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 April 2023

Regulatory Outlook and Diary

Forward Calendar: Updated 01 April 2023		
H12023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
H1 2023	Australia	Expected third consultation paper on over-the-counter (OTC) derivatives reporting and technical guidance by ASIC. Expected publication of final OTC derivatives reporting rules by ASIC
Q2 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.
Q2 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

Q2 2023	EU	The European Commission (EC) to adopt a Delegated Act (DA) to further extend the suspension of the third-country benchmark regime until end of 2025 under the EU Benchmarks Regulation (BMR).
Q2 2023	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
April 24, 2023	UK	Removal of clearing obligation for swaps referencing SOFR.
April 28, 2023	EU	The European Supervisory Authorities (ESAs) to submit a report to the European Commission (EC) on the broader SFDR RTS review (including on Principal Adverse Impact indicators)
May 1, 2023	India	Variation margin requirements apply to domestic covered entities exceeding the AANA threshold of INR 250 billion (approximately USD 3.2 billion)
June 2023	UK	Deadline for ending reliance on US dollar LIBOR.
June 1, 2023	US	Three-month calculation period begins under US prudential regulations to determine whether the material swaps exposure, or daily average aggregate notional amount, of swaps, security-based swaps, FX swaps and FX forwards for an entity and its affiliates that trade with a prudentially regulated swap dealer exceeds $8 billion for the application of initial margin requirements as of January 1, 2024
June 13, 2023	EU	The European Commission (EC) shall adopt 4 Delegated Acts (DAs) to specify the technical screening criteria with respect to the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems. The EC is also expected to adopt a DA amending the taxonomy climate change adaptation and mitigation DA alongside a proposal for a framework for environmental, social, and governance ratings and data providers.
June 15, 2023	EU	The European Commission shall adopt a Delegated Acts (DA) to designate exempted FX spot rates from the scope of the EU BMR.
June 15, 2023	EU	The European Commission (EC) shall submit a report to the European Parliament and to the Council on the scope of the BMR, in particular with respect to the use of third country benchmarks. If appropriate, the EC shall accompany the report with a legislative proposal.
June 18, 2023	UK	End of the temporary exemption for pension scheme arrangements from clearing and margining under UK EMIR.
June 18, 2023	EU	End of the temporary exemption for pension scheme arrangements from clearing and margining under EU EMIR.
June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the calibration of the Standardised Approach for Counterparty Credit Risk (SA-CCR) which will potentially inform a future review by the European Commission.

June 28, 2023	EU	As part of CRR II, the European Banking Authority is to report on the treatment of repos and reverse repos as well as securities hedging in the context of the Net Stable Funding Ratio (NSFR).
Q3 2023	EU	The European Commission (EC) has published the 3rd Capital Requirements Regulation (CRR III) proposal on October 27, 2021, which will implement the Basel 3 framework in Europe. The CRR III will transpose the market risk standards (FRTB) as a binding capital constraint, the output floor, the revised credit valuation adjustment framework, alongside operational and credit risk framework, amongst others. The proposal will also take into consideration the impact of the COVID-19 crisis on the EU banking sector. Member States reached their General Approach on November 8, 2022, and the European Parliament is expected to adopt its position on January 24, 2023. That means trilogues will likely start in February/March 2023 and it is expected the CRR 3 process will be finalized in Q3 2023. From the EC's original proposal, most of the requirements are set to apply from January 1, 2025. As a result of the ongoing negotiations, the implementation date of January 1, 2025, may still be subject to change
July 1, 2023	US	CFTC Effective Date for the Clearing Rules to Account for the Transition from LIBOR (See 87 Fed. Reg. 52182 (August 24, 2022)). The portion of the rule effective on this date removes the requirement to clear interest rate swaps referencing US dollar LIBOR and the Singapore Dollar Swap Offer Rate in each of the fixed-to-floating swap, basis swap and FRA classes, as applicable.
July 31, 2023	US	Expiration of a second extension of relief to Shanghai Clearing House permitting it to clear swaps subject to mandatory clearing in the People's Republic of China for the proprietary trades of clearing members that are US persons or affiliates of US persons (CFTC Letter No. 22-07).
Q3/ Q4 2023	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
September 1, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan 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.
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	Hong Kong	Basel III: Locally incorporated AIs required to report under revised FRTB and CVA frameworks.
January 1, 2024	Hong Kong	Basel III: Expected implementation of revised credit risk, operational risk, output floor, and leverage ratio frameworks
January 2024	Australia	Expected effective date of APRA prudential standard for IRRBB (APS 117).
January 4, 2024	EU	The three-year derogation from margin rules in respect of non-centrally cleared over-the-counter derivatives, which are single-stock equity options or index option where no EMIR Article 13(2) equivalence determination is in place, was due to expire on January 4, 2021.
January 4, 2024	Hong Kong	Expiry of the SFC exemption from margin requirements for non-centrally cleared single stock options, equity basket options and equity index options.
January 4, 2024	UK	Expiry of the derogation from margin rules in respect of non-centrally cleared over-the counter derivatives, which are single-stock equity options or index options.
January 29, 2024	US	Compliance Date for registered entities and swap counterparties to use the Unique Product Identifier (UPI) for swaps in the credit, equity, foreign exchange and interest rate asset classes for P43 and P45 reporting.
February 12, 2024	EU	CCP R&R (Article 96): ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.
March 01, 2024	Australia US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan Brazil	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2024 or January 1, 2025 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations.

March 01, 2024	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 8 trillion threshold for initial margin requirements as of September 1, 2024 (per amended rule pending finalization)..
March 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.
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
January 1, 2025	EU	Expected implementation of FRTB and CVA risk under the CRR III proposal.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
March 1, 2025	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 100 billion threshold for initial margin requirements as of September 1, 2025 (per amended rule pending finalization)
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM and ultimate parent companies of a broker-dealer (limited to those designated by JFSA).
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
Q4 2024/Q1 2025	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.

January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
January 1, 2025	UK	Expected implementation of the Basel 3.1 standards
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
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.
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate.

		Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR have to comply with real capital/large exposures/liquidity regime under Investment Firms Regulation (IFR) provisions on liquidity and IFR disclosure provisions.
August 12, 2027	EU	CCP R&R (Article 96): The Commission shall review this Regulation and its implementation and shall assess the effectiveness of the governance arrangements for the recovery and resolution of CCPs in the Union and submit a report thereon to the European Parliament and to the Council, accompanied where appropriate by proposals for revision of this Regulation.

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	H	Jan/Mar 2023 April / June 2023

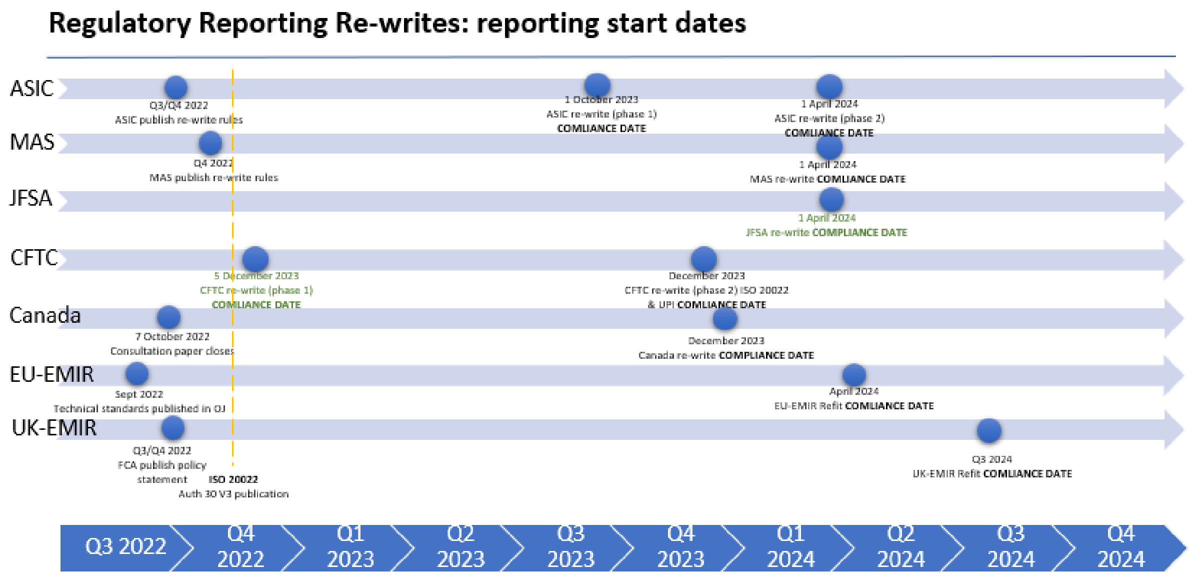
		on it in legacy contracts. End-March 2024: Synthetic 3-month sterling LIBOR is intended to cease. End-September 2024: The FCA has consulted on a proposal to require publication of a synthetic US dollar LIBOR for the 1-, 3- and 6-month settings until September 2024. The consultation sought views on this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

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

	financial markets. It ill enable a more flexible and tailored approach to meeting requirements in current legislation, whilst appropriately balancing any risks to financial stability, market integrity and consumer protection. Treasury have started work with the Bank of England and the FCA on secondary legislation to deliver this.			
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	Consultation Paper in Q4 2023 Policy Statement 2024	L	Oct -Dec 2023

	companies once finalised, which would replace existing TCFD disclosure requirements. The FCA expects to consult towards the end of this year, with final rules in the first half of 2024 subject to feedback. Timing may be subject to the Government's response to the ISSB standards			
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.		

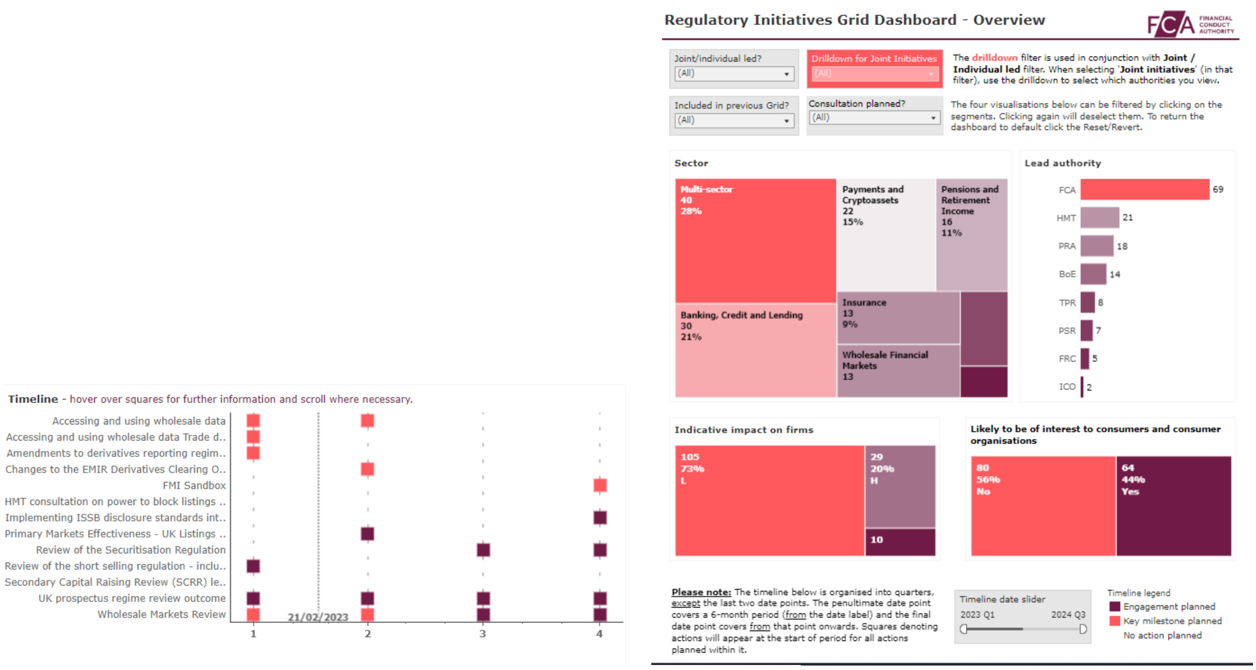


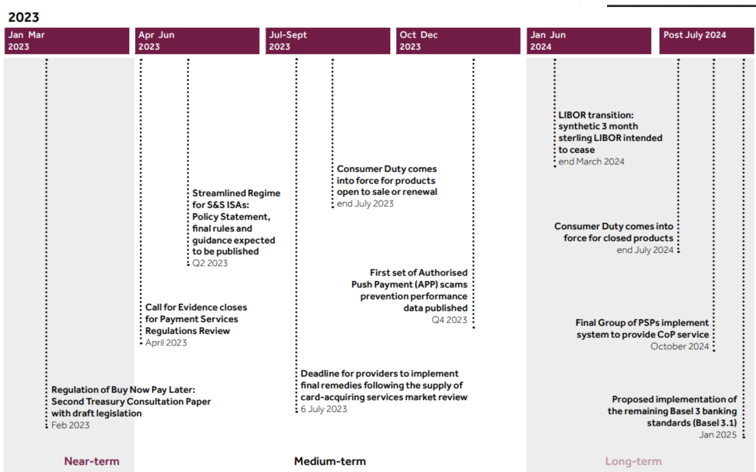
[Public Register for the Trading Obligation for derivatives under MiFIR]
[Public Register for the Clearing Obligation under EMIR]

EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

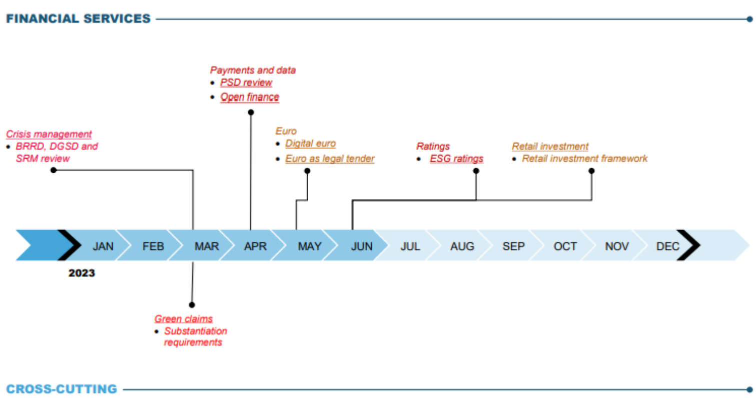
Regulatory Initiatives Grid overview

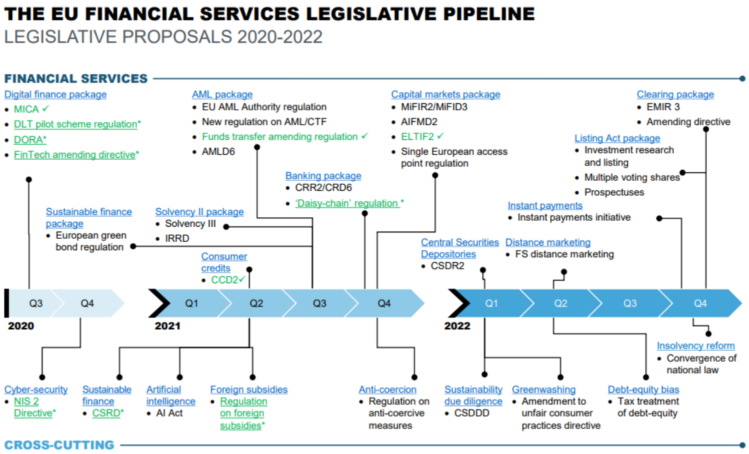




THE EU FINANCIAL SERVICES LEGISLATIVE PIPELINE

LEGISLATIVE PROPOSALS SCHEDULED FOR H1 2023





Legislative Proposals On Financial Services Scheduled For H1 2023

Financial services

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

Delayed And Possible Future Legislative Proposals On Financial Services

- Financial services Review of the Market Abuse Regulation (MAR) ESMA report 24/09/2020
- Review of the Directive on settlement finality in payment and securities settlement systems Targeted consultation 12/02/2021
- Review of the Directive on financial collateral arrangements Targeted consultation 17/02/2021
- Improving transparency of the secondary markets for non-performing loans Targeted consultation 16/06/2021
- EU banking sector – review of macroprudential rules to limit systemic risk Call for evidence 01/12/2021 Targeted consultation 30/11/2021

- Review of the Money Markets Funds Regulation ESMA opinion 16/02/2022 Targeted consultation 08/02/2022
- Review of the Benchmarks Regulation Targeted consultation 20/05/2022
- Mortgage credit – review of EU rules EBA advice 24/06/2022 Public consultation 22/11/2021
- Review of implementation of the Shareholders Rights Directive 2 (SRD2) Call for evidence 11/10/2022
- Review of the Regulation on wholesale market integrity and transparency (REMIT) Public consultation 23/01/2023
- Cross-cutting
- Cross-border investment within the EU – clarifying and supplementing EU rules Public consultation 26/05/2020
- Unlawful extra-territorial sanctions – a stronger EU response (amendment of the Blocking Statute) Public consultation 09/09/2021
- Corporate reporting – improving its quality and enforcement Call for evidence 01/12/2021
- Withholding taxes – new EU system to avoid double taxation Public consultation 01/04/2022

Pending Legislative Proposals On Financial Services

Banking package

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

Capital Markets Package

- Proposal for a Directive amending the Markets in Financial Instruments Directive (MiFID3) (2021) 726 2021/0384 25/11/2021
- Proposal for a Regulation amending the Markets in Financial Instruments Regulation as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders (MiFIR2) (2021) 727 2021/0385 25/11/2021
- Proposal for a Directive amending the Alternative Investment Fund Managers Directive and the UCITS Directive as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds (AIFMD2) (2021) 721 2021/0376 25/11/2021
- Proposal for a Regulation amending the European Long-term Investment Funds Regulation as regards the scope of eligible assets and investments, the portfolio

composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European longterm investment funds (ELTIF2) ✓ (2021) 722 2021/0377 25/11/2021

- Proposal for a Regulation on establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (2021) 723 2021/0378 27/11/2021

Clearing package

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

Benchmarks, RFRs & LiBOR Transition

Synthetic US Dollar LIBOR; *The FCA this afternoon announced its well flagged decision on synthetic U.S. dollar LIBOR. Perhaps odd that this solely the FCA as BMR supervisor and was not as a joint procedure with the FRBNY/ARRC*… presumably Wilf/ Wuerffel/ Bowman were closely informed.*

- The FCA (noting the email below) as well as has decided to require LIBOR's administrator, ICE Benchmark Administration Limited (IBA), to continue the publication of the 1-, 3- and 6-month US dollar LIBOR settings for a short period after 30 June 2023, using an unrepresentative 'synthetic' methodology ('synthetic US dollar LIBOR').
- FCA intends that publication of the <u>1-, 3- and 6-month synthetic US dollar LIBOR settings will cease on 30 September 2024</u>. It will review its decision, in line with the requirements of the Benchmarks Regulation.
    - *However, unless unforeseen and material events were to happen, FCA expects to follow the direction and timeline it has indicated. FCA considers providing early notice of this is helpful for market participants.*
    - *Firms must therefore continue to actively transition contracts that reference US dollar LIBOR. In line with FCA's previous Dear CEO letter, FCA continues to expect firms to take action and deliver demonstrable progress.*
    - *Synthetic LIBOR is only a temporary bridge, and synthetic settings will not continue simply for the convenience of those who could have transitioned their contracts but have not done so*
    - *The FCA will publish a detailed Feedback Statement later in Q2 2023, responding to the feedback received to its consultation.*
- FCA announces decision on synthetic US dollar LIBOR
- * The ARRC Minutes from their second 2023 meeting on 09th March detail the CCP OI migration schedules on weekends between 14 April and 22 May 2023 (again, already well flagged by LCH and CME)
- PDF ARRC_FRBNY; Meeting Readout; 15March2023.pdf

Also, late last week in the latest Handbook Notice #108; the FCA removed USD LIBOR swaps from the derivatives trading obligation.

- It will take effect on 24 April, concurrently with the Bank of England's removal of contracts referencing USD LIBOR from the derivatives clearing obligation.
- FCA Technical Standards (MiFIR) (Derivatives Trading Obligation) Instrument 2023; 30Mar2023.pdf
- ISDA blogged on this here: derivatiViews The Final LIBOR Hurdle & FCA Technical Standards (MiFIR) (DTO) Instrument 2023; 30Mar2023.pdf

Lastly to note the co-ordinated suspension/no-action of the DTO to facilitate TriOptima/Osttra to compress and migrate the IFEU CDS OI to LCH.sa and to ICC.

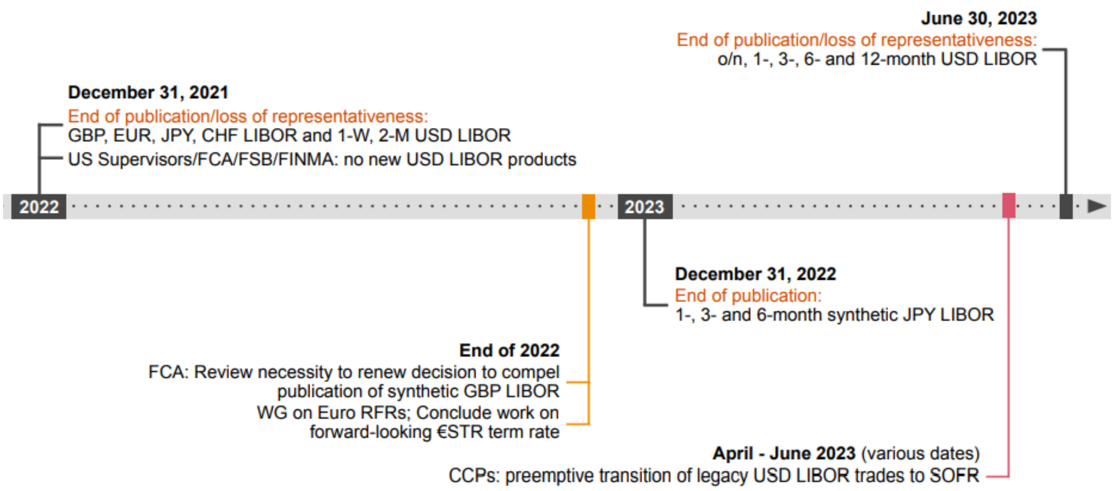
- Estimated at 17 Dealer Self-clearers and into a 35/65 split between the two receiving CCPs
- Release Number 8683-23; CFTC Staff Issues No-Action Letter Regarding the Migration of Credit Default Swaps from ICE Clear Europe Ltd; 23-05; 30March2023.pdf & ESMA156-6473_Statement_on_the_DTO_and_CDS_clearing.pdf

ClarusFT; Tracking CAD & SGD RFRS; Chris Barnes March 27, 2023.pdf

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

EVIA Summary Note; FSB Work Programme for 2023; Annual work programme and publication timetable for the FSB; 31March2023.pdf

State of Play in EMIR 3.0 /UK EMIR – *"We expect to see continued evolution of EMIR and UK EMIR in 2023, with developments across clearing, margin for uncleared derivatives and reporting of derivatives.*

- In the EU, the Commission has published a proposal for a regulation amending EMIR (so-called "EMIR 3"). The proposal focusses on clearing, reflecting the findings of the Commission's targeted review of the central clearing framework in the EU, as well as addressing concerns identified during recent turmoil in energy markets and more general points that have become apparent in the operation of EMIR. Whilst the legislative process, and certainly implementation, is expected to extend beyond 2023, the progress of the proposal will generate considerable interest during the course of the year.
- Pursuant to the Financial Services and Markets Bill, UK EMIR is set to be rewritten, primarily in regulators' rule books. This is part of a bigger picture as the UK government looks to rewrite the bulk of retained EU law related to financial services. Various provisions of UK EMIR are to be split between the existing regulatory perimeter under the regulated activities order (RAO) and the proposed designated activities regime (or DAR), a new regulatory framework for the regulation of certain activities relating to financial markets.
- The government intends to deliver this programme by splitting retained EU law into "tranches" and expects to make significant progress on the first two tranches by the end of 2023. Whilst UK EMIR falls within tranche 3 and, therefore, the "lift and shift" of UK EMIR is not expected to get underway this year, certain temporary exemptions available under the existing framework are due to expire ahead of this process. Industry advocacy is ongoing, and we may see some developments on these points during 2023. Substantive changes to UK EMIR are also expected to result from the Wholesale Markets Review, including exempting PTRR exercises from the clearing obligation. These changes are expected to be included in primary legislation as Parliamentary time allows, so are not expected to come into force in 2023.
- Both under EMIR and UK EMIR, changes to reporting requirements and procedures for data quality have now been finalised. There is considerable alignment between the two regimes. Reports will need to be made in accordance with the applicable new requirements from 29 April 2024, in the case of EMIR, and 30 September 2024, in the case of UK EMIR. With the level of detail to be reported significantly extended, including a considerable number of new reporting fields, the implementation periods will provide valuable time for counterparties to make necessary changes to processes and documentation."

Pension Funds Take Final Steps Ahead of CCP Deadline; *This week the Treasury issued a last minute reprieve exempting UK pension funds from the central clearing obligation, announcing a three-year exemption.*

- Unlike their European counterparts, UK pension funds will not be forced to comply with European Market Infrastructure Regulation (EMIR) obligations, until 2025 at the earliest.
- In the EU meanwhile,
- the deadline is set for 19 June this year, and any pension scheme arrangements (PSAs) with derivative positions exceeding €3 billion in OTC interest rate derivatives and/or €1 billion in OTC credit derivatives; €1 billion in OTC equity derivatives, €3 billion in OTC FX

derivatives and/or €3 billion in OTC commodity derivatives, must clear those positions using a central clearing counterparty (CCP).

- Pension funds have been exempted from the rule since 2019, but after renewing the dispensation for the past two years, ESMA believes there has been enough progress among PSAs for them to meet the regulations.
- Jamie Gavin, head of EMEA OTC at Société Générale, says that most of the larger, more sophisticated pension schemes are compliant with EMIR, and some already using CCPs "to make sure that they're happy with how the setup works", adding "there are no concerns about anybody meeting the deadline."
- Liquidity drain
- While EMIR's goal is to help manage risk, CCPs impose greater collateralisation requirements than might be expected in bilateral arrangements, and there is a preference for counterparties to post cash. This raises challenges for some PSAs especially those in Europe that tend to be conservative long-term holders of assets without large cash buffers.
- "Looking at Dutch pension funds, a 2020 ESMA study showed their Dollar Value of a Basis Point (DV01) [a risk measure for bonds, swaps, and other fixed income instruments] was €680 million which means for every basis point shift, the whole system has got to find €680 million in cash for variation margin. If we cast our minds back to Lehman when there was a 100-basis point move in five days, if we have a repeat of that scenario, someone has got to find €60-70 billion in cash," Gavin says.
- These concerns played out to some extent when the UK government's September 2022 'mini Budget' saw a sudden escalation in gilt yields forcing those pension funds following liability-driven investment (LDI) strategies to post huge amounts of margin to their swap counterparties as the value of their positions weakened.
- This was particularly problematic for those schemes that had to sell assets to stump up the cash to meet CCP demands.
- Paras Shah, head of LDI at fiduciary manager Cardano, says that in response, pension funds have been "locking up cash" as collateral in case such an event occurs again.
- "If you look at pension funds in other markets where they didn't have that crisis, they haven't necessarily to change their collateral setups or increase the buffers. The demand for cash is having much more of an impact on UK pension schemes," Shah says.
- However, he points out that collateral is a two-way street and the central clearing obligations protect pension schemes should their counterparty collapse which, given the recent issues with Silicon Valley Bank and Credit Suisse this year, may be of comfort.
- More tools needed
- For PensionsEurope, which represents national associations of pension funds, the move to obligatory central clearing would be more welcome if there were additional liquidity tools in place to help PSAs during times of economic stress.
- The association wants European CCPs to provide central bank liquidity to convert high quality government bonds into cash using their cleared repo platforms.
- "From a risk management perspective, the European clearinghouses would become then the superior platform to clear derivatives transactions for PSAs. We are not asking for direct liquidity, just mere temporary collateral transformation of European government bonds into cash, which are better match for pension funds liabilities than cash," the association said.
- Gavin says that using repos as an alternative to holding a cash buffer makes sense.

- "You want to be able to use repo to convert your bonds into cash rather than keeping a large cash buffer. The same ESMA study shows a 5% holding in cash equates to a 30% drag on returns of the fund, and if repos aren't available pension funds need somewhere between a five and 10% cash buffer, which is significant," he says.
- There have been advances by European CCPs to allow pension funds to clear using repos, including from Eurex which permits the combination of central clearing of repos and OTC interest rate swaps (IRS). According to Frank Odendall, head of funding & financing product & business development at Eurex, this not only expands the number of repo liquidity providers, but also offers additional operational, liquidity and safety advantages.
- Odendall at Eurex says: "Repo clearing is addressing pension funds' collateral needs and that is where we see the biggest growth."
- Readiness for central clearing
- Anastasios Pavlos, senior policy adviser at PensionsEurope sent questionnaires to national pension and insurance associations across the EU, Sweden and the UK to assess their readiness for central clearing. While the Netherlands and Britain are yet to report, DerivSource can share exclusive insight from seven countries across the region.

Denmark	Some pension funds and insurers already clear all their assets, while others only clear a few. It is expected that all companies will be fully ready by 19 June 2023.
Italy	Some pension funds and insurers already clear all their assets, while others only clear a few. It is expected that all companies will be fully ready by 19 June 2023.
Sweden	Pension foundations in general have not taken any specific actions because most pension foundations have an exposure below the applicable thresholds and continue to be exempt from the clearing obligation. Most of the larger PSAs in Sweden already fulfil the clearing obligations, but some smaller PSAs remain exempt. The biggest issue is the administrative costs/burden of clearing rather than the collateral requirements of CCPs.
Portugal	The level of exposure to OTC derivatives by Portuguese pension funds is small. Additionally, most of the pension fund management companies that belong to financial groups – which includes insurance companies and investment fund management companies – are already subject to the clearing obligation. However, some companies have a smaller dimension or are not integrated in larger financial groups that may still be in the process of adjusting their procedures to be able to start clearing after the 19 June 2023.
Croatia	Croatian banks are preparing frameworks for pension funds to start applying clearing obligations, since they are the exclusive counterparties for pension funds.
Bulgaria	Bulgarian pension funds normally invest as per the Bulgarian Social Security Code in plain vanilla assets that are kept under custody in the largest depositaries, which means compliance with EMIR is not necessary so far.

Austria	Bulgarian pension funds normally invest as per the Bulgarian Social Security Code in plain vanilla assets that are kept under custody in the largest depositaries, which means compliance with EMIR is not necessary so far.

CSDR – *"In 2022, following confirmation that the much-criticised mandatory buy-in (MBI) rules would not apply from 1 February 2022 along with the rest of the CSDR settlement discipline regime, attention quickly turned to what form any future revised MBI rules would take. We expect to have more clarity later in 2023 once the EU institutions have completed their trilogue negotiations and agreed on a final set of amendments*.

- While the industry's preferred outcome of removing the MBI regime altogether now looks unlikely, it does seem as though MBIs will only end up applying in certain exceptional circumstances where settlement failures for a particular transaction type or asset class have reached unacceptable levels over a sustained period of time.
- The derivatives industry has long been pushing for settlement fails relating to collateral transfers and physically settled derivatives to be explicitly carved out from any future MBI regime, on the basis that they would lead to significant uncertainties and unintended consequences, would cut across existing contractual provisions and (in the case of collateral transfers) are already extensively regulated elsewhere. It remains to be seen whether the EU institutions will take these objections into account.
- In the UK, the settlement discipline regime was not onshored as part of Brexit, and the UK is not proposing to introduce its own regulatory settlement discipline regime. However, most UK firms are indirectly impacted by the EU regime as it bites on securities cleared through an EU central securities depository (CSD)."

DORA – "*Over 20,000 firms in the EU will need to get themselves ready to implement the digital operational resilience act, or DORA, which takes effect on 17 January 2025 after a two-year transition period. Within this period, firms must also make sure their implementation programme responds to technical standards from the European Supervisory Authorities which will extend some of the high-level requirements already in DORA and add to the regulatory burden. This wave of technical standards has the potential to complicate matters for firms around halfway through their DORA implementation projects.*

- "A significant headache for many firms is the challenge of implementing a global resilience strategy in a way which is compliant with local regimes. Although the outcomes of the UK and EU regimes are largely aligned, the detailed requirements differ. Other jurisdictions are also developing rules aimed at building the operational resilience of their financial sectors. Whether these will align or diverge remains to be seen but in either case firms will need to keep abreast of developments as the year goes on."

SFDR & CSRD – *"After a long delay, the SFDR Level 2 requirements finally began to apply from 1 January 2023. But that is not the end of the story, as further amendments to the Level 2 will come during the course of 2023. The Commission will also publish Q&As addressing some quite fundamental questions posed by the ESAs in 2022, including around the definition of a "sustainable investment". It is hoped that the Commission's responses do not cut across the* *approach that market participants already adopted in preparation for the 1 January 2023 application date.*

- Although the SFDR does not directly capture derivatives, asset/fund managers, insurers and pension providers will be caught and so it is important that banks are aware of the regulation that their clients need to comply with, as investors look to the banks to help them navigate their way through the regulation and to provide the information to allow them to make the relevant disclosures. It will also be key to think about how products are being marketed and what is disclosed in the documentation, particularly where such products are being promoted as green, as many regulators crack down on greenwashing.
- The UK has proposed its own sustainability disclosure requirements (SDR) which would differ from the EU SFDR in several important respects. Notably, they would impose a general 'anti-greenwashing' rule on all FCA regulated firms (not just asset managers, unlike the focus of the EU SFDR) that would require them to revisit their approach to ESG and sustainability across all product types and disclosures. Under the labelling regime envisaged by the SDR, firms would need to provide details on (among other things) their use of derivatives in sustainable investment products.
- The Corporate Sustainability Reporting Directive (CSRD) will bring far-reaching changes to how EU and non-EU companies report on a number of ESG issues. It transforms sustainability reporting and will require a big shift in mindset for those affected.
- The CSRD became law in December 2022 and will be phased in in stages, starting from 1 January 2024. The new regime will require a wider range of EU companies, as well as some non-EU companies, to report on environmental matters, social and human rights and governance factors across their value chain, in accordance with mandatory reporting standards that the Commission is expected to adopt in June 2023. Tests for whether companies are in scope are complex, particularly for non-EU companies with securities listed on a regulated EU market who may be required to report as early as 2025 depending on their size and the nature of those securities. So 2023 will be a busy year for entities as they decide which parts of their organisation are in scope and what systems they need to put in place to collate the necessary information."

FCA publish trade data review findings and launches wholesale data market study

- Wholesale Data Market Study: The FCA has found through its trade data review that the market does not work as effectively as it could in allowing effective competition and innovation. Contributing factors include concentration, limited choice and switching, and complex pricing and licensing. In response to this and other concerns, the FCA has launched a wholesale data market study into the markets for benchmarks, credit ratings data and market data vendor services. It will decide whether to make a market investigation reference to the Competition and Markets Authority after six months and the final report is due in a year.
- The FCA has published a report on UK wholesale trading data in which it underlines the importance of access to good quality trade data for healthy financial markets. This follows the FCA's work over a number of years on accessing and using wholesale data.
- The FCA found that trade data users are generally able to access the data they need and this data plays an important role in investment activity in the UK. However there are

instances where competition is not working as well as it could be. The FCA plans to issue proposals for consultation on a viable consolidated tape regime which is intended to improve cost, quality and accessibility of wholesale data.
- In parallel, the FCA launched a market study on market data vendors, benchmarks providers and credit ratings agencies. The FCA will decide whether to make a market investigation reference to the Competition and Markets Authority (CMA) on one or more of these markets by September 1, 2023. The market study report will be published by March 1, 2024.

FCA Notice; The application of the derivatives trading obligation to certain credit default swaps; 30Mar2023.pdf

UK regulators set out updated draft rules on derivatives reporting

- The FCA and Bank of England (BoE) have published a joint policy statement containing final draft amendments to derivatives reporting rules under the UK version of the European Market Infrastructure Regulation (UK EMIR). The proposals are intended to align the UK derivatives reporting framework with international guidance to ensure a more globally consistent dataset. The policy statement also contains measures relating to mandatory delegated reporting requirements, counterparty notifications, registration and reconciliations processes, and the use of XML schemas and global identifiers.
- Following any final feedback on the UK EMIR validation rules and XML schemas, the final rules will be published shortly and will come into effect from September 30, 2024. There will be a 6-month transition period until March 31, 2025 for firms to update their derivative reporting in line with the new standards. The main difference between the UK and EU rules is the timing as the UK rules will apply 4-months after the EU, where the EMIR Refit reporting rules go live from April 29, 2024.

European Parliament adopts negotiating position on the MiFIR Review

- The European Parliament (EP) has agreed its position on the review of the Markets in Financial Instruments Regulation and Directive (MiFIR-D) that aims to reflect lessons learnt since the regime went live in 2018. The EP has backed a series of amendments relating to, among other things, data quality, the consolidated tape regime, payment for order flow (PFOF) and market transparency rules.
- The vote by MEPs follows the work of Danuta Hübner MEP who has led the negotiations between MEPs for the past year, involving consideration of a wide range of stakeholders and factors. Hübner remarked that the EP's position is intended to support the establishment of a consolidated tape in all asset classes, to simplify the transparency framework, and to increase the level of protection of retail investors. Notably, the EP's position aims to account for the approach of other jurisdictions such as the UK and US in an attempt to ensure that the EU capital markets remain competitive and exhibit best practice globally.
- The EP's vote sets the stage for the final negotiations ('trilogues') between the EP, member states and EU Commission to decide on final rule changes to the MiFIR-D regime. The updated rules are expected to be finalized by the end of 2023 and then start

to apply in 2024-2025, bringing significant changes to the rules and processes governing the European trading landscape over the coming years.

UK Treasury begins review into investment research

- HM Treasury has kicked off its review into investment research in an attempt to enhance the UK's attractiveness as a globally competitive listings destination. The review will consider the relationship between research levels and the attractiveness of the UK as a destination to list. The review will also evaluate options to improve the market for investment research in the UK and this may include changes to the research unbundling rules first introduced by the MiFID II framework in 2018.
- Investment research is used by potential investors to inform investment decisions in both public and private markets and there has been significant debate about it in recent years, especially since MiFID II ushered in far reaching requirements aimed at addressing perceived conflicts of interest where execution and research are bundled. The independent review will be chaired by Rachel Kent (Senior Partner at Hogan Lovells) and will report back within three months by June 2023.
- The review into investment research was first announced as part of the 'Edinburgh Reforms' announced by the Chancellor last December, a substantial package of regulatory reform designed to boost UK competitiveness in the global financial markets. This review follows the limited exemptions to the original research unbundling rules introduced by the FCA in March 2022.

SEC proposes to modernize the submission of certain forms, filings, and materials under the Securities Exchange Act of 1934

- The SEC proposed amendments designed to modernize its information collection and analysis methods by, among other things, proposing that a number of filings be submitted to the Commission electronically on EDGAR using structured data where appropriate. Specifically, the proposed amendments would require the electronic filing, submission, or posting of certain forms, filings, and other submissions that national securities exchanges, national securities associations, clearing agencies, broker-dealers, security-based swap dealers, and major security-based swap participants make with the Commission. The proposed amendments would also make certain amendments regarding the Financial and Operational Combined Uniform Single (FOCUS) Report to harmonize it with other rules, make technical corrections, and provide clarifications. In addition, the proposed amendments would require withdrawal of notices filed in connection with an exception to counting certain dealing transactions toward determining whether a person is a security-based swap dealer in specified circumstances. The public comment period will remain open for 30 days after publication in the Federal Register or until May 22, 2023, whichever is later.

Hong Kong consults on clearing rules to reflect IBOR transition

- The Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission (SFC) have launched a joint consultation on proposals to implement changes to the regulatory regime for Hong Kong's over-the-counter derivatives market.

- Specifically, the Hong Kong regulators are seeking to change the mandatory clearing regime by removing the requirement to clear certain OTC derivative transactions referencing interbank offered rates (IBORs) that are or will no longer be published or considered representative. Instead, the regulators will require clearing of those instruments that reference alternative reference rates (ARRs). The consultation period runs until April 11, 2023.

Korea aims to launch new alternative trading systems by year-end

- As part of the push to introduce alternative trading systems (ATS) into the Korean capital markets, the Korean Financial Services Commission (FSC) and Financial Supervisory Service (FSS) will decide whether to grant preliminary approvals to applicants over April and May. The FSC opened applications for ATS preliminary accreditation for a short window at the end of March. Firms that obtain preliminary authorisation will have to formally apply after meeting certain requirements and will be expected to start business within 6 months after authorization. On this timetable, it seems likely that Korea will see the launch of new ATS before the end of the year.
- The introduction of an ATS for securities is intended by the Korean authorities to increase competition with the Korea Exchange (KRX), boost transaction volumes, reduce costs for investors, and improve overall market efficiency.

CFTC approves proposed rule to codify no-action position regarding the treatment of separate accounts of a single customer by clearing members

- The CFTC unanimously approved a proposed rule to codify the no-action position in CFTC Staff Letter No. 19-17 regarding the treatment of separate accounts of a single customer by futures commission merchants (FMs) that are clearing members of derivatives clearing organizations (DCOs). The proposed rule would codify the no-action position regarding that regulation by adding new CFTC Regulation 39.13(j). The proposed rule would modify certain of the no-action conditions, including by adding: (i) reporting requirements for clearing members that are required to cease separate account treatment; (ii) an explicit process for clearing members to resume separate account treatment; and (iii) provisions designed to further clarify the no-action condition that separate accounts be on a one-business day margin call. The comment period will be open for 60 days after publication in the Federal Register.

CFTC staff announces modifications to the swap data reporting and public dissemination requirements

- The CFTC announced the publication of modifications to Version 3.1 of the CFTC Technical Specification, issued in Aug. 2022. The Technical Specification provides detailed instructions for swap data reporting and public dissemination requirements under Parts 43 and 45 of CFTC regulations. The Technical Specification includes the definitions, formats, and allowable values for data elements that are to be reported to swap data repositories (SDRs). The modifications to the Technical Specifications relate to the CFTC's issuance of an order designating a unique product identifier and product classification system to be used in swap recordkeeping and reporting (See CFTC Press Release No. 8659-23).

- CFTC announces the Technology Advisory Committee and new subcommittees of the Global Markets Advisory Committee
- CFTC Commissioner Christy Goldsmith Romero, sponsor of the CFTC's Technology Advisory Committee (TAC), announced the newly constituted membership, which includes Carole House as Chair and Ari Redbord as Vice Chair. At the TAC's inaugural meeting on Mar. 23, the Commissioner heard technology experts present on decentralized finance, cyber resilience, and responsible artificial intelligence issues, followed by a discussion on the membership on these topics as well as the renewal of certain subcommittees.
- CFTC Commissioner Caroline D. Pham announced new subcommittees of the Global Markets Advisory Committee (GMAC). The subcommittees are the Global Market Structure Subcommittee, Digital Assets Markets Subcommittees, and the Technical Issues Subcommittee. Commissioner Pham sponsors the GMAC and sought membership nominations for each subcommittee; new members for the subcommittees will be announced in the future.

FCA Handbook 108; Market Data Infrastructure Supervision (MDIS); 30Mar2023.pdf

FMI Outsourcing and third-party risk management: The BoE published three supervisory statements (SS) for outsourcing and third-party risk management for Central Counterparties (CCPs), Central Securities Depositories (CSDs) and Recognised Payment System Operators (RPSOs). The requirements are intended to align with and complement the regulatory framework on operational resilience for FMIs published in March 2021. These SS also replicate the requirements of PRA SS2/21 on outsourcing and third party risk management for banks, PRA designated investment firms and insurance firms. FMIs are expected to meet the requirements by 9 February 2024.

Updates to UK EMIR: The BoE/FCA Policy statement aims to align the UK derivatives reporting framework, under UK EMIR, with international guidance issued by CPMI-IOSCO and provide clarity to counterparties and Trade Repositories (TRs). The PS streamlines the FCA registration process for TRs that are already registered or recognised under the UK SFTR. It also introduces new requirements for TRs which will improve data quality, promote consistency of reporting, and facilitate the orderly transfer of data between TRs and to regulatory authorities.

From the Regulatory Initiatives Grid:

- Q1 2023 – Policy Statements (PSs) on improving equity secondary markets and guidance on trading venue perimeter.
- Q2 2023 – The "Vote Reporting Group" will publish proposals for consultation.
- Q2/Q3 2023 – Consultation Papers (CPs) on commodity derivatives and the consolidated tape.
- Q3/Q4 2023 – Formal engagement on the Overseas Funds Regime will take place later than planned.
- Q4 2023 – CP on transparency for bonds and derivatives.

The future of UK asset management regulation; striking proposals for discussion, a wide-ranging review; *The FCA is seeking views on various ways the UK regulatory regime for asset managers could be bolstered, amended, and modernised. In part, this has been prompted by new post-Brexit powers for the FCA under the UK's Future Regulatory Framework (FRF) review. The FCA's [Discussion Paper] (DP 23/2) explores potential new requirements, streamlining some rules, and areas where technology could be used to modernise funds and improve consumers' experience and impact. It will use feedback to prioritise its work and plans to publish a feedback statement and potentially a consultation paper later in 2023.*

- The FCA states it does not "want to create unnecessary complexity for firms operating their businesses internationally", will reform only where the benefits are clear, and rules should be "effective and proportionate". However, the proposals point to potential new requirements that some may view as unnecessarily onerous and poorly timed given the significant volume of regulatory change already faced by asset managers, particularly in the face of Consumer Duty implementation and the incoming Sustainability Disclosure Requirements (SDR). Experience with the SDR consultation and the proposals in this paper indicate the outcome could be diverging rules between the UK and the EU.
- The key proposals include:
- New requirements for portfolio managers (including wealth managers), and clarifying expectations of portfolio managers in the context of host authorised fund managers.
- Extending requirements for fund managers on liquidity management and reporting.
- Redrawing the UCITS boundary (possibly relabelling NURS[1] and introducing "basic" funds).
- Extending rules for depositary oversight and their resources.
- Modernising the fund regime and improving investor engagement through technology.
- Adjusting the threshold and exemption for small AIFMs.
- In this article we summarise the topics covered and then provide our initial insights and views on the potential impacts.
- Changing the structure of the regulatory regime
- The existing regulatory regime for asset managers (portfolio managers[2], fund managers[3] and funds) is complex. Much of the regulation specific to the sector is derived from EU law (mainly the UCITS Directive, AIFMD and MiFID II). Under the post-Brexit FRF, the FCA will now need to review retained EU law and consider whether to reinstate rules or to make changes.

- Its key proposals relate to changing the approach to the following regimes:
- Fund managers and portfolio managers: Currently, similar activities and products are regulated differently. For example, only fund managers are subject to specific rules on liquidity and investment due diligence, and wealth managers do not need to comply with specific rules that apply to retail fund managers. The FCA therefore asks whether it should extend the rules to portfolio managers to create a common framework.
- Retail funds: The FCA asks whether it should change the boundary of UCITS and considers three options: all authorised retail funds (UCITS and NURS) subject to a single set of rules; rebrand NURS as "UCITS plus" to capture more complex products; or create a new fund category of "basic funds" with restricted derivative use.
- Managers of professional funds: The FCA considers whether the "full-scope" AIFM regime threshold should be increased, or whether to allow firms to use the "small-

authorised" exemption if they meet non-size-related criteria (e.g. the strategies they manage). However, the FCA is concerned about aspects of the "small-registered" regime and may require some types of small-registered AIFMs to become authorised.

- Improving the way the regime works
- Rules for authorised fund managers (AFMs)
- Host AFMs: The FCA is concerned whether portfolio managers genuinely understand the role of AFMs and asks whether it should clarify its expectations by creating specific contractual requirements between the AFM and portfolio manager. It also considers clarifying the responsibilities of portfolio managers through new rules and guidance.
- Enhancing liquidity management: The FCA proposes to convert ESMA's stress testing guidelines into rules and remove ambiguity around whether stress testing must be performed. It also acknowledges the concerns of financial stability bodies and proposes to clarify its rules on certain liquidity management tools such as swing pricing. The FCA notes that reporting and/or public disclosure regarding UCITS funds' liquidity could be needed.
- Investment due diligence: The FCA notes weaknesses in this area and that investment in illiquid or complex securities can lead to consumer harm. It proposes making its expectations on due diligence clearer, potentially impacting portfolio managers.

- Depositaries; The FCA states that depositaries have not always challenged fund managers in a way it would expect, and notes certain existing oversight functions may potentially be of limited benefit. It therefore proposes to clarify its expectations in a wide range of areas — for example around depositaries' resources and knowledge, and oversight of liquidity management and fund pricing.
- Improving fund rules
    - UCITS eligible assets: The FCA is concerned about how firms are approaching the 10% unlisted rule, and that other criteria such as suitability, reliable valuation or liquidity characteristics are not considered by fund managers. It asks whether it should update or provide more guidance around rules in this area.
    - Prudent spread of risk: The FCA notes the possibility of moving from prescriptive rules (e.g. the 5/10/40 rule) to principles-based requirements. Surprisingly, it asks whether it should remove or modify prescriptive requirements in this or other areas of the retail fund rules.
- Keeping pace with technology and innovation; The FCA considers where the regulatory framework may need to be adapted to ensure technological change is supported and firms are not held back from innovating. It asks about changes that may be needed generally, as well as covering the following specific topics:
    - Technology in fund operations: The FCA asks whether it should modernise the way fund units are bought and sold — for example, the Investment Association is proposing a "Direct2Fund" model that would allow investors to transact directly with the fund when buying and selling units, rather than relying on the AFM to do so.
    - Tokenisation of fund units: The FCA is already looking at how existing rules around the creation/cancellation of units may need to be made more flexible to allow firms to operate a "digital register". The FCA asks for views on the benefits of tokenisation and the regulatory changes needed to enable it.

   - Tokenisation of portfolio assets: The FCA asks if there are specific rules that could impact fund managers' ability to invest in tokenised assets where the underlying instrument is itself an eligible asset.
   - Investment in cryptoassets: The FCA will not do more work in this area until the government has advanced its own thinking regarding the regulation of cryptoassets in the UK.
- Harnessing technology to improve investor engagement
   - Ongoing information needs of investors: The FCA considers how fund prospectuses could be modernised, and asks how their content and readability could be improved. The FCA notes that more frequent disclosures of holdings could be useful, and asks how the rules could be changed to enable firms to make better use of technology (e.g. implementing a machine-readable format). It also considers more radical ways of reformatting existing fund reports.
   - Investor engagement: The FCA asks how rules for fund unitholder meetings could be reviewed to increase investor participation. Regarding shareholder voting and investor engagement, the FCA asks how the relationships between fund managers, intermediaries and investors could be better reflected in the rules (including to facilitate pass-through voting), and whether the FCA should do more on engagement in terms of regulatory intervention.
- At a glance — the potential impact ;It is likely that the FCA, through the Financial Services & Markets Bill, will shortly have a secondary objective on international competitiveness and growth. Therefore, it is striking that the FCA does not appear to be using post-Brexit regulatory reform to make the UK market more competitive in any meaningful sense. In some cases, it is proposing more detailed and prescriptive rules in more areas, just as firms are working towards Consumer Duty implementation. We summarise the potential impacts below:

Topic	Our rating of the potential impact	Our initial insights and views on the potential impacts
Implementing a consolidated framework	Significant	Simplifying the regime would be welcome, but the FCA acknowledges it would come with initial compliance costs for firms. Changes would also lead to divergence from the EU framework, creating complexity for UK firms operating in both jurisdictions. This is partially offset by the proposed lengthy implementation timeline, but the costs may outweigh the benefits
Authorised Fund Managers	Significant	Proposals relating to clarifying liquidity stress testing requirements, the introduction of more rules around liquidity management tools and liquidity reporting could represent significant, additional regulatory requirements.
Depositaries	Significant	Existing oversight duties could be significantly extended to include liquidity management and stress testing, pricing and dealing, and enhancing depositaries' resources, knowledge, skills and expertise. This could require depositaries to revisit their business model.
Portfolio Managers	Significant	Proposed rules for portfolio managers regarding investment due diligence and liquidity management would represent new requirements. Contracts with Host AFMs and more retail rules for wealth managers could be onerous.
Detailed fund disclosure and reporting	Moderate	There could be significant changes to the format of the prospectus and fund reports and accounts. These documents could become more useful for investors but there may be significant costs for the industry and the need to adopt different approaches for EU and UK funds. More frequent disclosure of holdings is unlikely to be welcomed by industry.
Unitholder engagement	Minor / Moderate	Allowing virtual participation in unitholder meetings would be relatively straightforward but requiring platforms to allow investors to vote on proposals could be more challenging. The FCA appears undecided on whether industry best practice or regulatory intervention is needed.
Retail fund regime	Minor to Significant (depending on option chosen)	Relabelling NURS as "UCITS plus" could improve investor understanding but FCA-designed "basic funds" will be challenging. However, in the short term there would be implementation costs for fund managers. Given UCITS is a globally recognised brand, divergence from the EU framework could impact the ability to export UK funds.
Technology in fund operations	Minor	The FCA is open to facilitating tokenisation of both fund units and assets and to support the industry as it explores new opportunities. This may help accelerate efforts to modernise the industry.
AIFMs	Minor	No significant changes proposed. Potential amendments could allow more firms to make use of the small AIFM exemption but expectations of them may be clarified and some types of small registered AIFMs may need to be authorised.
Fund rules – eligible assets / prudent spread of risk	Minor	Proposals include guidance on the 10% unlisted rule, and possible removal or modification of certain detailed and prescriptive requirements. A move towards more outcomes-based regulation would be welcome but again would require different approaches in the UK and the EU.

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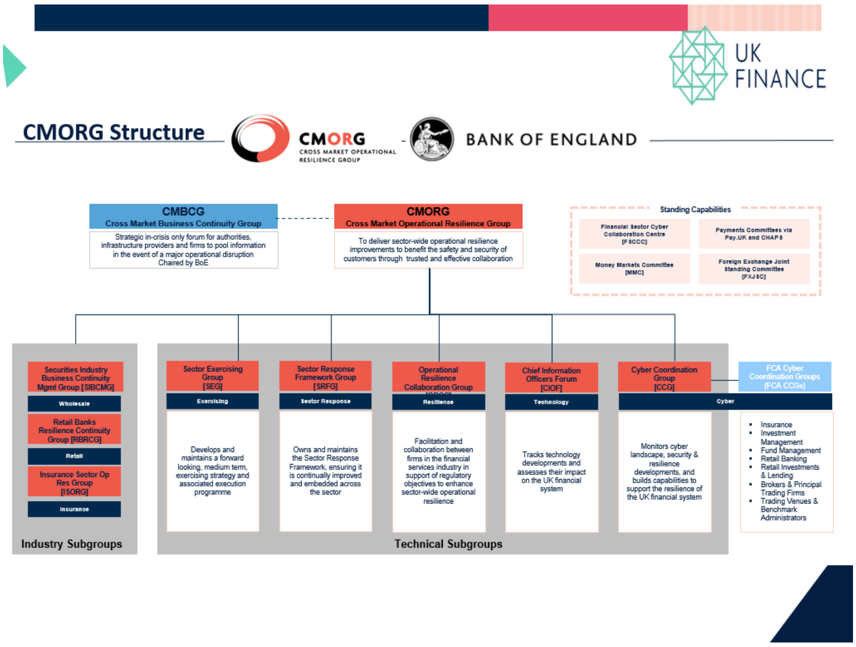

[China makes sweeping reform to financial sector regulation; CSRC proposes position limits, reporting rules; 31 March 2023.pdf]

Digital finance, SupTech, RegTech & FinTech

Japan, Australia, Indonesia, and Iran make progress on CBDC initiatives

- The Bank of Japan (BoJ) has confirmed that it will launch a pilot programme for a Central Bank Digital Currency (CBDC) in April 2023. This launch follows the completion of Proof of Concepts in March and will involve simulated digital yen transactions with private businesses. The pilot program is expected to allow the BoJ to develop a system for experiments in which it can test end-to-end process flow while exploring the measures and potential challenges for connecting the experimental system with external ones. At present, no actual transactions will take place among retailers and consumers in the program. To establish the institutional arrangements for a CBDC the BoJ will establish a CBDC Forum to discuss and explore a range of topics relating to retail payments with industry. The BOJ will select participants for the CBDC Forum in the coming months and will consider expanding the scope of the pilot programme over time.
- Second, the Reserve Bank of Australia (RBA) has announced the use case proposals and providers for its project to explore the potential of an Australian CBDC. The project will involve a variety of use cases including offline payments, livestock auction, high

quality liquid assets securities trading, funds custody, and corporate bond settlement, among others. Selected participants will be granted a real digital claim on the RBA and the intention is that industry and policymakers will better understand how a CBDC can benefit the Australian financial system. A report on the project's progress will be published later this summer.

- Third, Bank Indonesia (BI) has issued a consultation paper on the development of a wholesale digital rupiah. BI seeks input in the area of functionality which covers access, issuance, fund transfer and technical capability. The second area of input that BI is looking for relates to general technological considerations such as scalability, resilience, implications for wider payment, financial and monetary systems. This paper builds on a white paper issued in November, which outlined the central bank's plans for developing a digital rupiah under the banner of 'Project Garuda'. The consultation is open for comment until July 15, 2023.
- Finally, the Monetary and Banking Research Institute of Iran has completed preliminary research for the launch of a potential digital rial. Ten banks in Iran have applied to join the project and all banks and credit institutions in Iran are reportedly expected to start offering electronic wallets for the upcoming digital currency. There are some concerns that heavily sanctioned countries such as Iran could use digital currencies to bypass the international banking systems and sanctions.

White House signals skepticism over digital assets

- President's Economic Report Critiques Crypto Assets; 31 March 2023.pdf
- SEC Charges Crypto Platform and Executives for Registration Failures; 31Mar2023.pdf
- The White House has issued the President's annual Economic Report which includes a chapter on digital assets. Throughout the analysis, the White House was highly critical of the digital asset space, a sentiment which is best captured by this excerpt: "It has been argued that crypto assets may provide other benefits, such as improving payment systems, increasing financial inclusion, and creating mechanisms for the distribution of intellectual property and financial value that bypass intermediaries that extract value from both the provider and recipient. Looking under the hood at these arguments, however, shows a more complicated picture. So far, crypto assets have brought none of these benefits." The White House has underlined its skepticism toward the long-term benefits of the digital asset space and is concerned about the potential for spillover into the traditional financial system.
- This report comes on the heels of Treasury Secretary Janet Yellen's remarks in late-February regarding the importance of establishing a robust regulatory framework for cryptocurrencies while also clarifying that the US has not proposed an outright ban.

UK Government reintroduces data protection reforms

- Proposed new UK regime puts Crypto firms put on notice; 30Mar2023.pdf
- The UK Government has reintroduced the revised Data Protection and Digital Information (DPDI) Bill to Parliament which aims to reform the inherited General Data Protection Regulation (GDPR) rules from the EU. The new Bill represents a slightly modified version of the original Bill unveiled in summer 2022 and the Government's chosen narrative is that this legislation presents opportunities to reduce compliance

burdens in the UK. Five key areas have been targeted for further reform: a new list of legitimate interests, clarification that scientific research includes for commercial purposes, reducing compliance for low-risk processing, clarification concerning existing international transfer mechanisms, and clarifications around human involvement in automated decision-making. The plans to reduce compliance for low-risk processing has generated some controversy with several civil society groups questioning how this might impact individual rights. The Government's ambition is to finalize the legislation by the year-end if possible.

EIOPA launches digitalisation market monitoring survey

- The European Insurance and Occupational Pensions Authority (EIOPA) has launched a new survey to understand and monitor digital transformation trends in the European insurance market. The survey will examine how financial innovation is reshaping Europe's insurance sector and will look at developments such as digital distribution, communication channels, and partnerships with start-ups and technology companies. The adoption and governance of blockchain and artificial intelligence in insurance is also an area of focus for EIOPA. Findings from the survey will feed into EIOPA's work as it seeks to detect emerging risks for insurers and consumers.

SEBI finalizes cloud adoption framework for the Indian market

- The Securities and Exchange Board of India (SEBI) has finalized its new framework for Regulated Entities (REs) adopting cloud technology. This will impact stock exchanges, depositories, stock brokers, clearing corporations, asset managers, KYC registration agencies, and other REs operating across the Indian market.
- The cloud adoption framework covers a wide range of considerations for firms including governance, risk and compliance, the selection of cloud service providers, data ownership and data localisation requirements, due diligence and security controls. The main purpose of the framework is to highlight the key risks and mandatory control measures which REs need to put in place before adopting cloud computing.
- REs have one month to provide the SEBI with details of the cloud services they have deployed, three months to submit a roadmap for implementation of the new framework, and twelve months to ensure that all existing arrangements are in compliance with the new framework.

Australia publishes cyber security strategy

- The Australian Government published on February 27 a discussion paper on its 2023-2030 Cyber Security Strategy, designed to position Australia as the world's most cyber secure country by 2030 and an international standard-setter for carefully crafted cyber policy. The strategy is founded on the recognition that the current patchwork of policies and frameworks is not sufficient to keep up with the quickly-evolving digital economy.
- The paper seeks input on ways to enhance and harmonize existing regulatory frameworks to strengthen cyber resilience across the digital economy. Specifically, the government wants to hear views on whether the Security of Critical Infrastructure Act needs reform, and whether existing definitions of 'critical assets' should extend to

customer data and systems. It also asks whether company directors should be specifically required to address cyber security risks and the consequences, whether a new Cyber Security Act is needed, and what it should include. The discussion paper is open for comment until April 15, 2023.

Crypto friendly Signature Bank reportedly under DOJ, SEC investigation prior to collapse

- Amidst the turmoil surrounding Silicon Valley Bank, First Republic Bank and Signature Bank, reports have emerged that investigators from the Department of Justice and Securities and Exchange Commission were looking into Signature Bank's work with cryptocurrency-related firms before the bank was shut down by the New York State Department of Financial Services. Signature Bank was one of the few banks in the US taking crypto deposits. Reportedly, investigators were probing whether the lender took adequate steps to identify potential money laundering by its clients. Former Rep. Barney Frank, architect of the Dodd-Frank reforms following the 2008 financial crisis, was a board member at Signature Bank and has gone on record arguing that crypto panic sparked a deposit run on Signature. The bank has not been accused of wrongdoing yet, and the investigation could be closed without further action. However, it remains unclear when the investigation began and if it had any bearing on regulators' move to close the failed bank.

SEC continues build out of Crypto Assets and Cyber Unit

- The SEC is expected to ramp up its recent surge of cases targeting crypto firms as it continues to boost the size of its digital assets enforcement squad. In May 2022, the Commission announced it was adding 20 people to its newly named Crypto Assets and Cyber Unit, nearly doubling the size of the operation to 50 persons. The agency is expected to add additional staff to the unit, but the exact number of new positions remains to be confirmed. This expansion further underlies the priority that digital assets enforcement has become for the SEC.

To CBDC or not to CBDC; The BOE consultation on a digital pound; *HM Treasury (HMT) and the Bank of England (BoE) have now published their much-anticipated consultation on the digital pound. It is accompanied by a Technology Working Paper, which explores, in more detail, the technological minutiae related to their proposals. The consultation runs until 7 June, with the BoE now moving onto the `design' phase of the project — where they will develop further, in both technology and policy terms, the model being proposed.*

- According to the IMF, the BoE is one of more than half the world's central banks actively exploring or developing central bank digital currencies (CBDCs). Currently, 114 CBDCs (representing over 95% of global GDP) are in research and development and two are fully launched — Nigeria's eNaira and the Bahamian sand dollar.
- For the most part, the UK has followed a more cautious timeline than other jurisdictions — with the hope of gaining a second-mover advantage. In fact, Andrew Bailey, Governor of the BoE, has often reiterated his hesitancy as to whether a digital pound is needed — in either wholesale or retail form. A wholesale version is arguably redundant following the update of the BoE's real-time gross settlement (RTGS) system,

which facilitates wholesale payments in central bank money. And a retail version was described last year by the House of Lords as being a “solution looking for a problem”.

- However, this consultation marks a clear change in tone. Despite being too early to foresee a definite outcome, HMT and the BoE now deem it “likely” that a digital pound will be needed in the future for everyday payment needs. A key factor impacting this likelihood of launch (which would only occur in the second half of the decade) will be how the payments landscape continues to evolve — both in the UK and globally. Specifically:
    - Whether, and how sharply, cash use continues to decline.
    - The emergence of new forms of private digital money issued by new payment entities.
    - Whether new forms of private digital money display adequate interoperability.
    - International developments in CBDCs and private digital money.
- Key design features
- The consultation proposes a retail CBDC “designed for everyday payments by households and business” — as opposed to a wholesale CBDC which would be used to settle high-value payments between financial firms. Unlike commercial bank holdings, each digital pound would be a direct claim on the central bank. They would sit alongside, but not replace, cash.
- The BoE's model is designed around the following identified features:
- Public-private partnership
- The architecture would employ a private-public sector partnership via the “platform model” (as originally set out in the BoE's 2020 Discussion Paper).
- Public digital money issued by a central platform operated by the BoE
- The BoE would build and operate the “core ledger” which would provide the minimum necessary functionality for the digital pound.
- Regulated private firms — Payment Interface Providers (PIPs) and External Service Interface Providers (ESIPs) — would act as the interface between the user and the ledger, accessing the BoE's core infrastructure via an application programming interface (API). They would provide wallets — passing anonymised instructions from the user to the BoE's core ledger (where the transactions would be processed and settled). They would deal with all user-facing interactions, including handling customers' information.
- PIPs would provide interactions relating to payments, while ESIPs would provide non-payment related value-add services (e.g., business analytics, budgeting tools, fraud monitoring).
- PIPs and ESIPs would be “robustly yet proportionately regulated” to ensure resilience, continuity of operations and protection of customers. The BoE would also likely impose some principles for operation regarding interoperability and security.
- This model is technology-agnostic — e.g., the core ledger could be operated on a centralised traditional database or on distributed ledger.
- Digital pound wallets offered by the private sector
- These wallet providers would be encouraged to offer an array of innovative features and services, but all wallets would need to provide certain minimum functionality:
- Access to digital pounds: customers must be able to register on the digital pound ledger and open a wallet.

- Make payments: wallets should allow users to easily make and accept payments from merchants to other users, and commercial bank accounts, as well as switch digital pounds into cash.
- View balances and transaction history: users must be able to view their activity.
- Mobility: customers must be able to switch easily between wallet providers and, if desired, close their wallet.
- Privacy-protected like for cards and bank accounts, but not anonymous
- Individuals' personal details would be known to their PIP in the same way they are for bank account providers today (and subject to the same privacy protections). These providers would be responsible for recording the identity of digital pound users and carrying out any necessary Know Your Customer (KYC) and Anti-Money Laundering (AML) checks.
- Users would be able to adjust their privacy settings (to some degree) and the BoE is supportive of exploring ways to allow some small value transactions to have higher levels of privacy — e.g., through tiered identity verification or enhanced privacy controls.
- The BoE and the Government would not see any personal data
- PIPs would anonymise personal data before sharing them with the BoE. The data would, however, be available to police authorities and law enforcement in certain circumstances — on the same basis as currently with other digital payments.
- Accessible to UK and non-UK residents; To ensure consistency and equal treatment, non-residents' holdings of digital pounds would be on the same basis as residents.
- However, non-resident access would require a recognition regime to determine which non-UK PIPs and ESIPs could offer digital pound wallets and other services. This would ensure that UK standards of resilience, consumer protection, AML, KYC and any other legal requirements are upheld. UK authorities might reserve the right not to grant access to digital pounds for non-residents from certain high-risk jurisdictions.
- Used by households and businesses; Seamlessly exchangeable with other forms of money, including cash and bank deposits
- Accessed by users through smartphones or cards
- Initially, use of digital pounds would be designed to operate with existing online and in-store payments technology to ensure merchants would not have to invest in new infrastructure.
- The specific devices would be developed by private providers — with the BoE playing a role in ensuring they meet necessary standards.
- Although in-store, online and person-to-person payments would be the initial focus of the digital pound, that may broaden out in future. The BoE also intends to further explore offline and cross-border payments.
- The BoE / HMT will not be involved in any `programmability' related to the digital pound. However, PIPs and ESIPs would be permitted to implement such functionalities themselves (with user consent).
- No interest paid
- The digital pound is not intended to be a either a vehicle for savings or a monetary policy tool.
- Limited amount per user, at least initially; To ensure a smooth introduction (without unintended consequences for monetary or financial stability), the BoE proposes an individual user limit of between £10,000 and £20,000. This limit would aim to constrain the degree of deposit outflow from the banking system — with the £20,000 upper bound

still allowing 95% of income earners to use their digital wallet to receive their salary without regularly reaching their holding limit.

- Any limit would need to ensure that incoming funds otherwise breaching this threshold would not fail. One proposed mechanism is a functionality that would automatically “sweep” a user's holdings of digital pounds above the limit into a nominated account where it can be held in another form of money, such as a commercial bank deposit.
- For everyday payments online and in-store
- <u>Additional considerations</u>
- Climate change: The digital pound would be designed to support the Government and BoE's commitments to mitigate climate change. It would not make use of the same energy-intensive technologies that underpin some cryptoassets.
- Interaction with stablecoins: The digital pound should not crowd out or prevent other forms of digital innovation by the private sector. For example, as HMT and the BoE are developing their regulatory framework for systemic stablecoins, one possibility under consideration is that they could be backed by central bank held deposits. Such a stablecoin would be economically like the digital pound, but they could coexist and complement one another.
- Corporates: Although focused on use by households and individuals, corporate use of the digital pound is still being explored. The most direct way of maintaining a retail focus would be to restrict which types of business could hold digital pounds. Additional complexities would be subject to further work — including whether, and to what extent, non-resident corporates could have access and management of the holding limit.
- Financial inclusion: The digital pound could provide an extra option for some financially excluded groups. However, adoption among the financially excluded could be hampered by an unwillingness or inability to use digital payments. Digital inclusion therefore needs to be promoted alongside financial inclusion.
- <u>Economic implications of the proposals</u>
- In the consultation, the BoE identifies its primary motivations for pursuing a digital pound as the availability of central bank money as an anchor for confidence and safety in money, and promoting innovation, choice and efficiency in payments. Other motivations include enhancing financial inclusion, payments resilience and improving cross border payments.
- The BoE notes that it would seek to limit any associated financial and monetary stability risks. However, it would not seek to preserve the status quo structure of the financial system or protect any business model from the impact of technological innovation and competition.
- Regarding financial stability, the BoE acknowledges that new forms of digital money, both the digital pound and stablecoins, could adversely impact banks' businesses models and affect the cost and availability of credit. The extent of bank disintermediation and impact on the cost of credit depends significantly on the speed and scale of adoption of the digital pound. This is uncertain and would vary between transition, steady state and stress. The BoE advises that this risk has been accounted for within the proposed design — through holding limits — and that the risk would further diminish as the financial system has the time and flexibility to adjust.
- Regarding monetary stability, the digital pound would not fundamentally alter the traditional channels of money creation, but it might affect monetary stability. Bank disintermediation might affect the transmission of monetary policy to the real economy — and as a result, the BoE again advises that this is accounted for by keeping

the digital pound model retail-focused. And, although the digital pound could affect the equilibrium interest rate, the BoE judges that this impact would be small.

- European developments
- Meanwhile, across the channel, the ECB's 24-month investigation phase into a digital euro is set to conclude in October 2023, with the development of a prototype. As part of this phase, the ECB has been collaborating with private sector companies and intermediaries on potential user interfaces.
- Once the prototype is complete, the decision will be made on whether to go ahead with actually developing a digital euro. The EU has indicated interest in both a wholesale and retail version — with the retail version potentially adopting an intermediated design (i.e., where the ECB creates its own digital currency that is distributed via private sector companies and commercial banks).
- In preparation for a potential launch, in May the European Commission will propose relevant accompanying legislation. A recent statement from finance ministers — aimed at guiding the development of this legislation — highlighted certain key elements that they want to see prioritised. These elements included privacy protection, convertibility, interoperability, avoidance of programmability and holding limits.
- Interestingly, Fabio Panetta (who leads the ECB's CBDC work) recently flagged that it's unlikely blockchain technology has the processing power to support a digital euro aimed at catering to ~350 million Europeans. Instead, the digital euro may need to be designed on a centralised ledger — albeit one that is compatible with decentralised blockchains.
- What does this mean for financial services firms?
- As the likelihood of a future `Britcoin' (and digital euro) continues to increase, financial services firms should prepare themselves for what this would mean for their business models. As the BoE has made it clear it will not "seek to preserve the status quo structure of the financial system", these firms should commit to actively participate in shaping the design of this potential architecture, through the consultation process and other private-public engagement forums. In particular, traditional banking firms should consider how they could pivot their services and adapt to the role of PIP or ESIP.

Topic	Our rating of the potential impact	Our initial insights and views on the potential impacts
Implementing a consolidated framework	Significant	Simplifying the regime would be welcome, but the FCA acknowledges it would come with initial compliance costs for firms. Changes would also lead to divergence from the EU framework, creating complexity for UK firms operating in both jurisdictions. This is partially offset by the proposed lengthy implementation timeline, but the costs may outweigh the benefits
Authorised Fund Managers	Significant	Proposals relating to clarifying liquidity stress testing requirements, the introduction of more rules around liquidity management tools and liquidity reporting could represent significant, additional regulatory requirements.
Depositaries	Significant	Existing oversight duties could be significantly extended to include liquidity management and stress testing, pricing and dealing, and enhancing depositaries' resources, knowledge, skills and expertise. This could require depositaries to revisit their business model.
Portfolio Managers	Significant	Proposed rules for portfolio managers regarding investment due diligence and liquidity management would represent new requirements. Contracts with Host AFMs and more retail rules for wealth managers could be onerous.
Detailed fund disclosure and reporting	Moderate	There could be significant changes to the format of the prospectus and fund reports and accounts. These documents could become more useful for investors but there may be significant costs for the industry and the need to adopt different approaches for EU and UK funds. More frequent disclosure of holdings is unlikely to be welcomed by industry.
Unitholder engagement	Minor / Moderate	Allowing virtual participation in unitholder meetings would be relatively straightforward but requiring platforms to allow investors to vote on proposals could be more challenging. The FCA appears undecided on whether industry best practice or regulatory intervention is needed.
Retail fund regime	Minor to Significant (depending on option chosen)	Relabelling NURS as "UCITS plus" could improve investor understanding but FCA-designed "basic funds" will be challenging. However, in the short term there would be implementation costs for fund managers. Given UCITS is a globally recognised brand, divergence from the EU framework could impact the ability to export UK funds.
Technology in fund operations	Minor	The FCA is open to facilitating tokenisation of both fund units and assets and to support the industry as it explores new opportunities. This may help accelerate efforts to modernise the industry.
AIFMs	Minor	No significant changes proposed. Potential amendments could allow more firms to make use of the small AIFM exemption but expectations of them may be clarified and some types of small registered AIFMs may need to be authorised.
Fund rules – eligible assets / prudent spread of risk	Minor	Proposals include guidance on the 10% unlisted rule, and possible removal or modification of certain detailed and prescriptive requirements. A move towards more outcomes-based regulation would be welcome but again would require different approaches in the UK and the EU.

Sanctions

[UK OFSI; 16 March_2023_Monetary_Penalty_and_Enforcement_Guidance.pdf]

[The UK updates its sanctions guidance on "ownership and control" and sets out its due diligence expectations; 31March2023.pdf]

[UK Government published the Economic Crime Plan 2 for 2023- 2026; 31Mar2023.pdf]

[SFC fine exposes AML risk from customer supplied systems; 15March2023.pdf]

Conduct / Enforcement / Reporting

[FCA Regulation round-up March 2023.pdf]

FT; French prosecutors raid banks in tax fraud probe; 29Mar2023.pdf

ECON amendments EU AML_CFT legislation rules for CASPs; EBA consults on risk-based AML_CFT supervision to include CASPs.pdf

The FCA's discussion paper — Finance for positive change; *Beyond disclosure — focus on sustainability-related governance, incentives, and competencies*

- Supporting the development of sustainable finance is a key regulatory priority for the FCA, and it has already introduced and proposed related disclosure requirements in several areas. Its discussion paper (DP) begins the conversation on the extent to which additional regulatory expectations or guidance should be used to accelerate the move to sustainable finance for regulated firms.
- The paper poses questions around how sustainability-related considerations should be embedded in regulated firms' objectives, strategies, culture, governance, operations, decision-making processes, incentives and senior managers' responsibilities. It also seeks to gather views on how the governance and resourcing of stewardship can be strengthened and where competence-related barriers in financial services may impede progress.
- Context
- The FCA's considerations build on a variety of regulations already in place. Existing FCA rules require premium and standard listed companies and certain asset owners and asset managers to publish information on how they have incorporated climate-related risks into their governance and risk management processes, as part of their TCFD-aligned disclosures. However, through its proposed Sustainability Disclosure Requirements (SDR, see KPMG article here), the FCA is now exploring how to incorporate a much broader definition of sustainability-related risks — such as nature and biodiversity, human rights and modern slavery — into firms' governance and risk management frameworks.
- Wider stakeholder initiatives are also underway. For example, the Transition Plan Taskforce's draft disclosure framework may raise the bar further for in-scope firms to maintain effective governance structures over their greenhouse gas emissions. The DP brings aspects of some of these initiatives together for industry consideration.
- The FCA is also considering where it could build on broader regimes, such as the Senior Managers and Certification Regime (SM&CR) and the Consumer Duty. And while, to date, its sustainability-related requirements have focused mainly on regulated asset managers and asset owners, the focus has now shifted onto developing requirements for all regulated firms.
- Potential changes to deliver sustainable change
- The FCA's paper explores the potential for regulatory enhancements to support the embedding of sustainability considerations in various aspects of regulated firms' businesses. These can be grouped broadly into three themes:

1. Tone from the top; The FCA is exploring ways to integrate sustainability-related risks at all stages of the governance process — not only how firms set their strategic objectives, but

also how culture can act as an enabler and how the effectiveness of firms' governance can be integrated into the regulatory framework.

- Objectives, purpose and strategy: The FCA wants to understand whether firms are setting sustainability-related objectives and building these into their business models and strategies. The PRA already expects the boards of dual-regulated firms to understand how their firms are integrating climate considerations into their approach. The FCA seems to be considering both broadening the scope of firms that will need to consider such matters (i.e. beyond dual-regulated to all regulated firms) and extending these requirements beyond climate change to wider sustainability-related considerations.
- Culture and behaviours: The FCA emphasises the importance of a healthy culture and asks whether it should set expectations on how firms' culture and behaviours can support sustainable change. It notes growing investor interest in disclosing and improving diversity and inclusion practices.
- Governance: The FCA asks how firms are ensuring that they have the right skills and knowledge within their boards relating to climate-change and sustainability risks and opportunities, what are likely to be the most effective strategies for embedding these considerations in firms' operations, and how management information (MI) can be used to monitor developments and progress against public commitments. It is looking to gather views on whether regulatory guidance or expectations are needed in these areas.
- Accountability: The FCA notes that, while the PRA already expects dual-regulated firms to allocate responsibility for managing financial risks from climate change to a Senior Management Function (SMF), there are currently no similar requirements for solo-regulated firms. The FCA asks whether more guidance is needed and which SMF would be most suitable to take on sustainability-related responsibilities.

2. Sustainable products and directing capital; Firms can effect positive and sustainable change in their own business processes and can also play an important role in responsibly allocating, managing and overseeing the investments of their customers. The FCA is considering how further guidance and requirements could drive improvements in this area.

- Product governance: The FCA notes that its existing product governance handbook (PROD) does not currently contain explicit references to sustainability, although SDR will require firms to maintain appropriate governance arrangements over in-scope products. The FCA asks whether specific expectations should be introduced around the governance of products with sustainability characteristics. Interestingly, the FCA specifically proposes clarifying the roles and expectations of fund boards.
- Stewardship: Although there are existing requirements under the Shareholder Rights Directive, and certain firms must `comply or explain' in the context of the Stewardship Code, the FCA believes there are still barriers that prevent stewardship from taking a more prominent role in the investment approach. The paper seeks views on whether further measures are needed to encourage effective stewardship, whether there are any regulatory barriers, and whether additional measures would encourage firms to identify and respond to market-wide and systemic risks. For a deeper look at trends driving the increasing focus on stewardship reporting, see KPMG's latest article here.

3. Workforce management, competence and incentives; Effective delivery of sustainable business objectives does not just rely on top-down governance. The FCA is seeking to understand the extent to which regulatory expectations can facilitate the incentivisation of workforces and greater competence to deliver effective sustainability-related strategies.

- Remuneration and incentives: Existing codes require remuneration to promote effective risk management, including ESG risks under the [MIFIDPRU Remuneration Code](#) for in-scope firms. The FCA is seeking to understand the extent to which regulatory expectations can support firms in incentivising their staff to deliver effective sustainability-related strategies and how remuneration can be linked to sustainability-related metrics. It asks which matters firms should take into consideration when designing remuneration and incentive plans linked to their sustainability-related objectives, and what further guidance could be needed.
- Training and competence: The FCA is concerned that the ability of staff to drive positive sustainable change could be constrained by knowledge gaps and `competence washing' (i.e. a lack of sustainability-related subject matter expertise). It therefore seeks views on:
    - The main sustainability-related knowledge gaps and how they can be addressed.
    - The need for additional training and competence expectations.
    - Aspects of training that would be particularly useful.
    - Whether stakeholders have seen misrepresentation of ESG credentials and the potential harms.
- Comparison with existing EU requirements
- To some extent, the questions raised by the FCA suggest that it might consider introducing requirements that cover similar ground to existing EU rules that have applied to UCITS Management Companies, AIFMs and MiFID investment firms since 2022. These require firms to integrate sustainability risks and factors into their investment processes, decision-making, risk management, resourcing considerations, due diligence and conflicts of interest management.
- Additionally, EU MiFID investment firms must understand and incorporate `sustainability preferences' into their investment advice and suitability processes, and consider sustainability factors and risks in their product governance frameworks. In its SDR consultation, the FCA announced plans to consult on rules for financial advisers to incorporate sustainability matters and investor preferences when delivering investment advice.
- Looking ahead
- This DP indicates a willingness on the part of the FCA to consider significant changes to existing regulatory regimes to facilitate a transition to sustainable finance, and an openness to introducing new regulatory requirements to help realise the necessary changes to all aspects of a firm's business. As well as exploring the possibility for new requirements, the FCA specifically encourages firms to consider reflecting the matters discussed in their approaches to governance, remuneration, incentives and training.
- Firms should therefore seek to understand the extent to which their existing sustainability-related strategies and business processes could be enhanced by the proposals in the paper. Firms can start to prepare by considering how existing governance structures may need to be adjusted, how all three lines of defence can

factor the FCA's considerations into forward-looking work on this topic, and where upskilling is particularly needed or resources need to be increased.

- Although there is uncertainty around how the FCA's considerations could translate into future requirements, in some areas enhancements to the UK regime could be progressed more quickly to respond to some of the questions posed. This could particularly be the case where similar requirements already exist in the EU, considering lessons learned. But in any case, firms will need to prepare to navigate any differences between UK and EU regimes.

Time running out to meet MAS BCM deadline; 20Marh2023.pdf

Changes to Hong Kong BRMQs should not be overlooked; 30Mar2023.pdf

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Financial Stability, Prudential & Risk

ICARAs; General FCA feedback; 30March2023 .pdf

FCA hosted an initial round table last week to feedback a bit more colour to the thematic review on IFPR and the first ICARA submissions. They also spent quite a lot of time on the wind-down scenario's.

ICARAs — General FCA feedback

- Incorporate previous feedback into ICARAs
    - firms have not incorporated previous feedback into their ICARAs
    - previous ICAPs or anything else related to the firm it still stands from their perspective and that needs to be captured under the current ICARAs
- Explain if you are reducing capital requirements as a result of the new regime.
    - FCA noted that some firms had reduced their capital requirements as a result of the new regime without providing an explanation
    - FCA presumes that the risk within the firm generally won't have changed into the new reporting regime, so such an outcome should be accompanied by evidential documentation.
    - Therefore a great many firms have actually chosen to keep the risk capital at the same level as in the prior ICG assessment
- Some risks had no capital requirements against them.
    - These nulls would need to be explained using the risk assessment methodology that was used
- FCA will take a risk-based approach to SREPs
    - FCA aren't entirely clear yet on what their threat programme is going to be but they are not going to be conducting SREPs on a regular basis anymore. Rather the FCA is going to take a risk-based approach so the focus shall be upon the frequent OFAR and the MIFIDPRU 007 returns and upon all the other returns as the FCA supervision build-up the profile of the risk that a firm is running. This is particularly to be the case for fast-growing firms per last week's report.

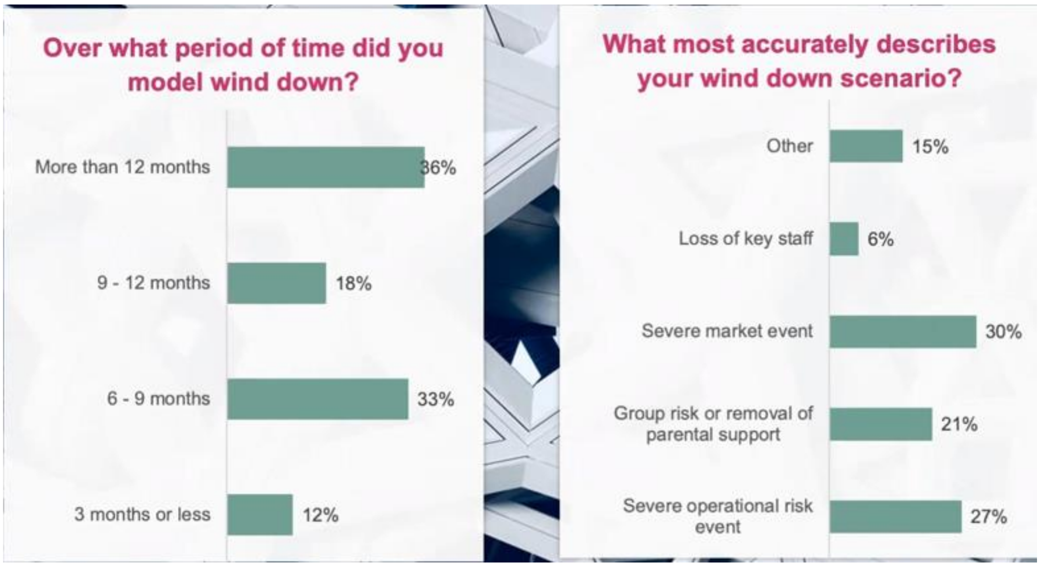
  - There also won't be any more governance scalars
- Use of insurance must be fully justified, payment delays to be captured under residual risk
  - use must be fully justified if it's considered an effective mitigation tool.
  - the key point concerns any liquidity timing gap in receiving resource from the insurer, since any gap must be captured under the residual risk

Wind Down — FCA feedback *(this was the major talking point as indeed it featured prominently in the feedback report)*

- On wind-down planning, the FCA said that many assumptions were unrealistic so they're talking about things like time scales have wine down which they generally perceived to be too short where < 1 year
- The time scales for wind down too short
  - Survey showed only c. 2/5th of firms are using 12 months +
  - absolutely anything less than that would be a bit touch and go; and 3-months or less is very optimistic
- Firms underestimated the level of resources required during wind down
  - FCA noted that firms under-estimated the level of resources they would need during wind-down: i.e. cash outflows in a wind down may be higher as suppliers their credit-clauses on the day they see affirming trouble and they're going to protect themselves
  - Survey also asked *what most accurate describes your wind down scenario*
  - 2/3 of IFPR firms have said *severe market eve*nt or a *severe operational event*
  - But it's also pleasing to see that "*Group Risk*" is in there as well as 1/5th responses
- Wind down models must include a stress backdrop
  - FCA noted that many firms forget that there's usually a stressed external environment that got them to the point of wind-down in the first place
  - This would typically occur after a firm had gone into recovery, failed, and is now in wind-down wherein that stressed backdrop is still ongoing.
- Poor model detail
  - FCA commented about modelling detail being generally poor by highlighting *Group Risk*,
- Firms are not considering the situation if the group was in a stress.
  - Many firms have a dependency on group financial support, and so they haven't considered the situation where the group was in the same general stress, therefore some groups services may be unavailable
  - Further, the group itself may not be in a position to provide financial support or liquidity tools when experiencing the same stress event
- Firms must comply with the resource requirements throughout wind down.
  - There may not be a requirement for the same requirements as a firm would have ascribed in being a "Going Concern," but the FCA says that you must be fully resourced during the wind down.
- The FCA a would prefer firms to do an annual fire-drill of the wind down plan.
  - this can be a fire-drill based around solely and just a reverse-stress-test plan, but also the FCA expects the execution of the test to be logical and it has to pass a sense-check.
  - The FCA also discussed group-level drills, for which they confirmed that the individual wind-down plans for each entity are not required, but rather that one

document for the entire group might be acceptable, but only provided that it must work for the entire group. They noted observing poor consistency across the group for wind down inter-related pass-through effects. Recent ICARA's did not always appear to impact other entities in the same way when they would expect that it would do (or without explanations as to why not).

- The FCA were very keen to find out what's going within firms at ground-level.
  - Currently all their ICARA interactions have solely been with the larger Fixed Portfolio groups (probably about 5% of firms that they supervise in total.)
  - Like their outreach to EVIA below, the FCA repeated their intention to try and do some workshops for the firms that they supervise.



- *To conclude, the FCA have said that they are not expecting firms to get it right in year-one, and they do recognise that it's an interactive process they do expect firms to get better over the next year or two.*

FAQ

What happens if you don't comply with OFAR, then what should do you need to do?

- This becomes the same as the prior regime, in that a firm should need to inform the FCA as soon as possible to notify non-compliance with either liquid assets or financial or capital assets.
  - A firm will need to submit an annex form to FCA to set out the reason and remediation for the breach under the overall financial literacy requirements.
  - Notably, this is the same form that you would now also need to notify for a drop below the early warning indicators.
  - These early warning indicators are a new requirement for firms firm so you not only have to meet OFAR, but you need to be above 110% of the calculated requirement.

    - In such a submission, any firm does also need to articulate a narrative as to what circumstances have led to the circumstances get close to an OFAR breach, and what are the mitigations and resolutions.
    - Usually this would involve some kind of time-table which should garner a closely held follow up from the FCA, such as the injection of fresh share capital.

<u>How does a firm test the wind-down plan in practice?</u>

- The best suggestion would be to start with a desktop exercise if it's the first fire drill.
- Initially the focus would be looking at whether the digital governance works within the context of the recovery plan and the integration into the wind-down process, such that SIFs and MRTs know what they need to be doing when and quite what decisions need to be made.
- Such a test as an exercise to begin with would be feed into a "Crisis MI Test," such that in any crisis a firm should make decisions based on a pre-mapped decision tree replete with the latest commercial information a firm can generate in a timely manner, and to present that in a way that's useful for senior management/ EXCO/ Board to make consequential decisions upon what to do next.
- A consequence of this crisis-mapping exercise a firm should recognise what type of crisis is unfolding from early-warning indicators and what the MI suggests for recovery options.
- Following such a desk-mapping exercise then it's time to get a more real with the wind-down process, and this may be achieved in two stages.
    - a next stage of your of the fire-drill evolution, which would involve a mock execution of your recovery options where there should be an execution plan with a thorough manual for the recovery option playbooks
    - This would facilitate a firm running through the process step-by-step to set out who makes which calls and decisions and who is notified at which points. In order to make a decision does a firm know where its information resources are and their timeliness. Such practical exercises carried out at speed show-up the cracks in the firm's policies and processes, particularly when management is trying to run multiple options across multiple subsidiaries all at the same time.
    - Where persevering the stress-tests, a firm may discover that in pursuing one option, then it cannot follow another one because they are mutually exclusive in various ways (either contractually or by dint of practical reasons.)
- These kinds of live exercise may be incredibly helpful in terms of scenario-planning, and where the most severe events are imposed, the more the firm gets to strip to its core resilience.

<u>What happens where OFAR is carried out at entity level but where financial submissions are done at consolidated level?</u> *(a common scenario where a firm is part of an investment firm group with both entity and group returns required)*

- Regardless of the group structure and the submission of group returns, a firm still has to ensure that OFAR is done at entity level such that that any MiFID investment firm in your group is satisfying OFAR from standalone basis as to satisfying its assessed needs for ongoing as well as for working capital, and in addition its needs for wind-down at entity level.
- Therefore it remains as an obvious challenge to firms doing a group risk assessment down to an entity level assessment. This requires some kind of repeatable and testable

methodology. Its likely that certain forms of risk should be specific to the subsidiary investment firms from risks which may be more general across the group.

Are firms still utilising and aiming for 1:200 type scenario outcome, and how is that derived from multiplying-out probability and impact.

- Yes, a firm may deploy the 1:200 scenario planning, particularly when considering all scenarios as stressed outcomes.
- This is only for stress testing and isn't for standard risk assessments.
- The FCA haven't set out any specific methodology that they expect firms to use, and it is the exercise more than the quantities which evidence the value to a firm as they would become open to challenge from both the board and from supervisors.
- It is key to explicitly document the assumptions made when modelling a risk of harm stress test scenario, in order to demonstrate how a firm understands its controls are valid.

Note: What is a 5x5 Risk Matrix? A type of risk matrix that is visually represented as a table or a grid, a 5x5 risk matrix has 5 categories each for probability (along the X axis) and impact (along the Y axis), all following a scale of low to high. As a comprehensive tool used by organizations during the risk assessment stage of project planning, operations management, or job hazard analysis, a 5x5 risk matrix aims to identify the probability and impact levels of injury and risk exposure to a worker in relation to workplace hazards. Further, it can serve as a supplementary tool in evaluating the possible damage or disruption brought about by risks.

- **Importance of Using One**
- For most organizations, having a tool to visually represent risk assessments is paramount to effective operations management. Aside from the purpose of objectively rating risks based on their probability of occurrence and impact levels, a 5×5 risk matrix helps provide an easy-to-follow guide for future risk rating processes whenever a new hazard is identified.
- This tool allows Environment, Health, and Safety (EHS) professionals conduct thorough risk assessments, having 5 rating levels for each component for a more accurate analysis. With the 5×5 risk matrix explained, compared to other versions like 3×3 and 4×4, the 5×5 version provides a more thorough way of rating risks using a 5-point scale.
- Ultimately, the two main advantages of this using this tool are the following:
- Helps simplify how various risk levels are represented
- Reduces the need to conduct time-consuming quantitative analyses
- **Its 2 Components**

Impact

How severe would the outcomes be if the risk occurred?

Probability

What is the probability the risk will happen?

	Insignificant 1	Minor 2	Significant 3	Major 4	Severe 5
5 Almost Certain	Medium 5	High 10	Very high 15	Extreme 20	Extreme 25
4 Likely	Medium 4	Medium 8	High 12	Very high 16	Extreme 20
3 Moderate	Low 3	Medium 6	Medium 9	High 12	Very high 15
2 Unlikely	Very low 2	Low 4	Medium 6	Medium 8	High 10
1 Rare	Very low 1	Very low 2	Low 3	Medium 4	Medium 5

SafetyCulture

- Color-coding is crucial for a 5×5 risk assessment matrix to represent the combination level of probability and impact of the identified risks. That said, high risks must be in red, moderate risks in yellow (amber), and low risks in green. Organizations, EHS professionals, and project managers can then use other closely-related colors, such as orange, light red, and light green, to differentiate the specific risk ratings.
- A 5×5 risk matrix also aims to answer the question "What are the 5 risk rating levels in the risk assessment matrix?" A 5×5 risk matrix has two axes, or components to put it simply, that make up the whole table or grid: the Probability and the Impact. Under the two are 5 risk rating levels used to calculate risks.
- Probability
- Also called likelihood, the Probability (x axis) pertains to the extent of how likely it is for the risk to occur. The 5 risk rating levels under this component are as follows:

1. Rare – unlikely to happen and/or have minor or negligible consequences
2. Unlikely – possible to happen and/or to have moderate consequences
3. Moderate – likely to happen and/or to have serious consequences
4. Likely – almost sure to happen and/or to have major consequences
5. Almost certain – sure to happen and/or have major consequences

- Impact
- Also called severity or consequences, the Impact (y axis) aims to determine the level of effects that the hazard can cause to workplace health and safety.
- While a 5×5 risk matrix can be tailored to the needs of an organization, the following represent the general terms used to describe the 5 levels to determine the risk's impact:

1. Insignificant – won't cause serious injuries or illnesses
2. Minor – can cause injuries or illnesses, only to a mild extent

3. **Significant** – can cause injuries or illnesses that may require medical attention but limited treatment
4. **Major** – can cause irreversible injuries or illnesses that require constant medical attention
5. **Severe** – can result to fatality

- Each risk box represents the rating of a risk that is calculated based on its particular levels of probability and impact. In most cases, the 5×5 risk matrix uses numeric values to better represent the risk ratings.
- Calculating Risks Using the 5×5 Risk Matrix
- *Probability x Impact = Risk Level*
- The first step is to assign a numeric value from 1 to 5, 1 being the lowest, for each of the categories under Probability and Impact. Then, use the formula of multiplying the value of the Probability to the value of Impact to determine the Risk Level.
- To better understand how the various levels indicate the Probability and Impact, here's a guide on the numeric values and their representation as a result of the analysis:
    - **1-4: Acceptable** – no further action may be needed and maintaining control measures is encouraged
    - **5-9: Adequate** – may be considered for further analysis
    - **10-16: Tolerable** – must be reviewed in a timely manner to carry out improvement strategies
    - **17-25: Unacceptable** – must implement cease in activities and endorse for immediate action
- With these, you can improve your existing risk control measures as needed, and recommend further actions that your EHS and quality managers can reinforce toward a proactive safety culture.

Implementation of the Investment Firms Prudential Regime (IFPR): The FCA published the findings of a multi-firm review with its initial observations on how firms have implemented the IFPR (which was introduced in January 2022 to deliver streamlined and simplified prudential requirements for certain UK investment firms).

- The review focused on capital adequacy, liquidity adequacy and wind-down planning under the internal capital adequacy and risk assessment (ICARA) process, as well as regulatory reporting. The FCA found that most firms had "engaged well" in the review and had made progress with their understanding of the requirements, but there are also areas for improvement.
- **FCA publish observations on the UK investment firm prudential regime;** The FCA has published its observations on the implementation of the investment firms prudential regime (IFPR) that began on January 1, 2022 and represents the new UK prudential regime for MiFID investment firms. The IFPR aims to refocus prudential requirements beyond the risks faced by the firm to also consider the risks the firm might pose to consumers and markets.
- Under IFPR firms are required to hold sufficient resources to support on-going activities and wind-down in an orderly manner. In-scope firms are also required to complete an internal capital adequacy and risk assessment (ICARA) process to

identify the risk of harm and produce reasonable estimates of own funds and liquid assets threshold requirements.

- In their observations, the FCA has identified insufficiently adequate assessments of threshold requirements, insufficient attention to wind-down plans, inaccurate or incomplete data submissions, poorly explained reduction in risk capital, and a lack of comprehensive own funds and liquid assets, among other issues. The FCA also noted that firms demonstrating best practices provided their senior management with in-depth training on IFPR. The FCA intends to publish a report after the completion of its review.

Ring-fencing and resolution regimes for banks: The December 2022 'Edinburgh reforms', aimed at driving growth and competitiveness in the financial services sector, called for a review of whether the ring-fencing and resolution regimes for banks (both established in the aftermath of the Global Financial Crisis) are effectively aligned. As a first step, HMT has now issued a Call for Evidence seeking views on the practicalities of aligning the regimes for banks and long-term options for reform.

- Effective bank regulation should be seen as a Brexit dividend; 30Mar2023.pdf
- Simpler regime: The PRA is consulting until 30 May on liquidity and disclosures requirements (CP4/23) as part of its development of a 'strong and simple' prudential framework for non-systemic banks and building societies. This follows CP5/22, which set out initial proposals, and CP16/22, which addressed the definition of a Simpler-regime firm. A further consultation in H1 2024 will look at capital-related measures. CP4/23 should be read in conjunction with CP5/23 on "Remuneration: Enhancing proportionality for small firms". For more on both consultations see article above.
- Removal of the 'bonus cap': Together, the PRA and FCA are consulting (CP15/22) on removing the current limits on the ratio between fixed and variable components of total remuneration, the 'bonus cap'. The regulators consider that this would strengthen the effectiveness of the remuneration regime by increasing the proportion of compensation at risk that can be subject to incentive setting tools within the remuneration framework — including deferral, payments in instruments, and risk adjustment. The proposed changes are anticipated to come into effect for Q2 2023 and would apply to a firm's performance starting the following year.
- The second resolvability assessment: The Bank of England (BoE) has written to the CFOs of the UK's eight major banks in advance of the second resolvability assessment, which is due to start in October 2023. The second assessment will evaluate progress made in remediating issues identified during the first assessment (as well as any new issues that have emerged since) and monitor progress in achieving and embedding resolvability outcomes. The BoE expects to see improvements in firms' assurance processes and will focus on a more detailed assessment of the `adequate financial resources' outcome (this may include requests for data, documentation or live evidence). It will again issue a public statement after the assessment, supplemented by private feedback to firms. Subsequent assessments will focus on the 'continuity and restructuring' outcome (in 2025-2026) and the `coordination and communication' outcome (in 2027-2028).

From the Regulatory Initiatives Grid:

- H1 2023 — Final principles for sound model risk management practices.
- Q1 2023 — PRA Discussion Paper on Liquid Asset Usability—feedback later in 2023.
- Q3 2023 — Consultation on implementation of changes to the PRA 110 reporting template.
- Q2 2023 — Final rules on contingent leverage, feeding into the Leverage Ratio.
- Q3 2023 — Consultation on amendments to the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR).

Regulators respond to turbulence in the global banking sector

- Regulators across the world have issued statements in response to the recent turbulence and heightened volatility in the global banking and financial sector. In Europe, the European Banking Authority (EBA) along with ECB Banking Supervision has welcomed the recent action by the Swiss authorities and stated that the European banking sector remains resilient, with robust levels of capital and liquidity. The BoE has issued a similar statement, underlining that the UK banking system is well capitalized and funded, and remains safe.
- The US Department of the Treasury, the Federal Reserve, and the Federal Deposit Insurance Corporation issued a joint statement regarding the recent bank failures and steps taken to mitigate the effects and safeguard the banking system.
- In Asia, the Monetary Authority of Singapore (MAS) published a press release stating that Singapore's banking system remains sound and resilient. The Hong Kong authorities have issued a similar statement.
- Additionally, the Bank of Canada, the Bank of England, the Bank of Japan, the European Central Bank, the Federal Reserve, and the Swiss National Bank have announced a coordinated action to enhance the provision of liquidity via the standing US dollar liquidity swap line arrangements. To improve the swap lines' effectiveness in providing US dollar funding, the central banks currently offering US dollar operations have agreed to increase the frequency of 7-day maturity operations from weekly to daily. These daily operations will commence on Monday, March 20 2023, and will continue at least through the end of April.

Federal Reserve Board announces additional funding to eligible depository institutions

- The Federal Reserve also announced that additional funding will be made available through the creation of a new Bank Term Funding Program (BTFP), offering loans of up to one year in length to banks, savings associations, credit unions, and other eligible depository institutions pledging U.S. Treasuries, agency debt and mortgage-backed securities, and other qualifying assets as collateral. With approval of the Treasury Secretary, the Department of Treasury will make available up to $25 billion from the Exchange Stabilization Fund as a backstop for the BTFP. The Federal Reserve does not anticipate that it will be necessary to draw on these backstop funds.
- Michael S. Barr, the Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, will lead a review of the supervision and regulation of Silicon Valley Bank. A report will be publicly released by May 1, 2023.

SEC publishes changes to technology infrastructure, consumer privacy, and cybersecurity rules and requirements

- The SEC has proposed amendments to expand and update Regulation Systems Compliance Integrity (SCI), the set of rules adopted in 2014 to help address technological vulnerabilities in the US securities markets and improve Commission oversight of the core technology of key US securities markets entities (SCI entities). The proposals would expand the scope of SCI entities to include registered security-based swap data repositories; all clearing agencies that are exempt from registration; and certain large broker-dealers, in particular, those that exceed a total assets threshold or a transaction activity in national market system stocks, exchange-listed options contracts, US Treasury securities, or Agency securities. The propose amendments would also require that an SCI entity's policies and procedures include the maintenance of a written inventory and classification of all SCI systems and a program for life cycle management; a program to prevent the unauthorized access to such systems and information therein; and a program to manage and oversee certain third-party vendors, including cloud service providers, of covered systems. The public comment period will remain open until 60 days after the date of publication of the proposing release in the Federal Register.
- The SEC also proposed amendments to Regulation S-P that would enhance the protection of customer information by, among other things, requiring broker-dealers, investment companies, registered investment advisers, and transfer agents (collectively, "covered institutions") to provide notice to individuals affected by certain types of data breaches that may put them at risk of identity theft or other harm. The proposal would require covered institutions to adopt written policies and procedures for an incident response program to address unauthorized access to or use of customer information. The proposed amendments would also require, with certain limited exceptions, covered institutions to provide notice to individuals whose sensitive customer information was or is reasonably likely to have been accessed or used without authorization. The proposal would require a covered institution to provide this notice as soon as practicable, but not later than 30 days after the covered institution becomes aware that an incident involving unauthorized access to or use of customer information has occurred or is reasonably likely to have occurred. The public comment period will remain open until 60 days after the date of publication of the proposing release in the Federal Register.
- To address ongoing cybersecurity concerns, the SEC proposed requirements for market entities such as broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities association, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents to address their cybersecurity risks. The proposal would require all market entities to implement policies and procedures that are reasonably designed to address their cybersecurity risks and, at least annually, review and assess the design and effectiveness of their cybersecurity policies and procedures, including whether they reflect changes in cybersecurity risk over the time period covered by the review. The proposal – through new notification requirements applicable to all market entities and additional reporting requirements applicable to market entities other than certain types of small broker-dealers – would improve the SEC's ability to obtain information about significant cybersecurity incidents affecting these entities. The public

comment period will remain open until 60 days after the date of publication of the proposing release in the Federal Register.

- The SEC also reopened the comment period on previously proposed rules and amendments related to cybersecurity risk management and cybersecurity-related disclosures for registered investment advisers, investment companies, and business development companies. The initial comment period for the rules – first proposed in Feb. 2022 – was Apr. 11, 2022. The reopened comment period will end 60 days after the publication of the reopening release in the Federal Register.

Final negotiations on the implementation of Basel III in the EU begin

- Negotiators from the EU institutions have initiated final discussions on proposals amending the Capital Requirements Regulation and Directive (CRR/D) that will implement the remaining Basel III standards into European law. A range of issues will be decided, such as the credit risk framework, the market risk framework, the output floor and ESG risks. There is also an expectation that the final text will have implications for the prudential treatment of crypto, macroprudential buffers and securitisation. The next meeting will take place in mid-April and a political agreement on the rules is expected by the summer. Formal adoption and publication in the Official Journal of the EU should take place before the year-end.
- In late February, the European Banking Authority (EBA) published a no-action letter stating that national competent authorities (NCAs) should not prioritize any supervisory or enforcement action in relation to the new banking book – trading book boundary provisions under the Basel III standard for market risk. This comes as legislators seek to postpone the application date of the boundary provisions under the Fundamental Review of the Trading Book (FRTB) framework until January 1, 2025.
- On March 21, the EBA issued specific reporting requirement proposals for consultation relating to market risk. This process is designed to ensure that supervisors receive a comprehensive set of information on the instruments and positions to which institutions apply FRTB approaches.

European Parliament adopts position on enhancing settlement discipline

- The EP has reached its final position on the Central Securities Depositories Review (CSDR) review in which MEPs agreed that the controversial process of "mandatory buy-ins" – that require market participants to buy or borrow certain securities to settle failed trades – should only be a last-resort for addressing settlement failure. Settlement fails occur when a party of a transaction does not deliver a security or funds on time, and MEPs propose to apply deterrent and proportionate cash penalties. The EP is seeking powers for the EU to suspend mandatory buy-ins where necessary.
- In addition to settlement failure, the CSDR review aims to improve the wider regulatory framework for Central Securities Depositories (CSDs) by attempting to minimize administrative burdens and cross-border obstacles so that CSDs can operate across the EU with one single license. MEPs also back measures allowing CSDs to access banking services to improve their settlement service offering. Final negotiations between the EP, member states and European Commission over the coming weeks and months will result in a final set of rules before the year-end.

Singapore consults on adjustment spreads for legacy SIBOR contracts

- Singapore has begun the second phase of the orderly transition to a SORA-based interest rate landscape with the publication of a new consultation on the setting of adjustment spreads to convert legacy retail loans referencing SIBOR to a SORA reference. Singapore's Steering Committee for SOR & SIBOR Transition to SORA (SC-STS) says the conversion of a legacy SIBOR contract to a SORA-based contract requires an adjustment spread to account for inherent differences between SIBOR and Compounded SORA, such as the credit and term risk premium absent in SORA. To account for uncertainty in the macroeconomic and interest rate conditions for 2023 and 2024, the consultation proposes an approach that would give retail customers options for transition that best meet their needs, provides certainty and transparency to retail customers and banks, and safeguards against extreme adjustment spread outcomes. The consultation is open for comment until April 28, 2023.

Green finance, ESG & Disclosures

EU legislators reach an agreement on the Green Bond Standard

- European legislators have agreed to a final version of the EU Green Bond Standard (GBS), making the EU a first-mover when it comes to setting standards for green bonds. According to statistics published by the European Parliament, Europe is the most prolific issuance region for green bonds with 51% of the global volume of green bonds being issued in the EU in 2020.
- This final deal establishes uniform requirements for bond issuers that wish to adopt an "Eu GB" or "European green bond" label. The idea is that this GBS will provide more certainty to investors looking to position their investments toward more sustainable technologies and businesses. The standard is aligned with the EU Taxonomy Regulation which defines which economic activities can be considered as environmentally sustainable. The text will now go through a legal review before translation into all EU official languages. The rules will then apply in approximately Q2 2024.

Bank of England issues report on climate risks

- The Bank of England (BoE) published a report setting out its latest thinking around climate-related risks and regulatory capital frameworks for banks and insurers. The report does not set out any policy or regulatory changes at this stage, as the BoE concluded that substantial further work is needed and there remain many open questions, notably on potential regime gaps to capture systemic risks from climate change and unintended consequences.
- However, the report contains a number of key findings; for example, the report concluded that the existing time horizons over which risks are capitalized by banks and insurers are appropriate for climate risks, at this stage. Nonetheless, the BoE will continue to consider how climate risks may be properly calibrated within the timelines

in existing capital frameworks. The report also confirmed that further analysis and work is needed to assess whether there may be a gap in the current macroprudential regime to effectively take into account climate risk.

Japan sets timeline for domestic implementation of ISSB Standards

- Following an inaugural meeting with the International Sustainability Standards Board (ISSB), Japan authorities have announced plans to adopt ESG standards by March 31, 2025 based on the forthcoming ISSB framework. The work will be led by the Sustainability Standards Board of Japan (SSBJ), who will issue a draft version by March 31, 2024 for feedback. While the implementation date for mandatory application of the standards has not yet been set, the SSBJ will discuss whether early application would be permitted for fiscal years ending after the publication of the final rules.

SEBI issues new wave of ESG proposals

- The Securities and Exchange Board of India (SEBI) has issued proposals on a wide-ranging regulatory framework for ESG that cover disclosure requirements for listed entities, the use of ESG ratings in the securities market and ESG investing by mutual funds.
- Some key proposals include new requirements for India's top 250 companies to make disclosures in relation to their supply chains on a 'comply or explain' basis beginning for fiscal years 2024-25. However, assurance of such disclosures will not be mandatory for fiscal years 2024-25, and instead, assurance will be enforced on a 'comply or explain' basis from fiscal year 2025-26 onwards.
- The SEBI is also seeking to increase transparency on the votes cast by ESG funds and their engagement with portfolio companies through enhanced disclosure requirements in an effort to mitigate the 'greenwashing'.
- On ESG ratings, the SEBI proposes that ESG ratings providers will have to factor in 15 ESG parameters that "have an Indian context" when assigning ESG ratings to Indian companies. In parallel, SEBI has also proposed a wider supervisory and regulatory framework for the ESG ratings market, based on amendments to its existing CRA Regulations. SEBI will consider industry feedback and publish final rules for India's ESG regulatory framework in due course.

New Zealand considers limited exemption for climate reporting

- The New Zealand Financial Markets Authority (FMA) is considering certain exemptions for foreign exempt issuers from mandatory climate-related disclosures. The proposal is that this will apply to companies listed on a recognized foreign exchange and have a secondary listing and foreign exempt issuer status on the New Zealand Stock Exchange (NZX). This proposal would relieve NZX FEIs that do not have a substantial presence in New Zealand from needing to comply with certain elements of the Climate-Related Disclosures Act (CRD). The FMA is aiming to strike a balance between fulfilling the objectives of the CRD regime in helping New Zealand to achieve its target of net zero carbon by 2050 and avoiding unnecessary compliance burdens for foreign exempt issuers in New Zealand, which may lead to the loss of FEIs on the NZX and reduced choice for investors. The proposals are open for feedback until April 17, 2023.

US Republican lawmakers ask for SEC climate proposal records

- In a letter dated Feb. 22, 2023, Rep. Patrick McHenry and other leading Republican lawmakers asked the SEC to provide information on the SEC's proposed climate disclosure rule. Citing the Supreme Court's recent ruling in *West Virginia v. EPA* in which upheld the major questions doctrine requiring government agencies to have clear congressional authorization for its actions, the Republicans requested records related to any legal advice or analysis the SEC received or considered on its statutory authority to adopt climate disclosure rules, among other items.

Fifty US lawmakers, led by Sens. Warren and Whitehouse, urge SEC Chair Gensler for strong climate rule

- A group of 50 members of Congress, led by Sens. Elizabeth Warren and Sheldon Whitehouse, wrote to SEC Chair Gary Gensler and urged the SEC to fulfill its duty to investors and to follow through on finalizing a strong climate disclosure rule without delay. In a letter dated Mar. 5, 2023, the lawmakers raised concerns with recent news reports that that the SEC considering scaling back the proposed climate disclosure rule and asked the SEC to require public companies to disclose information about their carbon footprints, including Scope 3 information, which covers greenhouse gas emissions generated by companies' suppliers and customers.

Pension scheme ESG disclosures: The Pensions Regulator (TPR) has begun a new campaign to ensure that pension trustees meet their ESG reporting duties. TPR will review ESG disclosures by defined benefit, defined contribution and hybrid schemes in the spring and summer of 2023, checking their statement of investment principles (SIP), implementation statements (IS) and, where relevant, their TCFD-aligned disclosures. The review findings will be shared with industry and TPR has warned that it will take enforcement action where trustees have not produced the correct disclosures.

UK; HM 2023 Green Finance Strategy; HMT consults on regime for ESG ratings providers; FCA updates on its SDR an labels CP; 31 March 2023.pdf

Carbon prices reached record highs in 2022, and the global carbon market value grew despite a decrease in transactions; 30Mar2023.pdf

From the Regulatory Initiatives Grid:

- Early 2023— Updated Green Finance Strategy (including update on UK Green Taxonomy).
- Q1/Q2 2023 — FRC review of Corporate Governance Code.
- Q1 2023 — HMT consultation on bringing ESG ratings providers within the FCA's remit.
- Q1 2023 — joint PRA/FCA Discussion Paper on SM&CR.
- H1 2023 — joint PRA/FCA consultation on diversity in financial services. Policy Statement in Q4 2023/Q1 2024.
- June 2023 — Policy Statement on SDR and investment labels.

- Q4 2023 — FCA consultation on implementing ISSB disclosure standards into FCA listing or transparency rules.

Energy & Commodities

EU Reg 943 Ammending Wholesale Energy Markets; 2Birds One Pager; 30Mar2023.pdf & Proposed Changes to EU Energy Reg 943 Law in Mark-up; 30Mar2023.pdf

UK HMT draft of FSMA 2000 (Commodity Derivatives and Emission Allowances) Order 2023; 31Mar2023.pdf

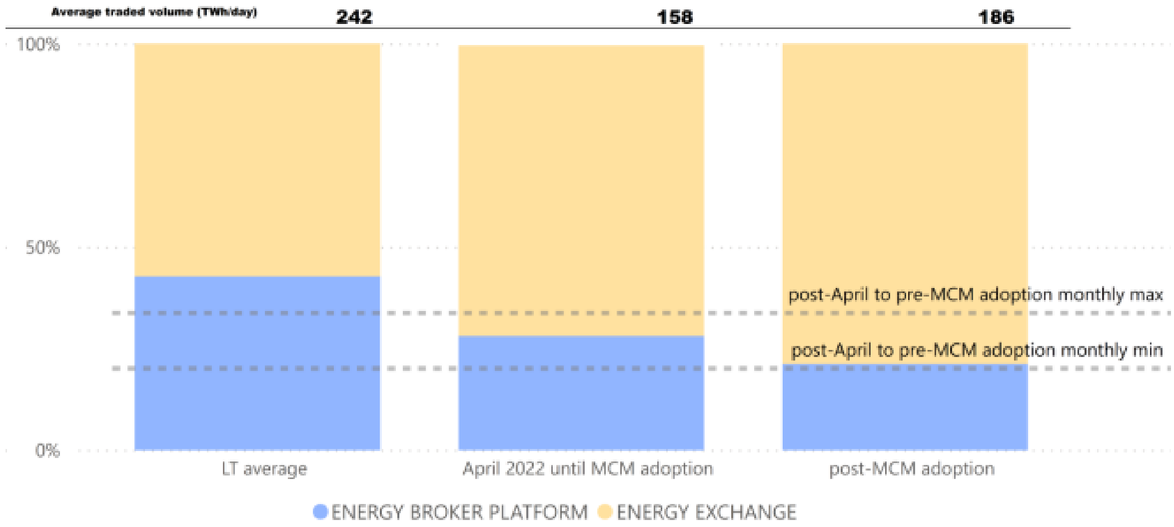
ACER Two notes:

1. MCM Effectiveness Presentation to EU Council Today
2. Updated REMIT transaction reporting guidance aligned with the new REMIT_Table 4_v2 schema
3. Last week's Roundup: Energy and Commodities Roundup; Week 12; 20th March 2023 to 25th March 2023.pdf ; Market Regs, Post Trading and Benchmarks News & Events; Week 12; 20th March 2023 to 25th March 2023 .pdf; MiFID3, MiFIR2 pre-trilogue comparison; 23Mar2023.pdf

Gas Market Correction Mechanism effects reports presented at today's Council's Energy Working Party meeting in Brussels

- 📃 The Swedish Presidency of the Council of the European Union invited ACER and ESMA to today's Energy Working Party meeting in Brussels (30 March 2023).
- The EU Agencies presented their respective assessments of the gas Market Correction Mechanism (MCM) on the energy and financial markets respectively.
- ACER's Director Christian Pilgaard Zinglersen and Dennis Hesseling (head of gas) discussed with Member States energy attachés ACER's Market Correction Mechanism Effects Report and its relevance in view of recent energy market developments.
- 🔗 ACER Market Correction Mechanism Effects Assessment Report: 👉 https://lnkd.in/dKKevidp
- 🔎 See the ACER PPT at the Energy Working Party meeting, Brussels, 30 March 2023 👉 https://lnkd.in/dj_gBFiU

Share of brokered and exchange traded gas volumes at TTF and total hub traded volumes – 01 January 2021 – 15 February 2023 (% of total hub traded volumes; TWh/day)



ACER and ESMA remain unable to identify significant impacts, either positive or negative:

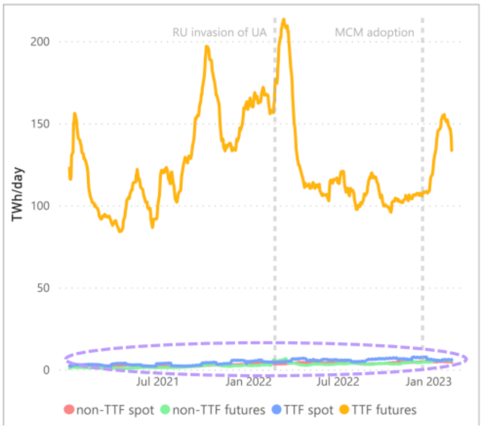
1. TTF prices have dropped by 60% after the MCM adoption, driven by supply and demand fundamentals.

2. Demand reduction and mild weather conditions have contributed to ensuring security of supply.

3. The MCM Regulation has not prompted a discernible shift in trading activity:

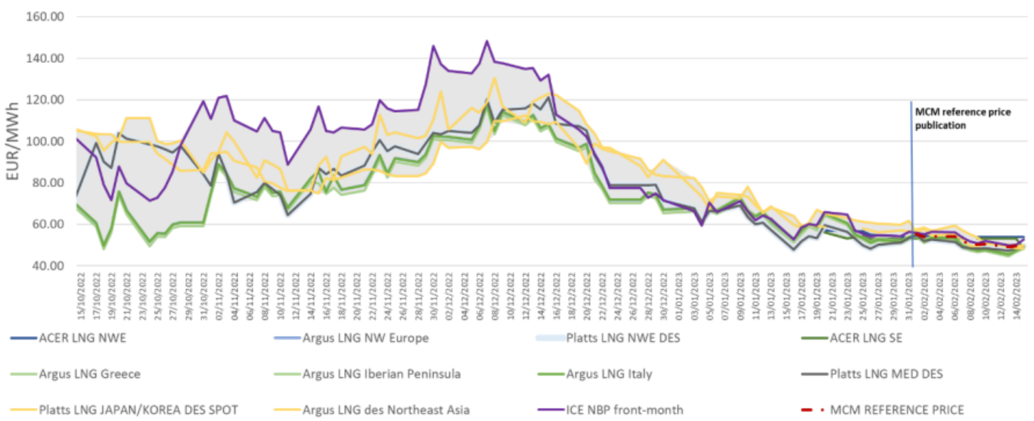
- Total hub traded volumes remain stable
- Gas derivatives liquidity has not been negatively impacted

TTF is by far the most liquid gas trading hub in the EU, with more than 10,000 derivatives' transactions per day, representing 95% of EU gas derivatives' trading (for comparison, 100 derivatives are daily traded at the second most liquid hub, the German THE)



- *ACER could not identify a need for revising the price indexes used to calculate the MCM reference price: they offer a valid proxy of global spot LNG pricing; their price differences are under 5-7 EUR/MWh - as of the first quarter of 20231 - whilst the inclusion of several indexes makes the MRM price reference relatively robust.*

Evolution of the price indexes that constitute the MCM reference price – EUR/MWh – October 2022 – February 2023



- *ACER's view on MCM extension:*
    - 1. On the sufficiency of EU VTPs' liquidity
        - Implement the MCM only at VTPs where gas derivatives' liquidity is sufficiently high.
        - Nonetheless, the extension to other VTPs is unlikely to lead to '*significant negative effects*'.
    - 2. On the prices to activate the extended MCM.
        - Use the same activation and de-activation conditions for all EU VTPs, relying on the TTF front-month price as the most liquid one.
    - 3. On the bidding limits to

- Use the same dynamic price bidding limit at the EU VTPs to which the MCM is extended.

2. Updated REMIT transaction reporting guidance aligned with the new REMIT_Table 4_v2 schema
   a. This work is narrow on the reporting of gas transportation contracts – likely of less relevance to most but we did discuss the ESMA outreach on NBP/ZTP switching options with firms recently

From: REMIT.roundtable <REMIT.roundtable@acer.europa.eu>
Sent: Thursday, March 30, 2023 1:50 PM
To: REMIT.roundtable <REMIT.roundtable@acer.europa.eu>
Cc: REMIT.roundtable <REMIT.roundtable@acer.europa.eu>
Subject: [FOR INFORMATION][OMPs] Updated REMIT transaction reporting guidance aligned with the new REMITTable 4_v2 schema

Dear colleagues,

In this email we would like to share with you the draft guidance documents on REMIT transaction reporting which have been updated based on the changes resulting from the new REMITTable 4 schema (version 2) planned to go live soon.

As you may recall, in the past there has been a lengthy consultation, including a Public Consultation in 2017, on the improvements to be introduced in the existing REMITTable 4 electronic format for the reporting of gas transportation contracts. As a result, the **new REMITTable 4 schema (v2)** is anticipated to go-live soon. We are working towards a best-case scenario release of the schema and all related documents on 17th April 2023. Please note that the timeline is still tentative and depends on ARIS releases and issues reported during testing – i.e. delays may be anticipated.

In order to align the business guidance with the new electronic format, we have prepared the updated version of **the Transaction Reporting User Manual (v.5.2)** and the **FAQs on REMIT transaction reporting (v15). These two guidance documents include in-text amendments solely related to the schema changes (e.g. update of the list of accepted values of certain data field), therefore, the updates are considered as technical by nature.** Here, please also note that some of the in-text changes in the TRUM has been already consulted during last year's guidance revision. In a similar fashion, the updated FAQs related to gas transportation contracts also reflect alignment with the electronic format only.

Since the changes have been already consulted (either as part of previous guidance revision or consultation on the new schema), we would like to proceed with the publication of the updated two documents on the ACER website at the same time when the new electronic format will go live (see above). Nevertheless, we are committed to share the drafts with reporting parties in advance, in order to provide opportunity for review and questions if any.

In the light of the above, please find the draft TRUM (v5.2) and the FAQ document (v15) attached to this email. The amendments have been carried out in track changes – please see the list of changes below. For your convenience, the presentation from last year's Joint AEMPs-OMPs-RRMs Roundtable Meeting where the Table 4 schema changes have been presented to the stakeholders is also enclosed. In case of any questions you may have on the amendments carried out in the attached documents, please contact us by no later than Friday, 7 April 2023 at REMIT.roundtable@acer.europa.eu.

Important: in case of any business questions on the reporting of gas transportation contracts triggered by these technical changes of the electronic format, reporting parties are kindly requested to submit their queries as soon as possible via the REMIT Query Form, so they can be taken into consideration for the upcoming guidance revision and consultation planned for 2023.

List of changes:

TRUM (v5.2) Chapter 7 - Reporting of gas transportation contracts	FAQ document (v15) FAQs in Chapter III.4.2 - Gas
• Data Field (1) Sender Identification • Data Field (2) Organised market place identification • Data Field (9) Transportation transaction type • Data Field (14) Action type • Data Field (17) Currency • Data Field (25) TSO 1 identification • Data Field (26) TSO 2 identification • Data Field (27) Market participant identification • Data Field (29) Procedure applicable	• FAQ 4.2.1 – Updated • FAQ 4.2.3 – Updated • FAQ 4.2.11 – Updated • FAQ 4.2.13 – Updated • FAQ 4.2.14 – Updated • FAQ 4.2.22 – Updated • FAQ 4.2.18 - Deleted

• Data Field (35) Price the transferee pays to the transferor (NOTE: stakeholders may propose examples) • Data Field (36) Transferor identification • Data Field (37) Transferee identification	

Thank you for your cooperation.

Kind regards, REMIT Team

3 Last week's Roundup:

- Energy and Commodities Roundup; Week 12; 20th March 2023 to 25th March 2023.pdf ;
- Is the UK being held to ransom in the power market; FT; 28Mar2023.pdf
- Germany risks running out of gas next winter, regulator warns; Klaus Müller says industry and households will have to make more savings; 23Mar2023.pdf
- Market Regs, Post Trading and Benchmarks News & Events; Week 12; 20th March 2023 to 25th March 2023 .pdf;
- MiFID3, MiFIR2 pre-trilogue comparison; 23Mar2023.pdf
- FCA outlines where improvements are needed in ESG benchmarks; 20Mar2023.pdf

The Market Abuse Centre (Entrima-MAC) organises the so-called "Monthly Market Abuse Meeting" which LEBA join along with a number of utility compliance leads.

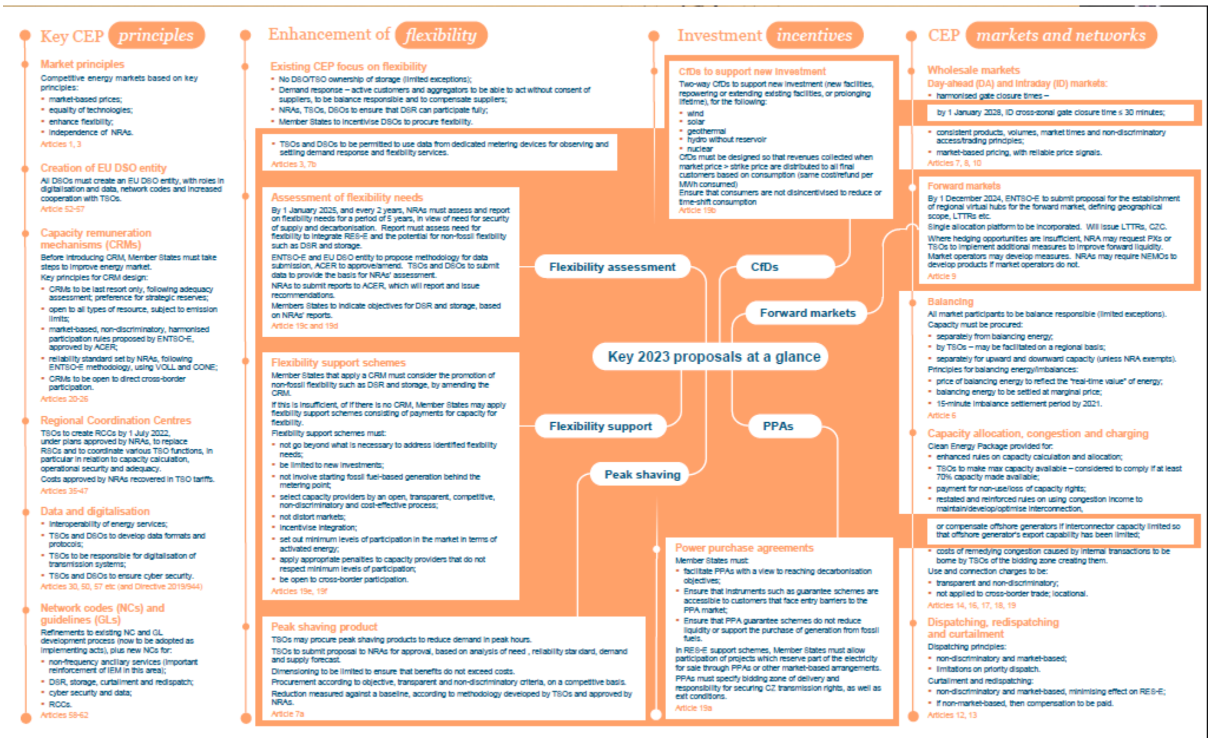
- In this virtual meeting, during the monthly forum members (currently 12#pax, incl. representative of broker association + compliance officers of energy trading firms, incl. utilities) discuss hypothetical and actual cases.
- Dilemmas that have appeared at daily work are also discussed.
- After all, although the prohibition of insider dealing and the prohibition of market manipulation are absolute, it is very challenging to judge on an actual case and be convinced whether some info should be qualified as inside information and whether a certain behaviour concerns manipulation, or not.
- Altogether, the event is to exchange experiences, opinions and gain insights, just to improve knowledge and competencies under Chatham House rules.
- This year Entrima-MAC (Jerry de Leeuw) wants to organise a dedicated session on "Brokers/ OMPs".

- The idea is to run this on Friday 14 April 2023, 11:00-13:00 (GMT) via MS-Teams. <- which is the Friday following Easter, so worth reminding today as the schools break up.
- Therefore, Jerry de Leeuw has asking me to remind and to enquire whether there is an interest to join this open session. He supposes that your colleagues at the trade compliance/surveillance department might also be interested to join a dialogue with client compliance leads.
- Possibilities on 'how' to participate in the session:

- Raise problem statements.
- Present a case or anything alike. Noting the REMIT law revisions pasted below, as well as the RRT Trum and FAQs
- Start an exchange of thoughts, or even a debate.
- Answer questions.
- If there is interest to join and raise a topic that involves preparation, Entrima-MAC note that they are very happy to organise it. Jerry is on j.deleeuw@entrima.org and looking forward to hear from you.

Electricity market reform Highlights of the Commission's proposal to amend the REMIT Regulation [marked-up] [*attached and extracts below*]

- The proposed amendments to Regulation 943. It's not nearly as radical as feared - interestingly it barely touches the key market principles, or the operation of day-ahead, intraday and balancing markets (or at least doesn't do so expressly). Instead, it creates a number of new tools and incentives - which may of course have all sorts of unintended consequences for other parts of the market.
- PDF Proposed Changes to EU Energy Reg 943 Law in Mark-up; 30Mar2023.pdf



(13) 'related undertaking' means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(14) 'distribution of natural gas' has the meaning set out in point (5) of Article 2 of Directive 2009/73/EC;

(15) 'distribution of electricity' has the meaning set out in point (5) of Article 2 of Directive 2009/72/EC;

(16) 'registered reporting mechanism' or 'RRM' means a person registered under this Regulation to provide the service of reporting details of transactions, including orders to trade, and fundamental data to the Agency on behalf of market participants;

(17) 'inside information platform' or 'IIP' means a person registered under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants;

(18) 'algorithmic trading' means trading in wholesale energy products where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

(19) 'direct electronic access' means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access);

(20) 'organised market place' ('OMP') means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account;

(21) 'LNG trading' means bids, offers or transactions for the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union;

(22) 'LNG market data' means records of bids, offers or transactions for LNG trading with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014;

(23) 'LNG market participant' means any natural or legal person, irrespective of that person's place of incorporation or domicile, who engages in LNG trading;

(24) 'LNG price assessment' means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by ACER;

(25) 'LNG benchmark' means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.

Article 3

Prohibition of insider trading

1. Persons who possess inside information in relation to a wholesale energy product shall be prohibited from:

(a) using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;

(b) disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties;

(c) recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.

The use of inside information by cancelling or amending an order concerning a wholesale energy product to which the information relates, where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider trading.

2. The prohibition set out in paragraph 1 applies to the following persons who possess inside information in relation to a wholesale energy product:

(a) members of the administrative, management or supervisory bodies of an undertaking;

(b) persons with holdings in the capital of an undertaking;

(c) persons with access to the information through the exercise of their employment, profession or duties;

(d) persons who have acquired such information through criminal activity;

(e) persons who know, or ought to know, that it is inside information.

3. Points (a) and (c) of paragraph 1 of this Article shall not apply to transmission system operators when purchasing electricity or natural gas in order to ensure the safe and secure operation of the system in accordance with their obligations under points (d) and (e) of Article 12 of Directive 2009/72/EC or points (a) and (c) of Article 13(1) of Directive 2009/73/EC.

4. This Article shall not apply to:

(a) transactions conducted in the discharge of an obligation that has become due to acquire or dispose of wholesale energy products where that obligation results from an agreement concluded, or an order to trade placed, before the person concerned came into possession of inside information;

(b) transactions entered into by electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or

(d) the bidding or balancing zone concerned;
(e) and, where applicable:
(f) the type of unavailability and the type of event;
(g) the unit of measurement;
(h) the unavailable, the available and the installed or technical capacity;
(i) the reason for the unavailability;
(j) the fuel type.
(k) the affected asset or unit and its identification code.

4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of inside information, minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

The IIP shall have systems in place that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request re-transmission of any such erroneous reports.

5. The Agency may withdraw the registration of an IIP where the latter:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the registration by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was registered;

(d) has seriously and systematically infringed this Regulation.

When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP.

6. The Commission shall, by means of implementing acts, specify:

(a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;

(b) the content of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;

(c) the concrete organisational requirements for the implementation of paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).

Article 5

Prohibition of market manipulation

Any engagement in, or attempt to engage in, market manipulation on wholesale energy markets shall be prohibited.

Article 5a

Algorithmic trading

1. A market participant that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or the systems otherwise functioning in a way that may create or contribute to a disorderly market. The market participant shall also have in place effective systems and risk controls to ensure that the trading systems comply with this Regulation and with the rules of an organised market place to which it is connected. The market participant shall have in place effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this paragraph.

2. A market participant that engages in algorithmic trading in a Member State shall notify this to the national regulatory authorities of its home Member State and to the Agency.

The national regulatory authority of the Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the trading system is subject, the key compliance and risk controls that it has in place to ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems.

The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

3. A market participant that provides direct electronic access to an organised market place shall notify the competent authorities of its home Member State and the Agency accordingly.

The national regulatory authority of the home Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 1 and evidence that those have been applied.

The market participant shall arrange for records to be kept in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

4. This article is without prejudice to obligations under Directive (EU) 2014/65.

Article 6

Technical updating of definitions of inside information and market manipulation

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to:

(a) align the definitions set out in points (1), (2), (3) and (5) of Article 2 for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy; and

(b) update those definitions for the sole purpose of taking into account future developments on wholesale energy markets.

2. The delegated acts referred to in paragraph 1 shall take into account at least:

(a) the specific functioning of wholesale energy markets, including the specificities of electricity and gas markets, and the interaction between commodity markets and derivative markets;

(b) the potential for manipulation across borders, between electricity and gas markets and across commodity markets and derivative markets;

(c) the potential impact on wholesale energy market prices of actual or planned production, consumption, use of transmission, or use of storage capacity; and

(d) network codes and framework guidelines adopted in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 7

Market monitoring

1. The Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation or attempts thereof. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.

2. National regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets referred to in paragraph 1. For this purpose national regulatory authorities shall have access to relevant information held by the Agency which it has collected in accordance with paragraph 1 of this Article, subject to Article 10(2). National regulatory authorities may also monitor trading activity in wholesale energy products at national level.

Member States may provide for their national competition authority or a market monitoring body established within that authority to carry out market monitoring with the national regulatory authority. In carrying out such market monitoring, the national competition authority or the market monitoring body shall have the same rights and obligations as the national regulatory authority pursuant to the first subparagraph of this paragraph, the second sentence of the second subparagraph of paragraph 3 of this Article, the second sentence of Article 4(2), the first sentence of Article 8(5), and Article 16.

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009.

The Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and ESMA.

All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.

Article 7a

Tasks and powers of ACER to carry out price assessments and benchmarks

1. As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.

2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.

3. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on ACER under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.

Article 7b

Publication of LNG price assessments and benchmark

1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.

2. For the purposes of this Article, ACER may make use of the services of a third party.

Article 7c

Provision of LNG market data to ACER

1. LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET).

2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29.

3. Where appropriate, ACER shall, after consulting the Commission, issue guidance on:

(a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and

(b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.

2. The investigatory and enforcement powers referred to in paragraph 1 shall be limited to the aim of the investigation. They shall be exercised in conformity with national law and include the right to:

(a) have access to any relevant document in any form, and to receive a copy of it;

(b) demand information from any relevant person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal;

(c) carry out on-site inspections;

(d) require existing telephone and existing data traffic records;

(e) require the cessation of any practice that is contrary to this Regulation or delegated acts or implementing acts adopted on the basis thereof;

(f) request a court to freeze or sequester assets;

(g) request a court or any competent authority to impose a temporary prohibition of professional activity.

3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities and to contribute to a uniform application of this Regulation throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a and 13b.

4. The Agency may exercise its powers to ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied where:

(a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or

(b) acts are being or have been carried out on wholesale energy products for delivery in at least two Member States and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in a third country but registered pursuant to Article 9(1); or

(c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b); or

(d) the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least three Member States.

5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least three Member States.

6. In exercising its powers, the Agency shall take into account the investigations in progress or already carried out in respect of the same cases by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.

7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18.

The Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.

Article 13a

On-site inspections by the Agency

1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned.

2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement.

3. The officials of and other persons authorised by the Agency to conduct an on-site inspection may enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6 and shall have all the powers referred in this Article. They shall also have the power to seal any premises, property and books or records for the period of, and to the extent necessary for the inspection.

4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.

5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.

6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin, the legal remedies available under Regulation (EU) 2019/942 as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.

7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall enjoy the powers set out in this Article. Officials of the national regulatory authority may also attend the on-site inspection upon request.

8. Where the officials of, as well as those authorised or appointed by, the Agency find that a person opposes an inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraphs 7 and 8 requires authorisation by a judicial authority according to applicable national law, the Agency shall also apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure.

10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:

(a) that the decision of the Agency is authentic; and

(b) that any measures to be taken are proportionate and not arbitrary or excessive having regard to the subject matter of the inspection.

For the purposes of point (b) of the first subparagraph, the national judicial authority may ask the Agency for detailed explanations, in particular relating to the grounds the Agency has for suspecting that a breach referred to in Article 13(3) has taken place, the seriousness of the suspected breach and the nature of the involvement of the person subject to the investigation. By way of derogation from Article 28 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.

Article 13b

Request for information

1 At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation. In its request the Agency shall:

(a) refer to this Article as the legal basis for the request;

(b) state the purpose of the request;

(c) specify what information is required, and following which data format;

(d) set a time-limit, proportionate to the request, within which the information is to be provided;

(e) inform the person that the reply to the request for information shall not be incorrect or misleading.

2. For the purpose of information requests as referred to in paragraph 1, the Agency shall have the power to issue decisions. In such a decision the Agency shall, in addition to the requirements in paragraph 1 indicate the right to appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942.

3. The persons referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.

4. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance in ensuring the fulfilment of the obligation referred to in paragraph 3, including through the imposition of penalties in accordance with applicable national law.

5. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency may draw conclusions on the basis of available information.

6. The Agency shall, without delay, send a copy of the request pursuant to paragraph 1 or the decision pursuant to paragraph 2 to the national regulatory authorities of the concerned Member States.

Article 13c

Procedural guarantees

1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:

(a) the right not to make self-incriminating statements;

(b) the right to be assisted by a person of choice;

(c) the right to use any of the official languages of the Member State where the on-site inspection takes place;

(d) the right to comment on facts concerning them;

(e) the right to receive a copy of the record of interview and either approve it or add observations.

2. The Agency shall seek evidence for and against the market participant, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.

3. The Agency shall carry out on-site inspections and request information in full respect of applicable confidentiality and Union data protection rules.

Article 13d

Mutual assistance

1. In order to ensure compliance with the relevant requirements set out in this Regulation, national regulatory authorities and the Agency shall assist each other.

Article 14

Right of appeal

Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 15

Obligations of persons professionally arranging or executing transactions

Any person professionally arranging or executing transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.

Persons professionally arranging or executing transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:

(i) identify breaches of Article 3, 4 or 5;
(ii) guarantee that their employees carrying out surveillance activities for the purpose of this Article are preserved from any conflict of interest and act in an independent manner.

3. The national regulatory authorities and market participants shall make every effort to comply with those guidelines and recommendations.

4. Within two months of the issuance of a guideline or recommendation, each national regulatory authority shall confirm whether it complies or intends to comply with that guideline or recommendation. If a national regulatory authority does not comply or does not intend to comply, it shall inform the Agency, stating its reasons.

5. The Agency shall publish the information that a national regulatory authority does not comply or does not intend to comply with that guideline or recommendation. The Agency may also decide to publish the reasons provided by the national regulatory authority for not complying with that guideline or recommendation. The national regulatory authority shall receive advanced notice of such publication.

6. If required by that guideline or recommendation, market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

7. The Agency shall include the guidelines and recommendations that it has issued in the report referred to in Article 19(1)(k) of Regulation (EU) 2019/942.

Regulation.

Article 18

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

Without prejudice to any criminal sanctions and supervisory powers of national regulatory authorities under Article 13, Member States shall, in accordance with national law, provide for national regulatory authorities to have the power to adopt appropriate administrative sanctions and other administrative measures in relation to the breaches of this Regulation referred to in Article 13(1).

The Member States shall notify, in detail, those provisions to the Commission and to the Agency ~~by 29 June 2013 at the latest~~ and shall notify it without delay of any subsequent amendment affecting them.

2. Member States shall, in accordance with national law, and the ne bis in idem principle, ensure that the national regulatory authorities have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this Regulation:

(a) adopt a decision requiring the person to bring the breach to an end;
(b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;
(c) issue public warnings or notices;
(d) adopt a decision imposing periodic penalty payments;
(e) adopt a decision imposing administrative pecuniary sanctions;

in respect of legal persons, maximum administrative pecuniary sanctions of at least:

i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;
ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year; iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.

in respect of natural persons, maximum administrative pecuniary sanctions of at least:

i. for breaches of Articles 3 and 5, EUR 5 000 000;
ii. for breaches of Article 4 and 15, EUR 1 000 000;
iii. for breaches of Article 8 and 9, EUR 500 000.

Notwithstanding paragraphs (e), the amount of the fine shall not exceed 20 % of the annual turnover of the legal person concerned in the preceding business year. In the case of natural persons, the amount of the fine shall not exceed 20 % of the yearly income in the preceding calendar year. Where the person has directly or indirectly benefited financially from the breach, the amount of the fine shall be at least equal to that benefit.

3. Member States shall ensure ~~provide~~ that the national regulatory authority may disclose to

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of 5 years from 28 December 2011. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Ends. 04 April 2023