opinions supporting their strategies, they are said to have lacked robust systems and controls to ensure these opinions were available and remained relevant. Compliance also faltered in monitoring and reviewing MCM's trading activities and neglected to consider associated risks. The responsible Board Member was also deemed to have an inadequate grasp of the strategy, meaning they were unable to provide meaningful oversight or challenge. As a result, MCM was found to have breached FCA Principles 2 and 3 (requirements for firms to conduct business with due skill, care and diligence and to take reasonable care to organise and control their affairs, respectively).
- Lessons learned. MCM's example serves as a poignant reminder of the vital role played by Compliance functions in ensuring firms have adequate systems and controls in place when relying on legal advice. Firms must ensure that they are capable of:
  - checking that any legal advice is both available and up-to-date;
  - confirming that it aligns with their trading (and other) strategies; and
  - promptly identifying and addressing any questions or concerns.

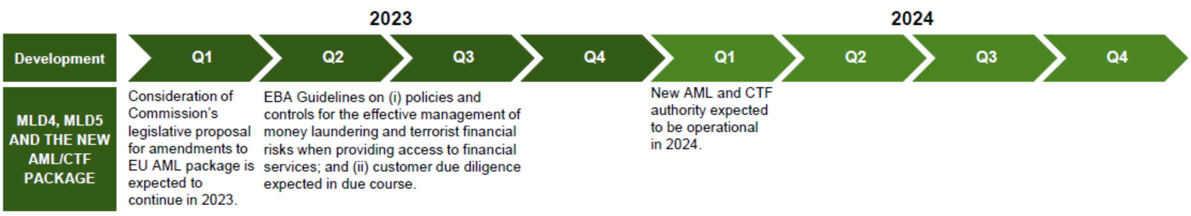
- Importantly, legal advice does not absolve firms of their responsibilities; they should still have a solid understanding of their trading strategies and continually monitor and review any trading undertaken.
- The FCA's ruling aligns with its approach to combatting financial crime, as outlined in Market Watch 52. Ultimately, tackling financial crime clearly remains a burning topic for the FCA, with it accounting for 14% of their regulatory enforcement cases for the 2021/2022 period. Clearly, this issue is here to stay.

EU MAR AND CSMAD



- 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. This will, amongst 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 will now continue through the EU legislative process.

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 the AML and CT framework.

- In July 2021, the Commission adopted a package of legislative proposals including a regulation establishing a new EU AML and CTF authority, a new regulation on AML and CTF, a regulation on information accompanying transfers of funds and certain cryptoassets and a sixth directive on AML and CTF. The package continued its progress through the EU legislative process in 2022, with different elements of the package progressing at different speeds. In October 2022, the Council of the EU confirmed that a compromise agreement had been reached on the regulation on information accompanying transfers of funds and certain cryptoassets. In December 2022, the Council of the EU adopted its position on the new regulation on AML and CTF and the sixth directive on AML and CTF. It is currently expected that the package of proposals will be finalised in 2023.
- •In December 2022, the EBA published a consultation paper on producing draft guidelines on policies and controls for the effective management of money laundering and terrorist financing risks when providing access to financial services. The consultation paper also consulted on revising existing guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions. The consultation closed in February 2023 and the EBA's report and finalised guidance are expected 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.

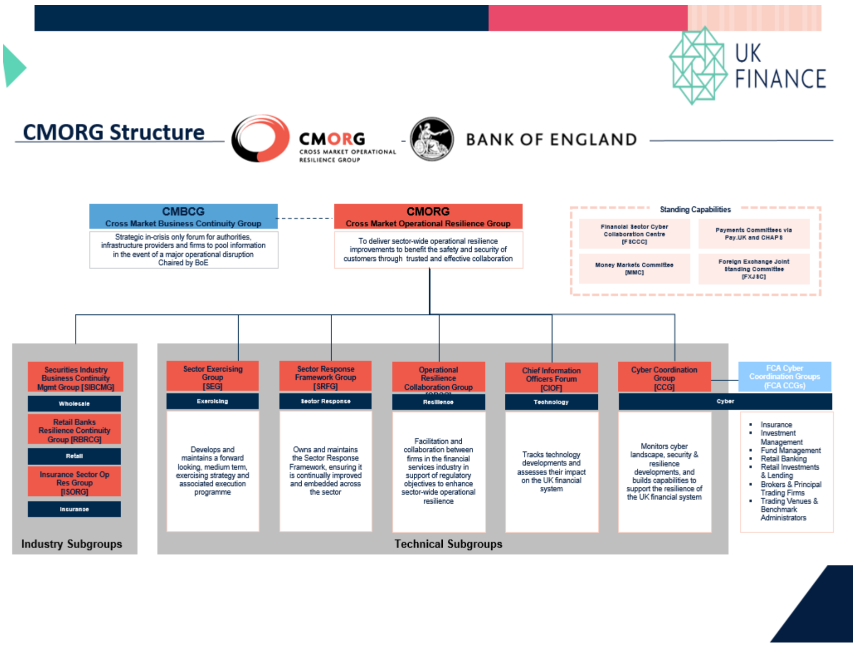
UK AML REGIME

	2023				2024			
Development	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
UK AML Regime		Certain provisions of the Money Laundering and Terrorist Financing (Amendment) (No 2) Regulations 2022 enter into force on 1 April 2023	Certain provisions of the Money Laundering and Terrorist Financing (Amendment) (No 2) Regulations 2022 enter into force on 1 September 2023					

- 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 are being phased in, culminating 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 are expected.
- 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 and 1 September 2022. Remaining provisions will enter into force on 1 April 2023 and 1 September 2023.

- •The UK's list of high risk third countries is updated periodically to reflect the Financial Action Task Force's standards. Future updates may be made following the next Financial Action Task Force plenaries, in March and July 2023.



Digital finance, SupTech, RegTech & FinTech

Further UK crack down on crypto promotions; The FCA publishes 'near final' rules to take effect from October; *In the face of continued volatility across the cryptoasset sector, coupled with a growing mismatch between consumers' investment decisions and their stated risk tolerance, the FCA has now published its final policy position on the promotion of cryptoassets (accompanied by 'near final' Handbook rules and supplementary guidance). Where firms market cryptoassets to UK consumers, the rules are likely to require considerable changes to in-scope firms' processes and controls around promoting cryptoassets and onboarding retail clients.*

- In January 2022, HM Treasury (HMT) confirmed its intention to legislate to bring certain cryptoassets within scope of the Financial Promotions Order. Shortly afterwards, the FCA published CP22/2 laying out strengthened rules for financial promotions of high-risk investments including cryptoassets.

- While these rules were finalised for other high-risk investments in PS 22/10, the FCA noted that final rules for cryptoassets would be confirmed once the legislative process was complete. Despite the delayed timeline, the FCA confirmed that cryptoassets would follow a consistent approach to PS22/10 (i.e. they would be treated the same as other high-risk investments), in order to maintain technology-neutrality.
- Now that the relevant legislation has been made[1], the FCA has published its final policy position in PS23/6 including 'near final' rules. The rules were published as 'near final' in order to give firms as much time as possible to prepare for the regime, while outstanding approvals are sought. The FCA has made it clear that, subject to exceptional circumstances, no further changes are expected, and these rules will apply from 8 October 2023. This compresses the original CP22/2 six-month transition period down to four-months.

Changes to the original consultation; *Details of the original CP22/2 proposals are described in our previous article here. In short, these proposals included defining cryptoassets as Restricted Mass Market Investments (RMMI) — which would require their promotion to be subject to additional restrictions (including risk warnings, banning incentives to invest, a cooling-off period, client categorisation requirements and appropriateness assessments).*

- These stipulations would apply to all firms marketing cryptoassets to UK consumers regardless of whether the firm was based overseas or what technology was being used.
- In PS23/6, the FCA stated it intends to proceed with the RMMI categorisation and its associated restrictions. As such, it is proceeding largely as consulted with only a few targeted changes (most of which seek to align to the rules in PS22/10 for other high-risk investments). These changes include:

Shortening the main risk warning to **'Don't invest unless you're prepared to lose all the money you invest. This is a high-risk investment, and you should not expect to be protected if something goes wrong. Take 2 mins to learn more',** but allowing firms to vary the prescribed risk summary (where they have good reason)

- Clarifying that the 24-hour cooling off period starts from when the consumer requests to view the direct offer financial promotion (DOFP)
    - Firms can proceed with other parts of the consumer journey (e.g., KYC/AML checks, appropriateness assessments) while the cooling-off period applies. If these other processes take more than 24 hours, firms will not need to introduce an additional pause in the consumer journey, although active consumer consent would still be needed to proceed
- Clarifying that, during high-net-worth attestations, consumers can provide figures to the nearest £10,000 / £100,000 and clarifying the level of checks firms are expected to conduct on the investor declaration form
    - The FCA confirmed it will not apply the self-certified investor category
- Modifying rules so that consumers must wait at least 24 hours before undertaking the appropriateness test again (from their second assessment onward)
    - The FCA will update the guidance firms should follow as part of this assessment
- Only introducing requirements to record the metrics proposed in CP22/2 that relate to client categorisation and appropriateness assessments
- Aligning the reduced implementation period to four months

  - The FCA will clarify how the regime applies to communications with existing customers and noted that it generally expects the new regime to impact communications which seek to encourage new investors
- Clarifying the application of the Consumer Duty
  - The Duty applies to authorised firms communicating or approving cryptoasset promotions, but it does not yet apply to promotions made by Money Laundering Regulations (MLR)-registered cryptoasset businesses
  - For authorised firms, the FCA will clarify which parts of the Duty apply (given cryptoassets are only within the financial promotion perimeter)
- It is worth noting that in the FCA's June Quarterly Consultation Paper, clarifications around CP22/2's original banning of incentives to invest are proposed, which would also impact cryptoasset promotions.

Supplementary guidance; *To supplement PS23/6, the FCA has also published a Guidance Consultation (GC23/1) which aims to support firms in implementing the central requirement for promotions to be 'fair, clear and not misleading'.*

- Although the GC addresses all cryptoasset promotions, it includes a particular emphasis on assets and arrangements that can cause 'significant consumer harm' — e.g., 'cryptoassets that claim to be stable', 'cryptoassets that claim to be backed by a commodity or asset' or 'complex yield models such as cryptoasset borrowing, lending and staking'. The GC includes an additional chapter dedicated to further discussion questions around complex yield models in order to better understand these arrangements. It also includes specific guidance on social media promotions, due-diligence expectations, disclosing legal and beneficial ownership and disclosing a firm's regulated status.
- Respondent feedback is due by **10 August 2023**, with the final guidance document to be published in the autumn.

Re-cap: four routes to promotion; *The requirements of the Financial Promotions Order mean that any entity intending to promote cryptoassets needs to have its promotions approved by an FCA-authorised firm. Due to concern that this could significantly restrict cryptoasset promotions, HMT introduced a temporary exemption allowing cryptoasset firms that are registered under the MLRs to communicate their own cryptoasset promotions. (Once the UK's wider crypto regulatory framework is finalised, cryptoasset firms will need to obtain full authorisation and thus will be able to issue their own promotions without the need for an exemption, at which point this exemption will be removed.)*

- As such, there are currently four routes to legally promoting cryptoassets to UK consumers:

1. The promotion is communicated by an authorised person
2. The promotion is made by an unauthorised person but approved by an authorised person. (Legislation is currently making its way through the UK Parliament which, if made, would introduce a regulatory gateway that authorised firms will need to pass through to approve financial promotions for unauthorised persons)

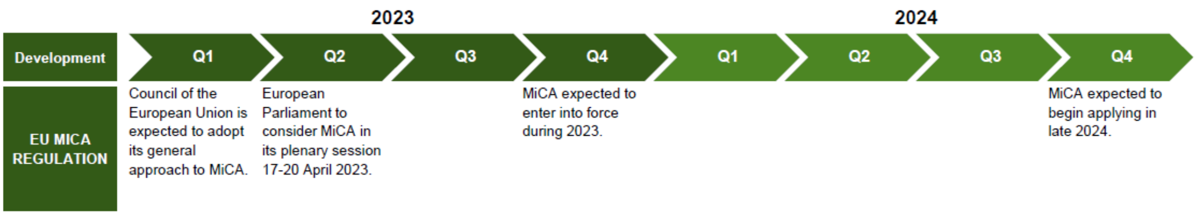
3. The promotion is communicated by (or on behalf of) a cryptoasset business registered with the FCA under the MLRs
4. The promotion is otherwise communicated in compliance with the conditions of an exemption in the Financial Promotions Order

- The requirements of PS23/6 will apply regardless of which route is used.

Next steps; *Following the publication of PS23/6, all firms marketing cryptoassets to UK consumers must finalise their preparations for the new regime, ahead of 8 October.*

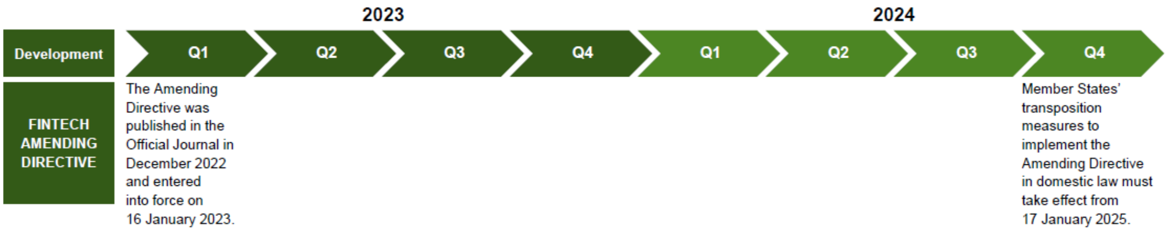
- Specifically, these firms must consider which route they will use to lawfully communicate their cryptoasset promotions and how they will meet the relevant requirements of that route. The requirements are complex, and the implementation timeframe is short — as such, firms should not underestimate the effort needed. Any firm or individuals in breach could be subject to enforcement action (including the potential for an unlimited fine and / or two years in jail).
- The FCA has re-emphasised that, even when the financial promotions regime comes into force, cryptoassets will remain high risk and largely unregulated — especially until the UK's wider regulatory framework is finalised

EU MICA REGULATION



- The European Parliament and the Council reached political agreement on the text of MiCA in October 2022. The European Parliament is expected to vote on the Regulation at its plenary session in April 2023.
- Once adopted, MICA will enter into force 20 days following its publication in the Official Journal of the European Union.
- MiCA's provisions related to stablecoins ('Asset Referenced Tokens' and 'E-Money Tokens') will apply 12 months after MiCA enters into force, with the remainder of its provision (covering other cryptoassets) will apply 18 months after MiCA enters into force.

FINTECH AMENDING DIRECTIVE



- The Amending Directive (EU) 2022/2556 of 14 December 2022 supports the DORA Regulation (see slide 35) as part of the EU's Digital Finance Strategy.
- The Amending Directive makes amendments to various sectoral Directives to ensure that their requirements on operational risk and risk management are cross-referenced to the DORA Regulation. The objective is to ensure legal certainty and clarity for financial services entities as to the relevant requirements for the operational resilience of their digital operations against information and communication technology (ICT) risk.
- Member States must amend their national law implementing the following Directives to transpose the provisions of the Amending Directive: UCITS Directive; Solvency II Directive; AIFMD; Capital Requirements Directive; Bank Recovery & Resolution Directive; MiFID II; PSD2; and IORP Directive.
- Provisions in the original proposal for the Amending Directive that proposed amendments to MiFID II to allow derogations from MiFID II requirements for DLT market infrastructures that have permission under the DLT Pilot Regulation (a related initiative under the EU's Digital Finance Strategy) were not carried through into the final version of the Amending Directive.
- •Member States' transposition measures to implement the Amending Directive in domestic law must take effect from 17 January 2025.

EU AI ACT

- The Commission published a proposal for a Regulation on artificial intelligence (AI) in April 2021. The proposed 'AI Act' sets out rules relating to the placing on the market, putting into service and use of AI systems in the EU, as well as transparency requirements and rules on market monitoring and surveillance.
  - The rules will apply proportionately on the basis of four different risk levels: unacceptable risk, high risk, limited risk, and minimal risk.
  - AI uses that are deemed to present unacceptable risk will be prohibited. High risk systems and their operators will be subject to the detailed requirements in Chapter 2 of Title III of the proposed Regulation. Limited risk systems will be

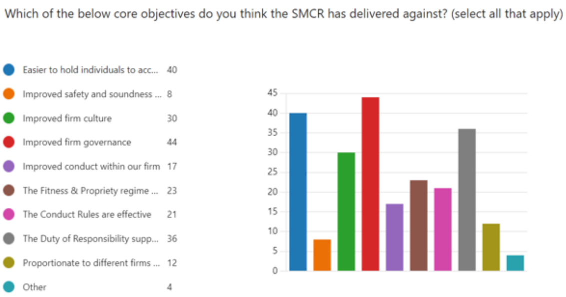
subject to transparency requirements. Minimal risk systems will be dealt with by development of and adherence to voluntary codes of conduct.

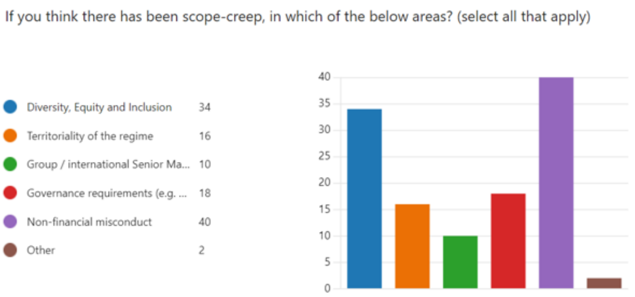
- It is intended that the AI Act will not apply to private, non-professional use of AI. Otherwise, it will apply to all sectors including financial services. The measures in the proposed Regulation will extend to providers and users of AI systems located in the EU as well as those based outside the EU to the extent the output produced by the system is used in the EU.
- Financial institutions looking to launch or use AI will need to analyse the extent to which they qualify under the AI Act as providers or users of AI systems and comply with the associated requirements according to the risk classification of the system.
- The Council agreed its general approach on the proposal on 6 December 2022 and is ready to begin negotiations with the European Parliament.
- The proposal is being considered by two committees of the European Parliament. A draft Report was published in April 2022 and has gone through a number of amendments in Committee. This legislative proposal has attracted feedback from a wide variety of stakeholders. A vote on the Report is yet to be scheduled.

Sanctions

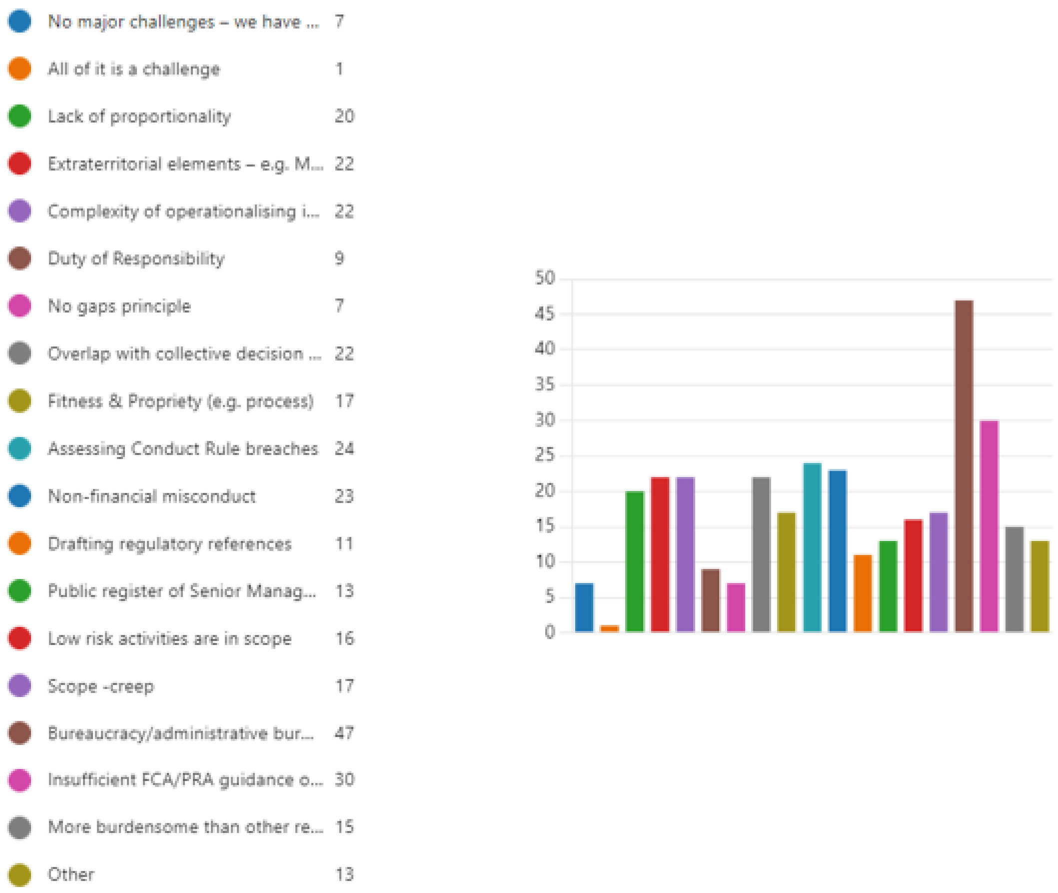
Conduct / Enforcement / Reporting

ETFs priced at NAV (FCA Quarterly Consultation Paper): The FCA proposed to introduce a deferral regime for transactions in Exchange-Traded Funds (ETFs) priced at net value asset (NAV). This would allow firms and trading venues to defer publication of trade reports to after the publication of the ETF's NAV. This change would apply to all ETF transactions (where they are priced at NAV) regardless of size of the transaction, and not solely those considered large in scale. The amendments would come into force on 29 April 2024 (in line with broader transparency amendments).

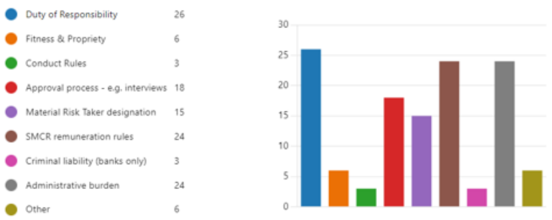


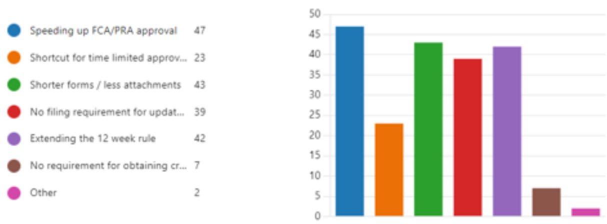


What do you think are the key issues with the SMCR? (select all that apply)

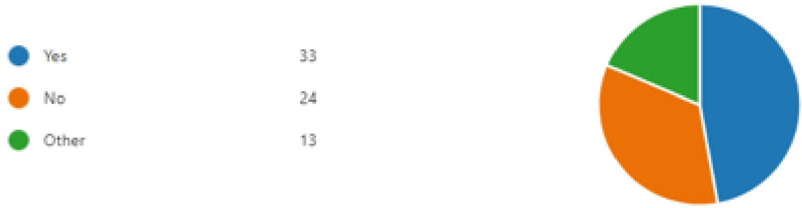


What parts of the SMCR deter individuals from taking up Senior Manager roles? (select all that apply)). What would help with Senior Manager administration? (select all that apply)





Do you find the Reg Reference Regime Helpful?



UK Focus on Non-financial misconduct and culture within financial services: FCA speech, Treasury Select Committee letter to the FCA and more; *While culture and non-financial misconduct has always been on the FCA's agenda, it is making something of a resurgence at the moment: from the incoming Consumer Duty and the FCA's expectation that it drives a culture shift for relevant firms, to the FCA's speech this week on how culture is central to the FCA's supervisory model and how culture must change to meet expectations.*

- The speech reiterated the importance of senior individuals working in financial services being assessed as fit and proper (they state that not disclosing arrests or convictions may lead to a ban from financial services) and firms' key role in preventing "rolling bad apples" (there is specific mention here to wholesale brokers and some firms turning a blind eye to previous misconduct including sexual harassment). This is particularly interesting in terms of how firms respond to adverse regulatory references and the scope for putting in place appropriate controls to prevent individuals who do have a history of misconduct from repeating their behaviour.
- This topic is something that we know is at the forefront of firms' minds given the recent press around non-financial misconduct and the latest Treasury Select Committee letter to the FCA, in which Harriet Baldwin MP (Chair of the Committee) stated "Culture in financial services, and the experiences of women in the industry, are ongoing concerns of the Treasury Committee." There is also the latest press on the Lloyd's Enforcement Tribunal's decision in relation to the Lloyd's Atrium misconduct probe (we mentioned the initial matter in March 2022's SMCR+ View) which will be of interest to insurers particularly.
- One final area mentioned in the FCA's speech which is particularly interesting and which firms may also want to discuss is the FCA's example of 'good practice' where firms which receive a qualified regulatory reference proactively contacted previous employers for more information and clarification of the facts included, and carried out their own investigations.

Upper Tribunal Decision on FCA Decision Notices against 3 individuals; *The contested Decision Notices late last year published by the FCA against three individuals at Julius Baer International Limited (JBI) for lacking integrity in relation to certain transactions entered into resulting in serious risks of financial crime.*

- The individuals referred the Decision Notices to the Upper Tribunal (UT), which disagreed with the FCA and, in a decision published on 12 June 2023, remitted the matter to the FCA with a direction for the FCA to reconsider its decision to prohibit the individuals in light of the Tribunal's findings.

- The UT was of the view that it would be "irrational" for the FCA to make a prohibition order against any of the individuals on the grounds that they acted without integrity. The UT noted several instances where the individuals demonstrated "varying degrees of a lack of competence and capability" and instructed the FCA to reconsider the decision taking into account specific matters, including:
    - There was no allegation of wrongdoing in the UK by Mr Selier or Mr Raitzin, and the primary regulator was FINMA (the Swiss regulator), who reviewed the matter and decided to take no action;
    - The FCA took no action against any individual in the UK who was responsible for the systems and controls at JBI which it found to be "severely deficient";
    - The serious delays in bringing the proceedings against the individuals given the events happened in 2010 and 2011 (and such proceedings have been unduly prolonged);
    - There is evidence of rehabilitation in respect of Mrs Whitestone starting some time ago.
- This isn't the first time the UT has disagreed with the FCA's grounds for a decision notice (although in this case the UT fell short of concluding that the FCA's decision was unreasonable).
- The FCA's statement pointed to the UT's criticism of many aspects of each individual's conduct, albeit the UT found that such conduct was negligent rather than reckless. The FCA also recognised some of the characterisation surrounding delays, stating that many were outside their control.

FCA Final Notice for ED&F Man Capital Markets Ltd ("MCM"); *The FCA published a Final Notice fining MCM, a global financial brokerage firm, £17,219,300 for breach of Principle 2 (act with due skill, care and diligence) and Principle 3 (take reasonable care to organise and control its affairs responsibly and effectively). The relevant period is February 2012 to March 2015, so before the SMCR was implemented.*

- In summary, through its Equity Finance Desk, MCM was engaged in dividend arbitrage trading in shares of issuers in several foreign jurisdictions, with this business being approved by MCM on the basis that there would be legal and tax advice supporting every trade. Heavy reliance was placed on this legal and tax advice, given that both the Compliance Function and senior management only had a basic understanding of the Equity Finance Desk business.
- Despite this, the FCA found that no meaningful checks occurred regarding the existence of the legal and tax opinions and key personnel relying on them never actually saw them, with the Compliance Function also failing to probe / test the existence of them. There was also no system to ensure that the trading was carried out in accordance with the current legal and tax advice.
- The FCA found that MCM had breached Principle 2 on the grounds that Compliance and senior management failed to take steps to increase their understanding of the activities of the Desk and failed to ensure risks arising from the dividend arbitrage trading were properly considered, understood, reviewed and monitored. It also found a breach of Principle 3 on the grounds that there was no system in place to ensure the tax and legal

opinions were obtained, nor that the trading was undertaken in line with the opinions. The lack of challenge and oversight of the trading activity was also seen to be a breach of Principle 3.

- Clearly this was before SMCR came into force, but it is not hard to see how this might have had implications for the individuals under the Duty of Responsibility and the Individual/Senior Manager Conduct Rules. There are also synergies with the recent Mr. Abarca Final Notice and his breach of Senior Manager Conduct Rule 2 which, was in part, due to an overreliance on third/fourth party communications and a lack of sufficient check and challenge (see our analysis of this here).

Financial Reporting Council ("FRC") Consultation Paper on changes to the UK Corporate Governance Code; Following the Government's 31 May 2022 response to its consultation on proposed changes to the UK's corporate governance regime, the FRC has now published a consultation paper on proposed changes to the UK Corporate Governance Code. The key focus of the reforms is strengthening the governance systems of companies - i.e. the "G" of ESG. For S&S analysis of the proposals. This will be of interest to Board members of listed companies / companies looking to list in the future, as well as Senior Managers in certain second and third line functions – e.g. risk and internal audit.

FCA update webpage on new international competitiveness objective; *The FCA has updated its regulatory framework reforms webpage to include further information about its new secondary international competitiveness and growth objective.*

- This includes "seven drivers of productivity" that will shape the FCA's work to facilitate this objective. The webpage also indicates the approaches of the PRA and FCA will need to be consistent, and the FCA will report annually on how it has delivered against the new objective, with the first report expected in July 2024.
- Although not specifically SMCR related, this does link to the questions posed in the Edinburgh Reforms driven SMCR review and in the subsequent HMT Call for Evidence and PRA / FCA Discussion Paper, and perhaps highlights that this is a key area of focus.

Financial Stability, Operational Resilience

MIFIDPRU amendments (FCA Quarterly Consultation): In its latest quarterly consultation paper, the FCA proposed amendments to MIFIDPRU (the Handbook rules under the FCA's Investment Firms Prudential Regime) to further clarify its requirements, and to amend SUP 16 to rectify some errors that have been identified. The clarifications would impact on various topics such as a firm's own funds threshold requirement, the group ICARA process, and the MIF007 ICARA assessment questionnaire.

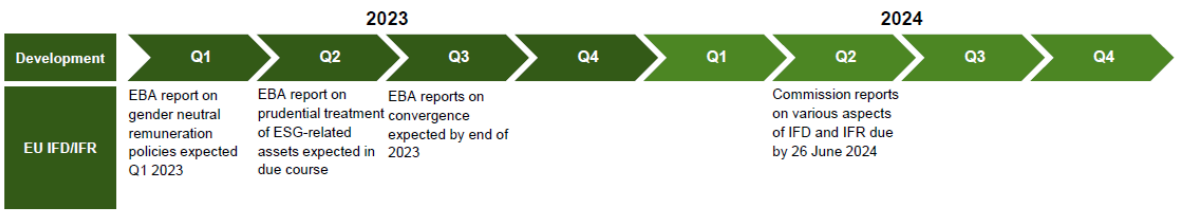
Non-Bank Financial Intermediation: In a speech, Ashley Alder (FCA Chair) set out views on the regulation of Non-Bank Financial Intermediation (NBFI), i.e. the non-bank sector. He noted the growing role of NBFI in the real economy, recapped the NBFI policy agenda and recent events, and set out areas for further action (particularly regarding private markets). He suggested that policy actions could include enhanced reporting from NBFIs to regulators and the public, greater disclosure of NBFIs' exposures, and further engagement with international regulators.

CCP Supervisory Stress Test: The BoE has launched its second public central counterparties (CCP) supervisory stress test (SST) which will explore the individual and system-wide credit and liquidity resilience of UK CCPs, and their interconnectedness with the rest of the financial system. The exercise aims to identify any potential vulnerabilities and gaps in CCPs' resilience, and will support and inform the BoE's supervisory and regulatory activities

BoE launches system-wide exploratory scenario (SWES): As set out in the December 2022 Financial Stability Report, the Bank of England (BoE) has launched its first system-wide exploratory exercise to improve understanding of the behaviours of banks and non-banks during stressed market conditions. Participating firms (to include large banks, insurers, CCPs and a variety of funds) will be announced later in the year and will contribute to the design of the scenario. The final report, including system-wide and sector-specific results is expected in 2024.

Dual-regulated firms: enhancing proportionality: The FCA is consulting on changing the remuneration rules for smaller, less complex dual-regulated firms to make them proportionate to the risks posed by small firms to consumers and markets in the UK.

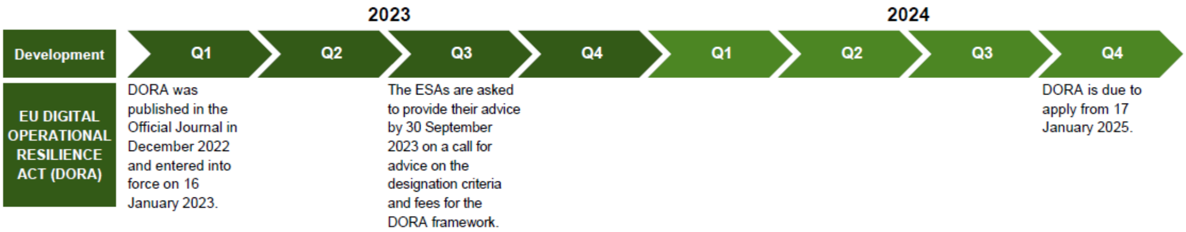
EU IFD/IFR



- The IFD and IFR will be accompanied by a number of RTS, ITS and guidelines, not all of which have been finalised.
- An EBA report on the application of gender-neutral remuneration policies is expected in Q1 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.
- 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.

DORA



- **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.

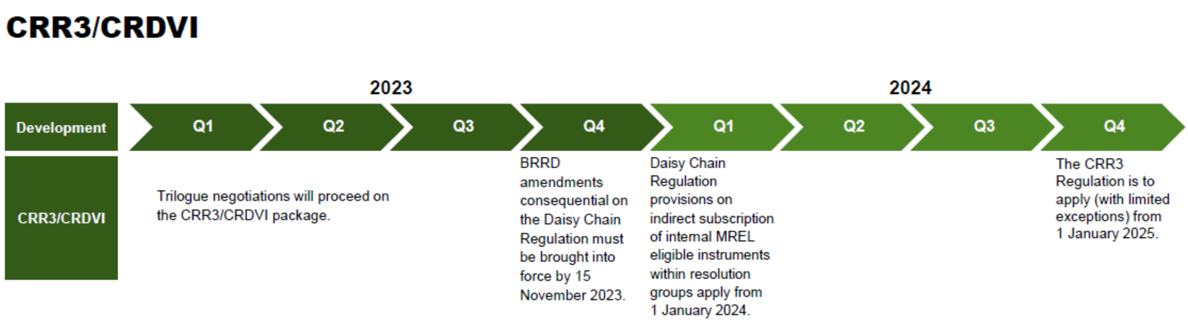
OPERATIONAL RESILIENCE

- **The Financial Services and Markets Bill (FSM Bill) which includes proposals to regulate cloud service providers and other designated critical third parties providing services to UK regulated firms, is expected to gain Royal Assent in H1 2023.**
- 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 Financial Services and Markets Bill. 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.

Prudential & Risk

MIFIDPRU amendments (FCA Quarterly Consultation): In its latest quarterly consultation paper, the FCA proposed amendments to MIFIDPRU (the Handbook rules under the FCA's Investment Firms Prudential Regime) to further clarify its requirements, and to amend SUP 16 to rectify some errors that have been identified. The clarifications would impact on various topics such as a firm's own funds threshold requirement, the group ICARA process, and the MIF007 ICARA assessment questionnaire.



- 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.
- •The Commission published its proposals for the CRR3/CRDVI package in October 2021.

- •The Council agreed its general approach on the package in November 2022, proposing some changes to the proposed fit and proper framework and adjustments to ensure proportionate application of the rules for small and non-complex institutions. The Council also seeks to defer (until 2026 at the earliest) the introduction of legislative proposals on third country branch supervision, in favour of mandating the EBA to produce a report by 31 December 2025 on the merits and modalities of introducing a harmonised third country branch requirement for banking services.
- •In the European Parliament, the ECON committee adopted its Reports on the proposals on 24 January 2023, and the European Parliament has entered into trilogue negotiations (under rule 71 of its Rules of Procedure).
- •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.

Carbon Emissions, Green finance, ESG & Disclosures

EU ETS – Capping It Off; *Recent developments in the EU's Emissions Trading System (EU ETS) are set to have a significant impact on financial services companies involved in trading emission allowances or invested in the growing list of industries that are subject to mandatory emissions caps.*

- Since 2005 the EU ETS has been a cornerstone of the EU's efforts to reduce greenhouse gas emissions. Under the system, certain energy-intensive companies (Operators) are subject to an annual cap on their greenhouse gas production, which reduces each year. Every year, Operators must surrender enough "emission allowances" to cover the emissions they produced, otherwise they face penalties.
- Holding of allowances isn't limited to Operators – other firms can and do hold accounts to trade them (and derivatives thereof) as MiFID financial instruments. But it's the Operators who must have them, and who acquire them either through free allocations (where applicable), participation in auctions, or trading with intermediaries or other Operators on applicable exchanges.
- *What has changed?* - In response to growing climate concerns and increased government-level commitments, the EU has brought in proposals to beef up its own carbon reduction targets – the "Fit for 55" package, so-called because it targets emissions reductions of at least 55% by 2030). To that end, several instruments that result (or will result) in a profound upgrade to EU ETS have recently been published, including:
    - an Amending Directive to the EU ETS itself;
    - an Aviation Amending Directive affecting the application of the EU ETS to aviation;
    - a Maritime Regulation which tweaks the EU ETS in the context of newly-covered maritime transport activities; and

  - a 'CBAM' Regulation, which, in parallel to EU ETS, from 2026 will phase in a "carbon border adjustment mechanism" requiring certain Operators to account for embedded emissions in products imported into the EU.
- *The new rules make several targeted changes that will alter the shape and feel of EU ETS. For instance, the legislation:*
  - decreases the total cap on emission allowances available per year through two one-off reductions (in 2024 and 2026),
  - accelerates the rate at which the cap decreases year-on-year
  - broadens the scope of the ETS to include emissions from the maritime transport sector from 2024,
  - sets up a whole new ETS for carbon emissions from road transport and heating fuels from 2027.
  - takes important steps towards phasing out free allowances for "hard-to-mitigate" polluting industries. There are various parts to this, including a phasing out (from 2026) of free allowances for certain Operators in tandem with the phasing in of the CBAM Regulation; we're also seeing a transition to full auctioning in the aviation sector from 2026; meanwhile the new maritime, road transport, and buildings sectors will have no free allowances from the get-go.
- *Interestingly, the Amending Directive also flags a number of areas for the Commission's future consideration, indicating that further changes may be just around the corner*. Issues include how to account for "negative emissions" (greenhouse gases permanently removed from the atmosphere), whether to lower the thresholds for currently in-scope activities (thereby growing the pool of Operators), and whether to expand EU ETS coverage into yet more sectors.
- *The new package of changes is enormous, and some elements will take years to come to fruition*. What is already clear, though, is that it represents a real step-change and shows how central EU ETS is to the EU's carbon reduction plans. As the number of Operators grows and the emission caps and free allocations dwindle, many polluters will increasingly feel the pinch, while firms trading allowances will undoubtedly see plenty of new opportunities.

CIX: (Carbon) Credit Where It's Due; *One recent snippet that caught our eye in the dizzyingly fast-changing world of voluntary carbon markets was the launch this month of CIX, a new Singapore-based global exchange for two-way spot trading of voluntary carbon credits*.

- There has been a lot of talk in recent years about 'scaling' the voluntary carbon markets, to unleash perceived demand from individuals and companies who are concerned about climate change and seeking to mitigate their own impact. This is an example of the product being brought, quite literally, to market.
- Currently, CIX are only making one standardised contract available for trading (CIX Nature X, or CNX), a curated basket of REDD+ projects registered with Verra. Each available contract lot represents 1,000 metric tonnes of CO2 equivalent, giving an indication of the size of market players they are targeting. We can see there is also a facility for users to register privately negotiated transactions, allowing them to engage in off-exchange trades whilst ensuring compliance with market regulations. It's a complex framework, clearly designed in anticipation of voluntary carbon trading going mainstream.

- Even so, these are still early steps down the road of 'scaling up', with plenty of obstacles for stakeholders of all kinds. There continue to be questions around the true environmental value of such credits – with Verra in particular taking a lot of recent flak. We can see this is impacting trading prices and volumes. Meanwhile, the space for market operators like CIX is becoming increasingly congested, as they jostle for position alongside existing players like ACX (also in Singapore) and CBL in the US. But if firms can lay the right foundations, the potential for growth remains staggering. All in all, the number of moving parts makes this a fascinating space to watch, and we'll be keeping a keen eye as the commercial and regulatory dynamics in this nascent industry continue to evolve.

FCA warns banks over 'greenwashing' in sustainable loans *UK regulator says penalties for borrowers that miss sustainability targets are too lenient While the FCA does not regulate the loan market directly, it checks that banks and directors act with integrity*

- The FCA has written to banks that lend to UK companies to admonish them about "greenwashing" and "conflicts of interest" in the sustainable loans market. The growing popularity of deals that link borrowing costs to sustainability targets has prompted fears that banks and high-emitting companies use these to burnish their reputation without setting meaningful climate goals. Sustainability-linked loans should include targets as good as those that companies publish in their climate transition plans, the FCA said in a letter to a handful of banks' sustainability bosses on Thursday. It warned of possible "further measures" to clean up the sector.
- The FT revealed last month that the regulator has been interviewing bankers and borrowers about such loans and is considering whether to draw up a voluntary code of conduct for the space. Last year $244bn of sustainability-linked loans were issued across Europe, compared with $319bn the previous year, amid a broader market downturn, according to data provider Dealogic. In 2020 there were $123bn of such loans issued.
- While the FCA does not regulate the loan market directly, it checks that banks and directors act with integrity, and was asked by the Treasury at the end of last year to help the UK reach net zero emissions by 2050. One problem identified in the letter to bankers is that punishments or rewards that bankers add to the cost of capital create little incentive for their clients to meet sustainability goals.
- This is because penalties — typically less than a 20th of a percentage point for borrowers with high credit ratings, and a third of a percentage point for lower-rated loans — have not risen with interest rates. Targets are also too easy to meet, according to the FCA. One company told the regulator that less than a third of 250 sustainability-linked loans it assessed last year were "fit for purpose", with targets that were "not robust" in half of cases.
- Bankers nonetheless have an incentive to do these deals as they count towards annual green financing targets, which is sometimes linked to executive pay, the FCA said. Two of the biggest providers of sustainability-linked loans in the UK, HSBC and Barclays, have each committed to raise up to $1tn of sustainable finance and investment by 2030.
- Banks do not typically publish the terms of sustainability-linked loans. Richard Gibbard, a lawyer on the banking team at the European law firm Fieldfisher, said an "inherent conflict of interest" prevents bankers from giving clients big discounts on debt as a

reward for good behaviour. “These deals are easy to do at the moment and they are not changing the world,” Gibbard added, describing the phenomenon as “ESG-washing”, in reference to the social and governance goals that complement environmental ones.

ISSB unveils first standards for climate risk disclosure The International Sustainability Standards Board has published final standards that build on voluntary guidelines from established institutions and could bring standardization and credibility to corporate climate disclosure practices. Canada, the UK and other nations are considering adopting the standards, which could help eliminate greenwashing and inform environmental, social and governance investing decisions. Reuters

CFTC plans carbon credit derivatives discussion on July 19 The US CFTC will hold its second voluntary carbon markets meeting on July 19 to discuss "developments in the cash and derivatives markets for carbon credits" and how it can promote integrity in the carbon credit derivatives market. CFTC chairman Rostin Behnam noted that the development and growth of the voluntary carbon markets are at a critical point and that "the CFTC has an important policy responsibility to promote product innovation, price discovery, and liquidity for high-quality carbon credits that are the underlying commodity for derivatives products listed on CFTC-registered exchanges." Futures & Options World

Promoting transparency and addressing greenwashing; Verena Ross' speech at Investering Denmark: *I would like to stress how transparency and comprehensibility of ESG disclosures, together with their effective supervision, are critical outcomes for ESMA. That is why addressing greenwashing risks is one of our priorities (as also spelled out in the ESMA Sustainable Finance Roadmap).*

- ESG-related financial products and markets have experienced remarkable growth in the EU. With the increasing demand for sustainable investment products, there is a heightened risk of greenwashing. Moreover, as financial market regulators, we face high expectations from stakeholders to step up in ensuring investor protection and market integrity and maintaining a trustworthy environment for sustainable investments.
- In May 2022, the European Commission (EC) issued a “Request for input related to greenwashing risks and the supervision of sustainable finance policies” to each of the ESAs, seeking input on:
    - 1. On the definition of greenwashing in the financial sector;
    - 2. On the risks greenwashing poses to investors and financial markets;
    - 3. On the implementation of sustainable finance policies aimed at preventing greenwashing and their supervision, as well as;
    - 4. On the potential improvements to the regulatory framework.
- We at ESMA will soon publish a Progress Report on Greenwashing, responding to the Commission’s request for input. This report aims to support a better understanding of greenwashing and to assess which areas of the sustainable investment value chain are more exposed to greenwashing risks. It will also serve as a basis for laying out remediation actions, including regarding the monitoring of greenwashing, and potential future regulatory or supervisory activity. It is unfortunately too early to give you a full presentation of the findings from this report, as the findings are still under discussion and are only expected to be published towards the end of May / beginning of June, but

I would like to give you a little sense of what to expect. Together with the reports of the other ESAs, the ESMA progress report will lay out the ESAs common high-level understanding of greenwashing. Building on existing references to greenwashing in the EU legislation, we have worked with EIOPA and 3 EBA to provide a common view of the scope of the greenwashing phenomena across the financial services sectors under our respective remits. This common understanding tries to address the limitations of the references to greenwashing that are currently in the EU legislation. For example, it tries to avoid looking at environmental, social and / or governance aspects in silos, and rather aims to consider sustainability claims across the full ESG spectrum.

- One important point, on which we have also convergent views with the other ESAs is the fact that intentionality is not a pre-condition for the characterisation of potential greenwashing cases. Greenwashing can be unintentional and what matters to us as supervisors is whether sustainability claims are misleading or have the potential to mislead consumers and investors. This is in line with our mandates to protect consumers and investors. As supervisors, our view is that, as is usually the case with any other type of misleading information, intentionality can and should, where relevant, be considered as an aggravating factor in the context of supervisory and enforcement actions. In its progress report, ESMA then identifies areas of the Sustainable Investment Value Chain that seem to be more exposed to greenwashing risks.
- For this ESMA looks at greenwashing across four key dimensions:
  - 1. ESMA identifies three main roles that can be played by market participants in any given occurrence of greenwashing: trigger (i.e., initiator), spreader and/or (e.g. as an investor) receiver of the misleading claim.
  - 2. Misleading sustainability claims may relate to various sustainability-related topics of relevance for market participants and (retail) investors. What we found is that claims that are more exposed to greenwashing risks are for example those covering real-world impact, how the sustainability strategy fits with the overall business strategy, and claims about ESG performance to date or pledges about future ESG performance.
  - 3. Third, claims may be misleading in various ways, either through the actual provision of misleading information or through the omission of certain information.
  - 4. Fourth, misleading sustainability claims can be communicated through several channels.
- Marketing materials, labels and product information are generally seen as more exposed to greenwashing risks. Of course, this mapping of high-risk areas might evolve as market practices improve and the regulatory framework stabilises. Now that I have covered broadly the mapping of risk areas that we have developed at the cross-sectoral level, let me say a few words about how greenwashing risks exemplify themselves in some key securities markets sectors that we have looked into specifically.
- Let me start with the beginning of the sustainable investment value chain – the issuers. Although forthcoming regulatory requirements are expected to further improve the quality of corporate-level sustainability information, several aspects warrant increased attention for issuers. Forward-looking information and in particular pledges about future ESG performance appear to be particularly exposed to greenwashing risk. This feeds into both entity-level sustainability reporting and into the communications associated with the issuances of corporate finance instruments. What seems clear is that enhanced transparency on underlying assumptions and parameters is necessary to

help investors make informed decisions, and judge the ambition and the credibility of various commitments.

- Providing a fair, clear and not misleading view of the sustainability risks and impact of an entity implies clear substantiation and the avoidance of cherry picking and inconsistencies across corporate communications. On the investment management side, the highest greenwashing risk apply equally to claims regarding funds, and to entity-level claims, about the ESG profile of the asset manager. Specific high-risk areas identified are impact claims, statements about engagement with investee companies, about a fund or asset manager's ESG credentials (such as ESG labels, ESG ratings or ESG certifications), and fund names.
- Benchmark administrators can act as triggers, as well as spreaders of misleading information, since benchmarks represent a key channel of transmission of claims produced by issuers and ESG data providers. The high-risk areas identified for benchmarks include for instance issues with impact claims related to EU climate benchmarks or lack of disclosure of methodologies regarding ESG data. Finally, greenwashing risks in the investment service providers sector stem predominantly from product-level claims. The most notable situations consist of misleading claims on ESG strategy and metrics. Misrepresentation is mostly transmitted in marketing materials, product information or via labels.
- A high-risk area is the extent to which advice offered to retail investors takes sustainability into account. As I mentioned earlier, this ESMA report to be published in a few weeks is a 'progress report'. Building on the findings from this progress report, we will work on a final report (due in one year's time, in May 2024), which will provide a stocktake of the supervisory response to greenwashing. It will also cover final recommendations, including on possible changes to the EU regulatory framework.
- Consultation on Guidelines for funds names
- While conducting the work on greenwashing risks, ESMA is already taking concrete action to support harmonised, comprehensible information for investors. We have recently consulted on draft guidelines on the names of funds using ESG or sustainability-related terms. A fund's name is one of the most significant identifiers of investment funds for investors, especially retail investors, and a great marketing tool. We are concerned that some funds are using ESG or sustainability-related terms in their names without necessarily living up to the corresponding sustainability features. This could potentially be misleading and give rise to greenwashing.
- In our draft guidelines we proposed some quantitative thresholds for the investments of such funds. We received very useful feedback from a broad range of stakeholders covering the financial industry, civil society, and investor representatives. The feedback received confirms the high priority all stakeholders attribute to this topic. The responses however show varying levels of support for what we proposed in the consultation paper. ESMA is currently digesting the feedback. We are considering the appropriate calibration of the measures together with national competent authorities. We hope to be in a position to communicate publicly about the next steps after the summer.
- Sustainability and investment services providers
- Looking at the situation from an investor perspective, the integration of ESG considerations adds new layers of complexity to an already complex field. This can be daunting - in particular for retail investors. The few assessments made by now, show that a vast majority of retail investors want their holdings to reflect sustainability

preferences. According to a survey run by 2 Degrees Investing in six European countries (Denmark, Estonia, Germany, Greece, Ireland and Romania) in Q4 2021 about households' beliefs and preferences regarding sustainable finance: "60% of retail investors have mixed financial /sustainability goal, paying attention to maximizing financial returns but also to the alignment of savings with personal values and/or the real impact on the society or the environment."

- However, these surveys also show that sustainability-minded clients did not follow the advice provided as they thought the advice did not match their expectations. We collectively need to improve this situation.
- To ensure that retail investors trust the advice they are given, we need to ensure that distributors take into account investors' sustainability preferences properly. In this regard, I wish to highlight ESMA's recent revision of its Guidelines related to suitability requirements – with new requirements to collect information from clients on their sustainability preferences and requirements to assess which products fulfil those preferences as well as their other investment objectives. These revised Guidelines also clarify that investment firms need to provide staff with appropriate training on sustainability topics.
- ESMA also recently updated its Guidelines on product governance to incorporate new requirements in the area of sustainability. The revised Guidelines explain that firms, when identifying the potential target market for a product, need also to set out any sustainability-related objectives the product is compatible with. This ensures the sustainability features of the products are considered when manufacturing or distributing a product. These two updated guidelines should help to ensure that investors are receiving the right information and advice about products, in a way that properly reflects the product's sustainability features.
- Conclusions
- I hope my short intervention today allowed me to give you a little insight into the forthcoming report on greenwashing, as well as explain what ESMA is doing in the area of sustainability more broadly. Sustainability will remain top of ESMA's agenda – something we have reconfirmed by making it also an EU wide supervisory priority (so called 'USSP') over the next years. You can rest assured that we will continue to monitor the market and the challenges faced by market participants and National Competent Authorities in the application and supervision of sustainable finance policies. We will identify where additional guidance or regulatory intervention might be needed and do our best to provide it. In the meantime, we count on market participants to do all they can to live up to the high expectations of investors and supervisors alike.

EU Commission publishes sustainable finance package; *The EU Commission has published its latest package of proposals on sustainable finance. The aim of the package is to ensure that the EU sustainable finance framework continues to support companies and the financial sector by encouraging private funding of transition projects and technologies and facilitating financial flows to sustainable investments. Specifically, the Commission has:*

approved in principle a new set of EU Taxonomy criteria for economic activities making a substantial contribution to one or more of the non-climate environmental objectives;

- adopted targeted amendments to the EU Taxonomy Climate Delegated Act, which expand on economic activities contributing to climate change mitigation and adaptation not included so far;
- adopted amendments to the EU Taxonomy Disclosures Delegated Act, to clarify the disclosure obligations for the additional activities; and
- adopted a proposal for a regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, which is intended to enable investors to make better informed decisions regarding sustainable investments and will require that ESG rating providers offering services to investors and companies in the EU be authorised and supervised by ESMA.
- The EU Taxonomy Delegated Acts have been approved in principle and once all EU official languages are available, they will be adopted and transmitted to the EU Parliament and the Council for their scrutiny. They are expected to apply as of January 2024.
- In addition, the Commission has presented an overview of the recent measures and tools put forward to address key implementation issues and questions raised by stakeholders. Early reporting trends show that companies across all key economic sectors are using the EU Taxonomy as part of their transition efforts. The Commission is also publishing the EU Taxonomy User Guide, a guidance document on the Taxonomy for non-experts.
- Finally, the Commission has issued a set of recommendations on transition finance, which are intended to provide guidance as well as practical examples for companies and the financial sector.

CSRD: EU Commission consults on first set of European Sustainability Reporting Standards;
The EU Commission has published for consultation a draft Delegated Regulation setting out the first set of European Sustainability Reporting Standards (ESRS) specifying the information that undertakings are required to report in accordance with the Accounting Directive (2013/34/EU) as amended by the Corporate Sustainability Directive ((EU) 2022/2464).

- Annex I to the draft Delegated Regulation sets out the following ESRS applicable to all in-scope undertakings, namely large undertakings, small and medium-sized undertakings with securities admitted to trading on EU regulated markets, and parent undertaking of large groups:
    - cross-cutting standards covering general requirements (ESRS 1) and general disclosures (ESRS 2);
    - specific standards on environmental disclosures covering climate change (ESRS E1), pollution (ESRS E2), water and marine resources (ESRS E3), biodiversity and ecosystems (ESRS E4) and resource use and circular economy (ESRS E5);
    - specific standards on social disclosures covering own workforce (ESRS S1), workers in the value chain (ESRS S2), affected communities (ESRS S3) and consumers and end-users (ESRS S4); and
    - specific standards on governance (ESRS G1).

- Annex II sets out acronyms and a glossary of terms.
- The information required for sustainability reporting is intended to include at least the information financial market participants require in order to comply with the disclosure

obligations under the Sustainable Finance Disclosures Regulation ((EU) 2019/2088) (SFDR).
- The draft Delegated Regulation is based on draft standards developed by EFRAG, which is currently working on the second set of draft ESRS covering sector-specific standards, proportionate standards for listed SMEs and standards for non-EU companies.
- Comments are due by 7 July 2023.

Global Developments

- World Ocean Day at the start of June flagged the significance of our ocean ecosystems: over 70% of the Earth's surface and producing 50% of the oxygen we need. *Building on the momentum of World Ocean Day, this week saw a historic agreement on the adoption of the UN High Seas Treaty. Initial agreement on the wording was covered in our March edition of ESG View. The UN has now adopted the agreement, which addresses four key issues including: the fair and equitable sharing of benefits from marine genetic resources; establishment of area-based management tools, including marine protected areas; ensuring environmental impacts of activities are included in decision-making; and facilitation of cooperation in capacity-building and the transfer of marine technology.*
- An historic climate development in Switzerland this week following a national referendum where 60% of voters casting their ballot in favour of a new climate bill (the Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security). This outcome signals overwhelming support for Switzerland to accelerate their net zero journey and become carbon neutral by 2050. It will be interesting to see whether other European states follow this lead and how this will impact the Swiss private market.

1. UN defines what counts as a carbon offset under the Paris Agreement (multi-sector)

- What: A recent information note issued by a UN Panel addressed the question of what counts as a carbon offset, provoking immediate backlash from the carbon removal industry. The document is part of the UN Article 6.4 Supervisory Board's wider goal of creating an international carbon trading program, pursuant to Article 6.4 of the Paris Agreement.
- Key observations: The Panel appeared to favour nature-based techniques over engineered solutions for carbon removal, citing the "unknown environmental and social risks" posed by the latter and describing it as "unproven" and "not suitable for implementation". In addition, the note stated that they "do not serve any of the objectives of the Article 6.4 mechanism." The Panel's role in setting up a wider trading system means that the position it takes may have significant implications for the emerging carbon removal industry. Responding to the information note, many in the carbon removal industry have since advocated for a method-neutral approach, which also avoids the difficulties that come with defining the blurred lines between 'nature-based' and 'engineered' carbon removal techniques.
- This newly sparked debate comes on the heels of governments in Zimbabwe and Kenya announcing new regulations of carbon credit markets within their jurisdictions and even revocations of carbon credit contracts between private entities and local communities. These developments have left participants in voluntary carbon markets more uncertain, both on 'nature-based' and 'engineered' carbon removal projects.

2. OECD releases revised guidelines on responsible business conduct (multi-sector)

- What: On 8 June, the Organisation for Economic Co-operation and Development (OECD) published its revised guidelines (Guidelines) for multinational enterprises on Responsible Business Conduct. These updates received great attention upon release, as they were the first revisions to the Guidelines since 2011 and marked a significant evolution to the global standards on responsible business conduct.

- Key amendments:
    - Further recommendations for enterprises to align with internationally agreed goals on climate change and biodiversity.
    - A new non-exhaustive list of environmental impacts for enterprises to be aware of, including in relation to climate change, biodiversity loss, degradation of ecosystems, pollution and waste.
    - Better protection for marginalised at-risk persons and groups including whistle-blowers.
    - Expanded due diligence and disclosure recommendations to all forms of corruption.
    - New recommendations to ensure lobbying activities are consistent with the Guidelines.
    - Strengthened procedures designed to improve the effectiveness of the National Contact Points (government agencies that promote the Guidelines and handle grievances).
- Key observations: Despite critiques that these reforms have been incremental, they are still significant. For example, they are particularly important as they feature within the European Parliament's amendments to the EU Corporate Sustainability Due Diligence Directive (CSDDD) (see an update on CSDDD vote below). The strengthening of environmental and human rights obligations within the Guidelines therefore also strengthens the due diligence duties contained within CSDDD.

3. UN Principles for Responsible Investment (PRI) publishes human rights and climate reporting guidelines (financial institutions)

- What: 14 June saw the opening of the new reporting window for signatories of the PRI, which closes on the 6 September 2023. PRI has helpfully released new guidelines summarising human rights relevant indicators for the 2023 reporting period and how they correspond to the responsibilities outlined in the United Nations Guiding Principles on Business and Human Rights (UNGPs). More recently, PRI has also called on asset owners to include human rights in their requests for proposals (RFPs) and issued guidance on how to identify human rights due diligence, confirming the increasing focus and importance on the subject. PRI also published guidance on net zero and climate reporting in PRI's Reporting Framework which include:
    - UN-convened Net Zero Asset Owner Alliance (NZAOA) guidance for entities reporting on their NZAOA requirements through PRI's reporting framework.
    - Updated guidance for those reporting against the Net Zero Asset Managers (NZAM) Initiative commitments.
    - Guidance for all PRI signatories on climate reporting, based on TCFD-aligned indicators.

European Developments

1. EU financial supervisory authorities warn of increased greenwashing risks (financial institutions)

- What: On 1 June, the European Supervisory Authorities, EBA, EIOPA, and ESMA, published their respective reports on greenwashing applicable to participants across the financial markets industry. Within the reports, 'greenwashing' is identified as a practice where sustainability-related statements, declarations, actions or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, financial product or financial service and which may be misleading to consumers, investors or other market participants.
- Key observations: The findings are stark and conclude that there is a clear risk of increased misrepresentation with potential to create significant reputational risk. According to the reports, this risk is increased by a number of factors, including the unavailability of high-quality sustainability data, in particular in the sustainability investment value chain, and a fast-moving regulatory framework which is not yet adequate or mature.
- Among other things, a number of preliminary remediation actions are highlighted. For example, the regulatory framework could be reinforced by clarifying certain key concepts and by further expanding on transition finance, sustainability impact or engagement. The reports also highlight the need to build sustainability expertise, such as placing obligations on market participants across the sustainable investment value chain to take responsibility for substantiated claims, and establishing a reliable and well-designed labelling scheme for environmental disclosures.
- Our view: Greenwashing is receiving ever more attention from European regulators and businesses must be alive to the reputational, regulatory and litigation risks it poses. The final greenwashing reports from the ESAs are expected in May 2024.

2. European Commission (EC) publishes package of Sustainable Finance measures (financial institutions)

- What: On 13 June, the EC published a package of measures aimed at improving the EU's sustainable finance framework. Read a full summary of our insights here.
- Key updates:
- *Proposed Level 2 measures under the Taxonomy Regulation:* The EC has approved in principle (but not formally published):
    - a draft Taxonomy Environmental Delegated Regulation to (a) establish Technical Screening Criteria (TSC) for activities that can make a substantial contribution to the environmental objectives for which TSCs are not already available and (b) clarify the disclosure obligations for the additional activities; and
    - amendments to the Taxonomy Climate Delegated Act covering economic activities that make a substantial contribution to the climate change environmental objectives where these activities haven't been previously included in the EU taxonomy.
- *A proposed Regulation on ESG ratings providers:* The EC has proposed measures to:
    - improve the reliability and transparency of ESG ratings activities.

    - set out organisational principles and clear rules on the prevention of conflicts of interest.
    - enable investors to make better informed decisions regarding sustainable investments.
    - require ESG rating providers which offer services to investors and companies in the EU to be authorised and supervised by ESMA.
- *Notice on interpretation of the Taxonomy Regulation and its links to the SFDR:* this deals with the interpretation of aspects of the EU Taxonomy Regulation and links to the SFDR. Importantly, the Notice confirms that Taxonomy-aligned investments can qualify as a 'sustainable investment' under the SFDR. Read more about it in our insights article.
- Looking ahead: Once the EC formally adopts the Taxonomy Regulation measures, the European Parliament (EP) and Council will have four months to review them (this can be extended once for an additional two months). The measures are expected to apply from January 2024. Meanwhile on the ESG ratings Regulation, the EC will engage in discussions with the Council and the EP to agree a final text in due course.

3. European Parliament (EP) approves the Corporate Sustainability Due Diligence Directive (CSDDD) (multi-sector)

- What: The EP vote went ahead as planned this month and CSDDD was adopted. The CSDDD's reach is set to be broad and all-encompassing. It applies to: (i) all EU-based companies with more than 250 employees and a worldwide turnover exceeding €40 million spanning all sectors including financial services; (ii) parent companies boasting over 500 employees and a global turnover surpassing €150 million; and (iii) non-EU companies with a turnover higher than €150 million, as long as at least €40 million of that turnover is generated within the EU.
- Key observations: The CSDDD sets forth clear rules on due diligence that cover both human rights and the environment. The rules extend to a company's value chain partners, encompassing suppliers, distribution, transport, storage and waste-management entities. In particular, one of the most important changes adopted by the EP compared to the initial proposal, is the requirement for companies to implement a climate transition plan to limit global warming to 1.5°C and in the case of large companies with over 1,000 employees, meeting the plan's targets will have an impact on a director's variable remuneration (i.e. bonuses). According to the new rules, failure to comply could incur sanctions by the national supervisory authorities (i.e. fines of at least 5% of the company's net global turnover or, for non-EU companies, ban from public procurement in the EU).
- Next steps: Negotiations with member states on the final text of the legislation will now begin.

4. EU Council approves approach to Platform Workers Directive (multi-sector)

- What: After much negotiation, on 12 June, EU labour minsters finally reached agreement on the general approach of the proposed Platform Workers Directive. Significantly, the new Directive will introduce a legal presumption of employment status for gig economy workers where their platform exerts control and direction over them. The Directive proposes that where any three of the below criteria are fulfilled, there will be a presumption of employment status unless the digital platform can demonstrate that no employment relationship exists:

- The digital labour platform:
  - determines upper limits for remuneration;
  - dictates what the individual wears / how they act towards service recipients;
  - supervises performance by electronic means;
  - controls working hours / periods of absence;
  - limits individual's ability to take accept / refuse work;
  - limits individual's ability to use subcontractors or substitutes;
  - restricts individual's ability to build a client base / do work for a third party.

- The Directive aims to improve the working conditions of gig economy workers by ensuring that the contractual relationship which they have best reflects the work that they do with the relevant digital platform – in reality millions of gig economy workers may gain access to employment rights. The Directive will also regulate the use of artificial intelligence, ensuring that workers are informed about the use of automated monitoring and decision-making systems on digital labour platforms.
- Next steps: Negotiations with the European Parliament are due to begin with a view to reaching a provisional agreement. Although it has taken three council presidencies to reach this point, now that there is a general consensus we may see more rapid progress.

5. EU have agreed to ambitious targets for renewable energy – but its success lies in member state implementation (multi-sector)

- What: After weeks of strained discussions, the Renewable Energy Directive (RED III) has been agreed by a large majority in the European Council and will now be submitted to the European Parliament for final approval. This Directive aims to support the delivery of the energy security and climate objectives in the context of the REPowerEU strategy – Europe's energy response to the Ukraine war. This increases the EU's targets, requiring 42.5% of EU energy to be renewable by 2030 - as opposed to 32% as it currently stands. These targets are supplemented with sector-specific targets in transport, industry and heating, with parallel targets within respective sectors allowing member states to adopt the target which best aligns with their specific industrial and policy goals. In addition, RED aims to accelerate planning and permitting procedures by loosening requirements on environmental impact assessments and giving renewable projects the status of 'overriding public interest'.
- Our view: RED III signals strong ambition from the EU, but the binding targets are placed on member state governments, not industry. As EU governments will seek to make use of the flexibility provided within the RED III, success will depend heavily on implementation at the member state level.

Middle East Developments

1. NEOM closes on $8.4 Billion for world's largest carbon-free green hydrogen plant (multi-sector)

- **What:** NEOM Green Hydrogen Company (NGHC) is a joint venture created between ACWA Power, Air Products and NEOM to build the world's largest green hydrogen plant to produce green ammonia in 2026. After signing financial documents with 23 banks and investment firms at the end of May, NGHC has achieved financial close on the largest green hydrogen facility valued at USD 8.4 billion. S&P Global has certified the non-recourse financing structure for the project where it has adhered to green loan principles. This has become one of the largest project financings to take place under the green loan framework.
- **Next steps:** The plant is currently being built in Saudi Arabia's region of NEOM. The deal will have implications for renewable energy in the region as the NGHC's plant will produce up to 4GW of solar and wind energy, which in turn can produce 600 tonnes of carbon free hydrogen per day by the end of 2026. This production will provide a cost effective solution for decarbonisation for the transportation and industrial sectors in particular.

2. UAE accelerates gender balance efforts in the private sector (multi-sector)

- The Dubai Women Establishment (DWE) directed by her highness Sheika Manal bint Mohammed bin Rashid Al Maktoum, organised a new round of the 'Women on International Boards' programme with the aim of providing confidence and elevating Emirati women by enhancing their leadership skills and showcasing their vital role as members of boards globally. This initiative is in line with the direction of wider UAE policies on diversity and a focuses on increasing the UAE's competitiveness in the market.
- Several multi-national and national companies including Emirates NBD, Pfizer, PwC Middle East, Nissan (among others) joined the voluntary pledge to 'Accelerate Gender Balance in the UAE Private Sector', aimed at enhancing the participation of women in senior and middle management roles to 30% by 2025, raising the total number of participating firms to 64. There are four main pillars to the pledge: (a) ensuring equal pay; (b) promotion of recruitment on the basis of gender equality; (c) encouraging gender balance in the development of policies and programmes governing work; and (d) encouraging transparency.

APAC Developments

1. EU and the Republic of Korea establishes a Green Partnership (multi-sector)

- **What:** On 22 May, the EU and the Republic of Korea announced the establishment of a Green Partnership with the aim of strengthening bilateral cooperation and exchanging best practices on climate action, clean and fair energy transition, protection of the environment, and other fields of the green transition. Both sides reaffirmed their: (a) strong commitment to green growth and enhanced efforts to achieve their respective 2030 targets, as well as net-zero greenhouse gas (GHG) emissions by 2050; and (b) willingness to work together for rapid, deeper and sustained reductions in greenhouse gas emissions to limit the global temperature increase to 1.5 °C.

- Some priority areas for cooperation include the following:

- **Climate Action**, including carbon pricing, methane emissions and climate adaptation policies.
- **Environmental Protection**, including cooperation in relation to biodiversity conservation, circular economy and resource efficiency and forest protection.
- **Clean and just Energy Transition**, such as intensifying cooperation on renewable energy and collaboration on energy transition.
- **Facilitating Transition with 3rd Party Countries**, notably to facilitate their efforts for mitigation, adaption and resilience, and the climate, the just and clean energy and circularity transition.

ESG litigation round-up

1. Advertising watchdogs take action against greenwashing (multi-sector)

- **What:** On 7 June, the UK Advertising Standards Authority (ASA) censured Shell, Repsol, and Petronas in relation to adverts which the regulator held misled consumers as to the companies' green credentials. The ASA took aim at television promotions, posters as well as online, TV and YouTube ads. Despite the companies' arguments that consumers were well aware of their environmentally detrimental operations and products, the ASA held that, as a result of the focus which the adverts placed on the companies' sustainable activities with little to no mention of the rest of their activities, consumers would be misled as to the progress each of the companies was making in their transition journeys, and therefore the adverts were misleading. More information on the UK's efforts to combat greenwashing is available in our recent update.
- On the same day, the Swiss Fairness Commission (SLK), an independent regulatory body in the Swiss communications industry, upheld complaints from five European countries relating to FIFA's claims that the 2022 Qatar World Cup had been carbon neutral. It was held that a high standard should be applied when claiming carbon neutrality and that FIFA had fallen short in showing that its claims were accurate in terms of sustainability and in the levels of offsets it had made and planned to make.
- **Key observations:** While the ASA and SLK's decisions may have only a reputational impact on the relevant businesses, this may not be the end of the road. In the same week, the District Court of Amsterdam allowed a civil case against the airline KLM to proceed. The claim is being brought by environmental groups for allegedly misleading consumers about their environmental credentials in a previous "Fly Responsibly" campaign. Crucially this claim followed a 2022 decision from the Dutch Advertising Code Authority (SRC) which had found certain "*Fly Responsibly*" adverts to be misleading.
- **Our view:** Standalone decisions by advertising authorities in cases of greenwashing may have limited impact however they are likely to be seen as a hook for environmental campaign groups to bring further claims against targeted businesses.

2. Volkswagen shareholder case dismissed by the Court (multi-sector)

- **What:** On 8 May, the Braunschweig Higher Regional Court in Germany dismissed a case brought by a number of European pension funds against Volkswagen (VW) relating to whether or not the executive board has to report on climate change-related lobbying activities. The case was rejected by the court, which also denied the investors the right to appeal the decision. VW had refused to table the lobbying proposal, arguing that shareholders lack the authority to address the issue. Based on the German law principle that shareholders are not permitted to give detailed instructions to the board, the court stated that the request went beyond seeking transparency and could influence the company's strategic decisions. AP7, one of the plaintiffs, disagreed with the court's ruling asserting that every reporting duty could unduly impact strategic decision-making if one was to logically apply the court's ruling.

- Key observations: It is worth noting that the court's decision does not prevent future legal action of other German companies rejecting similar resolutions and it will have to be seen whether such cases will come to different conclusions.

3. US Pension Funds sued for ESG strategy (financial-institutions)

- What: Three New York City pension funds face a claim in the US accusing them of breaching their fiduciary duties by divesting c.$4 billion of assets from companies involved in fossil-fuel extraction. The plaintiffs claim the decision to divest was "*a misguided and ineffectual gesture to address climate change*".
- Key observations: At the time, the trustees of the pension funds said the decision followed "*an extensive and thorough fiduciary process.*" However, the claim alleges the divestment was voted through "*to advance environmental goals unrelated to the financial health of the plans*", and that it therefore constituted an "*unlawful decision to elevate unrelated policy goals over the financial health of the plans,*" inconsistent with the trustees' fiduciary responsibilities. This contrasts starkly with the claim brought by ClientEarth against the directors of Shell in England & Wales, accusing the directors of breaching their statutory directors' duties by failing to take into consideration environmental issues (see our article for the latest development in the that claim).
- This claim is the latest significant development in the anti-ESG campaign in the US. As part of this movement, certain political figures are seeking to prevent asset managers, including pension funds, from including ESG factors in their investment decision making processes. At least 49 anti-ESG bills have so far been introduced across the US in 2023, and state treasurers have removed funds from asset managers who apply ESG factors. Whereas in March this year, Joe Biden vetoed a Republican-led bill designed to prevent pension fund managers from basing investment decisions on ESG factors. Further updates will be provided by our team as this claim progresses.

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. Science Based Target Initiative (SBTi) financial sector resource consultation (financial services)

- What: The Science Based Targets initiative (SBTi) is a standard-setter and validation body that provide companies with a clearly-defined path to reduce emissions in line with the Paris Agreement goals. On the 15 June, SBTi released three new draft resources for the financial sector for public consultation which include:

  - SBTi Financial Institutions Net-Zero (FINZ) Standard: Outlines a conceptual framework and initial criteria to enable financial institutions to establish credible near- and long-term net-zero targets across their portfolios and operations.
  - SBTi Near-Term Financial Sector Science Based Targets Guidance V2 and Near-Term Criteria and Recommendations for Financial Institutions Version V2: A near-term framework to align with 1.5°C pathways, increasing ambition from the previous alignment to well-below 2°C pathways. Also offers additional clarifications to improve interpretation and application of criteria.
  - SBTi Fossil Fuel Finance Position Paper: Presents both near- and long-term criteria to address financial institutions' activities with fossil fuel companies.
- Timing: The SBTi is hosting a webinar on 6 July 2023 to talk through these drafts and the consultation is open until 14 August 2023.

2. European Sustainability Reporting Standards Draft Delegated Act (multi-sector)

- What: The European Sustainability Reporting Standards (ESRS) are the reporting standards being introduced under the EU's Corporate Sustainability Reporting Directive (CSRD). In November last year, the European Financial Reporting Advisory Group submitted the first set of draft standards to the European Commission. On 9 June, the Commission published its revised draft of the ESRS. Key points to note include:
  - Materiality – all disclosures other than the "General disclosures" (required under ESRS 2) will be subject to a materiality assessment. When assessing materiality, organisations will need to consider both *impact* materiality and *financial* materiality.
  - 'Comply or explain' – where a matter is judged to be material, an organisation will be required to either disclose the information (i.e. *comply*) or, if it cannot disclose the information it must *explain* why.
  - Phase in of certain requirements – for example, undertakings with less than 750 employees will not need to disclose on Scope 3 greenhouse gas emissions data.
  - Alignment with global standards – further changes to ensure ESRS have a high degree of interoperability with the ISSB standards and Global Reporting Initiative.
- Timing: The consultation runs until 7 July 2023, with the aim for final standards to be introduced as soon as possible and ready for them to be applied by relevant organisations from 1 January 2024.
- Our view: The revised ESRS would, if adopted in their current form, reduce the potential burden imposed on reporting organisations, particularly smaller in scope companies. However, by giving the reporting organisations more flexibility as to the information they report, it has the potential to negatively impact consumers of that information including asset managers and other financial market participants who may require such data to meet their own reporting obligations under SFDR.

3. EU CBAM implementation regulation (multi-sector)

- What: In December 2022, the EU reached agreement on the introduction of a carbon border adjustment mechanism (CBAM) to prevent carbon leakage on the importation of items such as iron, steel, cement, fertiliser, aluminium, electricity and hydrogen. The scheme will involve importers being required to buy CBAM certificates to compensate for carbon emissions in the country of production. Details of the scheme can be found here. The CBAM is to commence from October 2023, but with an initial period of reporting only. During the initial period, importers will be required to make CBAM reports on a quarterly basis, no later than one month after the end of each quarter. Accordingly, the first report will be required to be made by end January 2024. Much of the detail on the required reports was left to be determined by implementing regulations.

- Consultation: The Commission has now published those draft implementing regulations for the initial reporting period for public consultation. These include details of how reports are to be made, the information to be included and how the necessary emission calculations are to be made. They also provide for penalties in the event of failure to report and failures to correct inaccuracies in reports of between EUR 10 and EUR 50 for each tonne of unreported embedded emissions.
- Timing: The consultation closes on the 11 July 2023.
- The introduction of the EU CBAM is just one link in the chain of measures designed to move the EU towards net zero. Read the latest report from Simmons & Simmons that looks at the approach to date in a number of European jurisdictions, considering the ways in which tax systems incentivise expenditure on carbon reduction measures, approaches to R&D on carbon reduction developments and the tax treatment of electric vehicles (EV) more generally, as well as asking what measures are expected in the near future.

4. UK consults on Non-Financial Reporting Requirements (multi-sector)

- What: On 8 June, the Department for Business and Trade (DBT), and the Financial Reporting Council (FRC), announced plans to review the non-financial reporting requirements UK companies will need to comply with to produce annual reports and to meet broader requirements that sit outside of the UK Companies Act.
- Key proposals: The review will consider if current company size thresholds (micro, small, medium and large) that determine certain non-financial reporting requirements are suitable, and whether the preparation and filing of accounts with Companies House remain fit for purpose.
- In addition to refreshing current reporting practices, the government is also asking for stakeholder views on wider reporting requirements that sit outside of the annual report, including gender pay gap and modern slavery reporting. The consultation is open for comment until 16 August 2023.

5. UK consults on Corporate Governance Code (multi-sector)

- What: The Financial Reporting Council (FRC) has published a consultation paper on proposed changes to the UK Corporate Governance Code (the Code). Revisions to the Code form part of a series of reforms contemplated by the Government in its response (published in May 2022) to its consultation on restoring trust in audit and corporate governance in the UK. The key focus of the reforms is strengthening the governance systems of companies. Most notably, the board will be required to establish and maintain an effective risk management and internal control framework and make a declaration on the effectiveness of the company's risk management and internal controls throughout the last financial year.

- There are also a number of other changes with an ESG influence:
    - Sustainability reporting – a requirement for the board committee to monitor the integrity of this (as part of the monitoring of narrative reporting).
    - Diversity and inclusion – encouraging board diversity beyond gender and ethnicity.
    - Remuneration – a requirement to align remuneration to the company's long term strategy, including ESG objectives.
- Timing: The consultation closes on 13 September 2023, with changes to the Code expected to apply for reporting periods beginning on or after 1 January 2025.
- You can read further detail on the proposed changes to the Code, along with information on the new minimum standards for audit committees of FTSE 350 companies and the upcoming review of non-financial reporting in our insights article.

6. Hong Kong Taxonomy for Climate Change Mitigation (financial services)

- What: The HKMA released a discussion paper titled "Prototype of a Green Classification Framework for Hong Kong" on 30 May 2023 to outline its current views on taxonomy and seek feedback from various stakeholders. The prototype taxonomy: (a) is intended to provide financial sectors professionals with consistent and internationally recognised definition of "green" and "environmentally sustainable" economic activities; (b) proposes to have three layers of depth to provide green definitions of varying extents of precision; and (c) aims to achieve interoperability with other reference taxonomies. While the current prototype is focused on specific activities in the energy, transport, buildings, waste and water sectors, other sectors important for climate change mitigation will be considered in the next phase. HKMA is requesting feedback from stakeholders broadly on the Taxonomy design and structure, the metrics and technical screening criteria and on implementation and future priorities relating to the Taxonomy.
- Timing: Responses should be submitted on or before 30 June 2023, as outlined at the end of the discussion paper.

GREEN BOND REGULATION

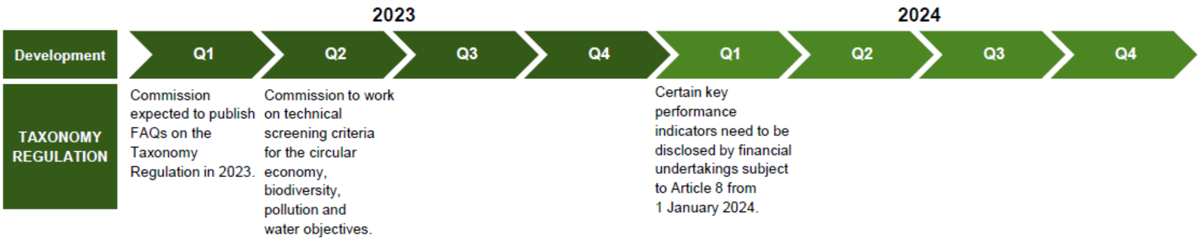
- In order to get the green bond label, the issuer needs to commit to use the proceeds from the bond issuance to finance, refinance
- or acquire assets aligned with the EU taxonomy set out in the EU Taxonomy Regulation.
- The Green Bond Regulation is designed to address the fact that, whilst green bonds play an increasingly important role in financing assets needed for the low-carbon transition, there has not, to date, been any uniform green bond standard within the EU, with Member States potentially adopting diverging measures.

- The Council and the European Parliament reached political agreement 2023.
- Once adopted by the co-legislators, the Regulation will start to apply 12 months after its entry into force.
- Key elements of the new Regulation are:
    - For designation, all proceeds of EuGBs must be invested in economic activities aligned with the Taxonomy Regulation (subject to a flexibility pocket of 15% for those sectors not yet covered by the Taxonomy and certain specific activities).
    - oCompliant bonds will have the '**European Green Bond**' or '**EuGB**' designation. Issuers' home state National Competent Authorities will supervise issuers' compliance with the standard.
    - oA registration and supervisory framework for reviewers of European Green Bonds will be established.
    - oThe Regulation also provides for some voluntary disclosure requirements for other environmentally sustainable and sustainability-linked bonds issued in the EU, such as those issued under the ICMA principles.

EU SFDR

- A delegated regulation incorporating nuclear and gas disclosures into SFDR disclosures was published in the Official Journal on 17 February 2023 and entered into force on 20 February 2023.
- The Commission was due to evaluate the SFDR by 30 December 2022. In December 2022, the European Commissioner for financial services, financial stability and Capital Markets Union stated that a public consultation on the SFDR should begin in early 2023.
- Commission Q&As on SFDR expected early 2023.
- In November 2022, the ESAs launched a Call for Evidence on greenwashing. A progress report is expected in May 2023 and a final report in May 2024.
- Financial market participants that are required to publish 'principal adverse impact' (PAI) statements under Articles 4(1)(a), 4(3) or 4(4) of the SFDR must comply with the disclosure requirements set out in the RTS by 30 June 2023 for the reference period 1 January 2022 to 31 December 2022.
- The ESAs are due to report to the Commission on best practices relating to voluntary disclosures annually, by 10 September of each year. The next report is due by 10 September 2023.
- The ESAs have been asked to review the indicators for principal adverse impact and the financial product disclosures under the SFDR. In November 2022 the ESAs wrote to the Commission to confirm that they would need a six-month extension to this deadline, with the result that the ESAs' review should complete by 28 November 2023.

EU TAXONOMY REGULATION



- In December 2022, the European Commissioner for financial services, financial stability and Capital Markets Union stated that the Commission intends to publish over 200 FAQs on the Taxonomy Regulation, presumably in 2023.
- The Commission has also announced its intention to work on technical screening criteria for activities that can make a substantial contribution to the remaining four environmental objectives (circular economy; biodiversity; pollution; and water). The Commission did not state a firm date by which this work would becompleted.
- Under Article 8 of the Taxonomy Regulation, undertakings that are required to publish non-financial information under Articles 19a or 29a of the Non-Financial Reporting Directive must include sustainability information in their non-financial disclosures. Under Commission Delegated Regulation 2021/2178, which supplements Article 8 of the Taxonomy Regulation, financial undertakings will need to disclose certain key performance indicators from 1 January 2024.
- A number of reports under the Taxonomy Regulation remain outstanding with no confirmed dates for publication.

Taxonomy Regulation: EU Commission consults on additional criteria in delegated acts; *The EU Commission has published for consultation two delegated acts relating to the Taxonomy Regulation ((EU) 2020/852).*

- The draft taxonomy environmental delegated act specifies the technical screening criteria for the purposes of determining whether an economic activity qualifies as environmentally sustainable or causes significant harm in the following sectors:
  - manufacturing;
  - water supply;
  - sewerage;
  - waste management and remediation;
  - construction;
  - civil engineering;
  - disaster risk management;
  - information and communication;
  - environmental protection and restoration; and
  - accommodation.

- The second draft delegated act amends the Taxonomy Climate Delegated Act ((EU) 2021/2139) to include technical screening criteria for manufacturing activities relating to low carbon transport and electrical equipment.
- Comments on both delegated acts are due by 3 May 2023.

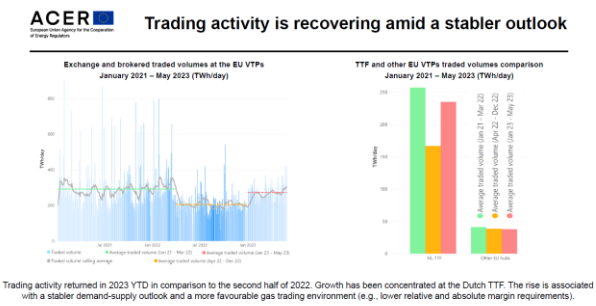
ANTI-GREENWASHING DIRECTIVE: AMENDMENTS TO UCPD

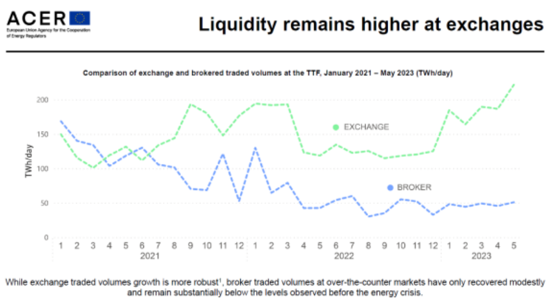
- A priority measure in the Commission's 2023 Work Programme, the proposed Directive on Empowering Consumers for Green Transition (referred to as the Anti-Greenwashing Directive) is proceeding through the EU legislative process. The new Directive aims to strengthen consumer rights and protections with respect to commercial practices, including greenwashing, that prevent sustainable purchases.
- The Directive will amend the Unfair Commercial Practices Directive (UCPD) to:
  - extend the list of product characteristics about which a trader cannot mislead consumers to cover the environmental or social impact;
  - extend the list of actions which are to be considered misleading if they cause or are likely to cause the average consumers to take a transactional decision that they would not have otherwise taken; and
  - add new practices, including forms of greenwashing, to the existing 'blacklist' of prohibited unfair commercial practice.
- In March 2022, the Commission published a package of proposed measures as part of its New Consumer Agenda and Circular Economy Action Plan, aimed at making sustainable products the norm in the EU, boosting circular business models, and empowering consumers for the green transition. The proposed *Directive on Empowering Consumers for Green Transition* (Anti-Greenwashing Directive) is designed to ensure consumers take informed and environment-friendly decisions when buying products, and the rules strive to strengthen consumer protection against untrustworthy or false environmental claims by banning greenwashing and other practices that mislead consumers.
- The European Parliament's Internal Market and Consumer Protection (IMCO) lead committee voted to adopt its Report on the proposal on 28 March 2023. The Report is tabled for a vote at a future plenary session of the European Parliament.
- The Council will continue to review the proposal under the Swedish Presidency.
- Once adopted the Directive will enter into force on the 20thday following its publication in the Official Journal. The Commission proposal envisages a 24-month transposition period, but this may be subject to change as the measure passes through trilogue negotiations.

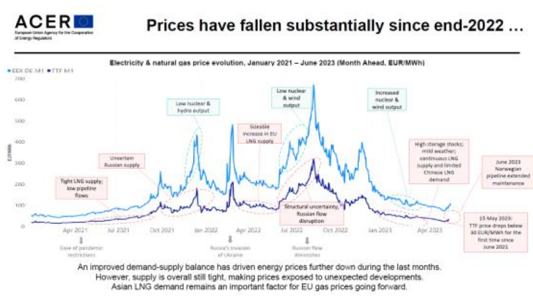
Energy & Commodities

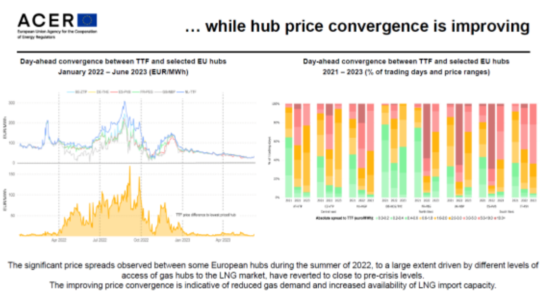
Expanded scope to REMIT; *Not all regulatory changes get a clear signposting. Financial services firms who have accessed trading in wholesale energy derivatives on EU exchanges via DEA (without having their own membership) have come in for a surprise at the hands of ACER, the EU's Agency for the Cooperation of Energy Regulators. Previously comfortably outside the reach of REMIT – the EU regulation designed to prevent market abuse in the wholesale energy market – these firms now find themselves dragged into the fold.*

- *So, what's changed?* ACER recently made a subtle amendment to its Transaction Reporting User Manual (TRUM), eliminating a carve-out that applied to trades filling the following criteria:
    - derivatives based on electricity or natural gas produced, traded, delivered or transported in the EEA;
    - conducted on an exchange through another firm's membership, rather than their own; and
    - that were either financially or (provided the relevant firm did not have arrangements to make/take delivery) physically settled.
- The effect is that firms trading certain derivatives are now 'market participants' within the scope of REMIT, and so under an obligation to register with a relevant EU national authority. ACER expects compliance with the new guidance by (a loosely defined) 'mid-2023', so affected firms should act swiftly to understand their position.
- *What next?* Anticipate that a number of firms will be obliged to register as REMIT participants for the first time following the TRUM update. This which will involve identifying a suitable Member State to register in and making the necessary filing with the relevant local regulator. We have been advising several clients on their REMIT registrations over the past few weeks; please feel free to reach out if you would like further guidance.
- Finally, as a heads-up for all firms within REMIT's purview: keep an eye on the Commission's proposal currently making its way through the EU Parliament and Council, that has the potential to make a number of alterations to REMIT off the back of the recent turbulence in European energy markets. We're keeping a close watch on this one as it works through the legislative process, so stay tuned.







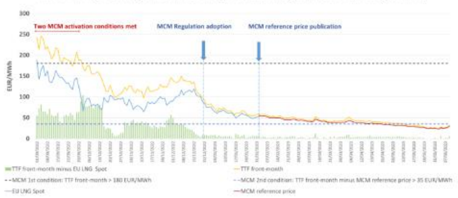


EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

The gas prices drop makes MCM[1] activation unlikely

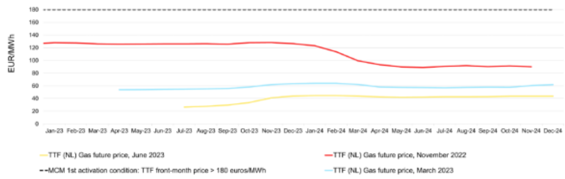
Front-month TTF, EU LNG spot and MCM reference price evolution, September 2022 – June 2023 (EUR/MWh)



MCM activation thresholds are far from current price levels.
Gas prices at the LNG cargoes continue to remain lower than hub prices, which reflect the cost of gas supplied within the system.

While gas price expectations are flattening

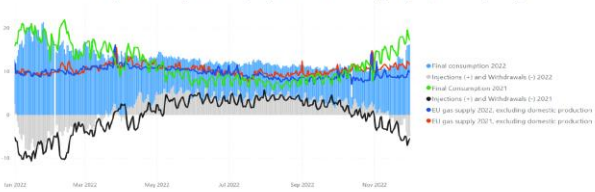
Two-year evolution of TTF future prices – products traded in November 2022 and March and June 2023 (EUR/MWh)



The prices of gas futures further fell in May and June 2023, anticipating an improved supply-demand balance.
However, they remain 1.5 times higher than the average of the preceding five-years (i.e., 20 to 25 EUR/MWh).
This is primarily because a reinforced global competition for LNG sources has potential to exert upward pressure on prices.

Rising LNG imports and lower demand have largely offset the loss in Russian flows (1/3)

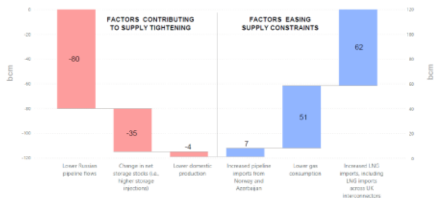
Overview of daily EU final consumption and storage net positions relative to EU daily gas imports[1], 2021 – 2022 (TWh/day)



The extreme price rises in 2022 must be attributed primarily to the Russian supply shock.
However, demand for gas was rather resilient, moved upwards by large storage injections, and caused prices to clear at record high levels.

Rising LNG imports and lower demand have largely offset the loss in Russian flows (2/3)

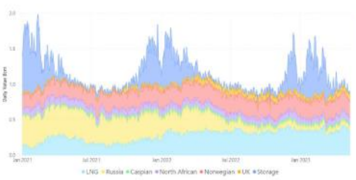
Estimated[1] EU gas supply and demand differences in 2022 in comparison to 2021 (bcm)



The extreme price rises in 2022 must be attributed primarily to the Russian supply shock. However, demand for gas was rather resilient, moved upwards by large storage injections, and caused prices to clear at record high levels.

Rising LNG imports and lower demand have largely offset the loss in Russian flows (3/3)

Daily evolution of gas imports by supply route, January 2021 to May 2023 (bcm/day)

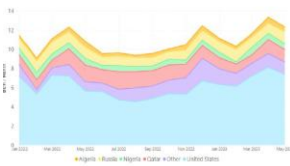


Source	% of imports share Jan 2021	% of imports share May 2023	Imports variation 2022 vs 2021
Russian	48%	8%	-55%
LNG	14%	41%	+73%
Norwegian	22%	27%	+9%
Caspian	2%	4%	+40%
North African	12%	11%	-9%
UK*	2%	9%	+200%

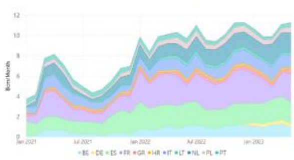
The EU supply breakdown has changed significantly as a result of the severe collapse in Russian flows and the parallel rise in EU LNG imports.

LNG imports keep rising, with US supplies on the lead

Monthly evolution of EU LNG imports by supply origin January 2022 – May 2023 (bcm/month)



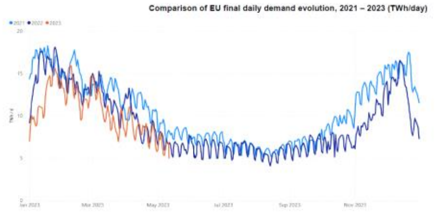
Monthly evolution of EU LNG send-outs by country January 2021 – May 2023 (bcm/month)



The US is the main EU LNG supplier (52% of LNG supply share), followed by Qatar and Russia.
France, Spain, the Netherlands and Italy are the four top EU LNG importers.

Gas consumption remains low…

Comparison of EU final daily demand evolution, 2021 – 2023 (TWh/day)

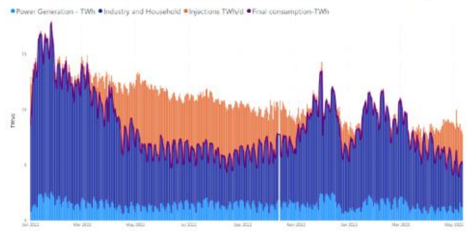


2021 EU Demand	4430 TWh
2022 EU Demand	3842 TWh
Demand drop 2022 - 2021	- 13.2%
Demand drop until May 2023 YTD	- 20.5%

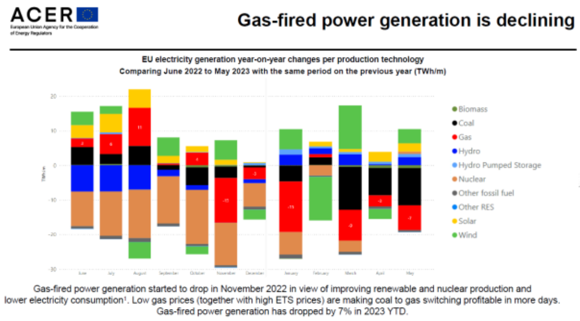
Final EU gas consumption has fallen in 2023 by 20.5% year-to-date. Lower consumption was driven by warmer weather,
subdued industrial consumption (result of high prices and previous efficiency investments)
and lower gas-fired power generation (due to increased renewable and nuclear production and lower electricity consumption).
Structural and non-structural elements[1] differently contribute to this result per Member State.

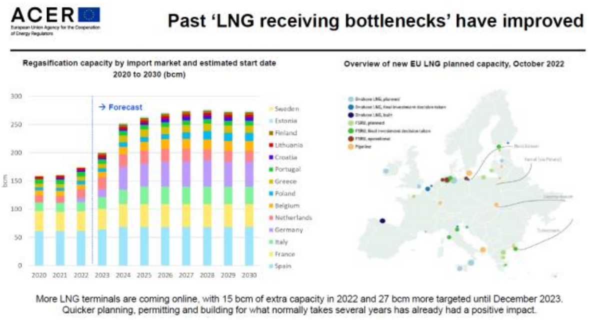
…with industries accounting for the largest reduction

EU gas final consumption breakdown per demand component, January 2022 to May 2023 (TWh/day)



The seasonal nature of households' demand results in pronounced fluctuations in final gas consumption across the year.
However, summer storage injection flatten the demand curve.



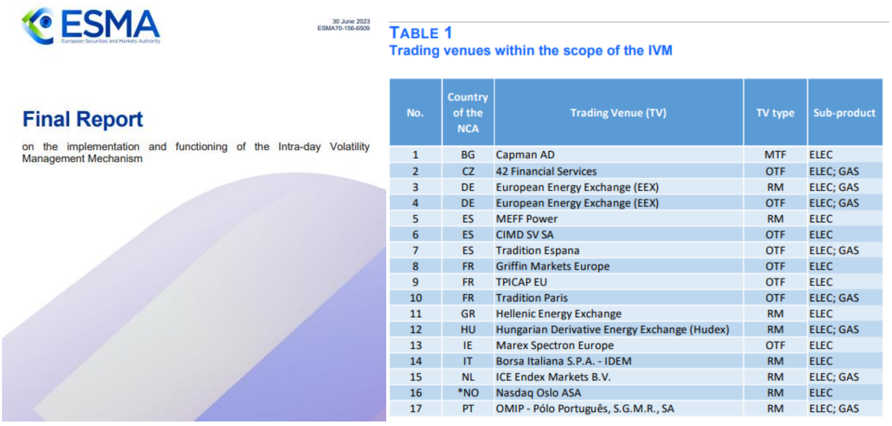


We would like to thank you for your participation in the virtual Joint AEMPs-OMPs-IITPs Roundtable Meeting on REMIT revision and beyond. *The meeting served as a platform to emphasize the significance and far-reaching consequences of the REMIT revision proposal, along with the importance of the forthcoming revision of the Implementing Regulation. It is crucial to highlight that engaging with stakeholders, fostering interaction, and exchanging ideas and feedback are fundamental aspects of ACER's mandate.*

- *1. Welcome and introduction of the meeting participants*
- *2. Introduction by ACER*
  - *Update on the ongoing revision of REMIT and future revision of the Implementing Regulation*
  - *State of play of REMIT data collection and data quality in the context of the REMIT revision*
  - *State of play of collection of inside information in the context of the REMIT revision*
- *3. Topics for discussion proposed by meeting participants*
- *4. Discussion on the future revision of the Implementing Regulation*
- *EFET position on REMIT II proposals.pdf*
- *Future IR revision Discussion Qs_Joint RT meeting 22 06 2023_For stakeholders.pdf*
- *Introduction by ACER Joint RT meeting 22 06 2023_For stakeholders.pdf*

Final Report Intra-day Volatility Management Mechanism; *In December 2022 the Council adopted Regulation (EU) 2022/2576 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders ('the Regulation'), which started applying on 30 December 2022 for a one-year period. The Regulation establishes that trading venues (TVs) on which energy-related commodity derivatives are traded should set up temporary intra-day volatility management mechanisms (IVMs).*

- *Should the reference price not be sourced from proxy liquid contracts, those illiquid TVs might have to implement the IVM using excessively large boundaries to not restrain trading activity. It can therefore be questioned whether the IVM delivers on its objectives* *for those fewer liquid venues and, more generally, whether the IVM should cover illiquid TVs for which the costs of implementing the IVM appear to outweigh its benefits, or be limited to liquid TVs where price formation occurs*



ESMA European Securities and Markets Authority

30 June 2023
ESMA70-156-6509

Final Report

on the implementation and functioning of the Intra-day Volatility Management Mechanism

TABLE 1
Trading venues within the scope of the IVM

No.	Country of the NCA	Trading Venue (TV)	TV type	Sub-product
1	BG	Capman AD	MTF	ELEC
2	CZ	42 Financial Services	OTF	ELEC; GAS
3	DE	European Energy Exchange (EEX)	RM	ELEC; GAS
4	DE	European Energy Exchange (EEX)	OTF	ELEC; GAS
5	ES	MEFF Power	RM	ELEC
6	ES	CIMD SV SA	OTF	ELEC
7	ES	Tradition Espana	OTF	ELEC; GAS
8	FR	Griffin Markets Europe	OTF	ELEC
9	FR	TPICAP EU	OTF	ELEC
10	FR	Tradition Paris	OTF	ELEC; GAS
11	GR	Hellenic Energy Exchange	RM	ELEC
12	HU	Hungarian Derivative Energy Exchange (Hudex)	RM	ELEC; GAS
13	IE	Marex Spectron Europe	OTF	ELEC
14	IT	Borsa Italiana S.P.A. - IDEM	RM	ELEC
15	NL	ICE Endex Markets B.V.	RM	ELEC; GAS
16	*NO	Nasdaq Oslo ASA	RM	ELEC
17	PT	OMIP - Pólo Português, S.G.M.R., SA	RM	ELEC; GAS

- This Report fulfils the mandate in Article 17 of the Regulation which requires ESMA to develop and submit a report to the European Commission by 30 June 2023 to evaluate the efficiency of the IVMs.
- In this Report, ESMA provides an assessment of the efficiency and the functionality of the introduced IVMs by identifying differences in the approaches taken by the TVs in the implementation and the calibration of IVMs. ESMA additionally analyses how IVMs function in comparison with existing circuit breakers to understand the effectiveness and value added of these mechanisms in managing volatility.
- In line with the mandate of Article 17 of the Regulation (EU) 2022/2576, ESMA has structured this Report as follows: Section 1 and Section 2 discuss the context in which the IVM was introduced, including the legal background. Section 3 presents ESMA's mandate, and the approach chosen as well as the data sources used to develop this Report.
- Section 4 provides an overview of the state of play with regard to the different approaches in the implementation of the IVMs, highlighting their customisation features.
- Section 5 proceeds with an evaluation of the efficiency of IVMs. The implemented IVMs generally seem adequately calibrated with the caveat of the assessment being done in a period with no evidence of protracted volatility episodes affecting energy commodity derivatives trading. The section further highlights the significant practical challenges for implementing the IVMs for illiquid TVs.
- Section 6 presents the conclusions of the Report.
    - Overall ESMA notes that, due to the practical challenges in implementing IVMs for illiquid TVs, it can be questioned whether the IVMs are appropriate mechanisms for those TVs.
    - ESMA considers that the already existing circuit breakers under MiFID II could deliver on the objective to limit excessive intra-day price volatility without introducing a second layer of circuit breakers via IVMs

- Illiquid TVs faced difficulties, in particular, for establishing meaningful reference prices and setting appropriate trading boundaries. The submissions received showed that several TVs among the less liquid ones sourced the reference price externally, referring to the prices of trades occurring on most liquid markets where relevant proxy contracts are traded. ESMA understands that as trades are being very infrequent on such TVs, the prices observed on their systems may often be outdated and hence not representative of current market conditions. Should the reference price not be sourced from proxy liquid contracts, those illiquid TVs might have to implement the IVM using excessively large boundaries to not restrain trading activity.
- 75. The report also identified the role of TV liquidity in the frequency of reference price updates and magnitudes of price boundaries noting that, in contrast to the most liquid TV, less liquid ones update the reference price less frequently and implement higher price boundaries. In a few instances, very high boundaries were implemented by illiquid TVs, which tend to make the IVM less meaningful. It can therefore be questioned whether the IVM delivers on its objectives for those fewer liquid venues and, more generally, whether the IVM should cover illiquid TVs for which the costs of implementing the IVM appear to outweigh its benefits, or be limited to liquid TVs where price formation occurs. ESMA suggests considering proportionality in the implementation of such mechanisms.
- 76. ESMA also notes that the majority of TVs integrated IVMs into existing circuit breakers, leading to the conclusion that TVs had generally already in place tools aimed at dealing with episodes of price volatility as prescribed by MiFID II.
- 77. ESMA believes that the introduction of IVMs might have had a positive impact by requiring TVs to review and, where necessary, slightly recalibrate existing circuit breakers. However, ESMA notes that as per MiFID II and the ESMA Guidelines on the calibration of circuit breakers and publication of trading halts, *TVs are already required to have mechanisms in place, which should be regularly reviewed*. In addition, trading venues are also required to have in place pre-trade controls aiming at rejecting erroneous orders, which also contribute to avoiding extreme price swings.
- 78. *Generally, ESMA considers that circuit breakers, if implemented both as static and dynamic ones, are appropriate and suitable tools for dealing with intra-day price volatility*. In this sense ESMA believes that ensuring the appropriate implementation and application of circuit breakers under MiFID II, integrating the lessons learnt from the IVM, would be preferable to having parallel requirements on circuit breakers and IVMs in different legislative frameworks.
- 79. At the same time, ESMA reiterates that it should not be the objective of IVMs or circuit breakers to make episodes of protracted volatility, resulting from market participants' uncertainty regarding fundamentals, disappear. Both mechanisms can help reduce volatility in prices by triggering halts to temporarily stop trading thereby giving market participants time to reflect on their assessment of fundamentals, or by rejecting orders which would lead to sharp price changes. However, none of those mechanisms is designed to prevent or stop disorderly trading in consequence of very volatile prices. *In order to achieve the latter, it would be necessary to suspend trading, which is something that both*

trading venues and competent authorities can do/request today under Articles 52 and 69(2) of MiFID II.

- Next Steps; ESMA envisages to issue further guidance to ensure the appropriate implementation and application of circuit breakers under MiFID II in the second half of 2023.
    - ESMA will continue to request updates on the implemented IVMs from EU TVs on a quarterly basis as per the Regulation.
    - ESMA will continue monitoring developments in the trading of EU energy commodity derivatives and stands ready to provide further technical advice upon request.

CHART 3
IVM PRICE CORRIDOR

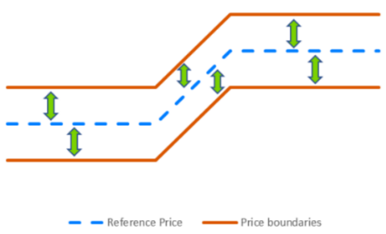
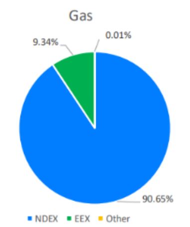
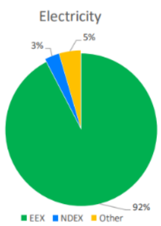


CHART 4
Main venues for natural gas derivatives



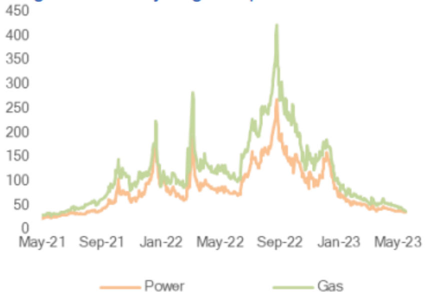
Note: by traded volume during Jan 22 – Jan 23
Sources: FITRS, ESMA

CHART 5
Main venues for power derivatives



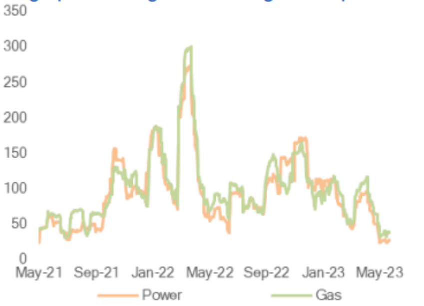
Note: by traded volume during Jan 22 – Jan 23
Sources: FITRS, ESMA

CHART 1
Energy commodity derivatives prices
Surge followed by large drop



Note: ICE Dutch TTF futures for natural gas and EEX Phelix futures for power.
Sources: Refinitiv EIKON, Datastream, ESMA

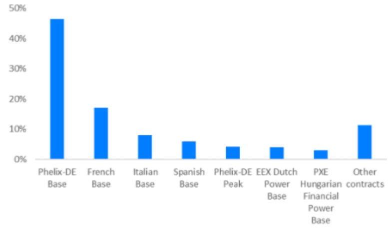
CHART 2
Energy commodity derivatives realised volatility
Large price swings in natural gas and power

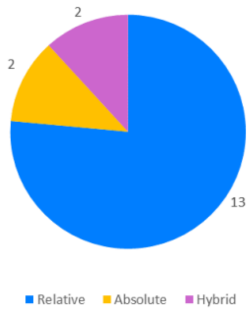


Note: Commodity price realised volatility (annualised 20D volatility) in %. German Phelix futures for power, Dutch TTF for gas.
Sources: Refinitiv EIKON, Datastream, ESMA

Boundaries type by venue
Mostly expressed in relative values

Open Interest (in MWh) on EEX for power contracts
Phelix-DE holds almost half of the OI

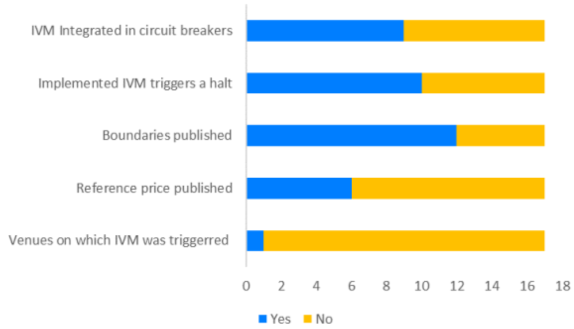




ESMA mandate; Article 17(2) of Regulation (EU) 2022/2576 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders.

- *"ESMA shall document any divergences in the implementation of the intra-day volatility management mechanisms across jurisdictions in the Union based on the reports from competent authorities. By 30 June 2023, ESMA shall submit a report to the Commission evaluating the efficiency of the intra-day volatility management mechanisms. On the basis of that report, the Commission shall consider whether to submit a proposal for the amendment of this Regulation to the Council"*

IVM implementation at venue level



Venue liquidity index, by average number of trades during Jan 22 – Jan 23

TV	Liquidity bracket	
	ELEC	GAS
EEX	3000 - 4000	700 - 800
ICE Endex	100 - 200	24000 - 25000
MEFF Power	1 - 10	na
Nasdaq	200 - 300	1 - 10
OMIP	1 - 10	na
42 Financial Services	10 - 50	0

- https://www.esma.europa.eu/document/final-report-intra-day-volatility-management-mechanism

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association