EVIA European Venues & Intermediaries Association

LEBA London Energy Brokers' Association

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

Wednesday 11th January 2023

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Regulatory Barometer

Incoming FCA chair warns on financial rules revamp Ashley Alder, chair designate of the UK Financial Conduct Authority, told members of Parliament on Wednesday that the UK should be careful not to stray too far from widely accepted norms in its revamp of financial regulations. Alder said any extreme divergence could hurt the UK's competitiveness in the eyes of global banks that seek to avoid fragmented regulatory environments. Reuters (14 Dec.), Financial Times

Highlights of the FCA's approach in 2022; *The strategy focuses on 3 areas - reducing and preventing serious harm, setting and testing higher standards, and promoting competition and positive change.*

In response to its new strategy, the FCA has removed or amended over 8,000 potentially misleading adverts in 2022 – 14 times more than 2021. It has also cancelled the authorisation of 201 firms for failing to meet minimum standards. This action reflects the FCA's increasingly data-led and assertive approach, which enables the regulator to find and deal with problem firms and misleading adverts swiftly.

- Nikhil Rathi, Chief Executive of the FCA, said: *'This has been a difficult year for many people who have been struggling with the cost of living. So, it is all the more important that financial companies meet our standards and treat their customers fairly, particularly those who are facing financial difficulties.*
    - *'As well as protecting consumers and supporting the vulnerable, we have been dealing with unprecedented market events and reviewing our rules to ensure our regulatory regime is fit for the future. We are working on reforms to the way companies are listed in the UK, which will support growth and competitiveness and continue to support innovative and fast-growing companies.*

  - *'We are pleased to have welcomed over 1,000 new colleagues to the FCA this year, and to have opened our new office in Leeds and accelerated our expansion in Edinburgh.'*
- Reducing and preventing serious harm; Action by the FCA has seen over £30m returned to people from businesses operating without authorisation. The FCA has issued over 1,800 warnings about potential scam firms so far in 2022, 400 more than the previous year, and the FCA's consumer hub has prevented £7m being lost to fraudsters.
- The FCA responded to cost-of-living pressures in line with its strategy to prevent serious harm. The FCA reminded 3,500 lenders of how they should be supporting borrowers in financial difficulty. The FCA also told 32 lenders to make changes to the way they treat customers, which led to 7 firms paying £12m in compensation to their customers. Insurers were also warned to ensure payouts remain fair as inflation bites.
- Steelworkers who received unsuitable advice to transfer out of the British Steel Pension Scheme (BSPS) will receive redress of, on average, £45,000 as a result of the FCA's scheme to get financial advisers to pay for unsuitable advice they gave. The FCA also fined Pembrokeshire Mortgage Centre £2.4m for serious failings in the way they advised BSPS members.
- The FCA has also continued to oversee the orderly wind-down of LIBOR through use of its powers and collaboration with industry and regulators globally. It announced that the remaining GBP LIBOR settings would cease by end-March 2024 and proposed that the remaining USD LIBOR settings would cease at end-September 2024. This will see a contract value of more than 265 trillion US dollars transition from LIBOR rates to alternative rates when the wind-down is completed.
- Setting higher standards; In July, the FCA confirmed plans to bring in a new Consumer Duty which is leading to a fundamental shift in how firms serve their customers. The FCA welcomes the considerable progress and efforts made by a wide range of firms to meet the requirements of the Duty by July 2023 and confirms it will take a pragmatic approach to oversight of its implementation. The Duty will allow the FCA to take quicker action when it sees practices that do not deliver the right outcomes for consumers.
- The FCA has also acted to help consumers who want to invest their money to do so with confidence, as part of its Consumer Investment Strategy. It has set out plans for simplified financial advice for those who want to invest in stocks and shares ISAs and introduced new rules to improve how high-risk products are marketed to potential investors.
- The FCA has continued to increase scrutiny on firms seeking to offer services to UK customers. In 2021/22, 1 in 5 firms applying to operate here did not become authorised, up from 1 in 14 in 2020/21. To support improvements in the authorisations process, the FCA has added 133 new colleagues to this area over the course of 2022. This has reduced the number of applications in the system by 50% since last December alongside increased scrutiny on applications and an expanding remit.
- The FCA continues to be proactive where activities are outside its remit, including securing changes to unfair and unclear Buy Now Pay Later contracts. Ahead of taking over regulation of the sector, the FCA also worked with funeral plan providers, including those that did not get authorisation, to make sure consumers were protected.
- The FCA acted quickly following Russia's invasion of Ukraine. It introduced new, practical measures to allow asset managers to separate the problem assets from the rest of a fund. The FCA also supported UK government efforts on sanctions and acted swiftly to ensure financial firms were meeting their obligations, which included testing their sanctions controls and writing to over 10,000 firms.
- Promoting competition and positive change; As part of its work to boost growth and competitiveness in the UK, the FCA plans to reform the way companies list in the UK, aiming to attract more high quality, growth companies and give investors greater opportunities. Separately, the FCA introduced rules to enhance transparency for investors on the diversity of boards and executive committees of listed companies.

- The FCA has set out its ideas for reforming Listing Rules that have not been changed since the 1980s. This includes removing complexity, expanding access to the market and empowering investors to make better decisions about the companies they invest in. Alongside this, the FCA has proposed ways to clamp down on greenwashing and build trust in ESG products.
- The FCA is also working on the Wholesale Markets Review, which will improve the competitiveness of the UK's wholesale markets and maintain its high regulatory standards.
- The FCA continues to be a world leader in innovation, with 56 firms being supported through its innovation services, such as the Sandbox, in 2022. It is providing up to 300 newly authorised or high growth firms with greater oversight and support, helping to raise standards and promote competition.
- This year, the FCA ran its first every policy sprint, bringing 184 participants from across the industry together to explore what cryptoasset regulation could look like in the future. So far, 39 cryptoasset firms have received registration under anti-money laundering rules.

Focus on ESG and Sustainable Finance over the turn of the year…

ESG data and ratings: the FCA has announced the formation of a group to develop a voluntary Code of Conduct for ESG data and ratings providers. The FCA has previously expressed its support for regulatory oversight of these firms.

Diversity and inclusion (D&I): the FCA will shortly publish a paper entitled `Understanding approaches to D&I in the FS industry'. In a recent speech, FCA Executive Director for Consumers and Competition Sheldon Mills stressed the importance of promoting D&I within financial services firms to achieve the FCA's statutory objectives of protecting customers, making markets work well and ensuring effective competition in consumers' interests. He highlighted the importance of continuing to collect data: while many firms focus on gender and ethnicity as the most visible diversity characteristics, firms should not forget the importance of also collecting socio-economic data and engaging employees with the data collection process (e.g. by explaining how the data is used and what insights can be gleaned from it).

Reporting and disclosure requirements continue to expand. The Corporate Sustainability Reporting Directive (CSRD) has cleared the final legislative hurdles and will enter into force in the next few weeks with implementation by Member States 18 months later. *The European Sustainability Reporting Standards (ESRS) supporting the CSRD have been finalised and submitted to the European Commission. In the UK, the Transition Plan Taskforce (TPT) has published its consultation on a framework for firms to disclose their net-zero transition plans.*

- Once finalised, this will inform the Financial Conduct Authority's (FCA's) approach to setting formal rules. In the meantime, the FCA has launched its long-awaited consultation on Sustainability Disclosure Requirements (SDR). Whilst the majority of the initial SDR proposals will affect asset managers, all FCA-regulated firms will be in scope of a new anti-greenwashing rule.
- Concerns around greenwashing are escalating rapidly. In response, the European Supervisory Authorities (ESAs) — the EBA, EIOPA and ESMA — have launched a call for evidence on the main risks and drivers of greenwashing. As well as consulting on the SDR, the FCA is convening a working group to develop a voluntary Code of Conduct for ESG data and ratings providers. And ESMA is consulting on the use of ESG or sustainability terms in fund names.
- The TCFD's 2022 status report, which reviewed the disclosures of 1,400 large companies across the globe, found encouraging signs of progress. However, in future, financial disclosures will go beyond climate, and November saw the publication of the TNFD's third iteration of the framework

for nature-related disclosures. Further regulatory developments on nature and biodiversity may follow the UN's COP15 Biodiversity Conference in Montreal.

- Taxonomies remain in focus. As we approach the end of 2022, it is clear that the UK government's initial timeline for developing a Green Taxonomy, set out in October 2021's Greening Finance Roadmap, is no longer feasible. The Green Technical Advisory Group (GTAG) released a report advising the UK government on the development of the UK Taxonomy, and we await confirmation of revised timings. Looking to the EU Taxonomy, the Platform on Sustainable Finance (PSF) has released its recommendations on how to achieve compliance with the 'minimum safeguards' criteria, crucially noting that compliance with certain S-related criteria can be achieved through existing regulations without the need for a Social Taxonomy.
- Climate-related financial risk also dominates the regulatory landscape. The ECB's 2022 thematic review of climate-related and environmental (C&E) risks found that, although most banks now have in place basic practices to manage C&E risks, they lack sophisticated methodologies and granular data. To accelerate progress, the ECB has set out clear deadlines for alignment with supervisory expectations. The Bank of England (BoE) hosted a Climate and Capital Conference to gather views on whether and how climate-related risk should be reflected in prudential frameworks, and the Prudential Regulation Authority (PRA) issued a Dear CEO letter providing thematic feedback on how banks and insurers are delivering against the expectations of Supervisory Statement 3/19. At a global level, the International Sustainability Standards Board (ISSB) has mandated the use of climate scenario analysis in resilience assessments, and the Financial Stability Board (FSB) has asked regulators to enhance their scenario analysis toolkit.
- On broader sustainability matters, the EU Parliament has put forward amendments to the proposed Corporate Sustainability Due Diligence Directive (CSDDD), widening the scope of firms captured under the directive. The European Council, on the other hand, has proposed a phase-in approach and included only very large companies in its scope.
- The EU Parliament has also adopted new legislation on gender balance on corporate boards to take effect from 2026. In the UK, we await the publication of the FCA, BoE and PRA joint consultation on diversity and inclusion in financial services firms.

Prudential

O-SII buffer rates : the PRA has confirmed that it will maintain firms' Other Systemically Important Institutions (O-SII) buffer rates for 2022. The PRA will reassess O-SII buffer rates in 2023 based on the Financial Policy Committee's updated framework. The decision on O-SII buffer rates taken in December 2023 will be based on end-2022 financial results and will take effect from January 2025.

Identifying O-SIIs : the PRA has updated its policy on its approach to identifying other systemically important institutions (O-SIIs) following consultation earlier in the year.

Solvency II — streamlining reporting and disclosure requirements: the PRA is consulting on proposals to streamline a number of current Solvency II reporting and disclosure requirements for insurers, and to improve data collection of data where reporting is currently not tailored appropriately to the features of the UK insurance sector or to the PRA's supervisory needs.

- The proposals involve revoking retained EU Technical Standards for firms' supervisory reporting and public disclosure under Solvency II and making new rules to amend and them.
- Solvency II — feedback on Risk Margin and Matching Adjustment: the PRA has published a Feedback Statement providing a summary of the responses received to its Discussion Paper on `Potential Reforms to Risk Margin and Matching Adjustment within Solvency II'.

Asset finance — credit risk management: the PRA has written to Chief Risk Officers (CROs) of PRA-regulated firms in the asset finance sector, summarising key themes and control weaknesses identified post-administration in relation to the Arena Holdings Group of companies — PRA-regulated firms are expected to consider these in order to strengthen their credit risk management frameworks.

Depositor Protection : the PRA published final rules on minor tweaks to depositor protection. The PRA had identified a number of areas where rules are no longer achieving the expected benefits and so need to be revoked, are redundant so need to be deleted, or require amendment to ensure they reflect the original policy intent of an effective compensation scheme for deposits which minimises the adverse effect that the failure of an FSCS member could have.

Capital Markets and Asset Management

LIBOR wind-down: the FCA is consulting on requiring LIBOR's administrator, IBA, to continue to publish the 1-, 3- and 6-month US dollar LIBOR settings under an unrepresentative `synthetic' methodology between 1 July 2023 until end-September 2024. After this, publication would cease permanently. The FCA also announced that it will require IBA to publish the 3-month synthetic sterling LIBOR setting until end-March 2024.

Liability Driven Investment (LDI): following volatility in the gilt market in the Autumn, the UK authorities and EU regulators have reiterated their expectations for market participants. In a speech, the Bank of England (BoE) articulated its view that the root cause of the recent LDI event was poorly managed leverage. The BoE indicated it will work with other international regulators to improve banks' and non-banks' stress testing, supervise to limit risks from leverage, and build greater transparency around leverage by regulatory disclosures from non-banks and supervisory monitoring. In December's Financial Stability Report, the Financial Policy Committee went further, stating that regulators should set out "appropriate steady-state minimum levels of resilience for LDI funds." More broadly, the FPC remains concerned about risks arising from the non-bank sector and reiterated strong support for urgent international and domestic policy responses. In 2023, the Bank will run an exploratory scenario exercise focused on risks in the non-bank sector for the first time.

The FCA also published a statement welcoming publications by The Pensions Regulator, the Central Bank of Ireland, and the Commission de Surveillance du Secteur Financier (Luxembourg) regarding the resilience of LDI portfolios and the governance of pension schemes using LDI strategies. The FCA expects asset managers to take appropriate action to "learn lessons" from recent events and stated all market participants should factor recent market conditions into their risk management practices. The FCA will "maintain a supervisory focus" to ensure vulnerabilities are addressed and will publish a statement on good practice towards the end of Q1 2023.

Productive Finance: following the conclusion of its recent consultation paper regarding broadening the distribution of the Long-Term Asset Fund (LTAF) to retail investors, the FCA published a webpage to help investors and potential investors understand how their units in an LTAF are priced. Although the webpage does not set out any new regulatory requirements for LTAFs, fund managers that plan to establish an LTAF may find it a useful recap of the existing requirements. More broadly, the UK Productive Finance Working Group (an industry-led group convened by the UK authorities) published a series of guides with key considerations for investing in less liquid assets. The guides covered various topics including value for money, performance fees, liquidity management, and fund structures for investing in less liquid assets.

Contract for Difference (CFD): the FCA has written to firms offering contacts for difference (CFDs) setting out the standards it expects CFD firms to demonstrate in order to protect consumers and ensure market

integrity. The FCA is concerned as CFDs are highly leveraged derivatives and adverse price movements in relevant markets can lead to substantial losses for consumers. The FCA wants firms to ensure their investors have all information necessary to properly assess the regulatory coverage attached to their products.

Transforming data collection: the BoE and FCA provided their latest update on their joint transformation programme and progress to transform data collection from the UK financial sector. As part of phase two, "discovery work" is underway on commercial real estate data, and on the FCA's strategic review of prudential data collection from solo-regulated firms. The discovery stage for the "retail banking business model" and the "incident, outsourcing and third-party reporting" use cases will begin in Q1 2023. In early 2023, a report will be published that looks at key questions around the development and adoption of data standards in the financial sector. The PRA is also expected to launch its "Banking Data Review" early in the new year.

Conduct & Reporting

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

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

- It was noted that there had been an increase in settlement efficiencies (97%) in the period between May and early September. Over the last two weeks of September and early October, there had been a significant increase in gilt repo volumes and the increase in the level of fails was commensurate with the increased volumes. Since the date of the last meeting Euroclear have made some changes to support the market and these include a permanent extension to the CREST diary, extending the DVP settlement window. Furthermore, auto splitting is to go live on 21 November 2022. There have been no further issues with the CREST system.
- Securities lending fails
- Results from an informal monthly survey (covering the period 2019 to the present) of some of the big institutions with regards to 'fails' for securities lending transactions were highlighted. This indicated a high level of settlement rates for open leg trades, settlement rates of between 95% and 97%. <u>On the other hand, the settlement rates for closing leg trades are quite poor, generally in the 85% range for both equities and fixed income</u>.
- The introduction of the Central Securities Depositories Regulation (CSDR) has led to an improvement, to 90%, in settlement rates for return leg trades in equities. Settlement rates for fixed income, on the other hand, have been falling steadily this year and are currently at 79% (based on aggregated figures for government and corporate bonds).
- The biggest reason for return leg fails is due to brokers not having the stock available to return (in equities space) and in fixed income due to illiquidity in the corporate bonds market. Data obtained from the ECB website showed settlement rates for TARGET2- Securities (T2S) over the period January to June 2022, both in value and volume, of around 93%-95%.
- The Committee agreed to monitor settlement rates and also noted that it is open to setting up a small working group to investigate the issue further. It was generally agreed that such poor settlement discipline was not acceptable.
- Item 5: Diversity and Inclusion (D&I).
- D&I at ISLA
- The Committee was given an overview of the work that ISLA is doing in the area of diversity and inclusion, noting that at the moment the Association's D&I activities have focused on working with partnership associations, such as the work being done with Women in Finance Group. ISLA is looking to step up its activities in the area of diversity and inclusion and is thus looking into broadening its approach to D&I and evaluating engagement with relevant groups. It was also noted that ISLA is at the early stage of this broader D&I strategy which will be driven by the Board and by members and so there will be more to report back at a future meeting.
- Impact of the return to office
- It was suggested that it was very early, given that various working from home models are in flux and also due to lack of data, to assess the impact of working from home on D&I. Data on gender metrics over a 5 year period showed slower than expected change in D&I which could be due to the pandemic. Perhaps a more intentional approach which provides support, sponsorship and advocates for more diverse candidates to move through the pipeline into middle and senior levels, where numbers are significantly dropping off, is required. There will be further work by external bodies to develop data to unearth some of the issues in this area. It was noted that it will be difficult to achieve change without data and targets.
- It was suggested that perhaps the Committee should commission a working group to examine D&I in Money Markets and come up with recommendations to help drive change in Money Markets and to ensure momentum was maintained. It was also noted that the 2022 Mckinsey report on 'Women in the workplace' highlights the recent increase in attrition rate for women in middle and senior levels.
- Item 6. Agreeing the text of the Statement of Commitment Letter
- In light of a recent breach of the Money Market Code, continuing fails in the money market, and the need to maintain momentum on Diversity & Inclusion amongst market participants' trading teams, the Committee agreed at the meeting in May 2022 to send a letter to all signatories of the Code to remind them of their obligations. The Co-Chairs and the Bank now wished to ensure that

there was full agreement to the suggested text of the letter. One Committee member suggested splitting paragraph 3 (which covers diversity and inclusion and working from home), into two distinct paragraphs. Another Committee member suggested further drafting changes which would be shared with the Secretariat of the Committee. When the letter is finalised it would be sent out to signatories of the Money Market Code.

Nathalie Aufauvre has been appointed Secretary General of the Autorité de contrôle prudentiel et de résolution; Upon the proposal of the Governor of the Banque de France, Chairman of the ACPR, Bruno Le Maire, Minister of the Economy, Finance and Industrial and Digital Sovereignty, has appointed Nathalie Aufauvre as Secretary General of the Autorité de contrôle prudentiel et de résolution (ACPR). As of Monday 9 January 2023, she will take over from Dominique Laboureix, who has been appointed President of the Single Resolution Board in Brussels

CFTC swaps reporting updated smoothly but faces issues Market participants say it will take three to six months to determine whether the CFTC's recently implemented swaps data reporting and record-keeping rule updates result in any problems. The collateral reporting requirement, the seven-day window for firms to correct reporting errors and questions about which reporting fields are optional have been cited as potential problems.: Risk

MAS consults on proposed revisions to guidelines on fair dealing; *The Monetary Authority of Singapore (MAS) has launched a consultation on its proposed amendments to the Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers.*

- Amongst other things, the MAS is proposing to widen the scope of the guidelines to apply to all financial institutions (FIs), all financial products and services offered by them, and all their customers. The MAS is also proposing to incorporate key principles and guidance on the fair treatment of customers at various stages of the customer journey. Some of the principles include:
    - putting in place sound and objective processes to assess applications received for financial products and services
    - ; designing and manufacturing products and services that are suitable for target customer segments; and
    - delivering products and services to customers as they have been led to expect and exercising right-of-review clauses judiciously.
- In particular, the MAS is seeking comments on proposals to:
    - expand the application of the guidelines to all FIs, and all financial products and services offered by them to all their customers, on a proportionate basis relevant to the nature of these products and services.
    - include expectations on sound and objective process to assess applications for financial products and services under Outcome 1.
    - apply the guidelines to product manufacturers, and not just distributors, and include expectations on the design and manufacturing of products and services within Outcome 2 of the guidelines.
    - incorporate the principles of transparency, consideration of customer's interests, and accountability and product governance, and include expectations to provide customers with information that accurately represents the products and services offered and delivered to them, within Outcome 4 of the guidelines; and

    - o include expectations of disclosing the right of review (RoR) clauses and exercising them judiciously, within Outcome 4 of the guidelines.
- Comments on the consultation are due by 8 February 2023.

An investigation, conducted by the SFC, on Asia Research & Capital Management Limited resulted in disciplinary action and the banning of its Manager-in-Charge for Compliance due to an overseas regulatory breach. The move sets a clear standard for senior management around reporting obligations, with the SFC keeping a close eye on foreign regulatory breaches.

- The SFC reprimanded and fined Asia Research & Capital Management Limited (ARMCL) HK$1.75 million for failures relating to its non-compliance with the European Union's short selling reporting requirements (EU Regulations) and failing to promptly notify the SFC of its material regulatory breaches.
- ARCML is licensed for Type 9 (asset management) regulated activities. It was fined by the FCA (FCA) GBP873,118 for its failures to disclose its net short position in a London Stock Exchange-listed stock to the FCA and the public between 22 February 2017 to 3 December 2019. Although ARCML knew about this material breach in early November 2019, it only notified the SFC of the breach about two months later in January 2020.

- As a result of the FCA's enforcement action, the SFC undertook its own investigation into ARCML and found that it failed to:

    - o Implement adequate measures to ensure compliance with the EU Regulations.
    - o Seek legal advice on its reporting obligations under EU regulations before entering swap transactions and establishing a short position of the relevant stock, even though it was unfamiliar with the EU market.

- Promptly notify the SFC of upon the occurrence of its material breach of the EU Regulations.
- This sets a clear precedent that the SFC will initiate an investigation based on foreign regulatory breaches. Seeking legal or regulatory advice is therefore essential for LCs venturing into a new product or jurisdiction, particularly if they aren't familiar with the new regulatory environment.
- LCs have a duty to report misconduct and suspected misconduct to the SFC, including any related to overseas regulatory regimes, immediately upon discovery. This should be done regardless of whether or not any internal investigations into the matter have been completed. The SFC clearly believes that delay in reporting may help the wrongdoer(s) perpetuate their misconduct and can jeopardise the investigations of law enforcement agencies.
- The SFC also found that Mr. Billy Wong, ARCML's former Head of Compliance and Operations and MIC for Compliance, should have been responsible for implementing and maintaining a robust risk management framework to ensure the LC complies with applicable laws and regulations. According to the investigation, he failed to handle regulatory filings in relation to ARCML's portfolio positions and consult external legal advisor when required. His conduct was seen to have fallen short of the standard required by the regulator as an MIC and member of ARCML's senior management, resulting in a ban from the industry for two months.
- This is the first time the SFC has taken disciplinary action against an MIC who was not a Responsible Officer (RO); a licensed representative in this case. The regulator has shown that it won't hesitate to sanction both the LC and licensed person where misconduct is discovered, regionally as well as internationally. This further emphasises the need for regulated persons, such as licensed persons and persons involved in the management of a business, to be aware of their responsibilities and the expected regulatory standards of conduct.

Transaction Reporting Best Practice Guidelines for firms executing orders on RMs across the UK/EU perimeter; *Noting recent developments in respect of:*

1. *ESMA Guidance on Brexit related order handling*
2. *ESMA and FCA heightened focus on reporting data quality*
3. *ESMA and FCA evolving discussions on the Trading Venue perimeter, pre-negotiation facilities and the definition of a multilateral system*

- Several queries have arisen concerning the reporting protocols for the internal transmission of interests and orders between group affiliates in order to submit orders onto a trading venue, especially where that TV is not an internal MTF/OTF, but rather an RM/exchange.
- Member firms may now frequently have a chain of entities between the desk which talks to an international client, and other desks/facilities/branches/subsidiaries which arrange and execute the trade legs within the transaction or package.
- Noting that the submission of a matched interest onto a TV is not order transmission, topics include:

1. Who reports
2. In what capacity
3. Duplication of reports
4. Reporting on behalf of non-IF/NFC market participants
5. Protocols for specific reporting fields [to FCA, to ESMA]

- Question to firms: *Are there use cases or protocols where any industry practice guideline (or perhaps a draft ESMA FAQ) that provided a basis of commonality for a member firm's internal policies [duly annually reviewed and available to board & supervisors etc] could be helpful for the second and third lines of compliance>?*
- The FCA have specifically advised us:

a) on block trades the arranger here is executing and needs to transaction report unless they comply with the conditions for transmission in RTS 22 Article 4, in which case the receiving firm (the UK situated executing broker) will report the clients of the arranger as buyer/seller.
b) In the absence of transmission meeting the conditions of Article 4, both the arranging firm and the UK situated executing broker will need to transaction report.
c) There is no difference as regards transaction reporting for an arranger or a firm acting in agency capacity.
d) For transaction reporting purposes we would not regard the arranging broker as acting as an OTF here.

- One aspect raised by member also concerns the "Execution Decision-maker" fields:
- Excluding Matched Principal Trades, for which we have an established reporting guidance under MiFID2, can we assert that an arranging firm, its block submitting affiliates and its trading venue activities may all and each can submit NORE into the relevant decision maker fields?
- Could member firms generally assert that it considers no part of the internal or inter-affiliate transaction chain is the "Decision Maker" in the meaning of MiFID2, by dint of holding no formal discretionary mandate on the investment and by dint of the Limited Licence held and Terms of Business with clients…
- Context and resources details:
- Noting for UK - MW62

- Buyer and seller decision makers

- Field 12 (buyer decision maker) and Field 21 (seller decision maker) only apply where:
  - the client is the buyer or seller, and the investment decision is made under a discretionary mandate, or
  - the buyer or seller has granted a power of representation
- We have identified firms misreporting these fields by mirroring the contents of the buyer and seller fields.
- Other firms fail to populate the decision maker fields where it would generally be expected; for example, where an asset management firm is acting under a discretionary mandate on behalf of a fund and identifies the fund as the buyer or seller. We have also noted investment firms identifying a fund as the buyer or seller where transmission is not taking place (within the definition of RTS 22 Article 4) and we would instead expect to see the fund management firm identified.

- Noting for EU *(and UK by extension)* ESMA's Transaction Reporting Guidelines
- a 'Decision Maker' is any third party authorized to transact for a client.
- "Internal Broker" – an investment firm can also be a decision maker. This occurs under a discretionary account where a client allows their broker to trade on their behalf.
- *"If the field is filled with a code other than 'NORE', the code is - as set out in the Article 9 of the Commission Delegated Regulation (EU) 2017/590 - either the identifier of a person within the Investment Firm or the identifier of an algorithm within the Investment Firm, depending on which is primarily responsible for the execution. This is the responsibility of the Investment Firm to determine in accordance with its governance model"*
- *5.12 Block 5: Execution within the firm field*
  - *Field 59 should be populated in every transaction report.*
  - *In cases where the decision about the execution was made by a client (e.g., the client instructs the details of the trade including the venue of execution) or by another person from outside the Investment Firm (e.g., an employee of a company within the same group), Investment Firms should use the default value 'NORE' in this field.*
  - *Example 28 Investment Firm X buys a financial instrument on behalf of a client, where the details of the trade were specifically instructed by that client.*
- *5.28 Direct Electronic Access (DEA)*
  - *Both the DEA provider and the DEA client, if it is an Investment Firm, should submit a transaction report (subject to the exception mentioned in variant B).*
  - *When transaction reporting, the DEA provider should ensure to identify itself as the executing entity (Field 4 Executing entity identification code).*
  - *Since the DEA user (the client) is making the decision on how to execute the DEA provider should populate the execution within the firm field with 'NORE' as set out in 5.12.*
    - *note that if the client made the decision, it would be populated with 'NORE' (see section 5.12).*
  - *The DEA provider should never fill in Field 57 (Investment decision within firm) as it is never involved in the investment decision which is the DEA client's responsibility.*
  - *Moreover, the DEA provider should report as acting in AOTC or MTCH capacity (Field 29).*
  - *In its transaction report, the DEA client should identify the DEA provider rather than the market as either the buyer (Field 7 - Buyer identification code) or the seller (Field 16 - Seller identification code) as applicable. Moreover, it should always populate Field 36 (Venue) as 'XOFF' as it is not the entity facing the market. However, it is highlighted that where the DEA client is acting on behalf of a client and where it has transmitted the details of that client pursuant to the conditions provided under Article 4 of Commission Delegated Regulation (EU) 2017/590, the DEA client should not transaction report as all the relevant transaction information will be provided to the competent authority by means of the DEA provider's transaction report*
- Article 9 Identification of person or computer algorithm responsible for execution of a transaction

- *1. Where a person or computer algorithm within the investment firm which executes a transaction determines which trading venue, systematic internaliser or organised trading platform located outside the Union to access, which firms to transmit orders to or any conditions related to the execution of an order, that person or computer algorithm shall be identified in field 59 of Table 2 of Annex I.*
- *2. Where a person within the investment firm is responsible for the execution of the transaction, the investment firm shall assign a designation for identifying that person in a transaction report in accordance with Article 6.*
- *3. Where a computer algorithm within the investment firm is responsible for the execution of the transaction, the investment firm shall assign a designation for identifying the computer algorithm in accordance with Article 8(3).*
- *4. Where a person and computer algorithm are both involved in execution of the transaction, or more than one person or algorithm are involved, the investment firm shall determine which person or computer algorithm is primarily responsible for the execution of the transaction. The person or computer algorithm taking primary responsibility for the execution shall be determined in accordance with pre-determined criteria established by the investment firm.*

Buyer decision maker

— Fields 12-15 are only applicable if the decision maker acts under a power of representation

12	Buyer decision maker code	Code used to identify the person who makes the decision to acquire the financial instrument. Where the decision is made by an investment firm, this field shall be populated with the identity of the investment firm rather than the individual making the investment decision. Where the decision maker is a legal entity, the LEI code of the decision maker shall be used. Where the decision maker is a non-legal entity, the identifier specified in Article 6 shall be used.	{LEI} {NATIONAL_ID}

Buyer decision maker details

— Fields 13-15 are only applicable if the decision maker is a natural person

13	Buy decision maker – First Name(s)	Full first name(s) of the decision maker for the buyer. In case of more than one first name, all names shall be included in this field separated by a comma	{ALPHANUM-140}
14	Buy decision maker – Surname(s)	Full surname(s) of the decision maker for the buyer. In case of more than one surname, all surnames shall be included in this field separated by a comma	{ALPHANUM-140}

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N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
15	Buy decision maker – Date of birth	Date of birth of the decision maker for the buyer	{DATEFORMAT}

Seller details and decision maker

— For joint accounts fields 16-20 shall be repeated for each seller.

— Where the transaction for a seller is for a transmitted order that has met the conditions for transmission set out in Article 4, the information in fields 16-24 shall be populated by the receiving firm in the receiving firm's report from the information received from the transmitting firm.

— Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 4, the receiving firm shall treat the transmitting firm as the seller.

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
16	Seller identification code	Code used to identify the disposer of the financial instrument. Where the disposer is a legal entity, the LEI code of the disposer shall be used. Where the disposer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that utilises a CCP and where the identity of the disposer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union that does not utilise a CCP and where the identity of the disposer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the Union shall be used. Where the disposer is an investment firm acting as a SI, the LEI code of the SI shall be used 'INTC' shall be used to designate an aggregate client account within the investment firm in order to report a transfer into or out of that account with an associated allocation to the individual client(s) out of or into that account respectively. In case of options and swaptions, the buyer shall be the counterparty that holds the right to exercise the option and the seller shall be the counterparty that sells the option and receives a premium. In case of futures and forwards other than futures and forwards relating to currencies, the buyer shall be the counterparty buying the instrument and the seller the counterparty selling the instrument.	{LEI} {MIC} {NATIONAL_ID} 'INTC'
		In the case of swaps relating to securities, the buyer shall be the counterparty that gets the risk of price movement of the underlying security and receives the security amount. The seller shall be the counterparty paying the security amount. In the case of swaps related to interest rates or inflation indices, the buyer shall be the counterparty paying the fixed rate. The seller shall be the counterparty receiving the fixed rate. In case of basis swaps (float-to-float interest rate swaps), the buyer shall be the counterparty that pays the spread and the seller the counterparty that receives the spread. In the case of swaps and forwards related to currencies and of cross currency swaps, the buyer shall be the counterparty receiving the currency which is first when sorted alphabetically by ISO 4217 standard and the seller shall be the counterparty delivering this currency. In the case of swap related to dividends, the buyer shall be the counterparty receiving the equivalent actual dividend payments. The seller is the counterparty paying the dividend and receiving the fixed rate. In the case of derivative instruments for the transfer of credit risk except options and swaptions, the buyer shall be the counterparty buying the protection. The seller is the counterparty selling the protection. In case of derivative contracts related to commodities, the buyer shall be the counterparty that receives the commodity specified in the report and the seller the counterparty delivering this commodity. In case of forward rate agreements, the buyer shall be the counterparty paying the fixed rate and the seller the counterparty receiving the fixed rate. For an increase in notional, the seller shall be the same as the disposer in the original transaction. For a decrease in notional the seller shall be the same as the acquirer of the financial instrument in the original transaction.	
17-24	**Fields 17-24 mirror all buyer related fields numbered 8-15 (buyer details and decision maker) for the seller.**		

- FAQ 13 could also be useful in leg c …
- Question 13 [Last update: 28/09/2020] Consider a scenario where an Investment Firm A executes a reportable transaction through an execution algorithm provided by another Investment Firm B59. a) How should field 59 (Execution within firm) of RTS 22 be reported when Investment Firm A uses the execution algorithm provided by Investment Firm B?
- b) Would Investment Firm A's reporting differ if Firm B was not a MiFID II Investment Firm and therefore did not have the obligation to report this transaction under Art. 26 MiFIR?
- c) Where Investment Firm B is using Investment Firm A's membership to access the market, is Investment Firm B executing the transaction and does Investment Firm B have to transaction report?
- Answer 13

a) The reporting obligations are the same as where Investment Firm A decides to send an order for execution to Investment Firm B. Investment Firm A should populate field 59 with the person or algorithm identifier within their firm that is primarily responsible for using Investment Firm B's algorithm. Investment Firm A shall not populate a code for Investment Firm B's algo, only its own information. The scenario is: IF A → IF B (algorithm) → CCP (Trading Venue or Investment Firm) Assuming that Investment Firm A is buying an instrument and dealing on own account trading capacity, and Investment Firm B is acting in "any other" trading capacity, the respective reports should be completed as follows:

b) No. Investment Firm A's reporting is the same as specified in a).

c) Yes. Investment Firm B is conducting the activity of executing a client order according to Art. 3 of RTS 2260. The scenario is: IF A → IF B (algorithm) → IF A (membership) → CCP (Trading Venue) Assuming that both Investment Firm A is buying an instrument and dealing on own account, and the subsequent steps in Investment Firm B and A are in "any other" trading capacity, the respective reports should be completed as follows:

    a. In order to match Investment Firm B's reports and reflect its involvement in more than one part of 'the chain', Investment Firm A has to submit two reports:

        i. one for its trade as a client with Investment Firm B (Report 1).

ii. one for its market-side trade with the Central Counterparty or another Investment Firm (Report 2)

N	Field	IF A's report 1	IF B's report	IF A's report 2
4	Executing entity identification code	{LEI} of Investment Firm A	{LEI} of Investment Firm B	{LEI} of Investment Firm A
7	Buyer identification code	{LEI} of Investment Firm A	{LEI} of Investment Firm A	{LEI} of Investment Firm B
16	Seller identification code	{LEI} of Investment Firm B	{LEI} of Investment Firm A	{LEI} of CCP
29	Trading capacity	'DEAL'	'AOTC'	'AOTC'
59	Execution within firm	Natural person's ID or code of algorithm within Investment Firm A	Code for Investment Firm B's execution algorithm	'NORE'

ission Delegated Regulation (EU) 2017/590.

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[ESMA promotes clarity to market participants on best execution reporting]

- [Deprioritisation of supervisory actions on the obligation to publish RTS 27];
- As flagged over recent weeks, finally ESMA has procedurally extended the effective suspension of RTS27 indefinitely [formal notice attached].
- This means that the EU now matches the UK position, and firms shall not need to restart their Best Ex reporting procedures or can stand them down if they were anyway being maintained in the absence of finality.
- ESMA does use rather presumptive language here that they do expect Brussels to deal the death blow to RTS27, (despite that fact that they have recently published a Best Ex Review Report).
- Recalling: Article 27(3) of MiFID II requires execution venues to make available to the public reports related to the quality of execution of transactions on their venues. The so-called RTS 274 further specifies the content and format of these reports (RTS 27 reports).
- *"According to the amending Directive, RTS 27 reports are rarely read and do not enable investors and other users to make meaningful comparisons on the basis of the information they contain.*
- *As a consequence, the amending Directive sets out a temporary suspension of the periodic reporting obligation to the public on execution venues in Article 27(3) of MiFID II until 28 February 2023."*
- [We had been asking the IP/SM teams at ESMA, as well as the MiFID unit in FISMA, for sufficient notice of this matter since firms have lead times; and as pointed out in the report, the comitology process between ESMA, DG_FISMA & the co-legislators could not have been completed before end Feb next year –> "*ESMA acknowledges that a re-application of the RTS 27 reporting obligation after 28 February 2023 would require execution venues to deploy significant resources to restart and maintain the reporting, possibly for a short period, until its expected abolishment."*]

- *ESMA today issued a Public Statement to promote coordinated action by National Competent Authorities (NCAs) under MiFID II not to prioritise supervisory actions towards execution venues relating to the periodic reporting obligation on them to publish the RTS 27 reports, from 1 March 2023 until the forthcoming legislative amendment[1] to the relevant Article of MiFID II applies.*
- The Directive amending MiFID II, under the Capital Markets Recovery Package temporarily suspended the RTS 27 reporting requirement until 28 February 2023. The European Commission's legislative proposal on the MiFID II/MiFIR review includes a proposal to delete the obligation to publish RTS 27 reports.
- This proposal is currently subject to the legislative procedure at the European Parliament and the Council of the EU. In this context, ESMA has observed a lack of clarity among market participants on the suspension of the obligation to publish RTS 27 reports, if the negotiations by the Council of the European Union and the European Parliament exceeded the expiration date of this temporary suspension (i.e., 28 February 2023).
- Based on available information, the MiFID II/MiFIR legislative procedure is likely to exceed 28 February 2023. Therefore, it is also likely that RTS 27 reporting obligation would temporarily re-apply after 28 February 2023 until the reviewed MiFID II Directive would apply.
- [1] Under the assumption that the European Parliament and the Council of the EU agree in the context of the MiFID II/MiFIR review to delete the RTS 27 reporting requirement.

Japan FSA publishes final guidelines on creating, recordkeeping and reporting of transaction information in respect of derivatives transactions; *The JFSA has published the finalised version of its 'Guidelines for Creating, Recordkeeping and Reporting of Transaction Information specified in Article 4(1) of the Cabinet Office Order on the Regulation of Over-the-Counter Derivatives, etc'.*

- In September 2022, the FSA published a draft version of the guidelines seeking industry comments. Based on the comments received from 17 individuals and organisations including overseas organisations, the finalised guidelines have been prepared to provide the trade repository, the Financial Instruments Clearing Organisation, and the Financial Instruments Business Operator etc., with details of the matters required to be provided by them in respect of certain derivatives transactions.
- The finalised guidelines are effective from 1 April 2024.

FINRA Proposes Additional Conditions to Rulemaking on Remote Office Inspections; *FINRA proposed adding conditions on a rulemaking to adopt a voluntary three-year pilot program that would allow broker-dealers to conduct annual office inspections remotely.*

- The amendment to the proposal would provide a list of factors a firm must consider when conducting remote office inspections, and would encourage more frequent use of unannounced, on-site inspections at locations deemed high-risk or previously "red-flagged." The partial amendment would also tighten the criteria for eligibility in the pilot program, including imposing loss of eligibility for failing to comply with FINRA Rule 3110.18 ("Supervision"). The amendments were offered in response to concerns raised by market participants.
- Comments on the partial amendment are due by January 12, 2023.
- FINRA Federal Register Filing: Notice of Partial Amendment No. 1 to Proposed Rule Change to Adopt Supplementary Material.18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

NYSE Arca, Inc. AWC: SVB Securities LLC settled NYSE Arca ("Exchange") charges for (i) failing to obtain customer consent prior to adjusting an options trade, (ii) executing the trade at terms that the customer had said were not acceptable and (iii) recordkeeping failures.

- In a Letter of Acceptance, Waiver and Consent, the Exchange found that the firm, having executed a customer's option trade, subsequently agreed to change the price in a manner that was unfavourable to the customer to accommodate the option counterparty. The Exchange said that the broker-dealer then went back to the customer to tell the customer a new price that was outside of the customer's pre-established price limits. The Exchange said the broker-dealer told the customer that the reason for the change was that there had been a printer error, rather than communicating that it had agreed with a counterparty to the price change. The Exchange also found that the firm failed to maintain adequate records of its agreed cancellation and rebooking of the trade.
- As a result, the Exchange determined that the broker-dealer violated Exchange Act Section 17(a) ("Records and reports"), Exchange Act Rule 17a-3(a)(6)(i) ("Records to be made by certain exchange members, brokers and dealers"), NYSE Arca Rule 2.28 ("Books and Records"), Rule 11.1(b) ("Adherence to Law and Good Business Practice") and Rule 11.18(b)-(c) ("Supervision").
- To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a civil monetary penalty of $120,000.

FINRA AWC: OFG Financial Services, Inc. settled FINRA charges for failing to "establish, maintain, and enforce a reasonable supervisory system... to review electronic communications that its registered representatives sent and received."

- FINRA found that the firm did not designate personnel to review communications, nor did the firm's policies indicate how often communications should be reviewed. Additionally, FINRA found that the firm did not have a useful keyword system for flagging emails to be reviewed. FINRA said the firm reviewed emails on essentially a random basis, but only conducted a review of approximately one quarter of 1 percent of emails.
- FINRA determined that the broker-dealer violated FINRA Rule 2010 ("Standards of Commercial Honor and Principals of Trade") and Rule 3110 ("Supervision"). To settle the charges, the broker-dealer agreed to (i) a censure, (ii) a civil monetary penalty of $45,000 and (iii) undertakings to remediate its electronic communication review issues.

FINRA AWC: Wells Fargo Securities, LLC; *A broker-dealer settled FINRA charges for overstating the firm's daily trading volume by nearly 148,000,000 shares on Bloomberg and Thomson Reuters, subscriber-based market data platforms.*

- In a Letter of Acceptance, Waiver, and Consent, FINRA found that the broker-dealer's advertising software suffered from an error that caused the system to advertise certain options trades as equity transactions from December 2016 to June 2018. In a separate instance, the broker-dealer's order management system caused certain trades routed between one of its trading desks and its electronic trading desk to be counted twice in advertised numbers. FINRA said that both failures were due in part to an inadequate supervisory system that was out of compliance with FINRA rules.
- FINRA determined that the overstatement violated FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade"), FINRA Rule 3110 ("Supervision") and FINRA Rule 5210 ("Publication of Transactions and Quotations"). To settle the charges, the broker-dealer agreed to (i) a censure and (ii) a $200,000 fine.

FCA reviews diversity and inclusion approaches in financial services; *The FCA has published a [multi-firm review](#) on how financial services firms are designing and embedding diversity and inclusion (D&I) strategies. The review found that, among other things:*

- many firms' strategies were generic and did not take a holistic view, lacking both a clear articulation of purpose and actions oriented to achieving their goals.
- firms are not systematically tracking the effectiveness of their measures and initiatives.
- there was considerable variation in the range of data that firms are collecting and the level of analysis conducted on that data and few firms have actionable data beyond gender and ethnicity.
- firms were not generally making significant efforts to get to the main reasons behind their issues in representation, for example, not using qualitative feedback such as exit interviews to provide insight into the numbers.
- while many firms said senior managers would be held accountable for progress and that it was part of their objectives, it was unclear how progress to goals would actually affect a performance grade or reward, and many firms could not give examples of situations that would call for a tangible adjustment to reward; and
- few firms talked about the behavioural biases that affect inclusion or the role of systemic discrimination and interventions were usually limited in scope and likely effectiveness.
- The FCA has encouraged firms to consider these findings in the development of their D&I strategies and practices.
- The review also includes the results of the pilot data survey issued in 2021 to better understand the D&I data that firms were collecting.

HKMA revises SPM module on code of conduct; *The HKMA has issued a revised version of its [supervisory policy manual module 'CG-3 Code of Conduct'](#) (SPM module) as a statutory guidance, by notice in the government gazette, under section 7(3) of the Banking Ordinance. Following consultation with two industry associations, the HKMA has revised the SPM module mainly to:*

- strengthen the conflicts of interest policy requirements.
- incorporate the relevant provisions of the Prevention of Bribery Ordinance and provide guidance to raise staff awareness on corruption prevention.
- update the existing guidelines to enhance the internal control systems for enforcing the Code of Conduct; and
- enhance the clarity of guidance in relation to the adoption of group policies for foreign bank branches.
- The HKMA expects authorised institutions to review whether their code of conduct and internal control systems are consistent with the principles set out in the revised module and, if needed, to adopt all necessary changes by 1 July 2023.

FCA writes Dear CEO letter to financial advisers and intermediaries; The FCA has written a [portfolio strategy letter](#) to the directors of firms setting out its expectations relating to financial advisors and intermediaries.

- In the letter the FCA provides an updated view of the key harms in the sector and summaries the work it intends to do in the area.
- The letter also sets out the FCA's expectation of firms in relation to:
    - providing suitable advice;
    - pension and investment scams;
    - firm failure and phoenixing;

- ongoing services; and
- other areas of interest including diversity and sustainability.

The UK's Financial Conduct Authority (FCA) has fined a broker group 4,775,200 GBP, for breaches of the Market Abuse Regulation Article 16(2), which requires "Professional Persons Arranging or Executing Transactions" (PPAET) to "effectively monitor" for market abuse in the form of market manipulation and insider trading. *The notice can be found here. The FCA found that the firm did not have adequate technology or procedures covering all relevant activity, as per the risk involved, from the start of MAR in July 2016 until 2018.*

- Market participants in energy and commodities usually hold PPAET status, regardless of whether they rely on exemptions and are therefore not financially authorised. This is the third fine levied by the FCA this year for inadequate monitoring under MAR (see here).

FCA Market Watch 71; Newsletter on changes in advisory firms' insider lists. December 2022

- About this edition
- Steps taken by firms to reduce the number of permanent insiders
- Article 18 of UK MAR and personal information
- In this edition we share our observations about changes in advisory firms' insider lists since the publication of Market Watch 60. We also remind firms of the requirement within UK Market Abuse Regulation (MAR) to include personal information in insider lists, and reiterate the importance of firms maintaining accurate insider lists and strictly limiting access to inside information to employees who require access to perform their role in order to prevent market abuse. Smaller permanent insider lists are desirable for firms and help ensure the security and integrity of firms' approach to managing their market abuse risk.

First name(s) of the insider	Surname(s) of the insider	Birth surname(s) of the insider (if different)	Professional telephone number(s) (work direct telephone line and work mobile numbers)	Company name and address	Function and reason for being insider	Obtained (the date and time at which a person obtained access to inside information)	Ceased (the date and time at which a person ceased to have access to inside information)	Date of birth	National Identification Number (if applicable)	Personal telephone numbers (home and personal mobile telephone numbers)	Personal full home address: street name; street number; city; post/zip code; country)
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/ UKFCA 2021/16 emission allowance market participant participant/ auction platform/auctioneerFCA 2021/16 or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[Number and/or text]	[Numbers (no space)]	[Text: detailed personal address of the insider - Street name and street number - City - Post/zip code - Country]

Market Watch 71: Template 1 of Annex 1 to the Technical Standards

Template 2 of Annex 1 to the Technical Standards

First name(s) of the insider	Surname(s) of the insider	Birth surname(s) of the insider (if different)	Professional telephone number(s) (work direct telephone line and work mobile numbers)	Company name and address	Function and reason for being insider	Included (the date and time at which a person was included in the permanent insider section)	Date of birth	National Identification Number (if applicable)	Personal telephone numbers (home and personal mobile telephone numbers)	Personal full home address (street name; street number; city; post/zip code; country)
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/ UKFCA 2021/16 emission allowance market participant participant/ auction platform/auctioneerFCA 2021/16 or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[Number and/or text]	[Numbers (no space)]	[Text: detailed personal address of the insider - Street name and number - City - Post/zip code - Country]

National identifiers

For natural persons on insider lists, the national identification number column, to ensure consistency with the national identifiers used in MiFIR transaction reports and STORs to support our market abuse enquiries, should contain the relevant national identifier for that individual, defined and designated in accordance with the requirements in Article 6 of RTS 22.

Firms are reminded that the first priority national identifier for UK nationals is the national insurance number, The full suite of national identifiers can be found in Annex II to RTS 22,

Personal telephone numbers

Firms are remined that, in accordance with the template in the Annex to the Technical Standards, personal telephone numbers must be included in insider lists,

Contractors

We have also seen insider lists which contained no personal details for contractors, Article 18(1) of UK MAR sets the requirement to maintain insider lists for 'Issuers and any person acting on their behalf or on their account',

We expect issuers to have arrangements in place to ensure that firms contracting to them provide personal data in response to regulatory requests, We also expect advisory firms to have in place similar arrangements with external parties with which they contract and to which they provide access to inside information, If a person does not agree to provide personal details, firms should consider whether that person should be given access to files containing inside information,

Data protection

UK MAR does not provide an exemption for the provision of personal data in relation to the location of people identified on insider lists and data protection laws in those locations, Firms must consider what arrangements they can put in place to meet their obligations under UK MAR, as well as the appropriateness of providing access to inside information to persons who cannot provide the personal data required to enable the firm to meet UK MAR obligations,

We have been informed by a small number of firms that where a person overseas has refused to provide the personal data required by UK MAR, those firms have withdrawn access to inside information,

Burden of work

In order to reduce the burden of work and to mitigate possible risks to data protection, firms should note that they may store insider lists and personal data separately, and add the personal data to the template when insider lists are requested by the FCA, However, we expect issuers and persons acting on their behalf or account to respond to our requests for insider lists promptly, For example, within two days,

FCA Market Watch 71; *On 13 December 2022, the FCA published Market Watch 71.*

- In Market Watch 71, the FCA shares their observations about changes in advisory firms' insider lists since the publication of Market Watch 60. The FCA also reminds firms of the requirement within UK Market Abuse Regulation (UK MAR) to include personal information in insider lists and reiterate the importance of firms maintaining accurate insider lists and strictly limiting access to inside information to employees who require access to perform their role in order to prevent market abuse.

- Furthermore, the FCA covers:
    - Steps taken by firms to reduce the number of permanent insiders. Since Market Watch 60, the FCA has seen considerable reductions in the numbers of permanent insiders at several advisory firms, as well as enhanced monitoring of access to inside information.
    - Article 18 of UK MAR and personal information. Recently, the FCA has received insider lists in response to regulatory requests, which do not contain personal information, other than names. The FCA have noticed the absence of telephone numbers, dates of birth and national identification numbers. The FCA requires this information to eliminate people for their enquiries by cross-referencing the information with MiFIR transaction reports, MAR suspicious transaction and order reports and other information sources.

Shaping the future of borderless work webinar that took place on 11th October 2022, previewing EY's research on Cross Border Remote Working. We are glad to say that we have published the final, full document entitled **'Shaping the future of borderless work: Towards a new model for cross-border remote working'**, which can be accessed here.

- We welcome the paper's findings which, among others, highlight the current gaps in work visas and the institutional risks faced by employers wishing to offer CBRW flexibilities. The recommendations help address the uncertainties, and costs, UK businesses face around compliance with immigration law, corporate tax, personal and employment tax, social security and employment law.

The FCA has launched a consultation on how to operationalise a gateway for firms approving financing promotions (CP22/27). *CP22/27 follows the introduction of the Financial Services and Markets Bill (FSM Bill), which includes provisions to introduce a gateway requiring all firms to apply to the FCA for permission to approve financial promotions for unauthorised firms.*

- As the FCA intends to operationalise the gateway as soon as is reasonably possible once the Bill receives Royal Assent and the relevant provisions commence, views are sought on, among other things:
    - the FCA's approach to assessing, granting and refusing applications;
    - a bi-annual reporting requirement for firms given permission to approve financial promotions; and
    - a requirement for eligible firms to notify the FCA within seven days when they approve, amend, or withdraw approval of a financial promotion.

- The FCA notes that CP22/27 is not generally relevant to authorised firms approving the financial promotions of their appointed representatives (ARs) or of unauthorised firms within their corporate group.
- Comments are due by 7 February 2023. Subject to the progress of the FSM Bill, the FCA intends to publish a policy statement and final rules in H1 2023

FCA Understanding approaches to D&I in financial services; Multi-firm reviews

- What we did
- 2. Findings
- 3. Next steps
- 4. Appendix 1: Effectiveness of actions
- 5. Appendix 2: Pilot Data Survey
- We observed how financial services firms are designing and embedding diversity and inclusion (D&I) strategies. We present our findings on these strategies and an overview of initiatives to improve diversity and inclusion, which industry leaders can consider in reviewing their own diversity and inclusion strategies.
- Diversity and inclusion are essential for healthy firm cultures, enabling firms to deliver better outcomes for consumers and markets. We want to see an inclusive industry where the most capable people are able to progress, no matter what their background, and where diversity of thought is valued. Diversity and inclusion, founded on a culture where it is safe to speak up, is essential for firms to have healthy cultures that help to deliver consumer protection and market integrity. Although there has been progress over the last few years and most firms are publicly committed to change, there is still much to be done.
- In July 2021, we published a joint Discussion Paper (DP) with the PRA and Bank of England. In this DP we discussed the current state of diversity and inclusion in the industry, set out the case that more progress advances our objectives, and proposed some areas for potential policy intervention. We will consult on these proposals in 2023.
- We decided to get a better understanding of the current state of diversity and inclusion approaches in regulated firms. This work had 3 goals:

1. To give firms and others a picture of the current position, allowing leaders to consider where initiatives might be relevant in their own firms.
2. To encourage further industry action.
3. To help us to develop a supervisory approach that we can use as the basis for future engagement with firms.

- This review presents the findings from our qualitative research and Appendix 1 sets out some evidence for the effectiveness of actions, but it is not intended as guidance. Where our observations refer to 'firms', we are referring to firms that were part of this review.

1. What we did

- We chose a sample of 12 'fixed' (generally larger) firms across multiple sectors. We asked each firm for some basic information, including their diversity and inclusion policy and strategy, if they had them, their targets or goals and any data that they used. We also requested a 90-minute structured interview with each firm. We asked all firms to make a senior leader available for this interview, in addition to any specialists that they wanted to include.
- We selected firms based on their gender pay gaps. We chose 8 firms with large pay gaps and 4 with relatively small pay gaps. However, as the largest pay gaps are disproportionately found in the investment banking and asset management sectors, we adjusted our sample to cover a wider range of sectors that would reflect the range of firms that we regulate.
- In 2021, we issued a pilot data survey to understand better the diversity and inclusion data that firms were collecting. In this review, we are also providing some of the results of our pilot data survey (see Appendix 2).

2. Findings

2.1. General observations

- We found a surprising degree of consistency among the firms we spoke to. All were early in the development of their approach on diversity and inclusion, typically having started serious efforts in 2019 or 2020. Some firms had made more progress than others but there was generally little correlation between how developed the firms' approaches were and the scale of pay gap.
- Almost all the people we spoke to were committed and passionate about making progress. There are a number of thoughtful initiatives underway. But many firms' strategies were generic and did not take a holistic view. They lacked both a clear articulation of purpose and actions oriented to achieving their goals. Firms were not fully capitalising on the data they collect to identify the best remedies, nor tracking which remedies are most effective.
- Very few firms seemed to have understood diversity and inclusion as a fundamental culture issue. Generally, we found much less understanding of and focus on building inclusive cultures than on actions to measure diversity and address specific issues.
- None of the retail firms that we spoke to had undertaken substantial work on the diverse needs of their consumer base, though a few had recognised the need for this.

2.2. Key points

- The firms that we spoke to are most focused on addressing gender representation, with ethnicity starting to receive more attention. Other demographic characteristics receive much less attention.
- On both gender and ethnicity, firms tend to focus most on improving representation at senior leadership level. This is despite data showing that the biggest drop-off in representation is from junior to middle management grades. Such focus, in isolation, risks creating a culture where firms attempt to 'poach' diverse senior talent rather than develop their own pipelines. This is not a sustainable approach and is unlikely to bring meaningful, long-lasting change.
- Firms' diversity and inclusion strategies are not consistently based on a clear diagnosis of their specific circumstances and challenges. This means actions and initiatives may not be appropriately focused. Firms are also not systematically tracking the effectiveness of these measures and initiatives. This leads to a lack of understanding about what really works. Without a strategy informed by a diagnostic process and better tracking of initiatives, some firms risk expending considerable resource without seeing meaningful results.
- There is wide variation in data quality. Firms with better diversity data had a better understanding of their position and were better placed to decide which actions to take. This variation was largely the result of differing levels of success with staff declaration rates. Firms with the best declaration rates have worked hard to achieve this, with focused initiatives to build trust and understanding, and optimising touch points with staff.
- Poor data quality also affected firms' abilities to carry out intersectional analysis to understand the experiences of different groups. So they were not able to design or implement targeted interventions to address these issues. There is a risk that this leads to patterns or trends being missed.
- The specific initiatives firms told us about included a number that we felt were likely to have a positive effect. But we also saw an overreliance, in some firms, on measures such as training, network groups and allyship, which although important, will not alone bring about the kind of systemic change needed.
- Most firms told us that senior managers were accountable and that diversity and inclusion goals could affect pay and bonuses. But it was much less clear in many cases how this worked in practice.
- Firms that are part of international groups had generally adopted a group-wide international strategy, without tailoring it to the circumstances of the UK organisation or the characteristics of

the UK. These firms typically had less ambitious and well-defined strategies and were often reliant on global, rather than UK-specific, data.

2.3. Commitment to diversity and inclusion

- Most firms approached the work positively. However, there were differing levels of commitment from firms, both to diversity and inclusion in general and specifically in their participation in our research. Some firms were reluctant to make senior business leaders available as we requested. Where they did, we spoke to people with a strong personal commitment to diversity and inclusion. But it was not clear to what extent the enthusiasm of the people we spoke to is more widely reflected across their organisations. In a few cases, they acknowledged that some parts of their organisations were harder to reach on this issue.
- By and large, firms were open and candid about the challenges they are facing and focused on achieving meaningful progress. However, we saw several instances where firms focused almost exclusively on gender representation at senior levels because there are external targets and expectations for it. This suggests that a compliance approach, rather than a genuine commitment to diversity and inclusion, is driving some strategies.

2.4. Current performance

- Most firms in our sample collected diversity data on their employees across all grades. In all cases where they had analysed this data in detail, it was notable that the step from junior to mid-level roles is where representation falls away most steeply, both for women and ethnic minorities. In the cases we saw, representation at senior levels is only marginally lower than at middle levels. This means that internal talent pipelines for senior representation will be limited, leading firms to look externally for top talent. This results in firms 'cannibalising each other', as one interviewee put it.
- Large gender pay gaps persist across the industry, and this is particularly marked in some sectors. There is little sign that action to close these has yet been effective (see Appendix 1 on effectiveness of actions). However, even in sectors where pay gaps are most pronounced, some firms display relatively smaller pay gaps. We found bonus gaps to be even wider than hourly pay gaps. We conclude that this is indicative of the fact that the highest bonuses are paid at senior levels, where women and ethnic minorities are still under-represented.
- Some firms had broken down ethnicity representation beyond a simple White/ethnic minority split. Where they had, the data showed there were clearly divergent outcomes for different ethnic minority groups.
- Few firms have taken steps to address social mobility. Where they have, this has focused on the entry points, with less attention to the cultural experience of employees from less socially privileged backgrounds. This may also be a contributing factor to the lack of progress for some ethnic minorities.
- Work around sexual orientation is often limited to supporting employee network groups and performative actions (eg, support for Pride). Similarly, few firms had given serious consideration to disability. Very few firms have paid attention to neurodiversity.
- Firms we spoke to generally weren't considering whether there were compounded issues for people belonging to more than one minority group that could lead to disadvantages ('intersectionality'). The Financial Services Culture Board found wide divergences in the experience of White women and women from ethnic minorities, for example.
- 2.5. Use of data
- We found considerable variation in the range of data that firms are collecting and the level of analysis conducted on that data. Some gather detailed breakdowns of gender and ethnicity data by grade. Others don't, in part due to poor employee declaration rates, and without clear

strategies to improve these. Our findings were consistent with the results of our pilot data survey (see Appendix 2).

- Few firms have actionable data beyond gender and ethnicity. Where firms had attempted to gather data on characteristics like disability and sexual orientation, they had all seen lower declaration rates than for ethnicity. We saw better declaration rates for data collected at recruitment/ onboarding stage compared to that from existing employees. Where firms achieved higher declaration rates, this was usually because they had made efforts to increase trust and make effective use of employee engagement. In one example, an action as simple as showing how to update diversity data at team meetings improved declaration rates.
- We also found differences in the level of employee declaration which firms believe constitutes a reliable data set on which a strategy and targets can be set. This means that, in some cases, firms with worse declaration rates are doing more than those with better rates. It may be possible to draw tentative conclusions about representation even with lower declaration rates.
- Crucially, it was not clear that firms - even those with the best data - are making full use of their data insights to inform their strategies. This is likely to mean that their interventions are not targeted on the most important issues. Firms were not generally making significant efforts to get to the heart of the reasons behind their issues in representation. For example, few firms were using detailed data about promotions processes or making use of qualitative feedback such as exit interviews to provide insight into the numbers.
- 2.6. Effectiveness of strategies and targets
- Most firms did not have strategies that clearly linked diagnosis, action and measurement. The level of detail covered in strategies was variable. Many firms had high-level strategies that would benefit from more definition and struggled to give clear examples of how they were going to reach their goals. Many strategies were not specific to the firm and its particular issues. For example, although firms in different sectors have very different job roles and cultures, potentially raising specific issues, we did not see this generally reflected.
- Many firms seemed unclear about their business rationale for better diversity and inclusion. Only 1 firm had made a clear connection with diversity of thought or recognised the potential benefits that this could bring to its business. Without a clear understanding of why firms are undertaking these efforts, there is a risk that diversity and inclusion is seen as an optional extra or that staff become fatigued and disengaged by ongoing initiatives.
- Firms had the most developed strategies for gender and were most likely to set targets for it. We think this is, in part, due to the availability of data and the influence of high-profile initiatives, notably the Women in Finance Charter and 30% club. While we understand the need for firms to be realistic in what can be achieved, we felt some of these targets lacked ambition.
- After gender, ethnicity received the most focus, although data availability stopped several firms from setting specific targets. As a result, ethnicity strategies often lacked the same level of focus, in terms of tangible actions, measures and accountability. Other characteristics received the least attention, with only a small number of firms in our sample articulating their importance and setting out measures to support them.
- Firms did not consistently measure the effectiveness of individual initiatives. Although further effort would be needed to put evaluations in place, without them there is a risk of wasted effort and unintended negative consequences.
- We found that some firms had launched numerous initiatives but had yet to see substantial improvements. We have 3 hypotheses as to why this might be:
- Diversity and inclusion initiatives take longer to deliver a visible impact than expected.
- Diversity initiatives alone, without meaningful cultural change driven from the top to embed them and drive inclusion, will not tackle diversity effectively.
- Some diversity and inclusion initiatives are not effective in delivering change.
- These possibilities have very different implications. So it will be important for firms to understand the reasons where initiatives are not delivering change.

Understanding approaches to D&I in financial services

Multi-firm reviews
Published: 12/12/2022 | Last updated: 13/12/2022

1. What we did
2. Findings
3. Next steps
4. Appendix 1: Effectiveness of actions
5. Appendix 2: Pilot Data Survey

We observed how financial services firms are designing and embedding diversity and inclusion (D&I) strategies. We present our findings on these strategies and an overview of initiatives to improve diversity and inclusion, which industry leaders can consider in reviewing their own diversity and inclusion strategies.

Who this will interest

This review will be of interest to all regulated firms.

What you need to do

We encourage all regulated firms to consider these findings in the development of their diversity and inclusion strategies and practices.

Introduction

Diversity and inclusion are essential for healthy firm cultures, enabling firms to deliver better outcomes for consumers and markets. We want to see an inclusive industry where the most capable people are able to progress, no matter what their background, and where diversity of thought is valued. Diversity and inclusion, founded on a culture where it is safe to speak up, is essential for firms to have healthy cultures that help to deliver consumer protection and market integrity. Although there has been progress over the last few years and most firms are publicly committed to change, there is still much to be done.

In July 2021, we published a joint Discussion Paper (DP) with the PRA and Bank of England. In this DP we discussed the current state of diversity and inclusion in the industry, set out the case that more progress advances our objectives, and proposed some areas for potential policy intervention. We will consult on these proposals in 2023.

We decided to get a better understanding of the current state of diversity and inclusion approaches in regulated firms. This work had 3 goals:

1. To give firms and others a picture of the current position, allowing leaders to consider where initiatives might be relevant in their own firms.
2. To encourage further industry action.
3. To help us to develop a supervisory approach that we can use as the basis for future engagement with firms.

This review presents the findings from our qualitative research and Appendix 1 sets out some evidence for the effectiveness of actions, but it is not intended as guidance. Where our observations refer to 'firms', we are referring to firms that were part of this review.

1. What we did

We chose a sample of 12 'fixed' (generally larger) firms across multiple sectors. We asked each firm for some basic information, including their diversity and inclusion policy and strategy, if they had them, their targets or goals and any data that they used. We also requested a 90-minute structured interview with each firm. We asked all firms to make a senior leader available for this interview, in addition to any specialists that they wanted to include.

We selected firms based on their gender pay gaps. We chose 8 firms with large pay gaps and 4 with relatively small pay gaps. However, as the largest pay gaps are disproportionately found in the investment banking and asset management sectors, we adjusted our sample to cover a wider range of sectors that would reflect the range of firms that we regulate.

In 2021, we issued a pilot data survey to understand better the diversity and inclusion data that firms were collecting. In this review, we are also providing some of the results of our pilot data survey (see Appendix 2).

We found a surprising degree of consistency among the firms we spoke to. All were early in the development of their approach on diversity and inclusion, typically having started serious efforts in 2019 or 2020. Some firms had made more progress than others but there was generally little correlation between how developed the firms' approaches were and the scale of pay gap.

Almost all the people we spoke to were committed and passionate about making progress. There are a number of thoughtful initiatives underway. But many firms' strategies were generic and did not take a holistic view. They lacked both a clear articulation of purpose and actions oriented to achieving their goals. Firms were not fully capitalising on the data they collect to identify the best remedies, nor tracking which remedies are most effective.

Very few firms seemed to have understood diversity and inclusion as a fundamental culture issue. Generally, we found much less understanding of and focus on building inclusive cultures than on actions to measure diversity and address specific issues.

None of the retail firms that we spoke to had undertaken substantial work on the diverse needs of their consumer base, though a few had recognised the need for this.

2.2. Key points

The firms that we spoke to are most focused on addressing gender representation, with ethnicity starting to receive more attention. Other demographic characteristics receive much less attention.

On both gender and ethnicity, firms tend to focus most on improving representation at senior leadership level. This is despite data showing that the biggest drop-off in representation is from junior to middle management grades. Such focus, in isolation, risks creating a culture where firms attempt to 'poach' diverse senior talent rather than develop their own pipelines. This is not a sustainable approach and is unlikely to bring meaningful, long-lasting change.

Firms' diversity and inclusion strategies are not consistently based on a clear diagnosis of their specific circumstances and challenges. This means actions and initiatives may not be appropriately focused. Firms are also not systematically tracking the effectiveness of these measures and initiatives. This leads to a lack of understanding about what really works. Without a strategy informed by a diagnostic process and better tracking of initiatives, some firms risk expending considerable resource without seeing meaningful results.

There is wide variation in data quality. Firms with better diversity data had a better understanding of their position and were better placed to decide which actions to take. This variation was largely the result of differing levels of success with staff declaration rates. Firms with the best declaration rates have worked hard to achieve this, with focused initiatives to build trust and understanding, and optimising touch points with staff.

Poor data quality also affected firms' abilities to carry out intersectional analysis to understand the experiences of different groups. So they were not able to design or implement targeted interventions to address these issues. There is a risk that this leads to patterns or trends being missed.

The specific initiatives firms told us about included a number that we felt were likely to have a positive effect. But we also saw an overreliance, in some firms, on measures such as training, network groups and allyship, which although important, will not alone bring about the kind of systemic change needed.

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Firms that are part of international groups had generally adopted a group-wide international strategy, without tailoring it to the circumstances of the UK organisation or the characteristics of the UK. These firms typically had less ambitious and well-defined strategies and were often reliant on global, rather than UK-specific, data.

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EBA proposes new money laundering guidelines to tackle de-risking; *The EBA has launched a consultation on two new sets of guidelines on the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services.*

- The first set is adding a new section to the EBA's ML/TF risk factors guidelines (EBA/2021/02), which set out what financial institutions should do to identify and tackle ML/TF risk. The purpose of the new section is to help financial institutions understand how not-for-profit organisations (NPOs) are organised, how they can be different from other customers and what they can do to manage ML/TF risks associated with such customers effectively, instead of denying them access to financial services.
- The second set tackles the issue of effective management of ML/TF risks by financial institutions when providing access to financial services. The guidelines aim to clarify the interaction between the access to financial services and institutions' AML/CFT obligations, including in situation where customers, including the most vulnerable, have legitimate reasons to be unable to provide traditional forms of identity documentation. In addition, they set out the steps institutions should take when considering whether to refuse or terminate a business relationship with a customer based on ML/TF risk or AML/CFT compliance grounds.
- Comments on the draft guidelines are due by 6 February 2023.

Contracts For Difference; FCA *issued a Portfolio letter which outlines our expectations and highlights poor practice seen in firms.*

- CFDs are high-risk derivative products which can pose risks to both our consumer protection and market integrity objectives. We have previously acted to mitigate these risks but have ongoing concerns. The letter builds on past Supervision and Policy communications to the sector and is in line with our 3-year strategy and Consumer Investments Strategy.

- FCA expect all firms to have agreed actions and next steps in response to the letter by January 2023

How you log into FCA systems is changing; *We are introducing multi-factor authentication to strengthen how you log into our systems and to further protect and control access to our data.*

- You will need to authenticate and enter a one-time passcode every time you log into:
- Connect, Reg Data, Fees Portal or Shared Intelligence Service (SIS) – from 20 January 2023.
- Electronic Submission System (ESS) – from 16 February 2023.
- You will be prompted to register and turn on multi-factor authentication when you log in from 20 Jan 2023 (16 February for ESS). See our website for more information and to prepare for the changes.

Regulatory fees and levies; *FCA have published our annual consultation paper which sets out our policy proposals for FCA fees from 2023/24. This applies to all FCA fee-payers and to any businesses* considering applying for FCA authorisation or registration.

- We cover a range of issues including our proposed approach to the assumptions we will need to set for next year's consultation on fee-rates, looking closely at inflation and the cost of living. We also cover appointed representatives and firms subject to the Investment Firms Prudential Regime, the new financial promotions regime, and the new Economic Crime Levy.
- Please consider our proposals and comment by 16 January 2023.

Ex-Wall Street Trader Convicted of Fraud in Precious Metals Spoofing Scheme A federal jury in the Northern District of Illinois convicted a former trader at JPMorgan Chase and Credit Suisse today of fraud in connection with a spoofing scheme in the gold and silver futures markets. According to court documents and evidence presented at trial, Christopher Jordan, 51, of Mountainside, New Jersey, was an executive director and trader on JPMorgan's precious metals desk in New York from 2006 to 2009, and on Credit Suisse's precious metals desk in New York in 2010. Between 2008 and 2010, Jordan placed thousands of spoof orders, i.e., orders that he intended to cancel before execution, to drive prices in a direction more favorable to orders he intended to execute on the opposite side of the market. /jlne.ws/3UPPquZ

The FCA has fined Santander UK Plc (Santander) £107,793,300 after it found serious and persistent gaps in its anti-money laundering (AML) controls, affecting its Business Banking customers. *Between 31 December 2012 and 18 October 2017, Santander failed to properly oversee and manage its AML systems, which significantly impacted the account oversight of more than 560,000 business customers.*

- Santander had ineffective systems to adequately verify the information provided by customers about the business they would be doing. The firm also failed to properly monitor the money customers had told them would be going through their accounts compared with what actually was being deposited.
- Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said:
- 'Santander's poor management of their anti-money laundering systems and their inadequate attempts to address the problems created a prolonged and severe risk of money laundering and financial crime.
- 'As part of our commitment to prevent and reduce financial crime, we continue to take action against firms which fail to operate proper anti-money laundering controls.'
- In one case, a new customer opened an account as a small translations business with expected monthly deposits of £5,000. Within six months it was receiving millions in deposits, and swiftly transferring the money to separate accounts.

- Although the account was recommended for closure by the bank's own AML team in March 2014, poor processes and structures meant that this was not acted upon until September 2015. As a result, the customer continued to receive and transfer millions of pounds through its account.
- Santander agreed to a request from law enforcement to keep the account open in September 2015, however, it failed to keep track of this request and the account remained open until the FCA wrote to Santander in December 2016.
- The FCA identified several other Business Banking accounts which Santander failed to manage correctly, leaving the bank open to serious money laundering risk. There were also examples of the bank failing to promptly deal with 'red flags' associated with suspicious activity, such as automated monitoring alerts.
- These failures led to more than £298 million passing through the bank before it closed the accounts.
- Santander knew that there were significant weaknesses in its AML systems and controls and began a programme of improvements in 2013. While these changes resulted in some improvements, Santander concluded that the changes did not adequately address the underlying weaknesses and, in 2017, decided to implement a comprehensive restructuring of its processes and systems. Santander UK continues to invest in its ongoing transformation and remediation programme.
- Santander has not disputed the FCA's findings and agreed to settle, which means it has qualified for a 30% discount. Without the discount, the financial penalty would have been £153,990,400.
- As part of its role to protect consumers and the market, the regulator has repeatedly stepped in and penalised firms for poor management of their AML systems. For example, it has fined Standard Chartered Bank £102.2 million, HSBC Bank plc £63.9 million, and its investigation led to NatWest being fined £264.8 million.
- Notes to editors

1. The Final Notice for Santander UK Plc (PDF)

The FCA has fined BGC Brokers LP, GFI Brokers Limited and GFI Securities Limited (together, BGC/GFI) £4,775,200 for failing to ensure they had appropriate systems and controls in place to effectively detect market abuse. BGC/GFI failed to properly implement the Market Abuse Regulation (MAR) trade surveillance requirements. This meant there was an increased risk that potentially suspicious trading would go undetected.

- BGC/GFI are inter-dealer brokers specialising in broking exchange listed and over-the-counter financial products and related derivative products. It is of fundamental importance to the integrity of the market that brokers such as BGC/GFI have effective market abuse surveillance systems in place.
- Between July 2016 and January 2018, BGC/GFI had manual, automatic and communications surveillance processes that were deficient, and therefore, inadequate in properly addressing the risk of market abuse. Additionally, BGC/GFI's systems for monitoring market abuse did not have proper coverage of all asset classes which are subject to MAR.
- Mark Steward, Executive Director of Enforcement and Market Oversight, commented:
- 'Oversight of our markets is a regulated partnership between the FCA and market participants and so gaps or holes in a firm's ability to monitor and detect abusive trading poses direct risks to market integrity. This case is another example of the FCA's determination to ensure firms prioritise market integrity and the maintenance of high standards of compliance.'
- BGC/GFI agreed to resolve the case at an early stage and qualified for a 30% discount. Without this discount, the fine would have been £6,821,800.
- BGC/GFI have since enhanced their systems and controls.

- Notes to editors

1. Final Notice for BGC/GFI.
2. The FCA conducts its own surveillance for market abuse by consolidating data obtained from market participants to detect potential insider dealing and market manipulation.
3. MAR was introduced in 2016 and expanded requirements to detect and report potential market abuse. It introduced a requirement to monitor both orders and trades to detect potential and attempted market abuse across a broad range of markets and financial instruments.
4. The FCA's Market Surveillance team conducts specialist supervision of the suspicious transaction and order reporting (STOR) regime. As part of its extensive supervisory programme, it undertakes regular and ad hoc visits to a wide range of market participants to assess their market abuse surveillance arrangements.
5. BGC Brokers LP (BGC), GFI Brokers Limited and GFI Securities Limited (GFI) are separate legal entities. BGC is the UK subsidiary of BGC Inc. GFI was purchased by BGC Inc in January 2016. Although GFI is run separately, it is part of the wider BGC organisation and shares the same compliance department.
6. MAR is a significant piece of legislation that covers the offences of insider dealing, unlawful disclosure of inside information, and market manipulation. Firms that arrange or execute transactions in financial instruments are required by Article 16(2) of MAR to establish and maintain effective arrangements, systems, and procedures to detect and report potential market abuse.
7. These failings meant that BGC/GFI breached Article 16(2) of MAR and Principle 3 of the FCA's Principles for Businesses – that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

The FCA has fined Metro Bank PLC £10,002,300 for breaching the Listing Rules by publishing incorrect information to investors. *The FCA has also decided to fine Metro Bank's former Chief Executive Craig Donaldson and former Chief Financial Officer David Arden £223,100 and £134,600, respectively, for being knowingly concerned in Metro Bank's breach.*

- Metro Bank has not referred the FCA's decision to the Upper Tribunal. The two individuals have referred their respective Decision Notices to the Upper Tribunal where they will each present their case. Any findings in the individuals' Decision Notices are therefore provisional and reflect the FCA's belief as to what occurred and how it considers their behaviour should be characterised.
- The Upper Tribunal will determine whether to uphold the FCA's decisions against the two individuals or not and whether there are any other actions that should be taken by the FCA. The Upper Tribunal's decision will be made public on its website following a hearing. Accordingly, the action outlined in the individuals' Decision Notices will have no effect pending the determination of the cases by the Upper Tribunal.
- As part of its quarterly financial results, Metro Bank regularly reported to the market on its prudential position, including the Risk Weighted Assets (RWA) on which its regulatory capital requirements are based. Metro Bank published incorrect information concerning its RWA figure in its third quarter trading update (the October Announcement) on 24 October 2018.
- Metro Bank was aware at the time that this figure was wrong and failed to qualify it or explain in the October Announcement that it was subject to an ongoing review and would require a substantial correction. Metro Bank also failed to consider, and to seek legal advice on, whether the incorrect RWA figure ought to be qualified or explained in the October Announcement. As a result, Metro Bank failed to take reasonable care to ensure that the October Announcement was not false and misleading and did not omit relevant information.
- The FCA considers that Mr Donaldson and Mr Arden were knowingly concerned in Metro Bank's breach of the Listing Rules. They were aware that the RWA figure in the October Announcement was wrong and would require substantial correction. Despite this, they failed to consider whether

the figure ought to be qualified or explained and failed to seek legal advice on this question. When the correct RWA figure was announced in January 2019, it contributed to a 39% fall in Metro Bank's share price.

- Mark Steward, Executive Director of Enforcement and Market Oversight, said: 'Listed firms must ensure that the information they are disclosing to the market is right. This is what investors are entitled to receive.
- 'The UK's Listing Rules impose high standards on issuers and their officers which Metro Bank, Mr Donaldson and Mr Arden failed to meet in this case.'
- Notes to editors

1. Metro Bank is a dual-regulated firm which was initially admitted to the Official List of the London Stock Exchange in 2016 and at the time of the announcement, was a member of the FTSE 250.
2. Final Notice for Metro Bank PLC.
3. Decision Notice for Craig Donaldson.
4. Decision Notice for David Arden.
5. Mr Craig Donaldson was Metro Bank's CEO from March 2009 until December 2019.
6. Mr David Arden was Metro Bank's Chief Financial Officer (CFO) from March 2018 until February 2022.
7. On 22 December 2021, the PRA published a Final Notice against Metro Bank and imposed a penalty of £5,376,000 for failings associated with the Bank's RWA reporting to the PRA.

Qatar MO: Qatar offered European lawmakers World Cup tickets, free trips to the Gulf state and other valuable hospitality as it sought to persuade them to soften their criticism of its treatment of workers ahead of the tournament. *The way [Qatari officials] engaged was off. They wanted to convince lawmakers there was no exploitation of workers there*

Metro Bank Fined £10M For Breaking Listing Rules; The Financial Conduct Authority said on Monday that it has fined Metro Bank £10 million ($12.3 million) for breaching listing rules by failing to publish correct information for investors, saying the lender did not ensure that its announcement was free from error. Read full article »

City of London Workers Want to Make WFH From Abroad Easier, Survey Finds; Finance workers are pushing for simpler rules for cross-border remote working, the latest sign that the pandemic-fueled appetite for flexible work isn't abating. The UK government, which launched a review into cross-border working rules earlier this year, should adopt common standards around tax, immigration policies and regulatory oversight, according to a report by the City of London Corporation and consulting firm EY published Wednesday. /jlne.ws/3uUMvGU

ECB to Allow Staff to Work Remotely for About Half of the Time; The European Central Bank will let staff work remotely for 110 days a year - roughly half their time. The rules, which take effect Jan. 1, permit as many as 10 days a month away from desks. That's stricter than the current system, under which employees must show up at the office at least eight days a month. /jlne.ws/3UZ2LRx

EU to tighten requirements for commodity derivatives traders The European Commission has published proposed changes to how commodity derivatives trades are managed within the bloc, which include ending the exemption for non-financial firms on reporting off-exchange trades. "To build resilience, the lessons drawn from the recent developments in energy markets, with several energy companies facing liquidity issues when using derivatives, need to be taken into account," the EC said in the draft proposal. Reuters Oil Price

- The European Union flagged tougher requirements on Wednesday for commodity companies using derivatives markets after failing to meet higher collateral calls when gas prices rocketed due to Russia's invasion of Ukraine. FISMA proposed EMIR changes in a draft law updating rules on clearing derivatives to better withstand shocks after governments had to help some energy companies meet higher margins on derivatives. "To build resilience, the lessons drawn from the recent developments in energy markets, with several energy companies facing liquidity issues when using derivatives, need to be taken into account," the draft EU law published on Wednesday said.
- Energy and other commodity firms use derivatives markets to hedge sales and shield themselves against volatile price moves. Brussels has already introduced a package of quick fixes, such as widening what can be used as collateral to meet margin calls, but said more structural changes were now needed.
- Europe is simply switching gas dependency from Russia to U.S.-RIA cites Kremlin
- One lesson from recent turmoil in energy markets is to scrap an exemption given to non-financial firms from reporting their off-exchange derivatives trades. The aim is to give regulators more data on markets, the draft law says.
- There will also be more emphasis on making sure energy firms are aware of potentially higher margin calls in a market crisis.
- The draft law also requires the bloc's securities watchdog ESMA to compile a report and cost benefit analysis on whether clearing houses should have "segregated" or separate accounts for non-financial and financial sector members to avoid cross-sector contagion in a crisis.
- The volume threshold at which mandatory clearing of derivatives contracts kicks in should also be looked at. "ESMA is encouraged to consider and provide, inter alia, more granularity for commodity derivatives," the draft law says.
- They could also be differentiated in relation to environmental, social and governance criteria, environmentally sustainable investments or crypto-related features, it said.

DTCC North America Re-write Update; *We wanted to provide an update of the week's reporting and what we are seeing. So far there have been no issues on our end and it appears that most of the issues we are seeing are growing pains due to the new requirements. That is especially apparent in the top NACK reasons, see attached. The good news is that the acceptance rate is climbing day by day and when we speak with specific firms, they are aware of their issues and are working to fix them. Please see attached for some more details. Keep in mind that this does not represent BAU as it includes Sunday's submissions and most firms have not updated existing trades yet and the growing pains previously mentioned. This is meant to give an idea of what has happened to date.*

North America Re-Write Go-Live Industry Statistics

Submissions - December 8th

Firms Submitting in Production	151
Total Industry Submission ACK Rate	93.53%
Trade State Industry Submission ACK Rate	90.49%
PPD Industry Submission ACK Rate	92.91%
Valuation Industry Submission ACK Rate	95.31%
Collateral Industry Submission ACK Rate	85.85%

Total Reported by Message Type and Jurisdiction *(Since Go-Live)*

	CFTC	SEC	Canada	Total
Valuation	53.14%	0.00%	0.00%	53.14%
Trade State	12.13%	14.82%	14.82%	41.76%
PPD	1.54%	3.29%	0.01%	4.83%
Collateral	0.26%	0.00%	0.00%	0.26%
Total	67.07%	18.11%	14.82%	100.00%

Top 5 Industry NACKs

1. The UTI+USI+Party 1+Party 2+Jurisdiction/Province of the Valuation must match that of an existing trade
2. Action Type cannot be submitted when underlying trade is not existing
3. Input Trade causing in-consistent Trade Identifiers with Existing Trades
4. The Original Message Type is required
5. The Message Type is required

Total Reported by Jurisdiction, Report Date and Action Type *(Since Go-Live)*

		Action Type								
	Report Date	NEWT	MODI	CORR	EROR	REVI	TERM	VALU	MARU	Total
CFTC	12/4/2022	1.5%	53.2%	0.3%	0.1%	0.0%	0.0%	44.9%	0.0%	100.0%
	12/5/2022	7.4%	23.6%	0.5%	0.2%	0.0%	2.2%	65.9%	0.2%	100.0%
	12/6/2022	4.3%	8.0%	0.6%	0.2%	0.0%	1.6%	84.9%	0.5%	100.0%
	12/7/2022	4.3%	4.4%	1.0%	0.2%	0.0%	2.6%	86.9%	0.5%	100.0%
	12/8/2022	4.8%	5.6%	0.9%	0.2%	0.1%	2.1%	85.9%	0.5%	100.0%
CFTC Total		**4.5%**	**11.9%**	**0.8%**	**0.2%**	**0.0%**	**1.9%**	**80.3%**	**0.4%**	**100.0%**
SEC	12/4/2022	0.5%	99.3%	0.0%	0.1%	0.1%	0.0%	0.0%	0.0%	100.0%
	12/5/2022	22.0%	62.4%	0.7%	0.5%	0.1%	14.2%	0.0%	0.0%	100.0%
	12/6/2022	24.1%	58.1%	1.6%	0.7%	0.1%	15.4%	0.0%	0.0%	100.0%
	12/7/2022	24.0%	58.6%	1.5%	0.6%	0.1%	15.3%	0.0%	0.0%	100.0%
	12/8/2022	23.3%	59.3%	2.3%	0.5%	0.1%	14.5%	0.0%	0.0%	100.0%
SEC Total		**18.5%**	**68.0%**	**1.2%**	**0.5%**	**0.1%**	**11.7%**	**0.0%**	**0.0%**	**100.0%**
Canada	12/4/2022	0.4%	99.4%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	100.0%
	12/5/2022	18.6%	63.6%	0.6%	0.2%	0.2%	16.8%	0.0%	0.0%	100.0%
	12/6/2022	21.1%	58.1%	1.8%	0.2%	0.1%	18.6%	0.0%	0.0%	100.0%
	12/7/2022	21.1%	58.7%	1.6%	0.2%	0.1%	18.4%	0.0%	0.0%	100.0%
	12/8/2022	37.3%	52.8%	5.0%	0.8%	0.0%	4.2%	0.0%	0.0%	100.0%
Canada Total		**13.9%**	**72.8%**	**1.0%**	**0.2%**	**0.1%**	**12.1%**	**0.0%**	**0.0%**	**100.0%**

PFOF; French resolution may lead EU to adopt US-style rules for PFOF German and Czech proposals would also put kibosh on commission's mooted ban on the practice; *When EU member states can't agree on a new regulation, the US may be the country to set the direction.*

- The Council of the EU is attempting to resolve a deadlock between member states on whether retail brokers can be paid to execute their flows with specific platforms. The council, comprising the elected governments of the EU's 27 member states, has been weighing up three sets of compromises, and is now likely to allow payment for order flow (PFOF) in some form.

On 8 December 2022, the FCA's new rules for the Appointed Representatives (AR) regime come into effect. *In our previous briefing note covering the FCA's Policy Statement on the updated AR regime we described 5 key areas of change and key steps for principal firms to consider when preparing for the new regime.*

- As part of the FCA's enhanced reporting requirements under the updated AR regime, principal firms will need to provide information about new and current ARs. The regulator intends to issue a Section 165 data request in December 2022. Firms should expect to receive this between 8 December and 10 December 2022. This will include:

- reasons for any appointments;
- nature of regulated business;
- whether any unregulated business is conducted;
- anticipated revenue;
- nature of financial arrangements between principal and AR; and
- complaints information and whether the AR is part of a group.
- The Section 165 data request will go to the Principal User on Connect.
- Firms will have until 28 February 2023 to respond.

- The FCA is committed to improving and strengthening the AR regime. This includes targeted supervision of principal firms across the whole financial services sector, by a new AR department.

On 8 December 2022, the FCA published a new webpage concerning the section 165 data request which it is sending to principal firms asking for more information about their appointed representatives. The webpage also includes responses to common questions. Principal firms have until 28 February 2023 to respond to the request.

FCA fines Santander UK Â£107.7 million for repeated anti-money laundering failures; The FCA has fined Santander UK Plc (Santander) Â£107,793,300 after it found serious and persistent gaps in its anti-money laundering (AML) controls, affecting its Business Banking customers. /jlne.ws/3hfZ6kH

FCA issues warning over CFD marketing The UK FCA has warned brokers offering contracts for difference products that they must be marketed and sold to retail customers fairly, as it said that a "significant minority" of firms were acting inappropriately. In a letter to regulated companies, the FCA said that there were "inherent conflicts of interest" in the market. Financial Times

Quomply Newsletter: MiFID Pain Points Guide, Webinar Recording, Troubleshooting MiFID;

- Compliance Becoming More Costly: KPMG & Innovate Finance Report highlights benefits of increased adoption of RegTech, as demonstrated by Qomply's Use Case
- Webinar Recording: Representatives from the Investment Association, Tradeweb & Kroll discuss Transaction Reporting Pain Points
- New Partnership: Quomply Joins London Stock Exchange Group's Regulatory Reporting Platform Partner Programme
- Regulatory Conference Round Up: Key Issues & Takeaways from Qomply's 2022 Regulatory Conference
- MiFID Pain Points Free Guide: The Silent Issues in your Transaction Reporting
- FIRDS Tool Try it for free now

Russian Arrested In UK Over Suspected Money Laundering; The National Crime Agency said it has arrested a wealthy Russian businessman and two other men on suspicion of a range of offenses including money laundering, conspiracy to defraud and conspiracy to commit perjury. Read full article »

FCA publishes Decision Notices against three bond traders for market manipulation; *The FCA has published Decision Notices given to Diego Urra, Jorge Lopez Gonzalez and Poojan Sheth, three bond traders, for market abuse.* Press Releases First published: 07/12/2022 Last updated: 07/12/2022

Shame that the FCA published this just after our monthly compliance meeting.

- Mizuho EGB market maker fined 30% of his c. £1.3 Ann income for 2016
- Relates to spoofing Eurex BTP futures to exit RFQ risk
- Still to go to the FCA "Tribunal" – perhaps odd that the determinations are therefore made public (prejudicial)?
- To what extent is policing the Eurex on exchange activities a BAFIN matter?
- To what extent is policing the Italian bond market a CONSOB matter?
- Since the spoof size was firm and dealable (i.e., no credit turned off) matters turns presumably on thought-policing of the trader intent (c.f. "Flashboys" for instance)

- Matters also turn perhaps on the Primary Dealer status of the firm in its ability to make both sides (c.f. Agent / Principal arguments)
- Would be interesting to consider whether the same activities would have been both spotted and dealt with in the same way had the trades been made in the cash markets, or basis-spread between the cash and futures …
- Noting that this is a rare instance where the regulator does not also/instead-of enforce against the firm's systems and controls (and education)
- Noting that this is an early instance where the regulator uses MRT and SMCR classifications
- To what extent is the regulator policing firm-own risk-limits and trading mandates and hedging mandates… seemingly quite some way
- The FCA has decided to ban Mr Urra, Mr Lopez Gonzalez and Mr Sheth from performing any functions in relation to regulated activity. The FCA has also imposed fines of £395,000 on Mr Urra and £100,000 each on Mr Lopez Gonzalez and Mr Sheth.
- The traders, who worked at Mizuho International Plc at the time, have referred the Decision Notices to the Upper Tribunal where they and the FCA will each present their cases.
- The Tribunal will then determine what, if any, is the appropriate action for the FCA to take, and will remit the matter to the FCA with such direction as the Tribunal considers appropriate for giving effect to its determination and in relation to the prohibition orders, whether to dismiss the references or remit them to the Authority with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.
- The Tribunal's decision will be made public on its website. Accordingly, the proposed action outlined in the Decision Notices will have no effect pending the determination of the case by the Tribunal.
- The FCA considers that the traders placed large misleading orders for BTP Futures that they did not intend to execute, giving false and misleading signals and a false or misleading impression as to the supply or demand of Italian Government Bond futures (BTP Futures) between 1 June 2016 and 29 July 2016. At the same time, they placed small orders which they did intend to execute on the opposite side of the order book.
- The FCA considers that the individuals repeated this pattern of deliberate and intentional market manipulation on a number of occasions and were dishonest.
- In the FCA's view, the fines and the bans that it has decided to impose reflect the serious nature of the breaches set out in the Decision Notices and should act as a deterrent to other market participants.
- There are no other ongoing investigations or actions relating to the trading.
- Notes to editors

1. The Decision Notices outline the reasons for the FCA's actions.
2. Decision Notice for Diego Urra.
3. Decision Notice for Jorge Lopez Gonzalez.
4. Decision Notice for Poojan Sheth.

- During the period 1 June to 29 July 2016, Mr Urra utilised an abusive trading strategy in EGB futures on the EUREX Exchange in Italian Government Bond futures ("BTP Futures"). He would place a large sized order on one side of the order book for the purpose of creating the impression of increased supply or demand, with the objective of assisting the execution of a smaller genuine order he wished to trade on the opposite side of the order book. For example, if Mr Urra wanted to buy bond futures, as well as placing a bid for those futures, he would place a large order to sell bond futures. The purpose of this was to create the impression that there was additional supply in the market with the aim of encouraging other market participants to sell (thereby increasing the chances of his buy order being executed). Once the smaller genuine order had been executed, he would cancel the large order.

- 2.4. Furthermore, this same pattern of abusive conduct through the placement of large orders on the opposite side of the book was also carried out by Mr Urra in concert with Mr Lopez and Mr Sheth. For example, Mr Urra would place an order he genuinely wished to trade and Mr Lopez or Mr Sheth would place a much larger order on the opposite side of the book for the purpose of creating the impression of additional supply or demand, thus assisting the execution of the genuine order.
- 2.5. Through the placement of these large misleading orders, Mr Urra and the other Traders falsely represented to the market an intention to buy or sell when their actual intention was the opposite. The only purpose of the large orders was to assist the execution of the smaller genuine orders that the Traders wanted to trade. The abusive trading strategy was such that it was unlikely the large misleading orders would themselves trade; notably, they were placed away from the touch (that is, the highest price to buy and the lowest price to sell) and were quickly cancelled.
- 2.6. This conduct gave false and misleading signals to the market as to demand and supply. It amounted to market manipulation which since 3 July 2016 has been prohibited by Article 15 of the Market Abuse Regulation, and until 2 July 2016 was prohibited by section 118(5) of the Act (the Relevant Period straddles the date on which the Market Abuse Regulation came into effect in the UK). Article 15 of the Market Abuse Regulation and section 118(5) of the Act are equivalent provisions; section 118(5) refers to "a false and misleading impression" rather than "false and misleading signals", but the Authority considers that there is no material difference between those concepts for the purposes of this Notice.
- 2.7. This market manipulation was serious and directly undermined the integrity of the market. Other market participants would likely have altered their trading strategies as a result of the false and misleading signals given by the large orders. For example, when Mr Urra placed a large buy order it gave a false signal that there was a material buyer in the market and other buyers, anticipating that the market was likely to move higher, would likely act with more urgency in order to secure the execution of their buy orders. The same is true in the opposite direction when he placed large sell orders.
- 2.8. Mr Urra frequently repeated this pattern of abusive conduct during the Relevant Period. The Authority has identified 31 occasions on which he carried it out by himself, and 98 occasions when he did so acting in concert with Mr Lopez and/or Mr Sheth. Irrespective of which of the Traders placed the orders on specific occasions, they were each individually responsible for participating in the abusive trading strategy, which was collaborative and undertaken for a common purpose.
- 2.9. Mr Urra knew that placing large orders on the opposite side of the book to assist the execution of other orders he or another Trader genuinely wanted to trade would result in false and misleading signals to the market. Furthermore, he knew that this would be likely to impact the trading activities of other market participants. His conduct constituted deliberate, intentional and repeated market manipulation and was dishonest.

On 6 December 2022, the Global Foreign Exchange Committee (GFXC) issued a press release concerning its recent video conference meeting where, among other things, it nominated and elected a new Co-Vice Chair. Also during the meeting GFXC members also agreed to commission a Digital Proportionality Tool for facilitating FX Global Code adherence. This tool to be made publicly available on the GFXC website in 2023, will organise the 55 FX Global Code Principles based on a participant's role in the foreign exchange market with the intention of streamlining the adherence process.

Two newly/recently(?) published REMIT decisions, and a new-look REMIT decisions page at ACER;
ACER's website seems to have been having some technical problems recently. Now that it's back on line, there's a redesigned page for NRA REMIT decisions. It has added functionality, allowing searches by

Member State, type of REMIT breach, status (e.g. final, under appeal or with the possibility of appeal) and decision year.

- ACER's REMIT page now includes a couple of cases that I am sure weren't there before. They were adopted in March this year, both from Austria, both criminal and both on Article 4. Both cases involve the late and incomplete publication of inside information. Wien Energie GmbH and Verbund Energy4Business GmbH published information about the decommissioning of power plants two or three weeks respectively after the date of the internal decision. In both cases, the published notices also gave incorrect information about the nature of the closure. The cases seem to have been investigated by the Austrian NRA E-Control, and the cases were then prosecuted before the Vienna Magistrates' Court, which found that the companies had committed administrative offences. The Court imposed a fine of €1,000 plus costs per director.
- These decisions are an interesting illustration of the range of REMIT enforcement mechanisms - in many Member States, it is the NRA itself that imposes an administrative penalty, but in others, like Austria, there is the possibility of criminal enforcement.

The table below gives an overview of decisions and sanctions of REMIT breaches:

ACER European Union Agency for the Cooperation of Energy Regulators

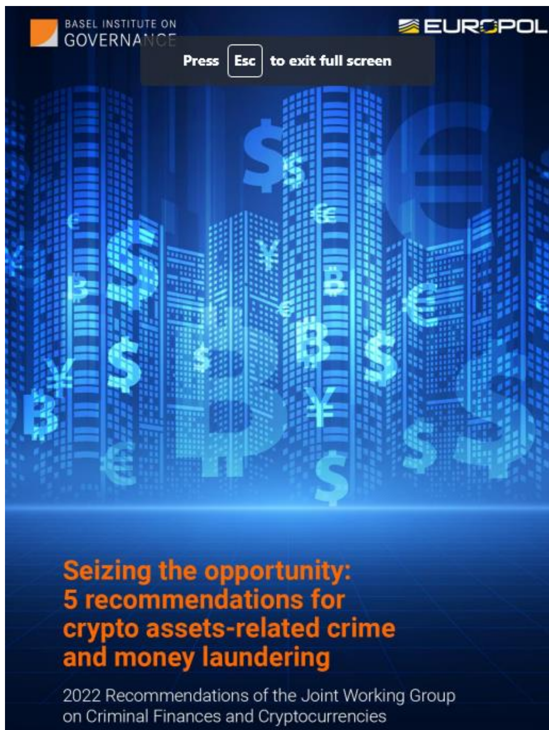
NRA, Member State: All | Type of REMIT Breach: All | Status: All | Decision Year: 2022

Type of REMIT Breach	NRA, Member State	Market Participant	Decision Date	Fine Amount	Status	Link
Article 3	CRE (FR)	Engie Sa	19 May 2022	EUR 80,000	Final	Link
Article 3 and Article 4	CRE (FR)	Electricité De France Sa	25 April 2022	EUR 500,000	Final	Link
Article 4	ACM (NL)	Pzem Energy B.V.	14 June 2022	EUR 150,000	Appeal Possible	Link
Article 4	E-Control (AU)	Verbund Energy4Business Gmbh	15 March 2022	EUR 1,100	Final	Link
Article 4	E-Control (AU)	Wien Energie Gmbh	15 March 2022	EUR 1,100	Final	Link
Article 5	ANRE (RO)	A Energy Ind S.R.L.	2022	340,294 RON (approx. 68,893 EUR)**	Under appeal	Link
Article 5	ANRE (RO)	Alive Capital S.R.L.	2022	400,000 RON (approx. 80,955	Final	Link

Seizing the opportunity: 5 recommendations for crypto asset related crime and money laundering by Basel Institute on Governance and Europol.

- *"As the use of cryptoassets expands into practically every country and sector, so does its abuse to commit new forms of crime and launder criminal proceeds. Yet with the right tools, capacity and cooperation, the unique characteristics of blockchain-based technologies offer an unprecedented opportunity to investigate organised crime and money laundering networks and to recover stolen funds."*
- 5 Recommendations:

1. Break down silos between "traditional" and "crypto"
2. Regulate broadly and make full use of existing laws
3. Take advantage of the blockchain to disrupt organised crime
4. Raise crypto literacy through capacity building and clear communication
5. Increase public-private cooperation



As the use of crypto assets expands into practically every country and sector, so does its abuse to commit new forms of crime and launder criminal proceeds. Yet with the right tools, capacity and cooperation, the unique characteristics of blockchain-based technologies offer an unprecedented opportunity to investigate organised crime and money laundering networks and to recover stolen funds.

These recommendations follow the 6th Global Conference on Criminal Finances and Cryptocurrencies on 1–2 September 2022. The conference was hosted by Europol at its headquarters in The Hague, the Netherlands, with the support of the Basel Institute on Governance through the joint Working Group on Criminal Finances and Cryptocurrencies.

The Recommendations are intended to highlight broad approaches and best practices. They are designed to help public and private actors stay one step ahead of those seeking to abuse crypto assets (also known as virtual assets) and services to make, hide and launder illicit money.

1. Break down silos between "traditional" and "crypto"

The separation between "traditional" and "crypto" organised crime and money laundering is increasingly unhelpful. Specialised crypto expertise remains essential for both law enforcement and AML compliance teams in the private sector. This is in part due to the highly technical nature and fast evolution of blockchain-based technologies. But recent trends in criminal activity and the use of cryptocurrencies to launder money show how the two worlds are merging. Efforts to combat such crimes in both the public and private sectors need to do the same.

As cryptocurrencies and other crypto assets start to merge with mainstream financial markets and services, so too do organised crime and money laundering involving crypto assets. The line between physical and virtual is blurring fast.

- **Crypto assets are increasingly involved in traditional money laundering typologies** like trade-based money laundering, and linked to a broad range of crimes from drug smuggling to sports match fixingor fraud.
- **Professional money launderers are taking advantage of the ever-growing options provided by crypto assets** to launder proceeds from both online and offline crimes.
- **Criminal synergies are growing between the physical and virtual spaces:** perpetrators of online scams use money laundering services provided by traditional criminal networks, for example.

WH Crypto Currently Webinar Series: The SEC's Oversight of Crypto on December 14; *Join us for the third session in our webinar series addressing the focus of various government agencies on crypto.*

During this program, WilmerHale attorneys Tiffany J. Smith, Michael Mugmon, Matthew Beville and Joseph Toner will discuss the SEC's (SEC) oversight of crypto and how this could impact market participants.

- The panellists will discuss:
- the SEC's jurisdiction over crypto assets and intermediaries;
- the SEC's focus on "crypto" investment companies;
- recent SEC crypto enforcement actions; and
- the actions the SEC may take to further regulate the crypto ecosystem and its participants.
- During the webinar, participants will have the opportunity to contribute questions online. CLE credit will be provided.
- About Wilmer Hale's Crypto Currently Webinar Series
- This webinar is part of a series presented by our Blockchain and Cryptocurrency Working Group, a cross-disciplinary group of lawyers that helps dynamic companies stay agile and achieve their goals while mitigating risk and guides established financial institutions as they explore the potential of blockchain and crypto. Consistent with President Biden's Executive Order on Ensuring Responsible Development of Digital Assets, which calls for a "whole-of-government strategy" for crypto, these webinars will address the approaches taken by various government agencies to regulate crypto, including the Department of Justice, SEC, Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Department of the Treasury, Consumer Financial Protection Bureau, Federal Trade Commission and Internal Revenue Service.
- Webinar Details; Wednesday, December 14, 2022 | 1–2 p.m. ET; RSVP

SFC issues quarterly report; The Securities and Futures Commission (SFC) today published its latest Quarterly Report which summarises key developments from July to September 2022. During the quarter, the SFC welcomed the Central Government's support initiatives (Note 1) announced by Mr Fang Xinghai, Vice-Chairman of the China Securities Regulatory Commission (CSRC), to enhance Hong Kong's status as an international financial centre, offshore renminbi centre and risk management centre. The SFC also published its Agenda for Green and Sustainable Finance, setting out its next steps to support Hong Kong's role as a regional sustainable finance centre. /jlne.ws/3P75oPS

Deutsche, Rabobank Rigged Bond Trades For 11 Years, EU Says; Deutsche Bank and Rabobank traders broke European Union competition rules over 11 years by colluding on pricing when trading Euro-denominated government bonds, the bloc's antitrust regulator said in a preliminary report published on Tuesday. Read full article »

MAR/MAD & Financial Crime

German regulator rebukes Standard Chartered over European operations; *In October, it criticised the bank after a special audit uncovered that its internal organisation did not meet legal requirements.*

- Last month, it threatened to fine Deutsche Bank if it missed deadlines for fixing its money-laundering controls, the latest escalation of a four-year tussle between lender and regulator.
- Standard Chartered Bank AG last year received an unqualified audit from EY.

High Court tosses out case by LME traders for disclosures on nickel debacle; Hedge fund AQR and other market participants were seeking more information on exchange's decision to cancel trades; A London court has dismissed a case by hedge fund AQR Capital Management and other market participants against the London Metal Exchange, relieving the bourse from a request to disclose further information about its March decision to cancel billions dollars' worth of nickel trades. /jlne.ws/3hLaq8L

- Brokerage Loses Appeal Over $283M Metal Fraud Pay-out; The Court of Appeal has dismissed efforts by a brokerage house to cut a $284 million pay out to ED&F Man over fake receipts for the purchase of nickel, rejecting arguments that the commodities trader had not lost out. Read full article »

Financial crime investigations in the UK: *looking ahead to 2023; As we enter a recession against the backdrop of ongoing geopolitical instability, we expect to see significant financial crime enforcement and investigations in 2023, including a focus on emerging areas such as ESG, cryptocurrencies, and significant developments in financial sanctions.*

We predict that developments in 2023 will include:

1. *a renewed focus on fraud, including further steps towards the introduction of a new offence of failure to prevent fraud and more broadly moves towards an effective outsourcing to the private sector of fraud prevention and reimbursement.*
2. *increased information sharing between regulated firms, and with the NCA and SFO.*
3. *greater enforcement in relation to money laundering systems and controls.*
4. *greater regulatory scrutiny in relation to ESG, regarding both greenwashing and risks such as modern slavery in the supply chain.*
5. *further cooperation between OFAC and OFSI in relation to the coordination of sanctions.*

1. Fraud

- We expect to see continued political pressure to tackle fraud translating into concrete steps in terms of additional "failure to prevent" fraud legislation, stricter requirements on payment processors to reimburse consumer victims of fraud, and the SFO and other authorities taking action to tackle fraud, including in growing areas such as greenwashing, crypto-currencies and NFTs.
- *Failure to prevent offence*
- Earlier this year, the Law Commission published its long-awaited proposals on reforming corporate criminal liability in England and Wales. Whilst the options paper rejected the much discussed "failure to prevent economic crime" offence, it outlined ten "options" for strengthening corporate liability, which notably includes the expansion of the failure to prevent model to fraud, with a company's liability extending to third parties such as agents but with a defence of reasonable procedures. We can expect 2023 to bring further developments in relation to the introduction of such an offence, with the government being urged to take steps to protect consumers from fraud, in particular in relation to the growth of online scams.
- *Reimbursement by payment services providers*
- The Payment Services Regulator's (the **PSR**) recent Consultation Paper (CP22/4) proposed mandatory reimbursement for consumer and charity victims of authorised push payment (**APP**) fraud in all but 'exceptional' cases. The proposal would require reimbursement for all cases above a minimum threshold of £100 and would provide a 48-hour window for the payment service provider (**PSP**) to reimburse the victim unless further investigation is required. A small number of PSPs have already signed up to the voluntary contingent reimbursement model code. Making reimbursement compulsory will likely have a significant impact on smaller PSPs and new market players and may have a negative impact on competition in this area. The PSR has recognised this risk but sees the increased incentive to allocate resources to fraud prevention as a benefit to the market as a whole. We may see similar codes and regulations, requiring businesses to take on the burden of reimbursing consumers who are victim to fraud, expanding into other areas, such as telecoms and online service providers in the coming years.
- Increased resources are needed to tackle fraud but there are real challenges in the context of broader government cost-cutting as the recession continues to bite. A new Public Sector Fraud Authority aimed at protecting public funds was established in August 2022 but with only £25 million of funding compared to estimated fraud arising out of Covid relief schemes of £16bn. We anticipate that we will continue to see some of the costs of tackling fraud effectively outsourced to the private sector.

2. Information-sharing

- We predict increased information-sharing between regulated entities and to the UK National Crime Agency (**NCA**) and SFO as well as between different jurisdictions (for example as a result of the Data Access Agreement (the **DAA**) between the UK and the US which came into force in October 2022.
- *Economic Crime and Corporate Transparency Bill*
- The Economic Crime and Corporate Transparency Bill (the **Bill**) entered the first stage of committee review in late November and we expect to see it move to the House of Lords next year following the final reading in the House of Commons. There are three key proposals:
    - **Information sharing between regulated firms:** the Bill proposes to allow regulated firms to voluntarily share information more easily for the purpose of preventing, investigating, or detecting economic crime. The Bill proposes that one firm (X) in the regulated sector will be able to share customer information with another firm (Y) in the regulated sector where Y has requested customer information and X has taken safeguarding action in relation to that customer as a result of economic crime concerns. Any such disclosure

will not be a breach of customer confidentiality provided the disclosure will assist Y with customer due diligence / identity verification or deciding whether to take its own safeguarding action. Information sharing via this route will remain subject to the firm's obligations under the FCA's Principles for Businesses.

- **NCA information requests:** Currently, the NCA is only able to use Information Orders (**IO**s) to request information once a regulated firm has submitted a suspicious activity report (**SAR**). The Bill will allow the NCA to request information via an IO before a SAR has been submitted. Firms can therefore expect to see an increase in the number of IOs they are required to respond to and an increase in proactive intelligence gathering, and sharing, by the NCA.
- **SFO's pre-investigation powers:** The Bill proposes to allowing the SFO to compel disclosure before an investigation has formally begun in all cases of fraud, bribery and corruption rather than, as present only in international bribery and corruption cases (see our article here and recent blog post here). This would significantly improve the SFO's information-gathering abilities in cases not involving international bribery and expedite the early stages of investigations. The use of any new powers would likely result in an increase in information requests to companies, as well as an increase in fraud or domestic bribery and corruption related investigations.

- *Data access agreement*
- Information sharing is also set to increase as a result of the DAA, which allows UK law enforcement authorities to directly request data production from US based telecoms providers (and vice versa) rather than requiring routing a request through government authorities under the relatively slow MLAT process (see here and here for more). We expect this new procedure, which will allow information requests to be dealt with on a much quicker basis, to result in telecoms providers (which includes social media platforms and instant messaging services) being met with a large increase in the number of requests they are required to deal with.

3. Money laundering developments

- We expect to see continued active enforcement by the FCA in relation to money laundering, following major enforcement action in 2021 and 2022. In particular, we expect to see the FCA focus on reporting lines and resourcing of compliance teams, on effective ongoing monitoring of customer activity compared to their stated business purpose, and increasingly on digital assets such as crypto-currencies and NFTs.
- *Legalisation of cannabis*
- As more countries move to legalise cannabis, we also expect to see continued money-laundering challenges for firms and corporates investing in or transacting with cannabis companies operating legally overseas. Germany is the latest country to announce a plan to legalise recreational cannabis among adults.
- Despite the legalisation of cannabis in Canada, the Netherlands and various states in the US, there is still little guidance for UK businesses with regard to cannabis-related activity (see our previous overview here. UK companies and individuals could risk committing offences under the Proceeds of Crime Act 2002 (**POCA**) by entering into commercial transactions with cannabis businesses or, in the case of regulated entities, failing to report suspicions of money laundering related to dealings with cannabis-related businesses (see our more detailed article here).
- The Bill (see above) also proposes reforms to the POCA regime for regulated firms. Of particular interest is the proposal to allow firms to pay away money or property from a customer's account where they know or suspect that part of the funds or property is criminal, if the amount in the account exceeds the amount to which the knowledge or suspicion is held (i.e., ringfencing). This would allow regulated firms to allow customers to continue to transact where money laundering is suspected, as long as the amount over which there is suspicion is effectively retained. Whilst we expect such a change to be largely welcomed by firms who often find themselves in a position

of conflict between their POCA and their contractual obligations, as well as the requirement not to tip off customers that have been reported for potential money laundering, there are likely to be practical difficulties for firms in implementing these changes.

4. ESG

- We expect to see continued attention on greenwashing, both from government authorities and civil litigants. Many companies have been keen to emphasize their green credentials (and certain companies are now required to make disclosures) and the regulatory requirements and risks in this area are ever-increasing. We expect to see:
- CMA investigations in relation to consumer-facing greenwashing concerns beyond the current focus on the fashion sector.
- a rise in SFO investigations on fraudulent schemes based on green investment opportunities.
- continued focus from the FCA (and in due course enforcement action) on greenwashing following their consultation paper on Sustainability Disclosure Requirements and investment labelling.
- section 90A class actions brought on behalf of institutional and other investors, in the same vein as claims which have been brought in relation to non-disclosure of financial crime issues.
- In terms of business and human rights (BHR) issues, the Modern Slavery Act 2015 (MSA) is set to be amended. The amendments were included in last year's Queen's Speech, and whilst there has been a great deal of political change in the intervening months, it appears the current government plans to continue with the legislative agenda of the Johnson government. The amendments to the MSA will include changes to the requirement to publish a slavery and human trafficking statement, including the introduction of mandatory reporting criteria and fines for compliance. Amongst other things, businesses will be required to disclose key modern slavery risks in their operations and supply chains.
- This strengthening of the MSA's reporting requirements comes at a time of significant change globally. Key legislative developments in 2023 will include the German Supply Chains Act coming into force on 1 January 2023, and the introduction of modern slavery legislation in Canada, likely in early 2023. Next year will also see key negotiations progress in the EU legislature around the proposed EU Corporate Sustainability Due Diligence Directive, which is likely to impact many UK companies.

5. Sanctions: increased cooperation between OFAC and OFSI

- On 17 October 2022 OFSI and OFAC announced their commitment to enhancing a close working relationship. In particular, OFAC and OFSI are looking to develop shared approaches to address priorities like cyber threats and the misuse of virtual assets, improving information sharing, and ensuring that sanctions do not hinder humanitarian trade and assistance efforts. The cooperation will include designing, communicating, and implementing new sanctions in close coordination with each other as well as with other key allies and partners.
- A consequence of the increased cooperation may be a more coordinated approach between the US and UK in alignment of financial sanctions, which could ease the burden of compliance on financial institutions and corporates.

DOJ, SEC, and CFTC Charge FTX and Alameda Executives with Fraud; *The DOJ, the SEC and the CFTC charged the Alameda Research CEO and the FTX Chief Technology Officer in schemes to defraud FTX's customers and investors.*

- In the criminal action, filed in the Southern District of New York, the officers were charged with, and simultaneously plead guilty to, wire fraud and conspiracy to commit other crimes including

(i) wire fraud, (ii) commodities and securities fraud and (iii) money laundering. According to the DOJ, both officers are cooperating with the investigation. The DOJ also announced the extradition of Samuel Bankman-Fried, the founder of FTX, to the United States from the Bahamas for related crimes (*see* previous coverage).

- The SEC filed a civil Complaint in the Southern District of New York charging the officers with fraud, including by manipulating the price of FTX's token, FTT, by purchasing large quantities on the open market which were also used as collateral for FTX loans of customer assets to Alameda. According to the SEC, the manipulated price caused the value of collateral on Alameda's balance sheet to be overstated, misleading investors about FTX's risk exposure. Further, the SEC alleged that the officers created software code that allowed Alameda to divert unlimited FTX customer funds that were then used for Alameda's trading activity. The SEC charged both defendants with violating Securities Act Section 17(a) ("Fraudulent interstate transactions"), Exchange Act Section 10(b) ("Regulation of the Use of manipulative and deceptive devices") and Exchange Act Rule 10b-5 ("Employment of manipulative and deceptive devices").
- Separately, the CFTC filed an amended civil Complaint, also in the Southern District of New York, alleging false statements and misuse of customer assets. The CFTC charged the officers with violating CEA Section 6(c)(1) ("Prohibition regarding manipulation and false information") and CFTC Rules Part 180.1(a)(1)-(3) ("Prohibition on the employment, or attempted employment, of manipulative and deceptive devices").
- SEC Complaint: Caroline Ellison and Zixiao "Gary" Wang
- CFTC Complaint: Samuel Bankman-Fried, FTX Trading Ltd. d/b/a FTX.com, Alameda Research LLC, Caroline Ellison, and Zixiao "Gary" Wang
- DOJ Press Release: United States Attorney Announces Extradition of FTX Founder Samuel Bankman-Fried to The United States and Guilty Pleas of Former CEO Of Alameda Research and Former Chief Technology Officer Of FTX
- SEC Press Release: SEC Charges Caroline Ellison and Gary Wang with Defrauding Investors in Crypto Asset Trading Platform FTX
- CFTC Press Release: CFTC Charges Alameda CEO and Alameda and FTX Co-Founder with Fraud in Action Against Sam Bankman-Fried and his Companies

Danske culpa: Denmark's largest bank has pleaded guilty to defrauding US banks and agreed to pay a $2bn penalty to resolve one of the biggest money-laundering scandals in recent years. Danske Bank will also pay $672mn to Danish authorities.

Danske Bank To Pay $2B For Lax Money Laundering Controls; Danish lender Danske Bank on Tuesday pled guilty in New York federal court and agreed to pay over $2 billion to resolve claims that it deceived U.S. banks about its anti-money laundering controls for high-risk customers in Estonia. Read full article »

Danske's money-laundering slap; *Bespoke justice. The U.S. Department of Justice is harsh but realistic. That's one takeaway from the $2 billion slap it delivered late on Tuesday to Denmark's Danske Bank, which pleaded guilty to conspiracy to commit bank fraud. It's a chunky penalty but could arguably have been higher.*

- Danske's Estonian unit processed $160 billion of potentially illicit payments through U.S. banks on behalf of foreign customers, including Russians, the DOJ said. BNP Paribas in 2014, by contrast, agreed to pay roughly $9 billion for moving $8.8 billion for sanctioned clients. In Danske's case, the bill is roughly 1% of suspicious flows, whereas BNP's was around 100% of illicit payments.
- It's possible that the DOJ thinks 99% of the questionable Danske payments were legitimate, or that BNP got an especially raw deal because of the elaborate lengths the DOJ said it went to in deceiving U.S. authorities. But HSBC's 2012 hit was also fairly close to the amount of Mexican

drug money the government reckoned it moved, suggesting again that Danske's thwack is the outlier relative to the scale of its misconduct.

- The best explanation, therefore, is that the DOJ sizes its penalties to fit the perpetrator rather than the offence. Danske will be able to keep using U.S. correspondent banks for dollar payments, according to a person familiar with the matter. Over time, its money-laundering slap will only leave a faint mark.

HMT; Counter Terrorism sanctions - Review; *The Government has today published a report on the operation of the asset freeze provisions as set out in the Counter Terrorism (Sanctions) (EU Exit) Regulations 2019 (CT Sanctions 2019)*

- The report is by Jonathan Hall KC in his capacity as Section 31 reviewer as detailed in the Sanctions and Anti-Money Laundering Act, 2018 (SAMLA). It is the first independent review of any counter terrorism sanctions regime commissioned by HM Treasury under SAMLA.

OFSI issues Trade 5 General Licence; *OFSI has issued General Licence INT/2022/2448692 under Regulation 64 of the Russia (Sanctions) (EU Exit) Regulations 2019.*

- General Licence INT/2022/2448692 allows for a 7 day wind down period in respect to financial prohibitions in Regulations 16, 17 and 18B of the Russia Regulations.
- The General Licence takes effect from 00:01 on 16 December 2022 and expires at 23:59 on 22 December 2022.
- Any Persons intending to use the General Licence should consult the copy of the Licence and refer to OFSI's General Guidance.

Anti-money laundering: Council agrees its position on a strengthened rulebook; *the Council agreed its position on a revised rulebook in order to enlarge the scope of the existing regulatory framework and to close existing loopholes. On 7 December 2022, the European Council announced that it has agreed its position on an anti-money laundering (**AML**) regulation and a new directive (**AMLD6**). The Council's press release provides that:*

- The new anti-money laundering and combatting the financing of terrorism (**AML/CFT**) rules will be extended to the entire crypto sector, obliging all crypto-asset service providers (**CASPs**) to conduct due diligence on their customers. The Council demands CASPs to apply customer due diligence measures when carrying out transactions amounting to 1,000 euros or more, and adds measures to mitigate risks in relation to transactions with self-hosted wallets. The Council also introduces specific enhanced due diligence measures for cross-border correspondent relationships for CASPs.

- Third-party financing intermediaries, persons trading in precious metals, precious stones and cultural goods, will also be subject to the rules, as will jewellers, horologists and goldsmiths. Furthermore, an EU-wide maximum limit of 10,000 euros is set for cash payments; Member States will have the flexibility to impose a lower maximum limit if they wish.

- Third countries listed by the Financial Action Task Force (**FATF**) will also be listed by the EU. There will be two EU lists, a 'black list' and a 'grey' list, reflecting the FATF listings. In addition, the Council has decided to make beneficial ownership rules more transparent and to further harmonise them. Related rules applicable to multi-layered ownership and control structures are also clarified.

- The rules also set forth that, member states should ensure that any natural or legal person that can demonstrate a legitimate interest has access to information held in beneficial ownership registers, and such persons should include those journalists and civil society organisations that are connected with the prevention and combatting of money laundering and terrorist financing.

- The package of rules foresees the clarification of outsourcing provisions, the clarification of supervisory powers, a minimum set of information to which all financial intelligence units should have access, as well as improved cooperation among authorities.
- The Council is now ready to begin trilogue negotiations with the European Parliament in order to agree on a final version of the text.

Economic Crime and Corporate Transparency Bill – an attempt to reduce economic and financial crime;
On Friday 25 November 2022, the Economic Crime and Corporate Transparency Bill (the **Bill***) entered Parliament. The Committee Stage (Commons) was brought to a conclusion on Tuesday 29 November 2022. The Bill, as amended by the Public Bill Committee, was published on 30 November 2022. The Bill proposes various reforms designed to reduce economic and financial crime in the UK, primarily by:*

1. Proposing changes to the criminal law enforcement regime to strengthen the UK's broader response to economic crime by increasing information sharing between regulators and authorities and expanding various law enforcement powers; and
2. Introducing additional corporate measures to increase transparency, primarily by improving the reliability of the data on record at Companies House.

- The Bill aims to achieve these objectives through a number of reforms, including:
- *Proposed changes to the criminal law enforcement regime*
- Information sharing between regulated firms; The proposed amendments are designed to encourage voluntary information sharing between firms, with the idea that this will assist in preventing or detecting economic crime, and in any subsequent investigations.
- The Bill proposes that firms in the regulated sector will be able to share customer information with other firms in the regulated sector where a firm has requested customer information and the firm with that information has taken safeguarding action in relation to that customer as a result of economic crime concerns. The proposal is that any such disclosure would not risk civil liability for a breach of customer confidentiality provided that the disclosure of information would assist the firm receiving the information with customer due diligence / identity verification or deciding whether to take safeguarding action. However, data protection restrictions on the information would continue to apply.
- Expanding the SFO's powers; Currently, the SFO can only use its information gathering powers before a formal investigation has been opened in cases of international bribery. It cannot, for example, require information be provided in fraud-related investigations without opening a formal investigation. The Bill proposes to expand these powers to allow the SFO to seek information in all cases, without opening a formal investigation. This could significantly increase the number of information requests made by the SFO – and potentially the number of investigations then opened.
- Information Orders; Currently, the National Crime Agency (NCA) is only able to make use of Information Orders on firms once the firm has submitted a suspicious activity report (SAR). The Bill will allow the NCA to make an Information Order before a SAR has been submitted, enabling proactive intelligence gathering – and likely sharing – by the NCA.
- Additional reforms are also proposed designed to give enforcement agencies more expansive powers to seize cryptoassets where there is a suspicion that these may be the proceeds of crime.
- *Proposed corporate registration reforms:*

- Companies House; Companies House has been criticised as a 'gateway' for economic crime: whilst it is a comprehensive database it lacks a number of checks which may go some way to preventing abuse by criminals. The proposed reforms would expand the powers of Companies House to query and reject filings, introduce additional verification processes and require additional information / filings. Whilst this will likely create an additional administrative burden on companies, when coupled with the proposals outlined above, it is expected that Companies House will work with law enforcement bodies through increased sharing of information in order to assist in the effort to reduce economic crime.
- Next steps; The Committee Stage was brought to a close on Tuesday 29 November. The date of the next stage, the Report Stage, is yet to be announced, as there is no set period between the end of Committee Stage and the start of the Report Stage. The Report Stage is usually followed immediately by debate on the Bill's third reading. Subject to Parliamentary approval, Companies House has indicated that it expects the Bill to receive Royal Assent in Spring of 2023.
- Whilst, if enacted, the Bill would strengthen the UK's economic crime protections there are concerns that further financial support is needed for regulators in order to fund these reforms.
- The Bill follows on from the Economic Crime (Transparency and Enforcement) Act passed earlier this year.

EPC yearly update on payment threats and fraud trends; *On 8 December 2022, the European Payments Council (EPC) published its annual report on payment threats and fraud trends.*

- The report provides an overview of the most important threats and other "fraud enablers" in the payments landscape, including engineering and phishing, malware, Advanced Persistent Threats, Distributed Denial of Service ((D)DoS), botnets and monetisation channels. For each threat the report provides an analysis of the impact and context and suggests controls and mitigations.

- Key points in the report include:

1. Social engineering attacks and phishing attempts are still increasing, and they remain instrumental often in combination with malware, with a shift from consumers, retailers, SMEs to company executives, employees (through "CEO fraud"), payment service providers and payment infrastructures and more frequently leading to authorised push payments fraud.
2. Awareness campaigns are still very important countermeasures against social engineering, and these campaigns should be coordinated, involving also public administrations. They should target individual and corporate customers, as well as employees.
3. Malware – existing in various forms – remains a major threat, in particular ransomware has been on the rise during the past year, requiring new mitigating measures. Measures against malware include proper maintenance of own devices by the customers, including mobile devices (regularly update the operating system, use only needed software, install and activate anti-virus and anti-malware tools, enable secure access, etc). Service providers' customer relations departments should inform their customers about these measures, and IT departments should implement adequate protection and control functions in their applications.
4. One of the most sophisticated and lucrative types of payment fraud now and for the future seems to be Advanced Persistent Threat. It must be considered as a potential high risk not only for payment infrastructures but also for all network related payment ecosystems.
5. The number of (D)DoS attacks has increased and are still frequently targeting the financial sector. There is a continuation of botnets and because of the high volume of infected consumer devices (e.g., PCs, mobile devices, etc.) severe threats remain. Extortion or ransom DDoS attacks started to become a new threat.

The Minister entrusted me with the responsibility of piloting the French bid to host AMLA in Paris. AMLA is the future European authority in charge of AML-CFT which must allow - finally - to have an effective and harmonised European approach. It will cover all sectors of activity and is expected to have 40 EU financial institutions in direct supervision of the AML-CFT. This is a very stimulating project because a location in Paris, close to the global standardizer, the FATF, would bring AMLA credibility and a dimension commensurate with our ambitions in this area!

Regulatory Outlook and Diary

Q4 2022 / Q1 2023	Hong Kong	Consultation of Hong Kong's reporting rules on adoption of UPI and CDE.
January 2023	Australia	Expected effective date of APRA banking standards relating to the overall approach to capital requirements, SA-CCR and the internal ratings-based approach to credit risk.
2023	Australia	Expected finalization of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks
H1 2023	Australia	Expected third consultation paper on over-the-counter (OTC) derivatives reporting and technical guidance by ASIC. Expected publication of final OTC derivatives reporting rules by ASIC
H1 2023	Singapore	Expected publication of the updated MAS reporting regime; delay from originally indicative Q2 2022 timeline.
January 1, 2023	Global	FRTB: Banks are required to report under the new market risk standards by January 1, 2023.
January 1, 2023	Global	Leverage Ratio: Banks are required to calculate leverage using the revised exposure definitions, including the G-SIB buffer from January 2023
January 1, 2023	Global	CVA: Banks are required to implement the revised CVA framework from January 2023.
January 1, 2023	EU	New application date for the leverage ratio surcharge for G-SIIs in the EU as agreed in the CRR quick fix legislation finalised in June 2020.
January 1, 2023	EU	Application of the Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation including disclosures for use of ESG-linked derivatives (except from first detailed reporting on the principal adverse impact indicators due by June 30, 2023).
January 1, 2023	EU	From 2023, the disclosure requirement under Regulation EU 2020/852 on the establishment of a framework to facilitate sustainable investment ('EU Taxonomy') with respect to the environmental objectives 'the sustainable use and protection of water and marine resources', 'the transition to a circular economy', 'pollution prevention and control' and 'the protection and restoration of biodiversity and ecosystem' (Article 9 (c) -(f)) have to be applied
January 1, 2023	US	Regulatory initial margin requirements apply under US prudential regulations for covered swap entities with material swaps exposure

		(average aggregate daily notional amount exceeding USD 8 billion) based on the calculation period which ended August 30, 2022.
January 1, 2023	US	CFTC Position Limits second compliance date for economically equivalent swaps / risk management exemption.
January 1, 2023	Australia	Basel III: Expected implementation of revised leverage ratio requirements, including revised treatment for client clearing.
January 1, 2023	Singapore	Basel III: Expected implementation of FRTB framework for supervisory reporting purposes.
January 1, 2023	Singapore	Basel III: Expected implementation of revised credit risk, operational risk, output floor and leverage ratio frameworks.
January 1, 2023	Malaysia	Discontinuation of publication of 2-month and 12-month KLIBOR by BNM.
January 1, 2023	Korea	Basel III: Expected implementation of FRTB and CVA frameworks.
February 12, 2023	EU	CCP R&R (Article 37 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum elements that should be included in a business reorganisation plan. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph.
February 12, 2023	EU	CCP R&R (Article 38 (4)): ESMA shall develop draft regulatory technical standards to specify further the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority.
February 12, 2023	South Africa	Variation margin requirements commence for any provider belonging to a group with aggregate month-end gross notional amount of over-the-counter derivatives for March, April and May of 2020 exceeding R30 trillion
March 01, 2023	US EU Australia Canada Hong Kong Korea Switzerland Singapore Japan	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds the lowest threshold for application or revocation of initial margin requirements as of the next relevant compliance date of either September 1, 2023 or January 1, 2024 (EU/UK/CHF/US Prudential). In the US, this calculation period only applies under CFTC regulations. For RSA, Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds either the ZAR 15 trillion or ZAR 8 trillion threshold for initial margin requirements as of September 1, 2023. (per amended rule pending finalization).

	South Africa	
March 31, 2023	Japan	Basel III: Implementation of leverage buffer for G-SIBs (certain transitional arrangement will apply until March 31, 2024, and some change will become effective from April 1, 2024)
April 24, 2023	UK	Removal of clearing obligation for swaps referencing SOFR.
May 1, 2023	India	Variation margin requirements apply to domestic covered entities exceeding the AANA threshold of INR 250 billion (approximately USD 3.2 billion)
June 2023	UK	Deadline for ending reliance on US dollar LIBOR.
June 1, 2023	US	Three-month calculation period begins under US prudential regulations to determine whether the material swaps exposure, or daily average aggregate notional amount, of swaps, security-based swaps, FX swaps and FX forwards for an entity and its affiliates that trade with a prudentially regulated swap dealer exceeds $8 billion for the application of initial margin requirements as of January 1, 2024
June 15, 2023	EU	The European Commission shall adopt a Delegated Acts (DA) to designate exempted FX spot rates from the scope of the EU BMR.
June 15, 2023	EU	The European Commission (EC) shall submit a report to the European Parliament and to the Council on the scope of the BMR, in particular with respect to the use of third country benchmarks. If appropriate, the EC shall accompany the report with a legislative proposal.
June 18, 2023	UK	End of the temporary exemption for pension scheme arrangements from clearing and margining under UK EMIR.
June 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	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 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.
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	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.
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 31, 2024	Japan	Basel III: Implementation of revised credit risk, CVA, market risk (FRTB) for international active banks and domestic banks using IMM.
April 01, 2024	Japan	Go-live of revised JFSA reporting rules based on the CPMI-IOSCO Technical Guidance. JFSA finalized the Guidelines of the revised reporting rules on December 9, 2022.
April 29, 2024	EU	Go-live of EMIR Refit reporting rules
June 28, 2024	EU	As part of the review clause inserted in CRR II, the European Commission taking into account the reports by the European Banking Authority is expected to review the treatment of repos and reverse repos as well as securities hedging transactions through a legislative proposal.

June 28, 2024	EU	As part of CRR II, the European Banking Authority is to monitor and report to the European Commission on Required Stable Funding (RSF) requirements for derivatives (including margin treatment and the 5% gross-derivative liabilities add-on).
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	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.
Q4 2024	Singapore	Expected go-live of the updated MAS reporting regime.
October 1, 2024	US	Expiration of temporary CFTC relief regarding capital and financial reporting for certain non-US nonbank swap dealers (See CFTC Staff Letter No. 22-10 and CFTC Staff Letter No. 21-20) *relief would also

		expire upon the Commission's issuance of comparability determinations for the jurisdictions in question.
October 21, 2024	Australia	Expected implementation of ASIC Derivative Transaction Rules (Reporting) 2024.
December 31, 2024	UK	The FCA direction under the temporary transitional powers allowing UK firms to execute certain trades with EU clients on EU venues (even though there is no UK equivalence decision in respect of those venues) expires at the end of 2024
January 1, 2025	EU	Expected implementation of FRTB and CVA risk under the CRR III proposal.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
March 1, 2025	South Africa	Three-month calculation period begins to determine whether the average aggregate notional amount of derivatives for an entity and its affiliates exceeds ZAR 100 billion threshold for initial margin requirements as of September 1, 2025 (per amended rule pending finalization)
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
Q4 2024/Q1 2025	EU	Earliest expected start date for the Internal Model Approach (IM) reporting requirements under the CRR II market risk standard.
January 1, 2025	Australia	Basel III: Expected implementation of APRA FRTB and CVA risk (APS 116 and APS 180) frameworks.
January 1, 2025	UK	Expected implementation of the Basel 3.1 standards
March 31, 2025	Japan	Basel III: Expected implementation of revised credit risk, CVA, market risk (FRTB) for domestic banks not using IMM.
June 30, 2025	EU	The temporary recognition of UK CCPs (LME, ICE and LCH) under the EMIR 2.2 framework expires. Unless further addressed, following this date, EU firms could not have access to the UK CCPs and would need to relocate their clearing activities to EU CCPs. Under EMIR 2.2, ESMA has also performed its tiering assessment, with LME becoming a Tier 1 CCP whereas ICE and LCH are considered Tier 2 CCPs.
September 1, 2025	South Africa	Initial margin requirements apply to a provider with aggregate month-end average notional amount exceeding ZAR 100 billion (per amended rule pending finalization).
November 15, 2025	EU	The CRR 2 IMA reporting requirements for market risk will be applicable from November 15, 2025, in the EU. As things stand currently in the CRR

		3 political process, these IMA reporting requirements may become obsolete as we are still looking at a January 1, 2025, start date for the capitalization of market risk in the EU. However, IMA Reporting could still become live if the European Commission decides to enact the two-year delay mentioned under the CRR3 Article 461a FRTB delegated act. As this may still evolve in the CRR 3 negotiations, ISDA will keep monitoring developments in this area.
December 1, 2025	US	Expiry of extension of relief concerning swap reporting requirements of Part 45 and 46 of the CFTC's regulations, applicable to certain non-US swap dealers (SD) and major swap participants (MSP) established in Australia, Canada, the European Union, Japan, Switzerland and the United Kingdom, that are not part of an affiliated group in which the ultimate parent entity is a US SD, US MSP, US bank, US financial holding company or US bank holding company. See CFTC Staff Letters No. 20-37 and No. 22-14.
February 12, 2026	EU	CCP R&R (Article 96): The European Commission (EC) shall review the implementation of this Regulation and shall assess at least the following: • the appropriateness and sufficiency of financial resources available to the resolution authority to cover losses arising from a non-default event • the amount of own resources of the CCP to be used in recovery and in resolution and the means for its use • whether the resolution tools available to the resolution authority are adequate. Where appropriate, that report shall be accompanied by proposals for revision of this Regulation.
June 2026	EU	Commodity dealers as defined under CCR, and which have been licensed as investment firms under MiFID 2/ MIFIR have to comply with real capital/large exposures/liquidity regime under Investment Firms Regulation (IFR) provisions on liquidity and IFR disclosure provisions.
August 12, 2027	EU	CCP R&R (Article 96): The Commission shall review this Regulation and its implementation and shall assess the effectiveness of the governance arrangements for the recovery and resolution of CCPs in the Union and submit a report thereon to the European Parliament and to the Council, accompanied where appropriate by proposals for revision of this Regulation.

LiBOR Transition

Table 1: timeline of events relating to derivative products referencing USD benchmarks	
01 May 2022	• CFTC introduces US swap clearing requirement on OIS referencing SOFR
31 October 2022	• Bank introduces DCO on OIS referencing SOFR
24 April 2023	• CCPs to commence removal of contracts referencing USD LIBOR as eligible for clearing • Bank removes contracts referencing USD LIBOR from DCO • Proposal: FCA removes contracts referencing USD LIBOR from DTO
01 July 2023	• Most widely used USD LIBOR benchmarks to cease publishing • CFTC removes contracts referencing USD LIBOR from US swap clearing requirement

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

The Federal Reserve Board ("FRB") adopted a final rule, Regulation ZZ, to implement the LIBOR Act and establish benchmark replacements for contracts that reference certain tenors of U.S. dollar LIBOR. *Among other things, the final rule addresses the following:*

- *Scope and Applicability*. The final rule applies only to existing LIBOR contracts governed by federal or state law that either (i) do not contain fallback provisions; (ii) contain fallback provisions that do not identify a specific benchmark replacement or a determining person; or (iii) where a determining person is specified, but has not made a selection by the earlier of the replacement date or the contractual deadline.
- *Clarifications Regarding "Determining Person"*. The final rule clarifies and provides additional explanation relating to the term "determining person." The Fed said that the term is not limited to persons with *current* authority, right or obligation to select a benchmark replacement.
- *Synthetic LIBOR.* The FRB said that LIBOR contracts containing fallback provisions that identify a specific benchmark replacement are "outside the scope of the LIBOR Act, even if these fallback provisions lack an express non-representativeness trigger."
- *Benchmark Replacements*. The final rule's benchmark replacements are based on SOFR and incorporate spread adjustments for each specified tenor of LIBOR. The final rule contains, among others, the following benchmark replacements:
  - Derivatives: Fallback Rate (SOFR)
  - Consumer Loans: "simple" SOFR for overnight LIBOR and CME Term SOFR for other tenors, with a linear transition approach for the first year following LIBOR replacement and the standard tenor spread adjustment thereafter;
  - FHFA-Regulated Entity Contracts (other than FHLB home loan advances): "simple" SOFR for overnight LIBOR and 30-day Average SOFR for other tenors, plus the standard tenor spread adjustment
    - FHLB Advances: Fallback Rate (SOFR)
    - FFELP ABS: Specified Average SOFR rates, based on relevant tenor, plus the applicable tenor spread adjustment
  - All Other Transactions: "simple" SOFR for overnight LIBOR and CME Term SOFR for other tenors, plus the standard tenor spread adjustment.
- In addition, the final rule also contains provisions (i) identifying certain benchmark replacement conforming changes; and (ii) codifying certain continuity-of-contract and safe harbor provisions of the LIBOR Act.

- FRB Press Release: FRB adopts final rule that implements Adjustable Interest Rate (LIBOR) Act by identifying benchmark rates based on SOFR (Secured Overnight Financing Rate) that will replace LIBOR in certain financial contracts after June 30, 2023
- Federal Register: FRB Regulation Implementing the Adjustable Interest Rate (LIBOR) Act
- FRB Memo: Final Regulation Implementing the Adjustable Interest Rate (LIBOR) Act

Debt Investors Losing Millions on Libor Switch Start to Fight Back

- Borrowers offer loan amendments not accounting for lower SOFR
- Investors begin to reject proposals amid mounting frustration
- The request from Allied Universal to its lenders last month seemed innocuous and logical enough.
- Value transfer" from the transition from LIBOR to SOFR is starting to bite -- potentially to the benefit of borrowers, and the detriment of lenders. Will standoffs lead to litigation?
- With the deadline rapidly approaching to phase out Libor as the benchmark for trillions of dollars of floating-rate debt, the provider of security guards and janitors wanted to start using a replacement to set the rate on more than $4 billion of loans. Under the terms of its credit agreement, the company didn't even need its debtholders to formally sign off on the plan — it just needed more than half of them to refrain from objecting.

CFTC Staff Letter 22-21; **Letter Type:** No-Action; **Division:** DCR, MPD

- **Regulation Parts:** 1.25, 22.2, 22.3, 30.7; **Tags:** DCO, FCM, SOFR, Investment of Customer Funds; **Issuance Date:** 12/23/2022
- **Description:** No-action letter regarding investments of customer funds by futures commission merchants and derivatives clearing organizations in securities benchmarked to the Secured Overnight Financing Rate.; **See also:** Request Letter **Requester(s):** CME, FIA
- In light of these considerations, MPD hereby extends the expiration of CFTC Staff Letter 21-02 until the earlier of December 31, 2024, or the effective date of any final Commission action addressing the addition of SOFR as a permitted benchmark for investments of customer funds, subject to continued compliance with the conditions of CFTC Staff Letter 21-02. For the same reasons, the Divisions believe that extending the position taken in CFTC Staff Letter 21-02 to DCOs investing customer funds pursuant to Commission regulation 1.25 is appropriate. In this respect, the Divisions believe that the analysis regarding SOFR-benchmarked adjustable-rate securities discussed above supports this position. The Divisions are therefore taking a no-action position with respect to DCOs, subject to the conditions set forth in CFTC Staff Letter 21-02, through the duration of the no-action position as extended pursuant to this letter.
- **CFTC Staff Issues No-Action Letter Regarding Investments of Customer Funds in Securities Benchmarked to SOFR**; Commission's Market Participants Division today announced it is extending CFTC Staff Letter No. 21-02 regarding investments of customer funds by futures commission merchants (FCMs). In issuing the extension in conjunction with the Division of Clearing and Risk, the scope of the letter was expanded to include investments by derivatives clearing organizations (DCOs). /jlne.ws/3WOyXZt
- **Statement of Commissioner Summer K. Mersinger on Extension of Staff No-Action Letter Regarding Investments in Securities with Adjustable Rate of Interest Benchmarked to SOFR**; I support extension of the staff no-action relief in Letter 21-02 regarding investments of customer funds by futures commission merchants in permitted investments that contain an adjustable rate of interest that is benchmarked to the Secured Overnight Financing Rate (also known as

SOFR), and the expansion of that staff no-action relief to derivatives clearing organizations. /jlne.ws/3YQ1VtG

- Statement of Commissioner Kristin N. Johnson on Extension of Staff No-Action Letter Regarding Investments in Securities with Adjustable Rate of Interest Benchmarked to SOFR; Commission regulation 1.25 is a seminal provision governing futures commission merchant ("FCM") and derivatives clearing organization ("DCO") [1] investment of customer funds. The regulation authorizes FCMs and DCOs to investment customer funds in a sensibly limited set of permitted investments consistent with the prudential objectives of preserving customer funds and maintaining liquidity.[2]; /jlne.ws/3PUOk04

LIBOR wind-down: the FCA is consulting on requiring LIBOR's administrator, IBA, to continue to publish the 1-, 3- and 6-month US dollar LIBOR settings under an unrepresentative `synthetic' methodology between 1 July 2023 until end-September 2024. After this, publication would cease permanently. The FCA also announced that it will require IBA to publish the 3-month synthetic sterling LIBOR setting until end-March 2024.

FSB reports on final transition away from LIBOR; *The FSB has published a progress report on the transition from LIBOR and other benchmarks to robust reference rates. The report:*

- o provides an overview of LIBOR transition efforts, covering success to date and remaining transition steps, including anchoring the financial system in overnight risk-free rates (RFRs).
- o provides updates from member jurisdictions on other benchmark transition efforts.
- o presents findings from the FSB's questionnaire on supervisory issues related to LIBOR transition, conducted in June 2022; and
- o sets out the FSB's conclusions and next steps.

- The report notes that while significant progress has been made, especially among FSB jurisdictions where exposure to LIBOR is the highest, there may be some residual risk arising from relatively low awareness of transition among users of USD LIBOR in jurisdictions where LIBOR exposure is low.
- The FSB has called for market participants to take active steps to address existing legacy contracts in preparation for the end of the remaining panel-based USD LIBOR settings and for the winding down of temporary synthetic LIBOR rates.
- The FSB has also encouraged market participants to use the most robust reference rates to achieve the intended benefits.

FSB encourages final transition to robust reference rates as cessation of remaining LIBOR panels approaches; Report provides an assessment of progress in transition from LIBOR and other benchmark and urges continued momentum for the last stage of transition

LCH SwapClear supporting Swiss, Danish risk-free rates LCH SwapClear says it has committed to supporting the transition to trades that reference the alternative risk-free Swedish krona short-term rate and the Denmark short-term rate. The moves make LCH SwapClear "the first CCP to offer clearing for DESTR," says LCH head of SwapClear and Listed Rates Susi de Verdelon. Securities Finance Times

Financial Stability Board warns against a 'pile up situation' if firms don't prioritise Libor transition

As of the end of 2020, it was estimated that over $70 trillion of USD Libor exposures would remain outstanding beyond the cessation of remaining tenors after June next year.

- The Financial Stability Board (FSB) has reiterated the need for firms to prioritise their Libor transition to avoid a "pile up situation" at cessation date at the end of June 2023.
- According to a report published by the board, the USD Libor transition is a top priority. As of the end of 2020, it was estimated that over $70 trillion of USD Libor exposures would remain outstanding beyond the cessation of remaining tenors after June next year. "Over 90% of this exposure is in derivatives" the board said, "which can be addressed through adherence to the ISDA Protocol and CCP conversion events".
- Other remaining exposures include approximately $2 trillion in bonds and securitisations, $2 trillion in business loans, and $1 trillion in consumer loans which the FSB has said can be reduced through remediation activity.
- "The recent extension of synthetic USD Libor is the very last step of the process. Financial institutions now have no choice but to fully familiarize themselves with new products using the risk-free rates," said Didier Loiseau, global head of rates, bonds and credit at Murex. "What made and still makes the adjustment challenging is that it's quite simply the equivalent of replacing apples with oranges. The reality is that the new RFRs or alternative reference rates are fundamentally very different instruments."

Across the pond, the UK's Financial Conduct Authority (FCA) moved to use its powers under the Benchmarks Regulation (BMR) to temporarily extend publication until 2024 under an unrepresentative synthetic methodology in order to assist with legacy transitions, last month.

"While we consider synthetic Libor a fair and reasonable approximation of what LIBOR might have been, it will no longer be representative for the purposes of the BMR. It is not for use in new contracts. It is intended for use in certain legacy contracts only," the watchdog emphasised.

ARRC's trivial fight over term SOFR use; Toyota's ABS deal should not derail effort to expand use of term rate in derivatives

- On November 8, Toyota issued a $1.5 billion auto loan securitisation with a $293 million floating rate tranche linked to a term version of the secured overnight financing rate, or SOFR. *It seemed innocuous enough, but the deal rankled members of the Alternative Reference Rates Committee, the Federal Reserve-backed group tasked with steering US markets away from Libor, which had previously advised against the use of term SOFR in securitisations of fixed rate assets such as auto loans.*
- The timing could not have been worse. At a meeting the following day, the ARRC was set to consider a proposal to expand the use of term SOFR in derivatives. But the meeting was derailed by debate over the Toyota deal. The plan to allow a wider use of term SOFR in derivatives was shelved for another day. That has not gone down well with the market. One structured finance banker dismissed the spat over the Toyota deal as "a big hullaballoo" that is distracting from the industry's wider goals. The ARRC endorsed CME's term SOFR last year, subject to a set of usage guidelines, to aid the market transition away from Libor. The problem, market participants say, is that the ARRC guidelines and CME's terms of use don't quite match up. While both are clear the rate can only be used in derivatives that directly hedge cash instruments that reference term SOFR, the rules are far less clear when it comes to the cash instruments themselves.
- CME's 14-page licensing agreement allows term SOFR to be used in all sorts of cash products, including "loans, mortgages, bonds, money market instruments (including certificates of deposit and commercial paper), cash securities, preferred stock, floating rate notes, structured notes, bank notes, capital or deposit instruments and any other debt or credit instruments". "That's pretty expansive," says a London-based lawyer, noting that securitisations fall within the structured notes definition. "The licence allows you to use it as you like for cash products."

- The ARRC's three-page best practice guidance limits the use of term SOFR to business loans and certain securitisations "that hold underlying business loans or other assets that reference the SOFR term rate and where those assets cannot easily reference other forms of SOFR".
- The ARRC, though, has no real power to enforce its guidelines. As a Libor transition manager at a US bank says: "These are not restrictions, just recommendations." Some say CME should simply revise its licence terms to align with the ARRC's guidelines. "The market would benefit from that," says a lawyer in New York, adding that this could be in the form of a clarification rather than a formal change to the licence. But CME may have good reasons to resist calls for stricter usage terms, which could dent competitiveness and prove costly to monitor and enforce. A spokesperson for the exchange declined to comment. It's also worth bearing in mind that CME's benchmark is not the only game in town. Ice Benchmark Administration, Libor's administrator, began publishing its own version of term SOFR in April. While Ice's rate lacks an official endorsement and is not included in the waterfall of replacement rates in ARRC cash fallbacks, it is currently being licensed for use in contracts – both cash and derivatives – without any usage restrictions. So far, there's been little interest in this alternative version, which is largely viewed as a redundancy rate for CME's term SOFR. IBA wasn't even allowed to use its own rate in a proposed 'synthetic Libor', which would be used to sweep in a tail of tough legacy contracts.
- CME, by contrast, has issued over 7,000 term SOFR licences to more than 1,800 firms. The rate underpins $2.6 trillion of loans and more than $660 billion of related derivatives hedges. That doesn't mean it's a fait accompli for CME. The ARRC's restrictions on the use of term SOFR in derivatives have created a one-sided market which dealers warn could pose a stability threat.
- The furore over the Toyota deal, and the use of term SOFR in securitisations of fixed rate assets more broadly, has faded hopes of softening the derivatives stance. In the gargantuan multi-year project to prise hundreds of trillions of dollars of contracts off Libor ahead of its June 2023 demise, a fight over the use of term SOFR in floating rate asset-backed securities – which are estimated to represent just 2% of overall issuance – seems trivial at best.
- Overly tight restrictions on CME term SOFR could gift the market to a non-endorsed competitor. Worse, it could breathe new life into credit-sensitive rates, which regulators fought so hard to extinguish. The ARRC should look past the Toyota deal and refocus on its core objectives.

After a choppy four months in which the pace of growth in adoption of risk-free rates (RFRs) flattened out, the uptrend appears to be back underway. *The latest ISDA-Clarus RFR Adoption Indicator for November came in at 51.4%, the second successive monthly growth and up from October's 51.3%. The indicator tracks how much global trading activity, as measured by DV01, is conducted in cleared OTC and exchange-traded interest rate derivatives (IRD) that reference the identified RFRs in six major currencies.*

- On a traded notional basis, the percentage of RFR-linked IRD increased to 48.3% of total IRD transacted in November 2022 compared to 45.4% the prior month.
- RFR-linked IRD DV01 grew to $15.9 billion from $15.7 billion in October, while total IRD DV01 increased to $31.0 billion from $30.7 billion. RFR-linked IRD traded notional rose to $87.8 trillion from $79.7 trillion, and total IRD traded notional increased to $181.7 trillion compared to $175.6 trillion the prior month.
- The percentage of trading activity in SOFR increased to an all-time high of 58.3% of total USD IRD DV01 in November 2022 compared to 58.1% in October, while CHF and GBP saw the largest percentage of RFR-linked IRD trading activity, totalling 100% of total CHF IRD DV01 and 99.9% of total GBP IRD DV01, respectively. JPY had the highest percentage of RFR-linked IRD DV01 executed as transactions with tenors longer than two years.

ISDA-Clarus RFR Adoption Indicator: November 2022; The ISDA-Clarus RFR Adoption Indicator increased to 51.4% in November 2022 compared to 51.3% the prior month. The indicator tracks how much global

trading activity (as measured by DV01) is conducted in cleared over-the-counter and exchange-traded interest rate derivatives (IRD) that reference the identified risk-free rates (RFRs) in six major currencies. On a traded notional basis, the percentage of RFR-linked IRD increased to 48.3% of total IRD transacted in November 2022 compared to 45.4% the prior month. Key highlights for November 2022 include:

- RFR-linked IRD DV01 grew to $15.9 billion from $15.7 billion the prior month.
- Total IRD DV01 increased to $31.0 billion from $30.7 billion the prior month.
- RFR-linked IRD traded notional rose to $87.8 trillion from $79.7 trillion the prior month.
- Total IRD traded notional increased to $181.7 trillion compared to $175.6 trillion the prior month.
- The percentage of trading activity in SOFR increased to an all-time high of 58.3% of total USD IRD DV01 in November 2022 compared to 58.1% the prior month.
- CHF and GBP saw the largest percentage of RFR-linked IRD trading activity, totaling 100% of total CHF IRD DV01 and 99.9% of total GBP IRD DV01, respectively.
- JPY had the highest percentage of RFR-linked IRD DV01 executed as transactions with tenors longer than two years.
- The November monthly report is available here. To access interactive charts and export the data, click here.

RFR Adoption – Is This Groundhog Day? *The ISDA-Clarus RFR Adoption Indicator was 51.4% last month.*

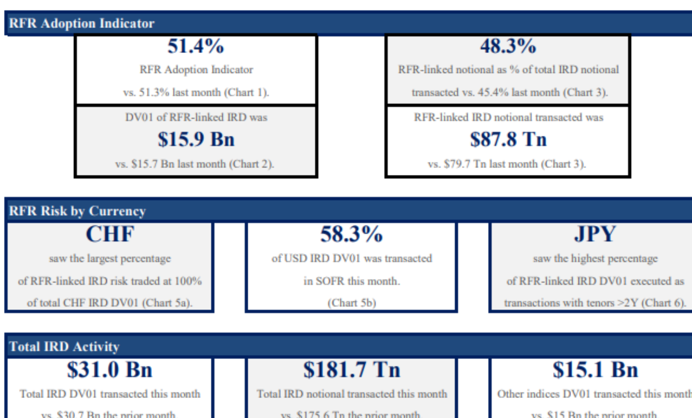
- This is the fourth consecutive month that it has remained around **51%**.
- SOFR adoption hit a new all-time of 58.3%.
- €STR adoption remains volatile.
- Following on from our last blog, we take a look at AONIA.

The ISDA-Clarus RFR Adoption Indicator for November 2022 has now been published.

ISDA-Clarus RFR Adoption Indicator

November 2022

ISDA-Clarus RFR Adoption Indicator tracks how much global trading activity (as measured by DV01) is conducted in cleared over-the-counter (OTC) and exchange-traded interest rate derivatives (IRD) that reference the identified risk-free rates (RFRs) in six major currencies.



RFR Adoption Indicator

51.4% RFR Adoption Indicator vs. 51.3% last month (Chart 1).	**48.3%** RFR-linked notional as % of total IRD notional transacted vs. 45.4% last month (Chart 3).
DV01 of RFR-linked IRD was **$15.9 Bn** vs. $15.7 Bn last month (Chart 2).	RFR-linked IRD notional transacted was **$87.8 Tn** vs. $79.7 Tn last month (Chart 3).

RFR Risk by Currency

CHF saw the largest percentage of RFR-linked IRD risk traded at 100% of total CHF IRD DV01 (Chart 5a).	**58.3%** of USD IRD DV01 was transacted in SOFR this month. (Chart 5b)	**JPY** saw the highest percentage of RFR-linked IRD DV01 executed as transactions with tenors >2Y (Chart 6).

Total IRD Activity

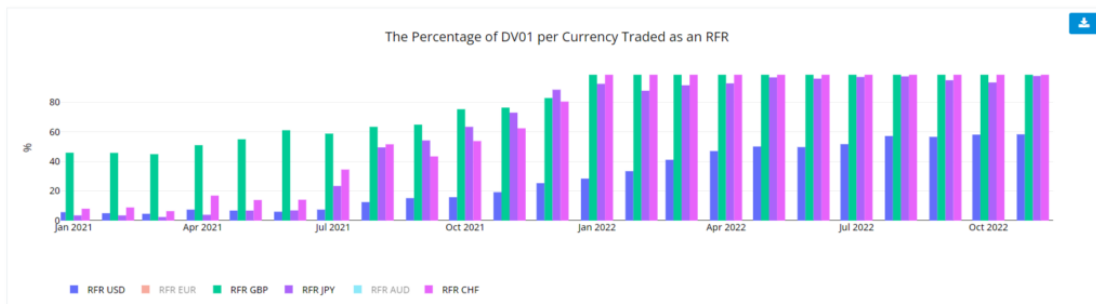
$31.0 Bn Total IRD DV01 transacted this month vs. $30.7 Bn the prior month.	**$181.7 Tn** Total IRD notional transacted this month vs. $175.6 Tn the prior month.	**$15.1 Bn** Other indices DV01 transacted this month vs. $15 Bn the prior month.

Showing;

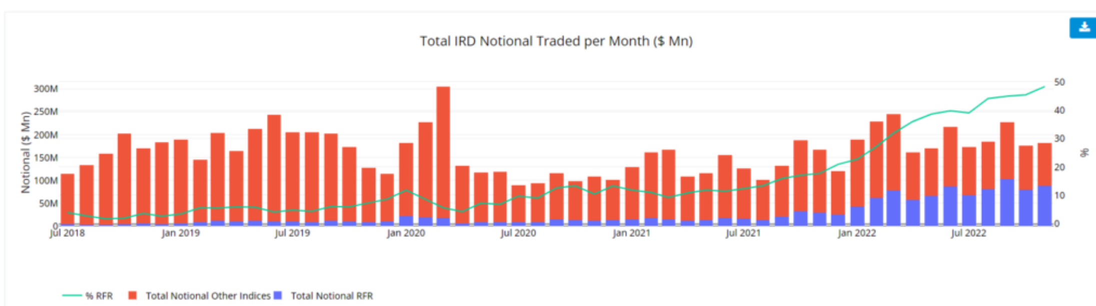
- The index has increased slightly to 51.4%, almost unchanged for 4 months now!
- SOFR adoption hit a new record high at 58.3%, marginally higher than last month.
- 48% of total activity by notional was vs RFRs, a new record.
- We saw more trading activity in Futures, accounting for 41% of all RFR risk – an all-time record.

Is History Repeating? - Groundhog Day appears to be a traditional film that isn't actually set at Christmas but is associated with this time of year. RFR Adoption is somewhat similar – in the run up to the end of 2021, it was all anyone spoke about (well, in certain circles!) and regulators choosing a year-end cut-off for (most) LIBORs just seemed so cruel to the industry that I doubt anyone will forget it in a hurry.

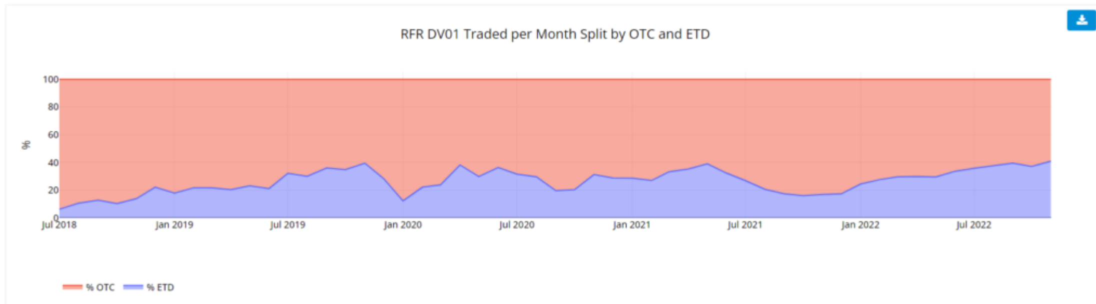
- In light of which, I checked back on my blog covering November 2021 to remind myself just how slow RFR Adoption was, even with just ~ 20 days to go:
- Regular readers will not be surprised at the level of hyperbole as we tried to promote the move to RFRs as early as possible. Avoiding event risks is just good risk management after all.
- However, RFR adoption was still down in a 62-76% range for the three currencies staring cessation in the face (GBP, CHF & JPY). Should we be surprised, therefore, that with 6 months still to go, USD SOFR adoption is "only" at 58.3% but increasing slowly month-on-month? It is entirely in-keeping with previous experience.



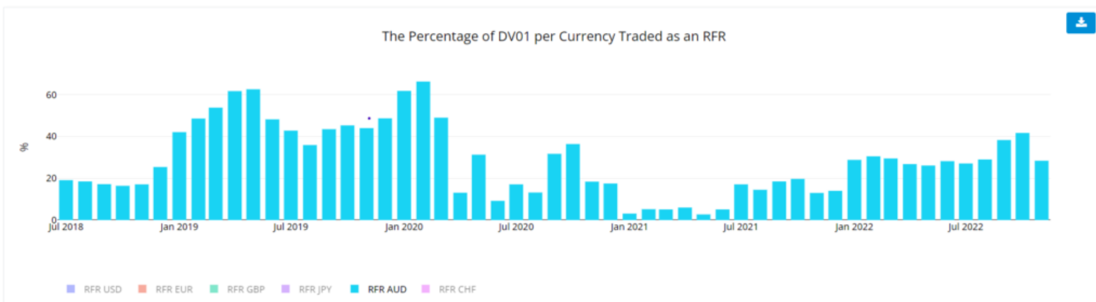
- For USD in November 2022, we need to look back at GBP in June 2021. Back then, SONIA made up 61% of the market, and it even fell the following month to 59%. USD SOFR adoption seems to be following a very similar course, which is why it has reached a "natural plateau" these days around 58%. It seems to be how the cycle works. It doesn't half make it hard to write blogs about it though!
- In Positive News
- We do have positive movement in the market, without any tenuous links to 1990s films! As measured by notional, the proportion of the market trading in RFRs just keeps on increasing, this month reaching a new high at 48.3%:



- And in related news, the proportion of RFR risk that was traded as a Futures contract ("ETD) increased to a new all-time high of 41%:

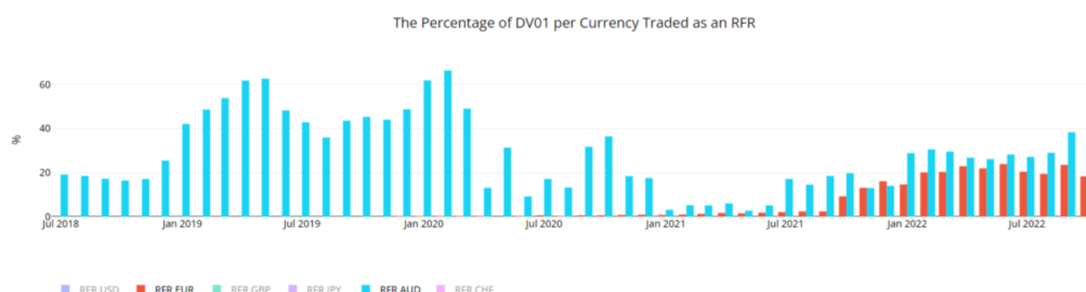


- These two facts are somewhat linked – more futures trading in RFR means more of the short-end risk they are associated with is moving to e.g. SOFR. This in turn increases the amount of notional traded as RFRs without really moving the needle on our preferred DV01 (risk) metrics.
- It is still somewhat puzzling that we can have positive momentum in a couple of key metrics (as well as a new high in SOFR adoption) and yet the headline Adoption Indicator remains static.
- AONIA; One of the metrics pulling the Adoption Indicator lower this month was AUD trading. The amount of risk traded as AONIA in any given month is very volatile – take a look below:



Showing;

- AONIA accounted for 66% of all AUD risk way back in February 2020.
- It sank back to 3% as recently as May 2021. I told you it was volatile!
- This year, the trend had been gradually higher…until November.
- With such a volatile time-series it seems entirely down to market expectations of rates and RBA action – without much consideration to market structure or simplifying the AUD curve.
- The reason I've spent a bit of time on AUD this week is because AUD and EUR likely have similar dynamics. It looks like the term rates are going to continue, but the market is beginning to show signs of choosing to trade the RFR. Will the RFRs gain enough traction to gain a consistent market share, or will the activity continue to be focused on short-end products?
- It's been a very rare occurrence when €STR Adoption has topped AONIA adoption. Will we see a reversal in 2023 at all?



Derivatives users reportedly slow to switch to SOFR for CSAs Derivatives users are in no hurry to switch from using Fed funds to the secured overnight financing rate for credit support annexes despite the looming deadline for the end of Libor, according to banking industry sources. "Fed funds is not being discontinued and parties need to determine how important it is to move from Fed funds to SOFR," says law firm Katten derivatives partner Ilene Froom. Risk

CME: Trading pit surviving SOFR transition CME Group's open-outcry trading pit has seen the migration to Secured Overnight Financing Rate-linked futures and options contracts overtake Libor-linked eurodollar futures, but traders remain dedicated to the pit over electronic trading. CME says that with 63% of SOFR options traded in the pit during November, open-outcry trading is surviving the transition to SOFR. BNN Bloomberg

Conversion of Cleared LIBOR Swaps to SOFR: the process, key dates, and more; *The transition from LIBOR to SOFR is progressing. June 30, 2023 is the LIBOR cessation date, but there are several key dates and factors to know in advance, particularly for participants holding legacy LIBOR positions with fixing dates beyond summer 2023. Our video series discusses the ins and outs of the conversion methodology, as well as the additional factors firms need to know as the planned conversion process approaches.*

1. Introduction and overview of CME Group's conversion plan – Explores key dates to know, which USD LIBOR swaps will be impacted, and how replacement swaps will function.
2. Conversion methodology and a detailed example – Details the underlying methodology CME Group will leverage for the primary conversion process, including an example scenario.
3. Available resources and operational processing considerations – Discusses the operational timeline for the night of the primary conversion, indicative analysis reporting (available in Q1 2023), and dress rehearsal dates.
4. Special cases and conclusion – Explores the planned basis swap splitting event, as well as the secondary conversion process for zero coupon swaps and other special cases.

- Conversion of cleared USD LIBOR swaps to SOFR: Video Series; Video 1: Introduction and Overview; Video 1 includes: Background on why CME Group will convert legacy cleared USD LIBOR swaps to SOFR, highlighting which USD LIBOR swaps will be subject to conversion and which swaps will not.
- Mechanics behind the planned primary conversion process scheduled for April 21, 2023.

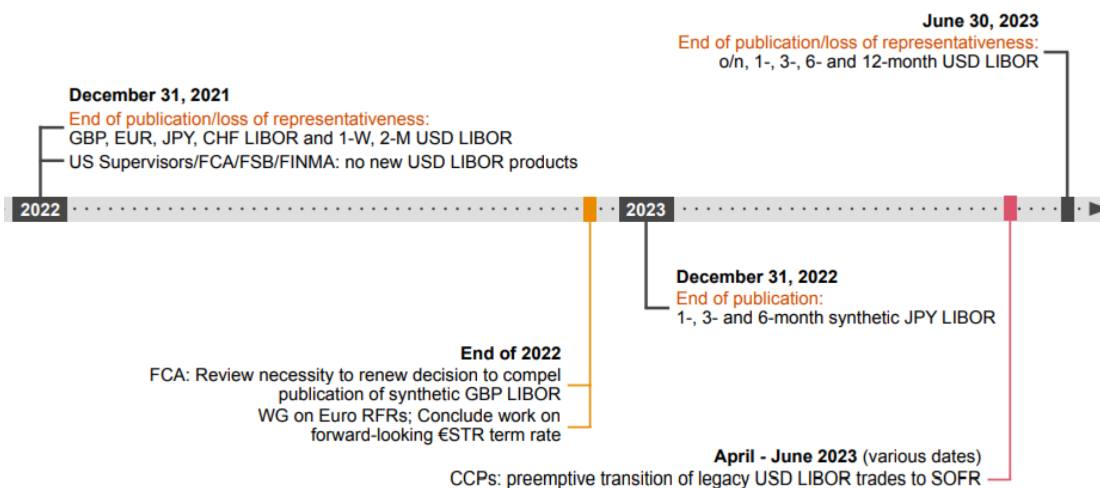
- Video 2: Conversion Methodology" Video 2 includes: Detailed look into the underlying methodology CME Group will use for the conversion process.
- In-depth example of how the conversion methodology will be applied.

- Video 3: Resources and Operational Considerations; Video 3 includes: Timeline for operational processing of the primary swap conversion on April 21, 2023.

- Dress rehearsal dates in January, February, and March to help provide testing opportunities for clearing members.
- Overview of indicative analysis reports that will show the net present value, cash compensation, and economic terms for the replacement swaps firms will receive based on their production portfolio.

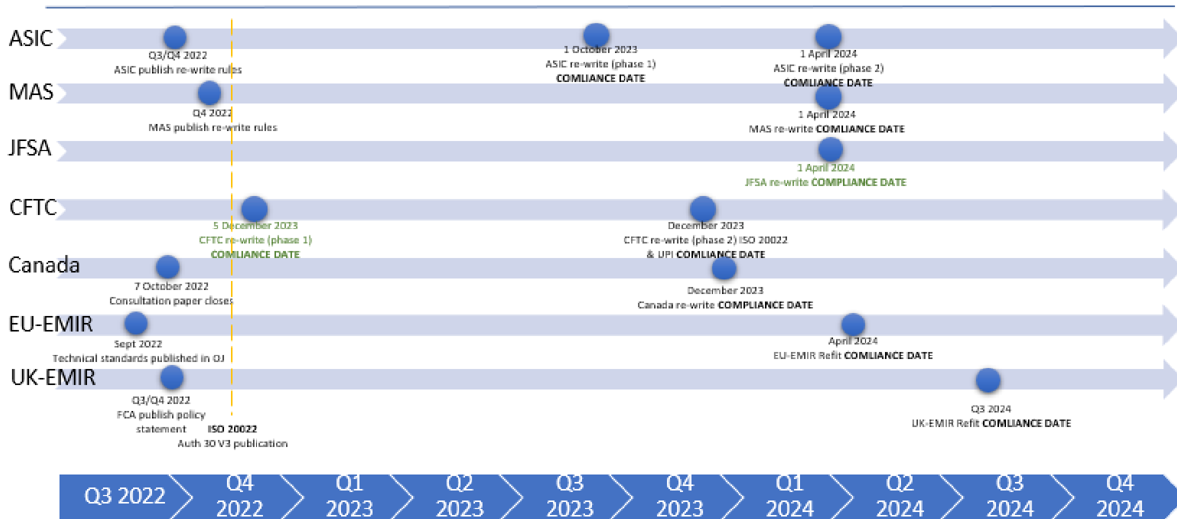
- Video 4: Special Cases; Video 4 includes: Overview of the mandatory basis swap splitting event scheduled for March 24, 2023. Fed Funds vs. LIBOR basis swaps are not in scope for the splitting exercise.
- Special cases included in the secondary conversion process: How CME Group will proceed with zero coupon swaps, swaption assignments, and any remaining in-scope LIBOR exposure in a daily conversion process beginning on July 3, 2023.

LIBOR transition target dates



Markets Conduct Regulations

Regulatory Reporting Re-writes: reporting start dates



Public Register for the Trading Obligation for derivatives under MiFIR

Public Register for the Clearing Obligation under EMIR

2. Trading venues where the classes of derivatives subject to the trading obligation are traded

2.1. EU trading venues

The table below lists the EU trading venues where the classes of derivatives subject to the trading obligation are available for trading.

Table 3: EU trading venues relevant for the trading obligation

Trading venue full name	MIC Code Type (Segment or Operating)	MIC Code	Country of establishment	Competent Authority	Venue Type (RM, MTF, OTF)	Interest Rate[3]	Credit[4]	Last update
Aurel BGC OTF	Segment	AURO	France	ACPR / AMF	OTF	YES	NO	16/01/2018
HPC SA OTF	Segment	HPCV	France	ACPR / AMF	OTF	YES	NO	21/03/2019
Tullet Prebon EU OTF	Segment	TPEU	France	ACPR / AMF	OTF	YES	NO[5]	03/10/2019
ICAP EU OTF	Segment	ICOT	France	ACPR / AMF	OTF	YES	YES	23/07/2019

TP ICAP EU MTF	Segment	TPIR, TPIO	France	ACPR / AMF	MTF	YES	NO	23/07/2019
Trad-X	Segment	TRXE	France	ACPR / AMF	MTF	YES	NO	27/11/2020
TSAF OTC OTF	Operating	TSAF	France	ACPR / AMF	OTF	YES	NO	22/12/2020
CIMD OTF	Segment	CIMV	Spain	CNMV	OTF	YES	YES	16/01/2018
CAPI OTF	Operating	CAPI	Spain	CNMV	OTF	YES	NO	16/01/2018
Tradition España OTF	Operating	TEUR	Spain	CNMV	OTF	YES	YES	01/10/2021
Bloomberg Trading Facility B.V.	Operating	BTFE	Netherlands	AFM	MTF	YES	YES	21/03/2019
Tradeweb EU B.V.	Segment	TWEM	Netherlands	AFM	MTF	YES	YES	27/11/2020
EBS MTF (CME Amsterdam B.V.)	Operating	EBSN	Netherlands	AFM	MTF	YES	NO	27/11/2020
iSwap Euro B.V.	Operating	ISWP	Netherlands	AFM	MTF	YES	NO	04/04/2019

Table 4: Third-countries deemed equivalent for the purpose of the trading obligation

Country	Reference of the Equivalence Decision	Category of trading venues covered by the Equivalence Decision
United States of America	Commission Implementing Decision (EU) 2017/2238[6]	Designated contract markets (DCM) and Swap execution facilities (SEF) listed in the Annex to the Decision
Singapore	Commission Implementing Decision (EU) 2019/541[7] amended by Commission Implementing Decision (EU) 2020/2127[8]	Approved exchanges and Recognised Market Operators listed in the Annex to the Decision

RegTech & FinTech

DSB Product Committee : Digital Asset Sub-Committee : Proposed Recommendations; *As discussed at this week's DAS-SC meeting (6th December 2022) this email contains the proposed text to be sent to the DSB Product Committee for their deliberations.*

- Members of the DAS-SC are asked to review the proposed text and suggest any changes that you would like to discuss at the next meeting. Members are kindly asked to respond by COB Thursday 15th December 2022.

1. Definition of Terms

- The recommendations of the DAS-SC are based on the following delineation of the Digital Assets that act as underliers to OTC Derivatives products.

    - Security Tokens: A digital asset token that represents an instrument or exhibits the characteristics of an instrument that is classified within the ISO 10962 (CFI) categories of Equity (E), Debt Instrument (D), Collective Investment Vehicle (C), an Entitlement (R), Listed Option (O) or Future (F).

- **Referential Tokens**: A fungible digital asset token that is not classified within the above definition of a Security Token (this includes Utility Tokens, Stable Coins, Governance Tokens and others).

2. **Security Tokens**

- The DAS-SC recommends that Security Tokens should be classified using the ISO 10962 (CFI) category appropriate to the characteristics of the instrument.
- The DAS-SC recommends that an OTC Derivative with a Security Token underlier should use the OTC ISIN/UPI asset class and product definition related to its ISO 10962 (CFI) code.
- **For example:**
- An on-chain Digital Asset that has the characteristics of a Bond would be classified under ISO 10962 (CFI) as D.B.*.*.*.*.
- An OTC Option on that Bond would use the Debt Option product definition for the generation of a UPI and/or OTC ISIN and the underlier would be identified using an ISIN (as its primary identifier).
- In the longer term, it is expected that the reference data for each Security Token's ISIN will include a link to one or more associated DTIs

3. **Referential Tokens**
    - **Short-Term Approach :** assuming no changes to ISO 10962 (CFI) or the product definitions supported by the ISIN or UPI for OTC derivatives
    - The DAS-SC recommends that **Referential Tokens** should be classified using the ISO 10962 (CFI) for Commodity/Other : T.T.M.X.X.X.
    - The DAS-SC recommends that an OTC Derivative with a **Referential Token** underlier should use the appropriate product definition within the Commodity asset class. The underlier for these products should be input using a Commodity Reference Price of "OTHER" along with Base Product = "OTHER", Transaction Type = "OTHER" and Final Price Type = "OTHER".
4. **For example:**
    - For the purposes of regulatory reporting, Bitcoin should be classified under ISO 10962 (CFI) as T.T.M.X.X.X.
    - A Swap on Bitcoin should use the Commodity Swap product definition for the generation of a UPI and/or OTC ISIN and the underlier would be identified using Commodity Reference Price of "OTHER".
    - **Medium-Term Approach :** assuming minor changes to the product definitions supported by the ISIN or UPI for OTC derivatives but no changes to ISO 10962 (CFI).
    - The DAS-SC proposes extending the Commodity Reference Price enumerated list to include specific digital assets and to include the DTI of the asset against each item, eg: "4H95J0R2X".
    - The code/name of the Referential Token should be included in the name displayed in the DSB GUI dropdown – e.g.: "4H95J0R2X (BTC)" in order to assist manual entry.

- A sub-set of Referential Token DTIs are to be added to the Commodity Reference Price enumerated list (based on trading volumes / market capitalization and approved for inclusion by the DSB PC).
- Long-Term Approach : assuming changes to ISO 10962 (CFI).
- The DAS-SC recommends that support for Referential Tokens within ISO 10962 (CFI) should be referred to the CFI Discussion Group (ISO/TC 068/SC 08/MA 05 (Discussions)) for consideration.
- The DAS-SC recommends extending the Referential Instruments (T) category of ISO 10962 (CFI) to include a separate Group for Digital Assets.
- The DAS-SC recommends extending the Swaps (S), Non-Listed and Complex Listed Options (H) and Forwards (J) categories of ISO 10962 (CFI) to include a separate Asset Class for Referential Tokens.
- The DAS-SC understands that the OTC ISIN and UPI may be required to be updated based on the need to support the additional CFI Asset Class within the OTC Derivative Categories.

DSB Product Committee : Digital Asset Strategy Sub-Committee Meeting Minutes; Date: 06-Dec-2022

Time: 15.00 – 16.30 UTC

- Open Actions; 005; The DSB will work with the ISDA to access available details of the relevant ISDA definitions for digital assets.
- Meeting Details
    - The meeting agreed to the amendment of DAS-SC deliverables to be based on timeframes (short, medium and long-term).
    - The meeting APPROVED the change of name from Investment Token to Security Token and for an update to the definition text. The definitions now read:

- Security Tokens: A digital asset token that represents an instrument or exhibits the characteristics of an instrument that is classified within the ISO 10962 (CFI) categories of Equity (E), Debt Instrument (D), Collective Investment Vehicle (C), an Entitlement (R), Listed Option (O) or Future (F).
- Referential Tokens: A fungible digital asset token that is not classified within the above definition of a Security Token (this includes Utility Tokens, Stable Coins, Governance Tokens and others).

- © DSB Product Committee 2022 Page 2 of 2
- Classified as Confidential

- The meeting APPROVED a recommendation that Referential Tokens should use the ISO 10962 (CFI) classification of T.T.M.X.X.X in the short-term (until there is an update to the standard).
- The meeting APPROVED a recommendation to use OTC ISIN / UPI Commodity Derivative templates to support OTC Derivatives based on Referential Tokens.
- The meeting APPROVED a recommendation that support for Referential Tokens within ISO 10962 (CFI) should be referred to the CFI Discussion Group (ISO/TC 068/SC 08/MA 05 (Discussions)) for consideration and that a new Digital Asset Group within the Referential Instrument category would be appropriate for the classification of Referential Tokens.
- The meeting discussed the on-going coordination of ANNA and the DTIF to ensure that Digital Assets (both Security Tokens and Referential Tokens) would be identified using linked ISIN and DTI(s). It was confirmed that ISINs for Referential Tokens would start with XT and would include the DTI for the token as the body of the ISIN.

- Action: DSB to email DAS-SC members with a summary of the current proposed text.>Action 008
- Summary of Open Actions; The DSB will work with the ISDA to access available details of the relevant ISDA definitions for digital assets.
- DSB to email members of the DAS-SC for their views on the current proposed text.

Transaction Reporting [Last update: 16/12/2022]; Question 1 [Last update: 16/12/2022]

1. How does the reporting obligation under MiFIR Article 26 and RTS 22 apply to transactions in DLT financial instruments?

2. Is there any lead-time envisaged to comply with such obligation or does it apply as soon as a DLT MTF/TSS is granted the permission to operate?

- Answer 1 1.
- In its Report on the DLT Pilot Regime, ESMA concluded that at this stage RTS 22 does not need to be amended to be effectively applied also to securities issued, traded, and recorded on DLT. Therefore, unless an exemption from MiFIR Article 26 is requested as foreseen in Article 4 of the DLTR4, the obligations under MiFIR Article 26 and RTS 22 apply in full to DLT MTFs or TSSs and its members in relation to transactions in DLT financial instruments executed on DLT MTFs/TSS.
- DLT MTFs or TSS should report transactions on behalf of firms that are not subject to MiFIR pursuant to Article 26(5) MiFIR.
- In addition, as the scope of the exemption from reporting can only cover the DLT MTF or TSS and its members, the obligations under MiFIR Article 26 and RTS 22 continue to apply to any investment firm that is not a member of the DLT MTF or TSS and is carrying out transactions in a DLT financial instrument under the DLTR irrespective of whether or not such transactions are ultimately executed on the DLT MTF or TSS.
- For examples of how transactions should be reported to NCAs depending on the specific trading scenario, investment firms executing transactions in DLT financial instruments and DLT MTFs/TSSs should refer to the ESMA Guidelines on MiFIR

transaction reporting, order record keeping and clock synchronisation and ESMA Q&As.
2. Unless an exemption from MiFIR Article 26 is granted, the reporting obligation applies as soon as the DLT-MTF/TSS is granted the permission to operate, no implementation lead-time is envisaged.

Update of Dutch Minister of Finance on Mica; *On 21 December 2022, the Dutch Minister of Finance (the* Minister*) provided an* [update](#) *on the European Markets in Crypto Assets Regulation (*MiCAR*) to the Dutch Parliament.*

- The text of MiCAR is currently being finalised and translated. MiCAR will be applicable 18 months after the date of publication in the Official Journal of the European Union (EU), except for the provisions dealing with stablecoins. These will be applicable twelve 12 months after publication. The final text of MiCAR is expected to be ready in the spring of 2023. The Minister announces that legislative proposals implementing relevant parts of MiCAR into Dutch law will be submitted to the Dutch Parliament as soon as possible following the official publication of MiCAR.
- According to the Minister, MiCAR contains a comprehensive regulatory framework for cryptos, while also striking a balance between innovation and administrative burden for crypto firms. Even though the rules in MiCAR are derived from those applicable to existing financial services and product, some MiCAR rules are formulated more abstractly to ensure this balance.
- The Dutch Authority for Financial Markets (*Autoriteit Financiële Markten*, the AFM) has indicated on several occasions that MiCAR is not the answer to all crypto-related issues. Although the Minister agrees with this statement, the Minister also considers that MiCA provides for a proper initial basis for regulating the crypto sector and has the potential to evolve into a more comprehensive regulatory regime. The Minister expects that the current crypto-related issues will significantly be reduced thanks to MiCAR.
- Finally, the Minister notes that even though MiCA does not apply yet, other existing rules do already apply. In this regard, the Minister refers to the applicability of criminal law in case of crypto-related fraud and to consumer law in case of misleading or aggressive sales practices by crypto firms.

MAS aims to preserve stablecoin stability with new regulatory framework; *Proposed regulatory changes show that the MAS sees stablecoins as a valid medium of exchange – provided they are securely backed. The revised framework, outlined in an MAS consultation paper, will expand current requirements to ensure that regulated stablecoins have value stability. Stablecoin issuers and intermediaries should start to review their business models against the proposals. As the regulatory environment for digital assets in Singapore takes shape, it's those who can evolve in parallel who will be best placed for success.*

- The current regulatory approach for stablecoins doesn't provide a mechanism to ensure that they maintain a high degree of value stability. The MAS' consultation paper: *Proposed Regulatory Approach for Stablecoin-Related Activities*, addresses this issue, setting out a new regulatory regime.

- Currently, a wide range of stablecoins is available. These vary in terms of their asset pegging as well as the mechanism that upholds their stability. The proposed stablecoin regulatory regime focuses only on single currency pegged stablecoins, or SCS. The main reason for this is that have a stronger use case for payment and settlement. Under the proposed framework, only SCS that are pegged to the Singapore dollar or G10 currencies will be allowed, prioritising the elevation of the standard of SCS issued in Singapore.
- Proposed regulatory framework and requirements imposed on SCS issuers
- SCS can be issued by both non-bank entities and banks. Non-bank entities would be able to issue them as tokens, backed or collateralised by a pool of assets. Banks could alternatively issue SCS as tokenised bank liabilities. Banks in Singapore could also choose to issue SCS by managing the underlying reserve assets, segregating them from the rest of the banks' assets.
- Non-bank issuers
- To be recognised as an issuer of MAS-regulated SCS, the issuer would need to obtain a Major Payment Institution (MPI) licence under the Payment Services Act and the SCS in circulation should exceed, or are anticipated to exceed, S$5 million in value. Otherwise, the issuer would require a Standard Payment Institution (SPI) licence and wouldn't be subject to the requirements for SCS issuers. Under the proposed framework, SPI licence holders wouldn't be recognised as issuers of MAS-regulated SCS. Nevertheless, any SCS issuer that wishes to be recognised as an issuer of MAS-regulated SCS could apply for an MPI licence and be subject to the additional requirements.
- Bank issuers
- Banks would continue to be exempted from the requirement to obtain a licence under the Payment Services Act.
- The following table highlights the proposed regulatory framework and requirements for SCS issuers (non-banks and banks):

	Non-bank SCS Issuers (MPI licence holder)	Banks (SCS backed by segregated reserve assets)	Banks (SCS as tokenised bank liabilities)
AML/CFT	MAS Notice PSN02 & PSN03	MAS Notice 626	
Tech & cyber risk management	Existing technology and cyber risk management standards on digital payment token (DPT) service providers and banks		
Reserve asset (RA) backing *(new)*	RA held in cash, cash equivalents or debt securities with up to three-month residual maturity and issued by (i) central bank of pegged currency; or (ii) organisations that are both of a governmental and international character with a credit rating of at least AA– RA valued on marked-to-market basis daily, at least equivalent to par value of SCS in circulation at all times RA denominated in the pegged currency		N/A

	Monthly disclosure (independently attested), and a yearly audit of the RA Segregation and custody of the RA: With licensed banks, merchant banks and finance companies, and CMSLs licensed for custodial services in Singapore	
Redemption at par *(new)*	Direct legal claim for the redemption at par, accepting redemption requests at any time Timely redemption (no later than five business days) Any redemption conditions must be reasonable (e.g., fees, minimum redemption amount) and disclosed upfront	
White paper issuance *(new)*	Requirement to issue a white paper disclosing details, including a description of the issuer, its project, rights, and obligations related to the token (e.g., redemption), risks etc.	N/A
Prudential *(new)*	Base capital requirements: Higher of S$1mil or six months' operating expenses Prohibited from provision of other non-issuance services e.g., lending of stablecoins/fiat, staking, trading. This can be done from a separate related entity in which the issuer doesn't have a stake	Existing risk-based capital and liquidity requirement under the Banking Act
Solvency *(new)*	Hold liquid assets valued at higher of six months' operating expenses or the amount assessed by the entity needed to achieve recovery or orderly wind-down	

- Proposed requirement on SCS issuers
- For non-issuance activities, SCS will continue to be treated as DPTs and entities offering SCS-related services will be regulated if the service falls within the scope of regulated DPT services under the Payment Services Act.
- Disclosure
- The MAS does not intend to prohibit any stablecoins, including those issued overseas. DPT service providers (DPTSPs) which offer SCS should clearly label which SCS are regulated by the MAS. SCS which don't fall into this category will be subject to the existing disclosure requirements under MAS Notice PSN08 on Disclosures and Communications.
- Timely transfer of SCS

- DPTSPs offering a MAS-regulated SCS transmission service would be required to complete the transfer in no more than three business days from the day the transfer request is received. This is in line with the money transmission requirement under the MAS' Notice PSN07 on Conduct for domestic money transfer services.
- Segregation of SCS
- Entities providing transmission or MAS-regulated SCS custody services would be required to hold and segregate customers' MAS-regulated SCS from other customers' assets, while keeping its own assets in different custody accounts.
- Implications for issuers and intermediaries
- To comply with the regulatory changes, SCS issuers and intermediaries would need to re-evaluate their business models to determine where they fall under the new framework. The proposed regulatory ideas are still in the developmental stages and reflect the MAS's prudent approach toward regulating stablecoins. These arrangements will likely provide a high degree of assurance of value stability to stablecoins.
- As the MAS adopts a progressive regulatory approach that provides for increased measures if needed, adaptation is key. As the regulatory framework in Singapore takes shape, players that can conform to these changing regulations will flourish in Singapore's digital asset ecosystem.

The targeted revisions to the CFTC over-the counter swaps reporting requirements that took effect on December 5 represent a critical milestone, not just for domestic firms but also for the global derivatives market. *By adopting international data standards, the CFTC has taken an important step towards greater global consistency of reporting rules that is set to be replicated in other jurisdictions in the years to come.*

- This should ensure that what is reported in one jurisdiction is comparable to what is reported in another, giving regulators the data to develop a more thorough picture of derivatives market activity than has been possible in the past. Essential as this is, however, it's not enough to deliver full transparency – market participants also need to implement the rules in a uniform way, because even minor deviations in interpretation can lead to inconsistencies in reported data.
- Planned revisions of the rules by regulators in the US, Canada, EU and Asia-Pacific to include global data standards alongside a digital approach to reporting have the potential to meaningfully improve transparency for regulators, while also creating efficiencies for financial institutions.
- This is where ISDA's Digital Regulatory Reporting (DRR) initiative can help. As part of this endeavour, an ISDA working group developed a collective interpretation of the CFTC rules and the Common Domain Model was used to express that consensus view as human-readable, machine executable code. That code was made freely available in November, enabling firms to either use it as the basis of their implementation or cross-check their own interpretation is consistent with the industry view.
- As other jurisdictions introduce their own reporting rule changes, the DRR will be extended accordingly. The work to tailor the DRR for the EU has already begun, as rule changes will be implemented under the European Market Infrastructure Regulation Refit on April 29, 2024. Regulators in Asia-Pacific are also expected to implement their revised

reporting rules in 2024, including the Monetary Authority of Singapore, which is targeting the second half of that year

- The implementation of this new batch of reporting rules will be an industry priority over the next few years. Thanks to the DRR, market participants will be able to implement the rules consistently and efficiently, paving the way towards more transparent markets.
- *"As the technical implementation of the industry consensus on reporting, the DRR means that when we do report, if there are issues of interpretation, we can be confident we're addressing this from a defensible position"* Harry McAllister, BNP Paribas
- *"We designed the DRR with the objective that it should be a real game changer that avoids firms having to devote resources to interpreting requirements and building their own reporting logic. This will not only improve efficiency and reduce the costs of reporting, but it will also result in better quality data that is more accurate and consistent"* Eric Litvack, ISDA
- For the first time, firms will have access to an industry agreed digital version of those amendments – part of ISDA's Digital Regulatory Reporting (DRR) initiative – which they can use as the basis for implementation or to benchmark their own rollout, resulting in greater efficiency and more consistent data than has ever previously been possible. "The reporting rule changes that start with the CFTC and will continue in other countries are a critical step in successfully completing the post-crisis derivatives reforms. We designed the DRR with the objective that it should be a real game changer that avoids firms having to devote resources to interpreting requirements and building their own reporting logic. This will not only improve efficiency and reduce the costs of reporting, but it will also result in better quality data that is more accurate and consistent, helping regulators to monitor potential sources of risk," says Eric Litvack, chairman of ISDA.
- Data standards; The concept of derivatives trade reporting envisioned by the Group-of-20 (G-20) nations in 2009 was straightforward: market participants would be required to report the key details of their derivatives trades to designated repositories, which would maintain central records, allowing regulators to monitor emerging risks across the market. Although most countries fulfilled the commitment and implemented reporting rules, there was a lack of consistency in the way rules were drafted, with each jurisdiction developing its own version of the requirements. This inconsistency created operational challenges for market participants – and has resulted in jurisdictional differences in what is reported and the format in which the data is submitted.
- "In implementing the G-20 commitment, each country drafted trade reporting rules independently, which inevitably led to different requirements and different interpretations of how derivatives should be reported. A single trade can be represented in a variety of ways and until all aspects of a trade are required to be reported in a standard manner around the world, existing reporting solutions will be unable to satisfy the original G-20 goal of transparency in this global market," says Kate Delp, general manager of the Depository Trust & Clearing Corporation's (DTCC) Us based trade repository, DTCC Data Repository (U.S.) LLC.
- Policymakers have long recognised the need to address these challenges in pursuit of more effective transparency. In 2014, the Financial Stability Board (FSB) published a feasibility study on approaches to aggregating OTC derivatives data. The FSB subsequently tasked the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions to draw up a globally harmonised set of data standards, including the unique transaction identifier (UTI), the unique

product identifier (UPI) and critical data elements (CDEs) that would be maintained by the Regulatory Oversight Committee.

- The UTI, UPI and CDEs, which span more than 100 data fields and specify a common definition and format for the reporting of trade information, are intended to form the basis of a more harmonised global trade reporting framework. They range from data elements relating to counterparties and margin to those covering clearing, trading and settlement.
- Speaking at ISDA's 36th AGM in Madrid in May 2022, current CFTC chair Rostin Behnam underscored the importance of data standardisation. "If the CFTC receives data in an automated and standardised way, it can be integrated with our existing analytics. This ensures that subject matter experts spend less time cleaning data and more time developing insights in support of surveillance, enforcement and monitoring programmes aimed at ensuring our markets maintain the highest level of integrity and transparency," said Behnam.
- The development of the CDEs was a critical step in promoting greater harmonisation of reporting rules, giving regulators a framework of standards to adopt in their domestic rule books. The first round of CFTC amendments on December 5 effectively fires the starting gun in that process, with a further round expected in late 2023 and equivalent amendments in other jurisdictions in 2024 (see box, Reporting Rule Changes Around the World).
- Important and welcome as the rule changes may be, they are not sufficient to create a truly harmonised and effective reporting framework. As long as firms conduct their own interpretation of the rules and implement them independently, there will always be inconsistencies. That is why ISDA has worked closely with its members on a digital approach that enables firms to leverage a peer reviewed interpretation of the rules. "To overcome inconsistencies in interpretation, we have developed a digital solution that establishes a reporting best practice to help firms comply with requirements in each jurisdiction. This is achieved by establishing an industry-wide taxonomy and using software to optimise the operational process of reporting to ensure consistent and accurate implementation," says Scott O'Malia, chief executive of ISDA.
- Development of DRR; At the heart of the DRR initiative is the Common Domain Model (CDM), a standard representation of events and processes that occur throughout the trade lifecycle. Over the past year, a dedicated ISDA working group has developed a mutualised, industry-agreed interpretation of the CFTC's amended rules, using the CDM to express that consensus view as human-readable, machine-executable code.
- The DRR is free to access for all market participants and can be used either as the basis of their implementation or as a benchmark to check whether their own reading of the rules is in line with the market, allowing them to address any potential discrepancies. "As the technical implementation of the industry consensus on reporting, the DRR means that when we do report, if there are issues of interpretation, we can be confident we're addressing this from a defensible position. In other words, where there is room for interpretation on how a regulation should be adopted, what the implications are and how we actually perform reporting, we're doing that in line with the industry consensus and we're doing so working from a mutualised code base that has been developed with our industry partners," said Harry McAllister, information architect at BNP Paribas, speaking at an ISDA virtual event on global transaction reporting on October 12.

- In the lead-up to the December deadline for the CFTC rules, BNP Paribas successfully tested the DRR in a production-level environment, submitting real data to the DTCC's CFTC swap data repository testing simulator. After months of industry work to interpret and code the CFTC rules, the test demonstrated the ability to use the DRR for end-to-end implementation. In late November, version 1.0 of the DRR was launched and made available to the whole market. *"We're intrinsically interested in the potential of the CDM to address a variety of post-trade processing domains, by which we mean clearing, confirmation, collateral management and, of course, regulatory reporting is an obvious and primary use case. So, in terms of selling the idea of implementation of the CDM to our sponsors, that wasn't really a problem, and we worked on a mandate to adopt the CDM and DRR as the basis first for the CFTC go-live, but with the explicit intention of leveraging that for all the other reporting regime revisions coming in its wake*," said McAllister.
- With further reporting rule changes on the horizon in other jurisdictions in 2023 and 2024, work on the DRR will not stand still after implementation of the first phase of the CFTC revisions. The model was designed to be used for other rule amendments, and because all jurisdictions are expected to adopt a substantial proportion of the CDEs, much of the work to code the CFTC rules will be transferred directly to the DRR for the EU rules that will come into effect in April 2024.
- By the time regulators in the UK, Canada and Asia Pacific implement reporting rule changes – also expected in 2024 – the lion's share of the coding is expected to be complete and only incremental efforts will be required to apply the DRR to each rule book. For those firms that have already tested or implemented the model for the CFTC revisions, there is little doubt of its potential to bring considerable improvements to trade reporting.
- *"You need unambiguous regulations to turn them into code. The DRR primarily solves the interpretation question, so instead of every firm having to interpret, code and test independently, they can easily access the industry consensus through an open-source architecture,"* says Miles Barker, global lead of the investment bank IT business analysis team for regulatory reporting at Credit Suisse.
- In time, it is also expected that regulators themselves could publish reporting rules as machine-executable code that can be interpreted automatically by the technology systems of reporting entities. This has the potential to bring significant efficiencies to the process of updating regulations, further reducing the risk of inconsistent interpretation. "*Through the DRR, we have created an example of standards-based implementation of regulation, and the hope would be that this can develop into standards-based expressions of regulation. The model has been produced in a domain specific language that is readable at any level of industry expertise, so it's very transparent and creates the necessary preconditions for machine-executable regulation,"* says Barker.
- This longer-term possibility of having regulators issue new rules in machine-executable code would reduce the challenges, resources and expense involved in issuing and implementing regulations. Effective use of the CDM – through the DRR – to implement this round of trade reporting rules could certainly pave the way for the model to be extended to the regulatory community in the future. "*Together with market participants, we have deliberately put in place an industry-wide design pattern that will pave the way towards the longer-term goal of having a standardised representation of derivatives contracts and lifecycles using a common blueprint that regulators can leverage as the*

basis to issue new regulations or update existing rules in the future," says Alan Milligan, head of data and digital solutions at ISDA

Deutsche Boerse facilitates first digital issuance of fixed income bond; Transaction on Deutsche Boerse's D7 digital post-trade, the KfW transaction involves a bond with a volume of 20 million euros. KfW has launched the first digital fixed income bond in the form of a central register security on the German Electronic Securities Act (eWpG). The issue was carried out by Clearstream on Deutsche Boerse's D7 digital post-trade platform. The transaction involves a bond with a volume of 20 million euros, a term of two years and a coupon of 2.381%. Deutsche Bank acted as lead manager for this transaction, and Hengeler Mueller as legal advisor. /jlne.ws/3VVL8TE

- KfW was the first issuer to issue a digital issue as a fixed-interest central register security based on the Electronic Securities Act (eWpG). Together with Clearstream, Deutsche Boerse Group's post-trade service provider, it has thus taken a forward-looking step towards digitizing securities issues in the largest capital market segment - that of fixed-interest bonds (fixed income).
- The issue was executed by Clearstream on Deutsche Boerse's digital post-trading platform D7. The transaction involves a bond with a volume of EUR 20 million, a term of 2 years and a coupon of 2.381%. The issue of the bond was accompanied by Deutsche Bank and Hengeler Mueller as legal advisor. /jlne.ws/3HfX5Q5

EU Digital Identity Wallet; *The European Commission is set to fund a multi-national and multi-company consortium as part of a pilot project involving a digital wallet program.*

- A multi-country consortium consisting of banks and technology companies has been chosen to deliver a cross-border payments pilot for the European Commission's EU digital identity wallet program.
- The consortium, led by Nordic-Baltic eID Project (Nobid), consists of participants from six member states - Denmark, Germany, Iceland, Italy, Latvia and Norway.
- The pilot project is due to launch in March 2023
- It is also known as the Nordic-Baltic eID Project. Funding for the same will come from the EU Commission's Digital Europa Programme. The consortium will now go into a contracting and grant negotiation process with the EU Commission.
- The EU digital identity wallet is a secure app that, when launched, will allow citizens across the continent to easily verify their ID, access public and private services, and store sensitive digital documents in one place.
- The consortium's proposal focuses on payments, one of the top priority use cases in the EU's digital ID wallet vision. Its implementation will leverage existing payment infrastructure to enable :
  - *payment issuance,
  - *instant payments,
  - *account-to-account transfers, and
  - *payment acceptance both in-store and online.
- The project has unrivalled support from leaders in banking and payments, including DSGV in Germany, DNB and BankID in Norway, Nets in Denmark, Intesa Sanpaolo, PagoPA and ABILab in Italy and Greiðs luveitan in Iceland.

- Technology partners in the consortium include Thales, iProov, Signicat, RB, Auðkenni, IPZS, Poste Italiane, Intesi Group, InfoCert, FBK, and Latvian State Radio and Television Centre. Merchants that will be testing out the payment solution include Elkjøp in Norway and REWE-group in Germany.
- Tor Alvik, project manager for the NOBID consortium said, “We are honoured and privileged to have the EU Commission’s trust in piloting and shaping the future of digital payments and digital identity in Europe. Together with all our partners, we will make use of our experience and highly mature digital identity infrastructures in the NOBID consortium countries to deliver a successful large-scale payments pilot of the EU Digital ID Wallet.”

EU Digital Identity Wallet Program

Crypto regulation – the introduction of MiCA into the EU regulatory landscape; Just over two years after it was first proposed, the agreed text of the new Markets in Crypto-assets Regulation (MiCA) has been released. MiCA aims to create an EU regulatory framework for the issuance of, intermediating and dealing in, cryptoassets. It will introduce licensing and conduct of business requirements as well as a market abuse regime with respect to cryptoassets.

- How does supervision work under MiCA?
- Competent Authorities (CAs) at member state level will be responsible for supervising CASPs and enforcing requirements under MiCA. CASPs that have more than 15 million active users will be classified as "Significant CASPs". Significant CASPs will remain supervised by the relevant CA(s), but the ESMA (ESMA) will have an "intervention power" to prohibit or restrict the provision of cryptoasset services by CASPs if there are threats to market integrity, investor protection or financial stability. Additionally, ESMA will be able to issue opinions on how to promote supervisory convergence; ESMA already has these powers for the wider financial market. The European Banking Authority will supervise stablecoins that have more than 10 million users or a reserve of assets that are worth more than €5 billion.
- The European Central Bank will also have veto rights in respect of any stablecoin in relation to which it has concerns. Stablecoin issuers will be obliged to maintain reserves 1:1 to cover all claims and provide permanent redemption rights to holders. Reserves will be fully protected in the event of insolvency. ESMA will be empowered to operate a

crypto blacklist in which it can effectively name and warn investors of any CASP that fails to comply with the requirements in MiCA. For example, any company that refuses to register in an EU member state or that purposely avoids having to register by operating outside legal structures might be included in such blacklist.

- Do market abuse restrictions apply?
- As a new type of asset class, cryptoassets that do not qualify as financial instruments under MiFID II fall outside the scope of the EU Market Abuse Regulation (MAR). However, MiCA sets out new market abuse rules for cryptoasset markets to guarantee market integrity. These rules apply to cryptoassets that are admitted to trading on a trading platform for cryptoassets operated by an authorised cryptoasset service provider. They notably include requirements relating to the disclosure of inside information, the prohibition of insider dealing, the prohibition of unlawful disclosure of inside information and the prohibition of market manipulation.
- When and how will MiCA apply?
- The EU Parliament is expected to formally adopt MiCA at a plenary session during February 2023. It will then still need to be formally approved by the Council of the EU before it can be published in the Official Journal, probably in Q1 or Q2 2023. It will enter into force 20 days after such publication. The provisions on ARTs and e-money tokens will apply from 12 months after entry into force, expected to be spring 2024. Other provisions of MiCA will apply from 18 months after entry into force (i.e. in the second half of 2024). For firms already providing cryptoasset services in accordance with national laws in the EU when MiCA starts to apply, there are grandfathering/transitional provisions under MiCA which will give firms more time to become authorised under MiCA. For example, existing CASPs may continue to provide their services in accordance with national law for an additional 18 months after MiCA comes into effect. In some cases, such firms may also benefit from a simplified authorisation procedure
- Additional technical guidance will follow MiCA's introduction and there is also scope for MiCA to be extended in the future. For example, as outlined above, MiCA includes a provision for EU authorities to review its application in relation to DeFi and NFTs that could lead to specific regulatory regimes to be introduced for them.
- *What should my firm be doing now to prepare for MiCA?*
- My firm is already authorised as a financial institution Firms that are already authorised will not generally need to seek another authorisation under MiCA, provided that they meet certain disclosure requirements including a requirement to notify their competent authorities of the services they intend to provide with respect to cryptoassets. However, requirements under MiCA are nuanced from equivalent requirements under MiFID and other existing legislation so such firms must still undertake a detailed analysis of their crypto activities to see what is caught by MiCA vs other existing legislation and to consider where changes to existing policies are needed or additional requirements might apply accordingly, e.g. location based requirements for issuers of ARTs.
- *My firm issues cryptoassets within the EU and is not currently authorised*
- Issuers of ARTs must be both established and authorised within the EU. Non-EU firms that wish to continue issuing ARTs in the EU should act now to establish an undertaking in an appropriate member state and secure the relevant authorisation given the time that such processes can take.
- My firm is based in the EU and currently provides cryptoasset services but is not currently authorised

- Firms should undertake a detailed analysis of the extent to which their activities are caught by MiCA and what restrictions will apply and consider whether seeking an authorisation in their home or any other appropriate member state ahead of MiCA taking effect would be worthwhile to benefit from the transitional arrangements and to avoid post-MiCA delays. Firms that wish to do so must act swiftly as authorisations can take many months to secure.
- *My firm currently provides cryptoasset services into the EU but is based outside the EU*
- MiCA does not provide for a separate third country regime, so non-EU firms will have to obtain full authorisation to offer services within the EU. Firms should undertake a detailed analysis of the extent to which their activities are caught by MiCA and what restrictions will apply and consider whether seeking an authorisation in an appropriate member state ahead of MiCA taking effect would be worthwhile to benefit from the transitional arrangements and to avoid post-MiCA delays. Firms that wish to do so must act swiftly as authorisations can take many months to secure.

Singapore to tighten rules on cryptocurrency trading; *Once touted as 'crypto paradise', Singapore is now moving ahead with its plans to tighten rules on cryptocurrency trading by retail customers. The Monetary Authority of Singapore (MAS) has proposed a suite of measures aimed at reducing the risk of consumer harm from cryptocurrency trading.*

- This briefing paper summarises these proposals and briefly considers how they compare with developments in Hong Kong, the EU and the UK. Cryptocurrency players should review their business plans and structures to see if they might be impacted.

The SEC filed its first legal brief in the GBTC spot ETF suit arguing "there [was] no inconsistency in the Commission's disapproval of Grayscale's spot ETP despite having approved two CME bitcoin futures ETPs." (Grayscale)

The CEO of crypto news source The Block resigned after revealing that he had secretly received $27 million in financing from Sam Bankman-Fried to support his 2021 management buyout. (Medium)

The Bank of England is seeking applications for a proof of concept for a CBDC wallet. (Gov.uk)

published a paper on the key findings of their experiments using distributed-ledger technology on existing networks to conduct real-time transactions with a central bank digital currency. "Experiments like these will provide the framework that allows central banks all over the world to confidentially issue CBDCs, something that we at HSBC anticipate is likely to happen within the next 15 years," HSBC said.: Finextra Research

Tokens and credentials are not the same thing at all; *The chaotic scenes at this year's Champions League final at the Stade de France in Paris were caused, according to the relevant authorities, by fans trying to gain access to the venue with counterfeit tickets.*

- As it turned out, it was poor filtration, unreliable technology and bad management that were the problem more than the fakes themselves because there were actually only 2,700 fake tickets presented on the night. I do not doubt that many of these tickets were

purchased in good faith and there are a great many devoted followers of the Reds who were taken for a ride by unscrupulous middlemen.

- There is actually a fairly easy solution to this problem because event tickets are a very natural application for "Web3".
- A ticket for a seat at the Champions League final is a non-fungible token (NFT). It is absolutely unique and there are no copies or clones allowed if the system is to work. I have absolutely no idea about how Champions League tickets are allocated at the moment but for the sake of discussion let us assume that some go to the clubs, some go to corporate sponsors, and some go to various dignitaries. Each of these is allocated through multiple tiers of distribution until an actual ticket ends up in the hands of an actual fan.
- Now imagine a decentralised alternative. The venue mints the NFTs for the event, and then sends these over to the wallets of the supporter's clubs, sponsors and so on. Basically, that's it. That's all they have to do.
- Neither the stadium nor the clubs nor the police nor anybody else has to worry about counterfeit tickets in this alternative vision because they simply don't exist in the NFT environment. The tickets can be bought and sold and transferred between wallets by means of DeFi protocols with no further central coordination required.
- (You might argue that fans should not be allowed to sell their tickets: For the purposes of this article, I disagree.)
- When a fan turns up at the stadium, they either have the NFT for a seat on the night or they do not. End of. That NFT might be stored in a suitable wallet accessed via a smartphone or might be stored in a smart card or even some fancy device provided for the purpose or whatever, but the general point holds: The fan shows up at the gate and presents the NFT, the gate opens, and friendly and helpful stewards direct them to their seat.
- Well, not quite. As always, the complicated part is identity.
- The stadium is private property, and it is under no obligation to allow entry to one and all. It might, for example, require that fans with a Liverpool ticket belong to the official Liverpool Supporters Club. Why? Well, because some people are banned from stadiums. In that case, even if he buys an NFT for a game at an English football stadium, he will be denied entry, because no fan club will issue the necessary verifiable credential (VC) that is needed to get into a ground, since in order to issue this credential, they will have to scan the list of banned supporters.
- (You can easily imagine that the fan club app on the phone will connect, say, once every week to obtain an IS-A-SUPPORTER credential that is valid for a week. No credential, no entry.)
- In other words, the token (in this case, the event ticket) and the credentials of the ticket bearer are entirely different things that are implemented in entirely different ways. This is an interesting debate right now as fintech looks for sustainable new business models around the metaverse.
- NFTs and VCs are often spoken of interchangeably because they uniquely identify entities in the digital world, but they are not the same thing at all. For one thing, a fundamental characteristic of an NFT is that it can be transferred: That's kind of the point of NFTs. It can cause real problems when these technologies are used for use cases for which they were not designed. NFTs are designed for recording the ownership of and transfer of value, as well as representing assets in digital form. VCs are

fundamentally optimized for recording attributes relating to identity. This is why the suggestion for using non-transferable NFTs to manage reputations does not feel right to me.

- Just to signpost where we are then: VCs are not transferable. VCs are a (privacy-enhancing, when used correctly) means to prove facts about an entity. NFTs are about demonstrating the rights of ownership, VCs are about demonstrating the reputation of owners.
- When it comes down to implementation though, I think the soccer examples illustrate the right way forward: the event ticket is an NFT, the Liverpool Supporters Club membership is a verifiable credential. A practical system for speeding people through the gates of the Stade de France in the future must deal with both of these, so that when the fan presents their smartphone to a gate, the gate can request authentication of the ownership of the NFT and the VC at the same time and have both of them delivered in one tap.
- The infrastructure is already coming together. An Android wallet capable of storing NFTs can use the Identity Credential Hardware Abstraction Layer (HAL) to deliver the requested verifiable credential and Apple already supports identity credentials such as drivers' licences in the USA. There is no practical barrier to building a working infrastructure that deploys both NFTs and VCs to the greater good.

Turkey Pushes Ahead with Digital Lira; Turkey's central bank announced today that it had completed the first set of tests for its long-planned digital currency. The Central Bank of the Republic of Turkey (CBRT) said that it plans to continue running tests for its digital lira next year. "The CBRT will continue to run the limited, closed-circuit pilot tests with technology stakeholders in the first quarter of 2023," the statement read. "Findings obtained from these tests will be shared with the public via a comprehensive evaluation report." /jlne.ws/3VrRQAg

Blockchain-based technology provider Securrency has formally unveiled in new CEO, hiring Nadine Chakar from State Street, where she was head of the bank’s digital assets division.

- Chakar will take up her role on January 9, confirming reports that she had left State Street late last year. Prior to her role as head of State Street Digital, Chakar was head of global markets at the bank, having joined from Manulife Investment Management in early 2019, where she was global head of operations and data. Prior to that she worked at BNY Mellon as global head of e-commerce strategy and research and financial market infrastructure.
- Securrency says Chakar’s appointment will allow Dan Doney, the fim’s founder, who has served as the company’s CEO and lead architect since its inception, to focus on innovation, technology delivery, and commercialisation. He will continue to serve as chief technology officer.
- “The financial services industry is at a critical tipping point as it tokenises regulated real-world assets and automates legacy financial processes using the power of blockchain technology,” says Chakar. “The Securrency team has done a remarkable job of developing the most robust technology on the market. As the new CEO, my priority is to accelerate the commercialisation of what is in essence the digital asset intelligence and interoperability foundation for major financial institutions and the global

ecosystem. Dan Doney is a true visionary and innovator in the industry, and I look forward to working closely with him and the team to create the global digital assets marketplaces of the future."

- Doney adds, "Nadine is an exceptional leader and Securrency has been fortunate to leverage her extensive financial industry expertise as a board member and now as incoming CEO. She knows capital market operations inside and out. Nadine shares my passion for innovation, and we are united in our determination to make financial markets more accessible and efficient. She has a razor-sharp view of where reform is needed and how our technology can help. I am excited to work with Nadine as we focus on evolving our solution to bridge traditional and decentralised finance."

CME Group and CF Benchmarks will extend their suite of non-tradeable cryptocurrency benchmark products after announcing plans for three new Metaverse reference rates and real-time indices, beginning January 30.

- The three new products are Axie Infinity, Chiliz, and Decentraland and will utilise pricing data from those crypto exchanges and trading platforms that are current constituent exchanges for the CME CF Benchmark suite of reference rates and real-time indices. Each will be calculated with pricing data from a minimum of two of these exchanges – Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.
- The new reference rates will provide the dollar price of each digital asset, published once-a-day at 4 pm London time, while each respective real-time index will be published once per second, 24 hours a day, 365 days per year.
- "These benchmarks will provide accurate and resilient pricing data for tokens linked to the Metaverse, an exciting new scion of crypto where properties and communities can exist wholly within a virtual realm," says Sui Chung, CEO of CF Benchmarks.
- Citing a rising interest in Metaverse projects, CME Group's global head of cryptocurrency products, Giobanni Vicioso, adds, "With increased price transparency across more cryptocurrency products, market participants will be able to price sector-specific portfolios, develop structured products with greater confidence and manage price risk around various Metaverse-based projects."

Sanctions

EU Commission- The following sanction files list have been updated: Consolidated Sanctions List:

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

On 2 December 2022, HM Treasury published updated statutory guidance to assist in the implementation of, and compliance with the Russia (Sanctions) (EU Exit) Regulations 2019. The

guidance has been updated to clarify the application of the prohibition on provision of technical assistance, financial services or funds related to G7 dependency and further goods.

Maritime transportation and services ban; *The UK, EU and U.S. restrictions are materially aligned and effectively prohibit the maritime transportation and services for the supply or delivery of Russian origin or Russian consigned / exported oil for maritime voyages between Russia and a third country or between two third countries. For the purposes of this client alert, "third country" refers to a country that is not the UK, the U.S., Canada, Japan or Australia, or not in the EU.*

- These restrictions apply from 5 December 2022 for HS/CN Code 2709 products and from 5 February 2023 for HS/CN Code 2710 products of Russian origin or that are Russian consigned or exported from Russia (Restricted Oil Products).
- In respect of HS/CN Code 2709 products, there is a wind-down if the oil was loaded onto a ship before 5 December 2022 provided that it is discharged and clears customs in a third country before 19 January 2023.
- Permitted maritime transportation and services

- The relevant publications on the price cap are as follows:
  - UK General Licence
  - U.S. Determination
  - EU Amending Regulation and Implementing Regulation
- The maritime transportation and services restrictions do not apply in relation to Restricted Oil Products that fall under HS/CN Code 2709 if the "unit price" (being the price per barrel) of such products is at or below US$60.
- This price cap covers only the price of Restricted Oil Products. Ancillary costs including, but not limited to, transportation and legal fees are not subject to the price cap.
- The relevant price cap relating to Restricted Oil Products that fall under HS/CN Code 2710 will be published by the UK, EU and U.S. in due course.
- The price cap restrictions will apply from shore to shore, i.e., from receipt of the relevant cargo onboard a ship up to the point where it is delivered and is substantially transformed into a different good in line with the applicable rules of origin (e.g., the resulting product comes under a different HS/CN code).
- In other words, every transaction from loading of the Restricted Oil Products cargo onboard a ship until such cargo is substantially transformed into a different good in line with the UK, EU and U.S. rules of origin must comply with the price cap in order for the price cap exemption to be available.
- The EU intends to regularly review the relevant price cap to ensure that it is "at least 5% below the average market price for Russian oil and petroleum products, calculated on the basis of data provided by the International Energy Agency".
- Updated guidance
- Over the past few weeks, the UK, EU and U.S. have each published and/or updated their relevant guidance on the price cap restrictions. A further client alert on the respective guidance will follow shortly.

Moscow Exchange provides an opportunity to conclude OTC-deals with bonds with settlements in yuan; MOEX; From December 5, 2022, banks, brokers, management companies and their clients can enter into over-the-counter bonds transactions with settlements in Chinese yuan. The new trading mode opens up additional opportunities for using the Chinese yuan in

transactions on the securities market. RMB settlements have become available for all bonds and Eurobonds as part of the service of bilateral transactions with a central counterparty (CC), which today allows you to make transactions with almost 2.5 thousand bonds. /jlne.ws/3B9oPSB

EU Consolidated Sanctions List:

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

OFSI will be operating a reduced service during the Christmas and New Year period.; *From 12:00 on Friday 23 December 2022 until Tuesday 3 January 2023 inclusive, we will only be dealing with urgent requests.*

- The OFSI and Oil Price Cap inboxes and the OFSI helpline mailbox will not be monitored on the following UK public holidays:
- Monday 26 December 2022
- Tuesday 27 December 2022
- Monday 2 January 2023
- Normal service will resume on Tuesday 3 January 2023.

HM Treasury publishes anti-money laundering and countering the financing of terrorism supervision report 2020-22; *On 19 December 2022, HM Treasury published the anti-money laundering and countering the financing of terrorism (**AML/CTF**) supervision report 2020-22.*

- The report provides information about the performance of AML/CTF supervisors between 6th April 2020 – 5th April 2022 and fulfils the Treasury's obligation, under section 51 of the Money Laundering Regulations (**MLRs**), to publish an annual report on supervisory activity.
- The report includes supervisory and enforcement data on both the statutory and Professional Body Supervisors, highlighting notable changes in supervisory activity and fines that supervisors have issued.

Regulators in the Bahamas Are Holding $3.5 Billion in FTX Customer Assets; The Bahamian Securities Commission has taken custody of FTX deposits valued at more than $3.5 billion as of Nov. 12, according to a media release published late Thursday by the BSC. Shortly after FTX filed for bankruptcy, about $372 million worth of tokens were stolen from the exchange by an unknown actor thought to be an external hacker. Given media reports of a cyberattack on FTX, and possible looting of FTX-controlled wallets by former employees, the Commission said in its media statement it "determined that there was a significant risk of imminent dissipation as to the digital assets under the custody or control of [FTX] to the prejudice of its customers and creditors." /jlne.ws/3CcCSHy

US sanctions more Russian banks The US Treasury Department has imposed sanctions on Russian businessman Vladimir Potanin and the financial services firms with which he is affiliated. The sanctions include Rosbank, a commercial lender acquired by Potanin earlier this year, and 17 subsidiaries of the already sanctioned major bank VTB. The Wall Street Journal (15 Dec.), Financial Times (15 Dec.), Bloomberg (15 Dec.), Reuters

OFAC Sanctions More Entities Involved in Russian Financial Sector; *OFAC sanctioned 18 entities related to the Russian Federation's financial services sector as part of a broader effort to limit Russia's ability to fund its war against Ukraine.*

OFSI; New sanctions measures – Russia; *As part of updated regulations in the Russia sanctions regime, there are new restrictions on the provision of trust services.*

- The Russia (Sanctions) (EU Exit) (Amendment) (No. 17) Regulations 2022 prohibit the provision of trust services:
- to or for the benefit of a person connected with Russia unless pursuant to an ongoing arrangement pursuant to which that person provided those services to or for the benefit of the person connected with Russia immediately prior to 16 December 2022
- to or for the benefit of a person designated for the purposes of regulation 18C (trust services)
- Amendments have also been made to restrictions on transferable securities and money-market instruments, loan and credit arrangements, and investments in Russia. These amendments have been designed to prohibit new investments in Russia via third countries.
- OFSI has updated its Russia guidance to reflect these measures.
- For full etails of the regulations on the FCDO's Russia Sanctions page,

EU sanctions tsar: David O'Sullivan, a former EU ambassador to the US, will be appointed sanctions envoy from January, as the bloc seeks to push for tighter enforcement of its penalties in countries including Turkey and crack down on circumvention of its measures against Russia.

EU Sanctions; Consolidated Sanctions List:

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

16 entries have been added to and 1 entry amended under the Russia financial sanctions regime; *On 13 December 2022 the Foreign, Commonwealth and Development Office updated the UK Sanctions List on GOV.UK. This list provides details of those designated under regulations made under the Sanctions Act.*

- 16 entries have been added to the Russia financial sanctions regime and are now subject to an asset freeze. 1 entry has been amended and remains subject to an asset freeze.
- Furthermore, corrections have been made to 4 entries under the Global Human Rights, Global Anti-Corruption and Myanmar financial sanctions regimes. The relevant notices can be found on the respective regime pages.
- OFSI's consolidated list of asset freeze targets has been updated to reflect these changes.
- To see the Russia notice

Brexit Regulations

UK execs welcome Edinburgh reforms but doubt "big bang" Financial industry executives have largely welcomed the UK's proposed "Edinburgh Reforms", but many say it will not likely produce the second "big bang" for the sector that Chancellor Jeremy Hunt has promised. "This is more of an adjustment, a redress of sorts," JPMorgan Securities Chair Sir Win Bischoff said of the "big bang" promise. "The Edinburgh Reforms will however be useful in arresting the relative and measurable decline of the City over the past five years." Financial Times

UK revokes French bank's licence for missed deadline The UK FCA has revoked the UK operating licence of France's Lyonnaise de Banque "for missing its landing slot and failing to apply for [post-Brexit] authorization in a timely manner." The FCA said the bank had been operating under the UK's Temporary Permissions Regime and that it had told banks at the start of the year that "the TPR should only be used by firms who want to operate in the UK in the long-term and meet the standards to do so.": Finance Magnates, BNN Bloomberg (Canada), Financial News

- Temporary permissions removed if firms failing to apply for authorisation; *Lyonnaise de Banque has had its temporary permissions revoked, meaning that the firm can no longer conduct regulated activity in the UK.*
- This is the first time that a firm in the Temporary Permissions Regime (TPR) has lost its permissions for missing its landing slot and failing to apply for authorisation in a timely manner.
- When the UK was part of the EU, firms based in another member state could trade in the UK without being authorised by the FCA under what was termed a passport. The TPR was put in place so those firms could continue to operate in the UK while they applied for full FCA authorisation, following the UK's withdrawal from the EU.
- At the start of the year, we stated our expectations of firms in the TPR and that if they miss their landing slots, or do not apply by 31 December 2022, we expect them to voluntarily cancel their temporary permissions.
- If this does not happen, then we would take swift action to cancel permissions as the TPR should only be used by firms who want to operate in the UK in the long-term and meet the standards to do so.
- Final Notice in relation to Lyonnaise de Banque

The HMT UK Reform package is an amalgam now conjointly owned by Rishi Sunak, Jeremy Hunt, John Glen and Andrew Griffiths which *is why it comprises an amalgam of both old initiatives (ring-fencing and consumer credit review), some new chapters (SMCR review, digital currency), as well as borrowed items from the not new WMR proposals (prospectuses, securitisation, consolidated tape).*

- *The first five categories of reform [FS&M Bill; WMR; SMCR; SSR; Research and perhaps ESG disclosures are relevant to firms, but the further 8 are not, but illustrate the omnibus approach to this "**second phase**" of the FRF; SOLV2 & the "Hill Review" having comprised the lion's share of the first phase]. Simmonds made a good quick-take webinar yesterday, and we're sure the other magic circle law firms will soon follow.*

1. The backdrop – the Financial Services and Markets Bill

This is all against the backdrop of the Future Regulatory Framework Review outcomes which are being implemented in the Financial Services and Markets Bill that, like the Polar Express, is currently steaming ahead through Parliament and will be passed at some point in the New Year.

We all know a lot about the FSM Bill already but now we have a tiny bit more detail on the future trajectory of the process though. As a reminder:

- The FSM Bill will, amongst other things, create the tools and framework needed to repeal EU financial services law and move it into the regulators' rulebooks
- This will take several years and will involve "significant policy, regulatory and legal resource" – so some policy changes might happen
- Significant progress on first 2 "tranches" of this are expected by the end of 2023
    - Tranche 1 will be implementing the Wholesale Markets Review, the Listing Review, the Securitisation Review, and the Solvency II Review
    - Tranche 2 will be remaining reform of MiFID, PRIIPS, SSR, Taxonomy Reg, MMF Reg, PSD and EMD, CRR and CRD, LTIF Reg, IMD
- This will be a painstaking process as Parliament will need to pass SIs to repeal each piece of retained EU law (or "REUL")
- Government will tell the regulators what they must "have regard" to from a government policy perspective in their rule-making
- The FSM Bill introduces "Designated Activities" – a new piece of jargon to mean activities that need rules around them (e.g. making a public offer) and that will be used at first for EMIR, MIFIR commodity derivatives rules, SSR, Securitisation Regulation, PR, BMR – i.e. to allow the government to preserve elements of EU regimes
- The FSM Bill proposes a new secondary FCA objective of growth and competitiveness. And, as part of the Edinburgh Reforms, we now also have new letters from Jeremy Hunt to the FCA and PRC specifying that they must have regard to supporting government's objectives of medium to long term economic growth and promoting the international competitiveness of the UK
- We are also promised less EU terminology in future and more UK terminology, thus potentially depriving the industry of further stimulating discussions about how "RTO is like arranging (bringing about)".

2. WMR (old)

- Much of the package announced was already known to the market.
- The key detail is in the government's response to the Wholesale Markets Review. Although openness and competition – to enhance the UK's position as a global hub for wholesale markets – is a key objective, this is not to be at the cost of maintaining high regulatory standards. That said, many of the proposed reforms will be welcomed by many in the markets, in particular, the simplification of the SI regime and dropping the double volume cap for equity markets. Also to be welcomed is the allocation of responsibility for certain matters to the rights market actors: so for example the position limit regime is going back to the exchanges – like in the US.
- What is also good to see so far is that the government is picking up on responses to the Wholesale Markets Review: for example on access to capital for small companies, a respondent suggested that a new type of trading venue which works with trading windows rather than continuous trading might be a solution. The government has announced that it will work with the regulators and market participants to trial such a new class of wholesale market venue.
- Other new things are also be trailed by others, so for example, the ideas for improving post trade by shortening the settlement cycle and working out which laws need to be changed to see if blockchain technologies can be used by CSDs are already being looked at in the US, India, and the EU. The key question will be how flexible and forgiving the detailed provisions to hang onto the scaffolding in the FSM Bill will be.

3. SMCR review (new)

- Whilst not insignificant, it's clear that an "overhaul" of the SMCR is not guaranteed. There's actually very little detail from Jeremy Hunt's statement except that there will be a Call for Evidence in Q1 2023 where information will be gathered on the effectiveness of the regime, the legislative framework, its scope, and proportionality, and also to seek views on potential improvements and reforms. Key initial takeaways for firms are:

1. There is a general sense in the market that this is likely going to be more about reviewing and tweaking the SMCR rather than scrapping it all together or looking to weaken standards.
2. It may potentially slow down other FCA initiatives relating to the SMCR – for example, the FCA's long awaited guidance on non-financial misconduct as part of their 2023 D&I consultation paper - until there is clarity over what revisions to the regime might look like.
3. It's status quo for now with any potential legislative changes unlikely to be quick given there will be a review/consultation phase after the Call for Evidence – but clearly it is something to watch next year.

4. Short Selling Regulation (new, but the FCA had flagged)

This is in the nature of a policy review. At this stage, the Call for Evidence covers shares only, government bonds and CDS to be consulted upon separately. The government wants to understand what does and doesn't work under the regime for shares.

We have a (lengthy) laundry list of things that could be improved, including:

1. raising, to sensible levels, the initial reporting thresholds for both private and public disclosure,
2. Anonymity
3. requiring the FCA to create and maintain a definitive public list of the shares that are in scope (on which everyone would be permitted to rely definitively),
4. requiring in-scope issuers to publish a denominator, again, on which everyone is permitted to rely as a "golden source" (with no reporting requirement unless and until the relevant issuer has published),
5. exempting firms from having to report net short positions to the extent that the position is matched by a delta equivalent long position in a convertible or warrant,
6. changing the timeframe for reporting to something a lot less aggressive than 3:30pm on T+1 (why does the market need to know about the position within such a short timeframe when the long regime allows 2-4 trading days?); and
7. allowing allocations in a capital raising to count as acceptable cover for sales (even if there are technical conditions (such as admission by the exchange) which still need to be satisfied before the issuance takes place).

5. Independent Research Review (newish – but it was anyway coming as the FCA had 'no-actioned')

- We are told this is yet another review of investment research and its contribution to UK capital markets competitiveness. We suspect this will be about unbundling (if you do not know what that is, we have a MiFID 2 survivors group that can explain) and perhaps also another look at the golden age of unconnected research* ushered in by the FCA's 2017 IPO reforms. (* not really……)

6. ESG

- The UK government published its previous Green Finance Strategy in July 2019. Since then, we've seen the UK government, PRA and FCA work to implement that strategy. Their work to-date has included the mandatory TCFD-aligned climate disclosure rules across the UK economy (including financial services firms, pensions, and larger listed corporates), and the proposed new Sustainability Disclosure Rules (SDRs).
- The Edinburgh Reforms announced that an updated Green Finance Strategy will be published in early 2023.

- This could cover further work to support the UK Government's 2050 net zero commitments, including mandatory transition plans across the UK economy (including for financial services). We also anticipate further work on the UK's version of the EU's environmental taxonomy, and potentially also a social taxonomy.
- Improving ESG Data: As a first tangible step, the Edinburgh Reforms included a specific proposal on bringing ESG ratings providers into the scope of the UK regulatory perimeter.
- Mandatory transition Plans.
- Nature Related disclosures; Issuers reporting Scope3 Greenhouse Gas Emissions.

- Financial Advice definitions: addressing the boundary between regulated financial advice to retail, and unregulated Financial Information.

7. Payments (newish – but it was anyway coming with FinTech)

- There are two main initiatives linked to payments, neither of which are completely out of the blue – a consultation on changes to the information requirements in the Payment Account Regulations (PARs) and a wider overhaul of the regulatory framework for payment services and e-money that will start with the FCA's powers to make rules in relation to APIs and EMIs.
- The consultation on PARs runs until 17 February 2023 and affected firms – mostly banks - are encouraged to feed back on the current information requirements. The PARs contained a lot of mandatory requirements on the form and content of fee information that must be provided to customers. Building on the post-implementation review conducted in 2021, HMT have come to the conclusion that most of these requirements are too prescriptive or '*less necessary in a UK context*'. This won't be news to anyone but the prevalence of free-when-in-credit-banking in the UK makes a lot of the requirements not only unnecessary but also irrelevant so there is a good opportunity to respond constructively to the consultation with a view to moving away from the current EU centric approach. One note of caution, however. In the context of the Consumer Duty, firms will need to consider how any changes or a perceived move away from being transparent with customers will be viewed by the FCA.
- On the overhaul of the rules affecting payments and e-money, this was signposted as part of the Future Regulatory Framework Review. The focus here is on giving the FCA powers (and HMT influence) to make rules for APIs and EMIs in the same way they do for authorised firms under FSMA. Of particular interest here is the power with regard to client money that has been called out in the draft Statutory Instrument changing the EMRs and PSRs. Having lost the argument around the creation of statutory trust in a safeguarding context at the Court of Appeal (the Ipagoo case from earlier this year) the FCA now appears to have found a way to make the necessary changes to the regulation to impose this requirement directly – the Simmonds Policy Note is available here.
- There is an interesting focus on the ability to make changes that encourage economic growth and respond quickly to the innovation in the payments space. This is obviously a welcome development, but it remains to be seen how effective the FCA will be when asked to take on a more commercial role. It does, however, open up the possibility that regulators will engage more with industry which was one of the main recommendations of the Kalifa Review.
- Overall, it's far from clear at this stage whether the divergence we've seen to date in fairly limited areas like TPP access and the application of SCA will turn into wholesale differences in payment regulation when between the UK and the EU.

8. Consumer Credit Act review (old) – some long overdue reforms

- Coming in at 48 pages plus annexes, this is currently the biggest of the consultation papers. Building on the FCA's 2019 Retained Provisions Report and the June 2022 announcement of CCA reform, this long overdue modernisation of the decidedly middle-aged and somewhat unwieldy CCA is expected to take several years. Two of the key

principles of the reforms will be proportionality and simplification, with an eye also to the territory that is going to be covered by the FCA Consumer Duty.

- Some of the points under consultation include:
    - Changing or possibly abolishing the £25k minimum for the business lending exemption
    - Reviewing and modernising information requirements
    - Looking at how reform can encourage financial inclusion and remove barriers to financing electric cars and "green" energy for homes

- Where possible, rules will be moved into the FCA Handbook and there may need to be some extension of FCA powers. The idea is that this will allow the rules to be flexible and to adapt rapidly to an evolving market. But the regime is likely to end up split between FCA rules and some residual legislation because some things need to be in legislation (e.g. rights to sue, powers that courts have, liability provisions where lenders can be jointly liable with brokers, circumstances in which credit agreements are unenforceable)

9. Ring-fencing (old) – some expected reforms

This follows on from the Skeoch report recommendations in March 2022, which concluded that the UK's ring-fencing regime is worth keeping for now but may gradually be superseded by the recovery and resolution regime. The Government intends to call for evidence in Q1 2023 on better aligning the ring-fencing and resolution regimes, and will consult in mid-2023 on reforms including some of the Skeoch recommendations such as:

- Descoping banking groups who do not have major investment banking operations (er... come to think of it, weren't the ones that collapsed in 2008 in this category, whereas the ones with IB operations didn't collapse? Just saying.)
- Amending the definition of Relevant Financial Institutions
- Removing geographical restrictions on where ring-fenced banks can operate
- Reviewing activities which ring-fenced banks can carry out and potentially expanding them
- Increasing the deposit threshold from £25bn to £35bn

10. PRIIPS (new, but not a surprise)

- Honey, I shrunk the KIDs! Literally, because the PRIIPs KID's days are now numbered and will soon cease to be a feature of the disclosure regime to UK retail investors. But watch this space; HMT is asking for views on a new framework for retail disclosure via a consultation which closes **3 March 2023**. The new disclosure regime will be crafted by the FCA, whose in-tray must now be creaking under the weight of the Government's festive generosity.
- HMT has been critical of the prescriptive, standardised document approach favoured by the EU and wants to move towards something which is more **flexible** and can be **tailored to retail client needs**. They have criticised **comparability**, saying that it is not feasible to

provide for a single format across such a wide range of varied products. The FCA will determine the format and presentation requirements for disclosure – more high risk or complex investments may have more prescriptive requirements, for example – but for other investments they would like to introduce flexible requirements that can be incorporated into firms' **existing information documents**. The FCA might define product classes or groupings within which there would be some standardisation so that similar products can be compared, but HMT acknowledges the challenges with this approach, such as not permitting firms the flexibility to tailor their disclosure to different clients

- Two important points to note:
  - Whilst the revocation process will commence "**as a matter of priority**" following Royal Assent - the upcoming changes to UK PRIIPs regime which take effect on 1 Jan 2023 are still coming into force.
  - This revocation will be effective in relation to **UK retail investors only**; firms will still need to continue to provide EU-compliant PRIIPs KIDs for **EU retail investors**.

- You may be asking how this will this impact the other PRIIPs reforms on the regulatory horizon. Helpfully, HMT have ruled out different disclosure regimes to govern UCITS and PRIIPs long-term. Therefore, the FCA shall **integrate UCITS and PRIIPs disclosure into a coherent UK retail disclosure framework before the end (in 2026) of the exemption for UK UCITS from producing PRIIPs KIDs**.
- The consultation also expresses a key ambition to improve the choice of investment products available to UK retail investors, and specifically mentions US ETFs in this regard. This indicates a longer-term move away from the current situation, where most of the non-UK funds that are made available to retail are EU funds.
- There is not much detail at the moment, but there are a number of obvious questions:

- What is the purpose of the new disclosure regime over and above what Consumer Duty requires under the Customer Understanding outcome? Will it make certain disclosures mandatory? The Government says it wants a "less prescriptive approach"
- How will the new regime interact with the Consumer Duty given that FCA will have power over both?
- Will the new regime apply to incoming offers from non-UK firms? Presumably yes, hence the FCA's consultation question about what additional powers the FCA may need. But how will this help achieve the Government's desire to open up UK retail access to non-UK products?

11. **VAT Treatment of Fund Management Consultation (old / borrowed)**

- This is something old or maybe borrowed for most fund managers.
- The government has published a consultation document setting out its plans to codify the existing UK VAT exemption for the management of special investment funds.
- In essence, the government intends to replace the existing definition with a clean and simplified rule allowing investment managers to determine whether they fall within the VAT exemption with greater certainty.

- For the industry, a top priority was the review of the VAT treatment of fund management, to ensure that the treatment of fund management in the UK is competitive and that the case for zero-rating is considered.
- However, disappointingly, the consultation will not consider the possible introduction of a VAT zero-rate for fund management fees due to cost. The consultation also avoids commenting on model portfolio services, which may leave many in the industry feeling that the most complex and divisive issues are not being properly addressed by HMRC.

12. Investment Management Exemption (new)

- HMRC has published the responses to its earlier consultation on expanding the investment transactions list for the purposes of the investment management exemption (IME). The response confirms that the expansion will take place, with regulations to be introduced before the end of 2022. The IME provides a safe harbour for non-UK funds using UK-based investment managers to conduct investment transactions on behalf of the fund without creating a risk of UK taxation for the foreign fund.
- The government has decided to push ahead with the expansion of the investment transactions list to include cryptoassets. Overall this seems a very positive outcome, especially as the government has recognised the need to introduce the changes without further delay.

13. UK LTIF / LTAF (new, but not a surprise)

- The EU's European Long-Term Investment Fund (ELTIF) structure was introduced in 2015 to encourage investment in long-term assets, and the UK retained the ELTIF in the immediate aftermath of Brexit, snappily re-naming it the UK Long-Term Asset Fund ("UK LTIF") for rather obvious reasons. However, no ELTIF or UK LTIF has even been authorised in the UK and, since Brexit, the UK has introduced the Long-Term Assets Fund ("LTAF") - an authorised fund which is considered more appropriate for UK investors. Further, the EU itself is currently looking to amend the ELTIF regime to make it a more attractive regime for EU managers.
- The lack of any existing UK LTIFs, the introduction of the LTAF, and the incoming changes to the EU's ELTIF regime have left the UK LTIF as a bit of a lame duck. Therefore, probably one of the least surprising announcements last week was that the UK LTIF will soon disappear from the menu of UK authorised funds.

Edinburgh Reforms: UK Government announces financial services package; *The UK Government has announced an extensive package of reforms to the UK's regulatory framework for financial services aimed at maintaining and building the competitiveness of the UK as a global financial centre.*

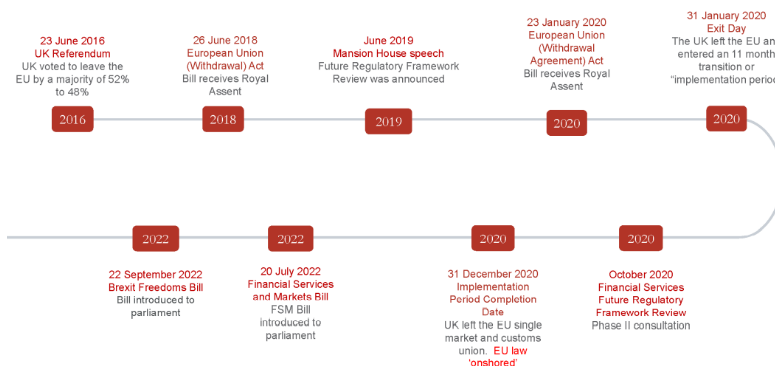
- The package, which builds on the 2021 Chancellor's Mansion House speech, seeks to take forward the implementation of a Financial Services and Markets Act 2000 (FSMA) model of regulation through powers established in the Financial Services and Markets (FSM) Bill.
- Measures set out in the package include:
    - reforming the ring-fencing regime for banks;

- issuing new remit letters for the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) with targeted recommendations on growth and international competitiveness;
- publishing the plan for repealing and reforming EU law using powers within the FSM Bill;
- overhauling the UK's regulation of prospectuses;
- reforming the Securitisation Regulation;
- repealing the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, and consulting on a new direction for retail disclosure;
- intending to repeal EU legislation on the European Long-Term Investment Fund (ELTIF), reflecting that the new UK Long-Term Asset Fund (LTAF) provides a better fund structure for the UK market;
- launching a call for evidence on reforming the Short Selling Regulation;
- publishing a draft statutory instrument (SI) to demonstrate how the new powers being taken forward in the FSM Bill will be used to ensure that the FCA has sufficient rulemaking powers over its retained EU payments legislation;
- consulting on removing burdensome customer information requirements set out in the Payment Accounts Regulations 2015;
- welcoming the PRA consultation on removing rules for the capital deduction of certain non-performing exposures (NPEs) held by banks;
- bringing forward secondary legislation to implement Wholesale Markets Review (WMR) reforms;
- establishing an Accelerated Settlement Taskforce;
- committing to establish the independent Investment Research Review;
- commencing a review into reforming the Senior Managers & Certification Regime (SM&CR) in Q1 2023;
- committing to having a regime for a UK consolidated tape in place by 2024;
- consulting, in early 2023 on issuing new guidance on Local Government Pension Scheme asset pooling;
- increasing the pace of consolidation in Defined Contribution pension schemes;
- from April 2023, improving the tax rules for Real Estate Investment Trusts (REITs);
- announcing changes to the Building Societies Act 1986;
- delivering the outcomes of the Secondary Capital Raising Review;
- consulting on reform to the VAT treatment of fund management;
- publishing an updated Green Finance Strategy in early 2023;
- consulting in Q1 2023 on bringing Environmental, Social, and Governance (ESG) ratings providers into the regulatory perimeter;
- consulting on a UK retail central bank digital currency (CBDC) alongside the Bank of England in the coming weeks;
- publishing a response to the consultation on expanding the Investment Manager Exemption to include cryptoassets;
- implementing a Financial Market Infrastructure Sandbox in 2023;
- working with the regulators and market participants to trial a new class of wholesale market venue which would operate on an intermittent trading basis;
- consulting on Consumer Credit Act Reform;
- laying regulations in early 2023 to remove well-designed performance fees from the pensions regulatory charge cap; and

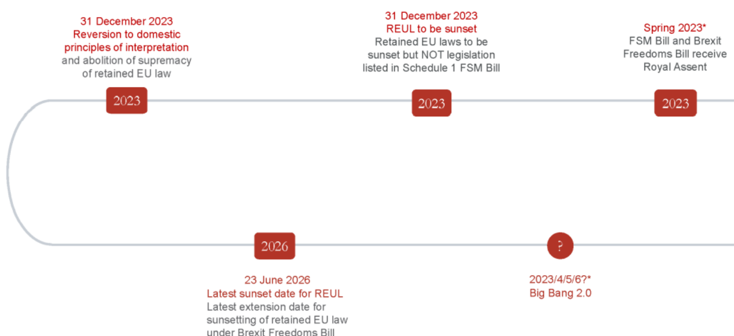
- committing to work with the FCA to examine the boundary between regulated financial advice and financial guidance.

- In a policy statement on the reforms, the Government has set out its approach to its implementation programme, including underpinning principles and the following proposed phased approach to retained EU law policy areas:
  - tranche 1, which is already underway, covering the WMR, Lord Hill's Listing Review, the Securitisation Review and review of Solvency II; and
  - tranche 2, which will cover the above and other measures, including the Taxonomy Regulation, MMFR, Payment Services Directive and the E-Money Directive, Insurance Mediation and Distribution Directives, CRR and Directive and Long-Term Investment Funds (LTIF) Regulation.
- The Government intends to make significant progress on both tranches by the end of 2023.
- A core list of EU financial services files in scope of the implementation programme is set out in an annex to the policy statement.
- The Government has also published three illustrative SIs and accompanying notes alongside the policy statement to demonstrate its intended approach, and a ministerial statement has been submitted to Parliament.
- For more information and resources on the FSM Bill and the implementation of the future regulatory framework (FRF), see the Topic Guide on the Clifford Chance Financial Markets Toolkit.

Quick recap of the Brexit process to date



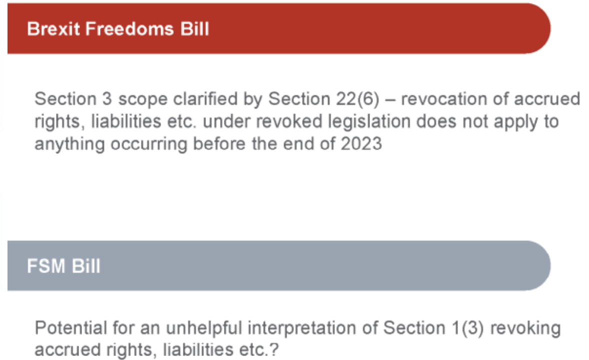
What's to come?



Freedom?

To be "sun-setted" by the end of 2023

Potential conflict impacting accrued rights



Potential for an unhelpful interpretation of Section 1(3) revoking accrued rights, liabilities etc.?

Or Hokey-Cokey?

Does not inc. Acts of Parliament e.g. Equality Act or Data Protection Act

Minsters can revoke, restate, replace or update laws

Ministers can say, in specific cases, that supremacy and general principles of EU law still apply

England, Wales and Scotland can diverge

Bill carves out: anything in Sch 1 to FSM Bill, Bank of England or FCA rules, requirements of payment system regulator

Brexit means Brexit?

After 2023, "retained EU law" will be called "assimilated law"

Courts/national authority able to give "incompatibility orders" that any domestic law is incompatible with any "retained direct EU legislation" (or vice versa)

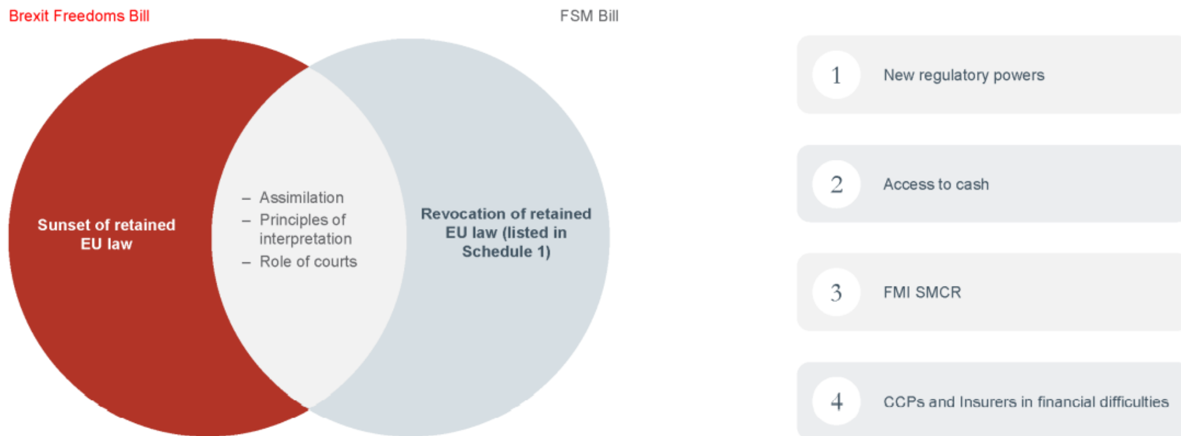
Internal referral system – like that currently to the CJEU – to a higher UK court on questions about "retained case law"

List of non-exhaustive of circs in which courts can depart from retained EU case law:

a) the fact that decisions of a foreign court are not (unless otherwise provided) binding
b) any changes of circumstances which are relevant to the retained EU case law
c) the extent to which the retained EU case law restricts the proper development of domestic law

This is a Bill so everything is subject to change

How does the Brexit Freedoms Bill dovetail with the FSM Bill?



Financial Services legislation

Legislators, regulators and industry beware

Jeremy Hunt launched the Edinburgh Reforms to some fanfare this month. Billed as a package of measures allowing the country to "seize on our Brexit freedoms to deliver an agile and home-grown regulatory regime", some would be forgiven for reading more into the reforms than is perhaps the case. *It would be wrong to characterise the reforms as de-regulation, and whilst there are areas where rules are likely to be repealed, this is largely with a view to replacing them with something that works better for the UK. Less regulation will not, and should not, be the result.*

- As Andrew Bailey pointed out in the FT recently, the current regulatory regime was not established to address a particular problem that then went away, but rather to establish

some core principles which are as relevant today as they were at the time of the financial crisis. In essence the Edinburgh reforms set out more detail on how UK financial regulation is intended to work in a post-Brexit era. In it, the government outlines the mechanisms for transferring the rules that started life in EU directive and are now contained in the UK statute book, into the various regulators rule books. The package also kicks off consultations on some changes to the rules and signpost further consultation in due course. Lastly, it includes new remit letters for the PRA and FCA with clear, targeted recommendations on growth and international competitiveness.

- Some of the proposals do indeed make use of our post-Brexit freedom to change EU imposed measures. For example, repealing (and then replacing) the PRIPPS regulations, reviewing the rules around short selling and reviewing the Consumer Credit Regime. Indeed, the reforms indicate that further reviews will take place as part of the transfer of rules to the regulators' rulebooks over time. But given the influential position that the UK had at the EU rule making table it seems unlikely that many requirements will be subject to very significant change. Reviewing arrangements around ring-fencing and SMCR, both measures put in place by the UK unilaterally post financial crisis, seems sensible, but anything more than tweaking at the margins may not be appropriate.
- It is in relation to the regulators' new secondary objectives around growth and competitiveness that that signs of strain between government and the regulators are most likely to surface. It is not yet clear to what extent the government's proposed review of the senior managers regime is part of the competition agenda, not least because fears that the regime might scare away top talent do not appear to have come to fruition. In the light of the regulator's seeming inability to effectively use the regime to hold senior bankers to account, it is perhaps not surprising.
- However, SMCR has delivered benefits around raising the bar and keeping some bad apples out of the game. Regulators should stand firm in the face of any relaxations, either in the name of competitiveness or otherwise, that might undermine the gains achieved so far.

The impact of Brexit until now has likely been felt by most as nothing more than a ripple, except for some issues like those at border/passport control areas and a lot of work for legal and compliance departments to make various pieces of legislation and regulation UK centric. *That was until 9th December 2022, when the Chancellor of the Exchequer, Jeremy Hunt, announced some 30 proposed reforms designed to "seize on our Brexit freedoms to deliver an agile and home-grown regulatory regime that works in the interest of British people and our businesses".*

- Mr Hunt went on to say, "And we will go further – delivering reform of burdensome EU laws that choke off growth in other industries such as digital technology and life sciences, leaving the EU gives us a golden opportunity to reshape our regulatory regime and unleash the full potential of our formidable financial sector".
- "We are committed to securing the UK's status as one of the most open, dynamic and competitive financial services hubs in the world".
- The reforms could also see a new role for the regulator too, with Mr Hunt also saying that the FCA (FCA), will be given a "secondary objective" to deliver growth and competitiveness, alongside ensuring stability and security for businesses and consumers.
- In what has been collectively termed the "Edinburgh Reforms", these 30 reforms are being hailed as the biggest shake up and reform the UK has seen since Brexit itself.

- However, not everything that the Reforms propose will be new, or unexpected, as the following analysis of some of the key topics reveals:
- Creating a Smarter Regulatory Framework – Governmental work has already been undertaken in the guise of The Future Regulatory Framework (FRF) Review, which will be delivered through the Financial Services and Markets Bill (FSM Bill), which is currently making its way through Parliament. The FRF will shape how the UK's regulatory framework operates outside of the EU and remains fit for purpose going into the future.
- So why the need for the review? At its highest level, two key reasons exist:

1. The current framework of regulation was introduced by the Financial Services and Markets Act (FSMA) 2000, and later updated to address the regulatory failings which were highlighted as contributory factors to the 2008 global financial crisis. Therefore, at best our existing framework was last updated 14 years ago, and at worst, introduced 22 years ago.
2. As the UK left the EU, the legislation relevant to the UK was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018, or "retained EU law (REUL)" as it is known. This has resulted in the UK retaining primary and secondary legislation, which, under FSMA, should be matters handled under the UK regulatory bodies' rules (FCA (FCA) and Prudential Regulation Authority (PRA)). As they sit currently under REUL, any amendments to these pieces of legislation are a burdensome process for Parliament, rather than the less burdensome act it should be for the Regulators.

- Deconstructing the current REUL and inserting it into Regulatory rule books will be a significant task and the Government proposes to break this down into two tranches. Some of the work in the first tranche is already underway, such as the Wholesale Markets Review, the Listing Review, Securitisation Review, and the Solvency II Directive review.

- The second tranche of work will focus on areas such as the reform of MiFID II, Solvency II, the Insurance Distribution Directive, and the consumer information rules in the Payment Accounts Regulations 2015. Other topics expected to receive attention as part of Tranche 2 are:
    - Plans to repeal PRIIPs
    - Short Selling
    - Prospectus Regime Reform
    - Plans to repeal ELTIFs.

- As mentioned previously, another change to be seen as a result of the smarter regulatory framework is the additional role of the Regulators in supporting the Government's objective of medium to long-term economic growth in the interests of consumers and businesses, particularly in relation to:
    - Facilitating investment in productive assets, i.e., venture and growth capital
    - The Government's ESG priorities, sustainable finance, and supply of long-term investment to support UK economic growth
    - Securing better outcomes for all consumers, including through improved competition
    - Fostering a well-functioning housing market that contributes to a wider economic growth, including helping first time buyers access the market

- Some of the above are already underway by means of the introduction of FCA's Consumer Duty.
  - The Regulators will also see further requirements placed upon them, with an objective to support the Government in promoting the UK's international competitiveness.
  - There are some significant and resource intensive topics to be handled here, and the Regulators' resources are not infinite. How they will cope with these assigned duties and tasks remains to be seen, but the Government has stated that it "expects to make significant progress on both tranches by the end of 2023".
- All Change for Banking Regulation – as a possible indication that the banking sector has made significant satisfactory progress since the financial crisis of 2008, the Edinburgh Reforms plan to make the follow updates:
  - Ring-Fencing Regime – Following the independent Skeoch review on Ring Fencing and Proprietary Trading, the Government intends to issue a public Call for Evidence in Q1 2023, based on a proposed alignment between the ring fencing and resolution regimes.
  - Non-Performing Exposures – One of the Reforms will see the PRA consulting on removing the rules for capital deduction of certain non-performing exposures (NPEs) held by banks. Consequently, the PRA would be able to apply a judgement-based approach to:
    - address the adequacy of firms' NPE provisions
    - simplify the UK rulebook
    - avoid unnecessary gold plating of prudential standards

- Amendments to the Building Societies Act (BSA) 1986 – One of the reforms focusses attentions on the requirement to update the BSA, and it is understood that the Building Societies Association has been working with the Treasury for some time to introduce secondary legislation that will partially update the BSA, which it is reported has not been fully revised for 25 years.
- The Building Societies Association said, "We heartily welcome this announcement which marks excellent progress in delivering legislation that is fit for purpose, enabling building societies which are a key part of today's financial services sector to better serve their members and provide competition in financial services."

- Consumer Credit Act (CCA) 1974 – On 16th June 2022, the government announced its intention to reform the CCA (some would say not before time), and this intention was followed up as one of The Edinburgh Reforms, following which HMT published a consultation focusing on matters such as:
  - the strategic direction of reform
  - the accessibility of credit and financial inclusion
  - how the consumer credit regulatory environment could be changed to ensure optimal performance of regulation surrounding
    - customer communications,
    - consumer protections and
    - sanctions for firms that do not adhere to regulatory standards.

As part of the papers the government issued in its Edinburgh Reforms last week was a Policy Statement 'Building a smarter financial services framework for the UK'. *The purpose of the*

*Policy Statement was to set out the government's plan to take forward the implementation of a comprehensive model of regulation based on the Financial Services and Markets Act 2000 (***FSMA model***). An essential part of this is the Financial Services and Markets Bill (the* ***FS&M Bill****) which is currently making its way through Parliament.*

- The FS&M Bill introduces a range of tools to enable the transition to the comprehensive FSMA model. Financial services related retained EU law (**FS REUL**) is covered by the repeal provisions of the Bill (there is a separate process for non- FS REUL which is covered by the Retained EU Law (Revocation and Reform) Bill). The FS&M Bill also introduces a range of new tools to enable the transition.
- In terms of tools these include a new 'have regards' power. The FS&M Bill gives the government the ability to set specific 'have regards' that the regulators must consider when making their rules in specific areas of regulation. Significantly, this power is only relevant when new rules or amendments to existing rules are proposed. It cannot be used to require a regulator to go back and review an existing rule. The Policy Paper states that the government will only introduce an activity-specific 'have regard' where there is a significant broader public policy priority which is important enough to be considered explicitly as part of the regulators' policy making process, and where scrutiny of rule proposals would benefit from a regulator's explanation on how the policy priority has been taken into account.
- In the Policy Paper the government illustrates its approach to using the 'have regard' power by way of reference to its reform of the Prospectus Regulation. In this context, 'have regard' is proposed for the replacement regime and is being used to highlight the importance of facilitating offers of securities to the public being made to a wide range of investors. The FCA, when making rules in relation to the admission of securities to trading on Regulated Markets and primary Multilateral Trading Facilities (**MTFs**), would be required to have regard to "the desirability of facilitating offers of transferable securities in the United Kingdom being made to a wide range of investors." The FCA would be obliged to explain how having regard to this specified matter has affected any rules it proposed to make under the statutory instrument related to admissions to trading and admissions to primary MTFs.
- The Bill also contains a power to require the regulators to make rules and keep them under review. HM Treasury is also given the power to require the regulators to review their rules when this is in the public interest. In terms of what could be in the public interest the Policy Paper provides two examples being where (1) significant developments in the relevant markets give rise to the possibility that the current rules may no longer be appropriate; or (2) substantial evidence gives rise to the possibility that the rules are not achieving their purpose.
- In addition, the Bill gives the government the power to 'restate' FS REUL which the Bill repeals. When restating such law the government is also empowered to modify it through secondary legislation. However, in order to create consistency with the FSMA model the government states in the Policy Paper that it will not generally be looking to restate regulatory requirements into legislation where they could take the form of regulator rules.
- A further tool is the Designated Activities Regime (**DAR**) which gives HM Treasury the power to designate activities which brings them into the regulatory perimeter. The DAR will be used as a replacement for some aspects of FS REUL and chapter 4 of the Policy

Statement illustrates how the government will use the DAR to provide for the replacement of the Prospectus Regulation and elements of the Securitisation Regulation. Significantly, the DAR also has a forward looking element too.

- The repeal of FS REUL under the Bill is a huge task and the Policy Paper sets out the government's blueprint for doing so.
- The Policy Paper states that HM Treasury has identified 43 'core' files (areas of FS REUL) and sets out a full list in Annex 1 which includes the Markets in Financial Instruments Directive II and Solvency II. Work on these files has been divided into tranches and work is already underway to review, repeal, reform and replace the first tranche. The first tranche of files includes those pieces of legislation relating to the Wholesale Markets Review, Lord Hill's Listing Review, the Securitisation Review and the review of the Solvency II Directive. The second tranche will include the remaining implementation of the outcomes of the Wholesale Markets Review and Solvency II, the Packaged Retail and Insurance-Based Investment Products Regulation, the Short Selling Regulation, the Taxonomy Regulation, the Money Market Funds Regulation, the Payment Services Directive II and E-Money Directive, and the Capital Requirements Regulation and Directive. The government expects to make significant progress on tranches 1 and 2 by the end of next year.
- Where the government is not moving to immediately commence the repeal of a piece of FS REUL the Bill also gives it the power to make amendments until its repeal is commenced. Therefore, alongside the programme to repeal FS REUL, there will be various amendments along the way.
- The Policy Paper contains three illustrative statutory instruments which are intended to give some further insights into the approach the government is taking. Two of the statutory instruments relate to the reform of the Prospectus Regulation and the Securitisation Regulation. There is also a statutory instrument that would give the FCA wider rulemaking powers in relation to payments regulation to ensure that the FCA has the necessary powers to make rules to replace financial services retained EU law.

The Edinburgh reforms and securitisation: The road ahead; *On 9 December 2022, the Chancellor of the Exchequer announced a set of reforms (the "**Edinburgh Reforms**") that aim to drive growth and competitiveness in the financial services sector* [1]. *As part of the Edinburgh Reforms, the UK Government published both an illustrative Statutory Instrument on the Securitisation Regulation (the "**Illustrative Securitisation SI**") and a related policy note (the "**Securitisation Policy Note**")*[2].

- Both the Securitisation Policy Note and Illustrative Securitisation SI provide further explanation about how HM Treasury may use its future powers to move to a comprehensive regulator-led model for the regulation on securitisation following the repeal of retained EU law in this area.
- Salient points are (a) the future UK regulatory landscape for securitisation, (b) the Edinburgh Reforms and the December 2021 HMT Report on the Review of the UK Securitisation Regulation[3] (the "**Securitisation Regulation Review Report**") and (c) some further points to note from the Securitisation Policy Note and the Illustrative Securitisation SI.
- **The future UK regulatory landscape for securitisation**

- On 20 July 2022, the Financial Services and Markets Bill ("**FSMB**") was introduced to Parliament. The FSMB will repeal retained EU law on financial services (including the UK Securitisation Regulation[4]) so that it can be replaced with a UK specific regulatory regime. This regime will broadly adopt the existing UK regulatory model whereby the framework for the creation of detailed regulatory rules is set out in primary legislation (particularly the Financial Services and Markets Act 2000 ("**FSMA**")). The detailed rules are then made by regulators operating under the broad authority conferred by FSMA.
- *The Designated Activities Regime for sell-side*
- The FSMB introduces a 'designated activities regime' ("**DAR**") which allows HMT and the **FCA** to regulate certain financial markets activities even when carrying out such activities does not require the person doing so to be authorised by a financial regulator. In other words, any person, whether required to have an authorisation or not, must comply with the specific rules set down by HMT and the FCA when undertaking any designated activity (unless an exemption is available).
- Because the rules applicable to securitisations should apply to both authorised and unauthorised entities, HMT considers the DAR to be an appropriate framework to regulate the provision of securitisation. Under the Illustrative Securitisation SI, the following activities will be considered 'designated activities' for the purposes of the DAR (the "**Securitisation Designated Activities**"): (a) acting as an originator, sponsor, original lender, or securitisation special purpose entity in a securitisation or (b) selling a securitisation position to a retail client located in the United Kingdom. Any investment activity (see below) would not be considered a Securitisation Designated Activity.
- The Illustrative Securitisation SI clarifies that the FCA will be the regulator responsible for making rules relating to the Securitisation Designated Activities save for certain rules that apply to authorised persons by the **PRA**. The latter carve-out has been included to maintain the current split of regulatory responsibilities between the FCA and the PRA when it comes to the securitisation requirements for PRA-authorised persons, with the FCA currently responsible for a number of securitisation requirements (selling securitisations to retail clients and the designation of securitisation as Simple, Transparent, and Standardised ("**STS**")) and the PRA for the other securitisation requirements (including risk retention, disclosures, re-securitisation and credit granting). With regards to occupational pension schemes ("**OPSs**"), the Illustrative Securitisation SI also means that, when an OPS undertakes a Securitisation Designated Activity, it will need to comply with the future FCA rules and be subject to supervision of the FCA in this respect. Regulatory responsibility for supervising compliance of OPSs undertaking any Securitisation Designated Activities will therefore move from the Pensions Regulator to the FCA.
- *Institutional Investor Regime for buy-side*
- As mentioned above, investing in a securitisation will not be considered a Securitisation Designated Activity and therefore not fall within the DAR. However, investing in a securitisation will remain subject to regulation. The Illustrative Securitisation SI clarifies that the appropriate regulators must make rules requiring an institutional investor to carry out due diligence before and while holding a securitisation position. Even though this is still being considered, it is currently envisaged that the PRA (for PRA-authorised persons) and the FCA (for any other institutional investor, including small, registered UK AIFMs, other than OPSs) will need to make the rules relating to such due diligence requirements. For OPSs, the due diligence requirements, which will continue to be monitored by the Pensions Regulator and mirror those set out in the UK Securitisation

Regulation, are set out in the Illustrative Securitisation SI as the Pensions Regulator does not have the appropriate rulemaking powers (it not being an FSMA regulator).

- *Securitisation Repositories and Third-Party verifiers*
- The regulatory perimeter will be maintained in relation to securitisation repositories and third-party verifiers. These firms are and will remain registered or authorised with the FCA and therefore will not be subject to the DAR or the institutional investor regime set out above. The requirements for those entities, along with the FCA's powers, are set out in the Illustrative Securitisation SI and mirror those in the UK Securitisation Regulation.
- *Risk of divergence between rules issued by different regulators*
- In the future UK securitisation regulatory landscape, securitisation related rules and requirements will therefore be set out by the FCA and the PRA whilst for OPSs the buy-side rules will be set out by way of statutory instrument (given that the Pensions Regulator is not an FSMA regulator). These risks fracturing the regime that currently exists. This in turn may make the placing of securitisations more complex for originators, issuers, and their advisers if due diligence rules differ as between different types of investors. Given the importance of the regulatory regime being clear and coherent, HMT intends to require the FCA and the PRA to have regard to the coherence of the overall framework for the regulation of securitisation when making relevant rules. This requirement is expected to apply on an ongoing basis. It is however unclear how coherence will be achieved when it comes to buy-side OPSs relative to other types of investors. The dialogue between the FCA and the PRA will not involve the Pensions Regulator and any changes to the due diligence requirements that may be agreed between the PRA and the FCA will need to be put into a statutory instrument (which will need to be tabled in Parliament to be effective) in order to apply to buy-side OPSs.
- The Edinburgh Reforms and the Securitisation Regulation Review
- HMT conducted a review of the UK Securitisation Regulation in 2021. This review presented an opportunity to consider ways in which the UK Securitisation Regulation could be improved to ensure the regime is as effective as it can be. The review's overarching aims were (a) to bolster securitisation standards in the UK in order to enhance investor protection and promote market transparency; and (b) to support and develop securitisation markets in the UK, including through the increased issuance of STS securitisations, in order to ultimately increase their contribution to the real economy.

- As outlined in the Securitisation Regulation Review Report, HMT is committed to working with the FCA and the PRA to bring forward, where appropriate, reforms in the following areas:
    - certain risk retention provisions, for example in relation to (i) transferring the risk retention manager (which appears to relate to the CLO market and the potential for changing CLO managers in particular) and (ii) the calculation of the risk retention amount in securitisations of non-performing exposures.
    - the definitions of public and private securitisation, as well as the disclosure requirements for certain securitisations, to ensure they are appropriate.
    - due diligence requirements for institutional investors when investing in non-UK securitisations, to provide greater clarity on what is required; and
    - the definition of institutional investor as it relates to certain unauthorised non-UK Alternative Investment Fund Managers ("AIFMs") who are currently in scope of due diligence requirements, so that these requirements do not disincentivise

these firms from seeking investors in the UK, and to address extraterritorial supervision and enforcement problems.

- Given the future UK regulatory landscape for securitisation (see above), not all the reforms identified in the Securitisation Regulation Review Report have made their way into the Illustrative Securitisation SI. A number of the above proposals may instead be set out in the rules to be made by the FCA and the PRA, drafts of which are not yet available. However, HMT has indicated in the Securitisation Policy Note that it remains committed to the reforms identified in the Securitisation Regulation Review Report and that it is considering the best way of engaging with the regulators in relation to the timely delivery of appropriate reforms in these areas.

- Some of the reforms have however made it into the Illustrative Securitisation SI (even if only by way of note), with detailed drafting to follow:
    - the definition of institutional investor in the Illustrative Securitisation SI has been updated to exclude certain non-UK AIFMs.
    - it is noted in the Illustrative Securitisation SI that HMT intends to "maintain the exemption for certain [private] securitisations not to be required to report to securitisation repositories".
- The Securitisation Regulation Review Report also noted HMT would introduce a regime to recognise equivalent STS securitisations issued by entities established outside the UK. This has been included in the FSMB and the Illustrative Securitisation SI. HMT also confirmed that the EU STS securitisations will be continuing to be considered STS in the UK until 31 December 2024. This approach contrasts with the European Commission's recent view that it is "premature to introduce an STS equivalence regime at this time" [5].
- Further points to note from the Securitisation Policy Note and Illustrative Securitisation SI
- The Securitisation Policy and Illustrative Securitisation SI do not provide the full picture for UK securitisation regulation in the future. The exact drafting, design and format of the Illustrative Securitisation SI is not final and will continue to develop before the final legislation is laid before Parliament following Royal Assent of FSMB. In addition, a large number of rules (including, amongst others, risk retention requirements, credit-granting requirements, due diligence requirements and STS criteria) will no longer be set out in primary and secondary legislation but rather in rules made by the FCA and, where applicable, the PRA. It is therefore unclear whether any further significant changes to the current securitisation regime set out in the UK Securitisation Regulation will be introduced.

- The Securitisation Policy Note and the Illustrative Securitisation SI in its current form do contain a few noteworthy points:
    - *Distinction between traditional securitisation and synthetic securitisation:* The definitions currently included in the UK Securitisation Regulation have not been included in the Illustrative Securitisation SI and may well be included in the rules to be made by the FCA. This would leave it for the FCA to decide whether to open up the possibility of synthetic securitisations being STS.
    - *Location of securitisation special purpose vehicle:* For the purposes of the UK securitisation regime, the Illustrative Securitisation SI retains the requirement that the securitisation special purpose vehicle does not need to be located in the UK as long as the country in which it is located is not listed as a high-risk and

non-cooperative jurisdiction by the Financial Action Task Force or has signed up to an effective exchange of information on tax matters with the UK. Originators and sponsors involved in a UK STS securitisation must be established in the UK (save that originators and sponsors for the purposes of UK STS can still be established in the EU until 31 December 2024 – see above).

- *Due diligence requirements in relation to non-UK securitisations:* Whilst the due diligence requirements will be largely set out in the rules to be made by the PRA and the FCA, the due diligence requirements for OPSs set out in the Illustrative Securitisation SI have maintained the requirement to obtain "substantially the same information" from the originator, sponsor, or original lender as if it was a UK securitisation. This therefore allows UK investors to invest in non-UK securitisations more easily. No such 'substantially the same' standard applies under the EU securitisation regime, which was confirmed by the European Commission's recent report on the functioning of the EU Securitisation Regulation[6]. In this report, the European Commission confirmed that EU institutional investors are required to verify that sell-side parties will make available the same disclosure and template reporting for non-EU securitisations as is required for EU securitisations and that "materially comparable information" is not sufficient in this respect.
- *Ban on re-securitisations*: the Illustrative Securitisation SI does not include an outright ban on re-securitisations (as is the case in the UK Securitisation Regulation). Rather investment firms and credit institutions are subject to an obligation to consult the Bank of England before the FCA and PRA (as applicable) grant permission to carry out a re-securitisation. There appear to be no limitations in the Illustrative Securitisation SI on non-banks and non-investment firms carrying out re-securitisations (although such limitations could be included in the FCA and PRA rules as part of the DAR). Under the UK Securitisation Regulation, re-securitisations can only take place for a limited number of legitimate purposes but the requirement for legitimate purposes is no longer included in the Illustrative Securitisation SI. More worryingly for some banks, the following wording of the UK Securitisation Regulation is no longer included in the Illustrative Securitisation SI: "*A fully supported ABCP programme shall not be considered to be a re-securitisation for the purposes of this Article, provided that none of the ABCP transactions within that programme is a re-securitisation and that the credit enhancement does not establish a second layer of tranching at the programme level.*[7]" On the basis of the description of a re-securitisation in the Illustrative Securitisation SI (being the situation where a securitisation position is included as an underlying exposure in a securitisation), it may mean additional permission and consultation requirements for banks or institutions with an asset-backed commercial paper programme. However, as mentioned above, the Illustrative Securitisation SI is not final and the re-securitisation clarification for asset-backed commercial paper programmes may still be included in the rules to be made by the FCA and PRA.
- *Relevant sanctions:* In relation to STS securitisations, the definition of 'relevant sanction' in comparison to the UK Securitisation Regulation appears to be broader as it no longer refers to the sanction being "by reason of an act or failure, whether intentional or through negligence". So, any failure to meet the STS securitisation requirements would need to be notified and/or included on the list

of notified securitisations and no longer when it is intentional or through negligence. Also, even though it is noted that cross-references to the relevant requirements still need to be included in the Illustrative Securitisation SI, the relevant sanctions definition only refers to a failure to meet the requirements and no longer to an STS notification being misleading. This omission may be covered through the new FCA rules, but this is not clear at the moment.

- Conclusion
- The Edinburgh Reforms build on the Securitisation Regulation Review Report and will give regulators the powers to steer the direction of the UK securitisation regime. The hope is that the Edinburgh Reforms will therefore establish a smarter securitisation regulatory framework for the UK that is "agile, less costly and more responsive to emerging trends" compared to the current EU retained law. Whilst the Edinburgh Reforms are more focussed on detailing the new FSMA model for regulation of securitisation at this time, existing divergences between the UK and EU securitisation regime appear to have been maintained and further divergences may follow under the new powers granted to the UK financial regulators. Unfortunately, in the absence of any draft rules by the FCA and the PRA and the final Illustrative Securitisation SI, it is unclear what substantive changes (if any) will be introduced to the current UK securitisation regime once EU retained law has been repealed.

[1] The Edinburgh Reforms can be found via: https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms

[2] The HM Treasury's policy paper on building a smarter financial services framework for the UK together with the Illustrative Securitisation SI and the Securitisation Policy Note can be found via: https://www.gov.uk/government/publications/building-a-smarter-financial-services-framework-for-the-uk

[3] HM Treasury, Review of the Securitisation Regulation: Report and call for evidence response, December 2021, available through: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040038/Securitisation_Regulation_Review.pdf

[4] The UK version of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent, and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

[5] European Commission, Report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation, October 2022, available through: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0517&from=EN

[6] European Commission, Report from the Commission to the European Parliament and the Council on the functioning of the Securitisation Regulation, October 2022, available

through: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0517&from=EN

[7] Article 8(4) of the UK Securitisation Regulation

Conduct / Enforcement

Senior Managers and Certification Regime (SMCR) - Additionally, as part of the Reforms, the Chancellor stated that the Government will be undertaking a review into the SMCR in Q1 2023.

- SMCR was first introduced as part of the response to the financial crisis of 2008, and the effectiveness of the regime has largely gone untested since. It is fair to say that since the introduction of SMCR there has been a change in culture within firms, mainly for the better, but there has been a consistently low number of enforcement actions taken against individuals covered under the regime, and questions need to be asked such as:

1. Does the low level of enforcement actions demonstrate that SMCR has been successful in ensuring that only the right people are placed into the most senior positions in firms and that the personal liability factor has been a successful deterrent from sub-standard senior management behaviour?
2. Has the SMCR not been used to its full potential by the Regulators?

- In a similar way that the new secondary objectives of the Regulators are to support the Government's objectives in economic growth, protecting the interests of the consumer and businesses, and promoting the international competitiveness of the UK, a fully effective SMCR will help the Regulators to achieve and maintain a reputation as credible governing bodies of the UK financial services sector.
- The UK Regulators must do and be seen to be doing the right thing, and to be holding those responsible for failures and for jeopardising the interests of the consumer to account for their actions, or lack thereof.
- Technology and Innovation – Every area of industry needs to keep abreast of developing technology and to move and adapt accordingly, and the financial services sector is no different.
- The Reforms have detailed measures that the Government will be taking to ensure that the sector remains at the cutting edge of technology, thus continuing to promote the UK's competitiveness in the world market. The Reforms will focus on areas such as:
- Financial Markets Infrastructure Sandbox – as part of the FSM Bill, measures to implement a sandbox in 2023 to enable firms to test new technology and innovation such as distributed ledger technology have been announced
- Establishing a cryptoasset regulatory regime – the FSM Bill will encompass a wider range of crypto related activities under the regulatory umbrella
- Central Bank Digital Currency (CBDC) – a consultation will be published to explore the possibility of a CBDC
- Conclusion – The foregoing really is just the tip of the iceberg, a high-level review of just some of the topics being addressed under the Edinburgh Reforms. The Reforms are

bold, and arguably necessary if the Government is to stay ahead of the game in respect of its plans and ambitions for the UK, which from one standpoint it needs to be if it is to prove that Brexit was a pain worthwhile for the long-term greater good.

- As with everything, the proof of the pudding will be in the eating. Will the Reforms create the playing field that the Government wants in reality; how far away from the EU and the REUL will the Reforms take us; and, post Reforms, what image will the rest of the world have of the UK? Will the Government's objectives in relation to competitiveness, technology and innovation for example be realised?
- The answers to these questions remain to be seen and for firms trading in the UK only, the impact of the Reforms whilst significant, will at least be contained to within the UK.
- However, no matter where the UK is left on the international stage or how many of the Government's objectives are met, one thing that Compliance Officers of firms who hold a UK and EU presence need to be doing now, is starting to plan for a dual regulatory approach. If, once implemented, the Edinburgh Reforms take the UK some way away from the EU's position, then firms will see themselves needing two or possibly three sets of policies, procedures, risk assessments and staff training, to cover the UK regime, the EU regime, and the areas where common regulatory and legislative practice exists.

The UK's Financial Conduct Authority (FCA) has fined a broker group 4,775,200 GBP, for breaches of the Market Abuse Regulation Article 16(2), which requires "Professional Persons Arranging or Executing Transactions" (PPAET) to "effectively monitor" for market abuse in the form of market manipulation and insider trading. *The notice can be found here. The FCA found that the firm did not have adequate technology or procedures covering all relevant activity, as per the risk involved, from the start of MAR in July 2016 until 2018.*

- Market participants in energy and commodities usually hold PPAET status, regardless of whether they rely on exemptions and are therefore not financially authorised. This is the third fine levied by the FCA this year for inadequate monitoring under MAR (see here).

FCA Market Watch 71; *On 13 December 2022, the FCA published Market Watch 71.*

- In Market Watch 71, the FCA shares their observations about changes in advisory firms' insider lists since the publication of Market Watch 60. The FCA also reminds firms of the requirement within UK Market Abuse Regulation (UK MAR) to include personal information in insider lists and reiterate the importance of firms maintaining accurate insider lists and strictly limiting access to inside information to employees who require access to perform their role in order to prevent market abuse.

- Furthermore, the FCA covers:
    - Steps taken by firms to reduce the number of permanent insiders. Since Market Watch 60, the FCA has seen considerable reductions in the numbers of permanent insiders at several advisory firms, as well as enhanced monitoring of access to inside information.
    - Article 18 of UK MAR and personal information. Recently, the FCA has received insider lists in response to regulatory requests, which do not contain personal information, other than names. The FCA have noticed the absence of telephone

numbers, dates of birth and national identification numbers. The FCA requires this information to eliminate people for their enquiries by cross-referencing the information with MiFIR transaction reports, MAR suspicious transaction and order reports and other information sources.

FCA writes Dear CEO letter to financial advisers and intermediaries; The FCA has written a portfolio strategy letter to the directors of firms setting out its expectations relating to financial advisors and intermediaries.

- In the letter the FCA provides an updated view of the key harms in the sector and summaries the work it intends to do in the area.
- The letter also sets out the FCA's expectation of firms in relation to:
    - providing suitable advice;
    - pension and investment scams;
    - firm failure and phoenixing;
    - ongoing services; and
    - other areas of interest including diversity and sustainability.

Retail Conduct Updates

FOS future funding model: the FOS has published a feedback statement on its proposals to create a future funding model. The FOS intends to (i) consult on plans to change its compulsory jurisdiction and voluntary jurisdiction levies to recover fixed costs, (ii) introduce a 12-month time limit for disputing case fees and (iii) trial changes to the group fee account arrangements. These proposals are in response to changes in complaint volumes and type, and to incentivise constructive behaviour in industry.

Defined benefit (DB) pension transfer: the FCA continues its work in the area of non-compliant pension transfer advice publishing updates to its statement on DB pension transfer redress in response to concerns about the exclusion of fees and charges from some firms calculations and unfair contract termination. Related to this, the FCA has confirmed changes to its methodology for calculating redress for non-compliant pension transfer advice, including former members of the British Steel Pension Scheme (BSPS) and is also consulting on extending its temporary BSPS asset retention rules so that the rules apply until firms have resolved all relevant cases. This will help prevent firms seeking to avoid the cost of redress liabilities. The current temporary asset retention rules expire on 31 January 2023. In addition, the FCA has written to personal indemnity insurance (PII) firms setting out its expectations of these firms when responding to queries from BSPS scheme firms about whether their PII is likely to cover claims about BSPS advice.

Financial promotions gateway : the FCA has launched a consultation setting out how they plan to operate a new financial promotions gateway. This gateway requires all firms that want to continue approving financial promotions for unauthorised persons to apply for permission and

will require firms to demonstrate they have the right expertise for the promotions they wish to approve.

Portfolio letter for Financial Advisers and Intermediaries: the FCA has written to Financial Advisers and Intermediaries highlighting its expectations of firms with regard to advice suitability, pensions and investment scams, firm failure and phoenixing.

Market Structure

Prudential

FCA consults on remuneration: ratio between fixed and variable components of total remuneration ('bonus cap'); *On 19 December 2022, the FCA published Consultation Paper CP22/28: Remuneration; Ratio between fixed and variable components of total remuneration.*

- In CP22/28, the FCA sets out its joint proposed rule changes with the PRA to remove the existing limits on the ratio between fixed and variable components of total remuneration (the 'bonus cap'). The aim of CP22/28 is to strengthen the effectiveness of the remuneration regime by increasing the proportion of compensation that can be subject to the incentive setting tools within the framework. In the FCA's view, over time these changes should also help remove unintended consequences of the bonus cap, particularly the growth in the proportion of the fixed component of total remuneration, which reduces a firm's ability to adjust costs to absorb losses. The FCA decided to consult jointly with the PRA to avoid unnecessary duplication.

- The proposals in CP22/28 would result in the removal of the current bonus cap requirements through:
    - Changes to the Remuneration part of the Disclosure (CRR) part of the PRA Rulebook (Appendix 1 and Appendix 4), and to Senior Management Arrangements, Systems and Controls (SYSC) 19D: Dual-regulated firms Remuneration Code that is part of the FCA's Handbook (Appendix 2); and
    - Updates to the PRA's Supervisory Statement 2/17 'Remuneration' (Appendix 3).
- The deadline for responses to this consultation is 31 March 2023.

A year of ICARA – firms "underestimated work required"; *The Investment Firms Prudential Regime is about to reach its first birthday and Bovill has worked with over 300 clients to adapt to the new rules. Inevitably the focus for many of these clients has been the internal capital and risk*

assessment process – or ICARA. There are some themes we have seen time and time again that anyone looking to draft an ICARA in 2023 would be wise to take on board.

- In general, firms have underestimated the amount of work required to put an ICARA together, even where they have an existing ICAAP, and as a result we have seen many firms push back their MIF007 submission dates two or three times in order to get a decent document across the line. In some cases, this has been as a result of push back from the board. This has been encouraging to see from a governance and challenge perspective.
- In the banking sector, developing a risk management framework has been an iterative process which generally gets better over time. We expect something similar for MIFIDPRU firms. Where firms we've seen have made a good start there are some common themes which anyone developing an ICARA can build from.

- Business model and strategy; From our review of ICARAs most firms provided either no or limited information regarding their business outlook or external factors that influence the success of the business model and strategy. Narrative on regulatory and market trends and the competitive landscape would be a good start.

- Governance: Firms that used to run the ICAAP process have generally continued to use the same governance structure for the ICARA. Approval of the ICARA tends to be at the end of the process; most firms do not involve the Board in the scenario selection process.
- We have been encouraged to see that the senior management and boards of non-SNI firms have been keen to learn about the ICARA process in order to provide robust challenge. However, this has been less common in SNI firms.
- The governance process around stress testing, recovery plan trigger points and the implementation of recovery actions is nebulous for many firms.
- Many firms struggled to identify, and include in their ICARA document, information on the key personnel that are involved in stress testing, recovery planning and the implementation of recovery actions.

- Risk management and risk of harms assessment; Firms have struggled with identifying their risks of harm. We have found that many firms have found it difficult to engage the wider business on the ICARA process and instead rely mainly on the risk function. More engagement with the business should be a priority for the 2023 ICARA.
- Most firms have been unable to clearly articulate their risk appetite.
- Risk appetite statements are generally not linked to Key Risk Indicators which should be used to track risk limits and outline the process used to mitigate risks which are outside of appetite.
- Most firms have struggled to work out how much additional financial resource to hold against their risks. We have also seen a lot of uncertainty around how to assess risk of harm to customers.
- With the FCA's Consumer Duty regime coming into effect on 31 July 2023 and 31 July 2024 (depending on the types of products and services that firms offer), the focus on harm to consumers is of utmost importance. Firms should already have in place a plan of how they are going to implement the consumer duty principles and be able to evidence that their Boards have scrutinised and challenged the plans to ensure they are

deliverable and robust to meet the new standards. A reference to this implementation plan should be included in the ICARA document for best practice.

- Firms tend to think about holding sufficient capital, but not enough on how much additional liquidity they need to hold against ongoing risks. Few firms have considered how much additional liquidity would be required for wind down.
- Firms need to be careful not to double count or have the same scenario both for the Risk of Harms Assessment and the Stress and Scenarios.
- Several firms struggled to move from the ICAAP's risk assessment approach to the ICARA's where risks need to be classified in three categories – risk to firm ('RtF'), risk to market ('RtM') and risk to customers ('RtF').

- Recovery planning: Recovery planning is new for many firms so, for most, it has not been fully thought through. Credibility of recovery options is a real weakness in the ICARAs we have seen, particularly around the practicalities of execution, such as timing, individual responsibilities, or ability to execute in a stress.
- Nearly all firms have struggled to come up with a diverse menu of recovery options that would provide a benefit in a capital or a liquidity stress.
- Few firms have been able to articulate exactly how or when they would actually invoke the recovery plan.

- Stress testing and scenario development; We have found that firms struggled to identify severe but plausible scenarios for stress testing. Many have needed assistance in thinking through the scenario development process and have benefited from facilitated scenario design workshops.
- Very few firms outlined the financial impact of their stress scenarios on a pre and post recovery actions basis and so the benefit of recovery actions in these scenarios are not clear.

- Reverse stress testing: Most firms have chosen not to do reverse stress testing this year.

- Wind down planning: Firms tend to understand the need to have a proper Wind Down Plan in place and how it links to the ICARA however there are still areas which need to be developed within their Wind Down plans.
- Some firms still consider that they would be able to wind down their regulated business and cancel their Part 4A permissions within a 6-month period, rather than the generally accepted 12 months.

FCA consults on remuneration: ratio between fixed and variable components of total remuneration ('bonus cap'); *On 19 December 2022, the FCA published Consultation Paper* *CP22/28: Remuneration; Ratio between fixed and variable components of total remuneration*.

- In CP22/28, the FCA sets out its joint proposed rule changes with the PRA to remove the existing limits on the ratio between fixed and variable components of total remuneration (the 'bonus cap'). The aim of CP22/28 is to strengthen the effectiveness

of the remuneration regime by increasing the proportion of compensation that can be subject to the incentive setting tools within the framework. In the FCA's view, over time these changes should also help remove unintended consequences of the bonus cap, particularly the growth in the proportion of the fixed component of total remuneration, which reduces a firm's ability to adjust costs to absorb losses. The FCA decided to consult jointly with the PRA to avoid unnecessary duplication.

- The proposals in CP22/28 would result in the removal of the current bonus cap requirements through:
  - Changes to the Remuneration part of the Disclosure (CRR) part of the PRA Rulebook (Appendix 1 and Appendix 4), and to Senior Management Arrangements, Systems and Controls (SYSC) 19D: Dual-regulated firms Remuneration Code that is part of the FCA's Handbook (Appendix 2); and
  - Updates to the PRA's Supervisory Statement 2/17 'Remuneration' (Appendix 3).
- The deadline for responses to this consultation is 31 March 2023.

PRA consultation on implementing final Basel reforms

Completing the UK framework

After a long wait, the Prudential Regulation Authority (PRA) has published consultation paper CP16/22 setting out its proposed rules and expectations for the parts of the Basel 3 standards that remain to be implemented in the UK. These are the final elements of the banking prudential reform package developed by the Basel Committee for Banking Supervision (BCBS) in response to the global financial crisis. Although referred to by the PRA as Basel 3.1, it is commonly known as Basel 4 across the industry.

Key messages

As expected, the PRA proposals have stayed close to the Basel standards with a small number of transitional arrangements and concessions. PRA CEO Sam Woods stressed the importance of alignment with global banking standards and the inclusion of "appropriate but limited adjustments for the UK market".

The UK has therefore been much stricter than the EU in its interpretation of the Basel standards, and the CP notes explicitly that the deviations proposed by the EU would make it an "international outlier". This divergence between the UK and the EU will mean that firms operating in both jurisdictions will either need to align to the UK's stricter regime across all models or run two sets of standards.

There is significant amount of work for firms to do on market risk. In particular they will need to accelerate work on model permissions with the PRA requesting submission of IMA applications by 1 January 2024, a full 12 months prior to the implementation date.

Banks using the Internal Ratings Based (IRB) credit approach will have until 1 July 2024 to submit any model changes required to implement the PRA's proposals.

Changes to the SME supporting factor and real estate lending were not expected and will be difficult for some challenger banks. There are now also approval mechanisms for elements of the Standardised Approach for credit.

There are positive linkages in the paper to the PRA's new Strong and Simple regime for non-systemic banks, with an option for banks meeting the eligibility criteria on 1 January 2024 to choose whether they wish to be subject to a new Transitional Capital Regime or the Basel 3.1 rules.

The implementation timeline is also as expected, running from 1 January 2025 with some transitional arrangements (see below). This is in line with the EU and the expected timeline for the US. However, the UK does not support EU transitional regimes for unrated corporates and low-risk mortgages, noting that "uncertain endings create uncertainty for banks".

The PRA notes that it does not expect the proposals to significantly increase overall capital requirements on average across UK firms, but this remains to be seen.

Quantitative impact study (QIS) data provided by firms indicates that there would be an overall decrease in capital requirements for smaller-sized building societies, while large banks would see a small increase overall.

Importantly, the PRA does not intend to require firms to capitalise for the same risk twice. Where the impact of poorly measured risk weights was previously captured in Pillar 2A requirements or the PRA buffer, those would fall as Pillar 1 increases. This would mean that both capital ratios and minimum Pillar 2 capital requirements would fall.

With the proposed requirements now clearly set out, it is time for banks in the UK to mobilise their implementation programmes if they have not already done so. As previously noted, banks operating across multiple jurisdictions will need to consider carefully how to satisfy distinct sets of requirements — this may be exacerbated further once the US rules are published. A well-defined and structured Basel 4 programme will be essential. For more on effective preparation and project management see our article here.

Scope and applicability

The CP is relevant for all PRA-regulated banks, building societies, investment firms and financial holding companies. The measures proposed would introduce significant changes to the way firms calculate risk-weighted assets (RWAs) for risk-based capital ratios and are intended to reduce excessive variability and make the ratios more consistent and comparable. They are also intended to facilitate effective competition by narrowing the gap between risk weights calculated under internal models, typically used by larger banks, and standardised approaches.

The key proposals in the CP relate to:

- A revised standardised approach (SA) and revisions to the internal ratings based (IRB) approach for credit risk
- Revisions to the use of credit risk mitigation (CRM) techniques
- Removal of the use of internal models for credit valuation adjustment (CVA) risk and introduction of new standardised and basic approaches
- A revised approach to market risk
- Removal of the use of internal models (IMs) for calculating operational risk capital requirements and the introduction of a new Standardised Approach (SA)
- Introduction of an aggregate 'output floor' to ensure that total RWAs for firms using Ims and subject to the floor cannot fall below 72.5% of RWAs derived under SAs

Given the significance of the consultation and the complexity of the content, it will run for longer than usual, closing on 31 March 2023.

Timeline

The majority of the proposals would apply from 1 January 2025. The PRA also sets out a number of transitional arrangements:

- Output floor — phasing in over five years from 1 January 2025 to 1 January 2030
- Credit risk SA — a five-year transitional period starting from 1 January 2025 for SA and IRB firms for the implementation of the revised treatment of equity exposures
- CVA framework — a five-year transitional treatment under which only legacy trades that would be exempt from CVA RWAs prior to the application of the new CVA requirements remain exempt. Firms would have the option to irreversibly apply the new CVA requirements to these trades instead
- SA-CCR framework — firms would be allowed to apply the reduced alpha multiplier to trades with certain counterparties, including legacy trades with such counterparties, from the proposed implementation date of 1 January 2025, but would be required to maintain additional Pillar 1 capital equal to the reduction in capital requirements on the proposed implementation date for the legacy trades. The additional capital requirement for the legacy trades would reduce linearly over five years

Interaction with other frameworks and initiatives

Strong and simple: the PRA has begun work on a "strong and simple" prudential framework for non-systemic banks and building societies. It proposes that firms meeting the Simpler-regime criteria (including the size threshold which has increased from £15bn to £20bn) on 1 January 2024 would have the choice between being subject to the Basel 3.1 standards or to the new Transitional Capital Regime that would be in place until the implementation of a permanent risk-based capital regime for Simpler-regime firms. However, as the new regime is yet to be specified in full, this may not be a straightforward decision. Firms that are part of a group based outside of the UK — whether a subsidiary of a foreign headquartered banking group or a firm with a foreign holding company — cannot meet the Simpler—regime criteria but could apply for a modification of the criteria that would enable them to be subject to the Transitional Capital Regime.

Leverage ratio: most of the changes to calculating the leverage exposure measure were implemented in January 2022. Changes relating to the credit risk SA, including proposed changes to the treatment of off-balance sheet items and the proposed amendment to the SA-CCR, would flow through to the leverage framework. However, no new policy is required for the leverage ratio specifically.

Large exposures: no further changes are proposed to the large exposure requirements which have already been transferred from the CRR to PRA rules and amended to implement the Basel 3 standards. However, changes to prudential standards in the CP would have a consequential impact on the large exposure requirements.

Liquidity risk: proposed changes to prudential standards in the CP would automatically flow through to the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) although Basel 3.1 standards did not make amendments to either standard directly.

Consideration of climate risk: the PRA notes that the Basel 3.1 standards were not designed to include specific climate risk-related measures and that the proposals are therefore broadly neutral in terms of the UK net-zero target. However, consideration has been given to the net-zero target in developing certain proposals for credit risk SA and IRB and market risk.

Credit Risk Standardised Approach (SA)

The Basel Framework sets out two approaches for calculating risk-weighted assets (RWAs) for credit risk – the standardised approach (SA) and the internal ratings-based approach (IRB).

Basel 3.1 introduces amendments to the SA to reduce reliance on external ratings, increase risk-sensitivity and promote comparability between firms. In particular, it proposes:

- More granular method for unrated exposures to banks and companies, and for exposures in jurisdictions that allow the use of credit ratings
- Recalibration of risk weights for exposures to rated banks
- More granular value table for exposures to companies
- More granular treatment for retail exposures
- Increased risk sensitivity for exposures secured on residential real estate, by setting weightings based on LTV
- More risk-sensitive methods for exposures secured on commercial real estate
- More granular risk weights for exposures to subordinated debt and shares
- Off-balance sheet items become more sensitive to risk, by modifying credit conversion factors (CFs)

The PRA proposals align to the Basel CR-SA framework, with the following exceptions:

- Enhanced risk-sensitivity, including lower risk weights for low-risk mortgage lending and the introduction of specific treatments for 'specialised lending'
- A more risk-sensitive treatment for exposures to unrated corporates, including unrated funds
- Revisions to the risk weights for corporate exposures including to SMEs

- A more risk-sensitive approach to risk-weighting equity exposures, including a prudent treatment for higher risk 'speculative unlisted equity'
- Removal of implicit assumptions of sovereign support for exposures to banks
- Off-balance sheet CFs aligned to local UK market conditions
- A proportionate approach to SA operational requirements, including for the new due diligence requirements for the use of external credit ratings

The PRA proposes to remove the SME support factor under both SA and IRB approaches, maintain the lower CRR risk weight for retail SME exposures and introduce a new lower risk weight for unrated corporate SMEs.

In relation to climate risk, for specialised lending under the credit risk SA, the PRA considers that the proposed removal of the infrastructure support factor would be offset by its proposal for project finance exposures (which explicitly covers environmental infrastructure projects) where 'high quality' exposures would receive lower risk weights.

Credit Risk Internal Ratings-Based Approach (IRB)

Consistent with the Basel 3.1 standards, the PRA proposes to:

- Remove the option to use the IRB approach for certain categories of exposures and restrict modelling within the IRB approach for certain other categories of exposures where it is judged that the model parameters cannot be estimated reliably for regulatory capital purposes. Firms using the IRB approach would no longer be required to model all material exposure classes.
- Adopt exposure-level, model parameter floors ('input floors') to help ensure a minimum level of conservatism for portfolios where the IRB approaches remain available.
- Provide greater specification of parameter estimation practices to reduce variability in RWAs for portfolios where the IRB approaches remain available.

The PRA proposals deviate from Basel 3.1 in the following ways:

- It allows firms to apply for permission to permanently apply the SA to subsets of exposures within a roll-out class.
- It does not implement a specific 'extraordinary circumstances' condition thereby retaining the existing reversion conditions.
- It extends the scope of the application of the 1.25 asset value co-efficient of correlation multiplier to all large financial sector entities (FSEs), amending the CRR FSE definition to explicitly include the total assets of the entire group and amending the definition of an unregulated FSE to include all FSEs that are not prudentially regulated as either a credit institution, investment firm, or an insurer.
- It introduces a new formula to compare P and EL amounts in PRA rules to help ensure that specific provisions for defaulted exposures cannot be used to cover expected loss (EL) amounts on other exposures.
- For revolving exposures that are at or over limit, firms would be required to model exposure at default (EAD) directly – the PRA does not consider CFs a meaningful concept for on-balance sheet exposures.

- It prohibits modelling of exposure at default for exposures subject to the slotting approach as it considers that this would reduce unnecessary complexity in the regulatory framework
- Firms are currently required to recognised post-default additional drawings for non-retail exposures. This is aligned with the Basel 3.1 standards, however in recognition that some jurisdictions may require post-default drawings to be reflected in loss given default (LGD), the PRA proposes that firms be permitted to use either approach for non-retail exposures as well as for retail exposures.

The PRA also proposes:

- Changes to improve the operation of the elements of the IRB framework that do not derive from the Basel standards. This includes changing the threshold for approving IRB model applications and IRB model changes from 'full compliance' with the IRB requirements to 'material compliance'.
- Changes to existing expectations / general requirements for use of the IRB approach to improve the overall consistency and coherence of the PRA's IRB framework.

The PRA notes that, for specialised lending under the IRB approach, were it to require the 'slotting' approach for object and project finance exposures, there could be an increase in risk weights resulting in firms being deterred from investing in green finance projects. The PRA therefore proposes to continue to allow the use of the Foundation IRB (FIRB) and Advanced IRB (AIRB) approaches, or slotting for object and project finance exposures, to avoid any potential negative impact on the net-zero target.

Credit Risk Mitigation (CRM)

CRM techniques are used by firms to reduce the credit risk associated with an exposure or exposures that they hold. The CRR allows firms to reflect two forms of eligible CRM in their RWAs – funded credit protection (FCP) and unfunded credit protection (UFCP).

Key proposals for funded credit protection (FCP) that are consistent with Basel 3.1 include:

- Under the SA, removal of certain methods for calculating the effects of FCP and amendments to the methods that remain available
- Under the FIRB approach, amendments to existing methods for calculating the effects of FCP, including new supervisory LGD values and collateral volatility adjustments
- Under the AIRB approach, a new technique for calculating the effects of FCP where firms lack sufficient data

Key proposals for unfunded credit protection (UFCP) that are consistent with Basel 3.1 include:

- Restrictions on existing methods where firms adjust PDs and/or obligor grades in IRB models
- New restrictions on recognising and modelling UFCP which would depend on the credit risk approach applicable to comparable direct exposures to the protection provider

Also aligned to the Basel standards are a number of material changes to the CRM framework in order to reduce excessive variability of RWAs, including:

- Withdrawal of the option to use own-estimate volatility adjustments in the Financial Collateral Comprehensive Method (FCCM) for firms using all credit risk approaches - FCCM with use of supervisory volatility adjustments would remain available
- Restricting the use of the internal models approach for master netting agreements to firms using the FIRB and AIRB approaches and extending this approach to cover single transactions, in addition to the existing scope of transactions subject to master netting agreements (MNAs) - renamed as the 'SFT VaR method')
- Introduction of a new integrated approach to collateral recognition for firms using the FIRB approach, which would incorporate and update existing methods for recognising financial and non-financial collateral - the foundation collateral method
- Introduction of new restrictions on the availability of methods for recognising the effect of UFCP, based on the credit risk approach that would be applied to comparable exposures to the protection provider, as well as the credit risk approach that applies to the exposure itself
- Withdrawal of the 'double default' approach for recognising the effect of UFCP in the IRB approach
- The PRA proposes to clarify that firms may choose to disregard CRM across all credit risk approaches and CRM methods

Market risk

Consistent with Basel standards, the PRA:

- Assigns positions to the trading book vs the non-trading book to determine whether they are to be treated under the market risk or credit risk framework
- Proposes constraints on the recognition of internal hedges between risks across the two books
- Proposes to supplement existing requirements for structural foreign exchange risk
- Proposes the use of three new market risk approaches to replace the current methodologies – the Simplified Standardised Approach (SSA), the Advanced Standardised Approach (ASA) and the Internal Model Approach (IMA)
- Proposes to retain the existing derogation for small trading book business – which permits firms with very limited trading activity (i.e., the size of on-and off-balance sheet trading book business is less than 5% of total assets, and less than £44 million) to use the credit risk approach to measure market risk

Firms would be allowed to use a combination of IMA and ASA to calculate market risk capital requirements. However, a firm using the SSA would need to do so for all market risk positions, and a firm using the small trading book derogation would need to do so for its entire trading book.

The PRA also proposes to specify a unique risk weight for carbon emissions certificates, which could be adjusted if the PRA sees future evidence that the calibration of the Basel 3.1 standards is excessively conservative.

Simplified Standardised Approach (SSA)

Aligned to Basel, the PRA proposes to retain the existing standardised approach – recalibrated to reflect market conditions and events.

The PRA introduces eligibility criteria that firms would need to meet to continue using this 'limited market risk' approach – i.e., either:

- Aggregate market risk assets and liabilities are less than £440 million and less than 10% of total assets, or
- There is eligibility to use the derogation for small trading book business

Also consistent with Basel, the PRA stipulates that firms with correlation trading portfolios (CTP securitisations) be prohibited from using the SSA due to the complexity of correlation trading.

Advanced Standardised Approach (ASA)

- Basel 3.1 introduces a new 'risk sensitive' standardised approach available to all firms – i.e., those that do not have permission to use an internal model approach. Under this approach, capital requirements are the sum of:
- A sensitivities-based method (SbM) capital requirement.
- A residual risk add-on (RAO); and
- A default risk charge (DRC).

The PRA maintains alignment with this approach, but proposes:

- A minor adjustment to the 'gross jump-to-default' calculation under DRC
- A separate framework for the treatment of carbon emissions certificates
- Amendments to the capital requirements for collective investment undertakings (CIUs): the Basel approach sets out three methods for calculating CIU capital requirements – the Look-Through Approach (LTA), the Mandate-Based Approach (MBA) and the Fall-Back Approach (FBA). Unlike Basel, the PRA proposes that firms would require specific permission to use the MBA approach. Moreover, the PRA also proposes to implement a fourth method – an External Party Approach (EPA) where a firm has access to a risk weight for the CIU that is calculated by an external third party.
- Additional prescription around how non-trading book FX and commodity positions should be reflected.

Internal Model Approach (IMA)

Basel introduces a new IMA approach to replace the existing framework – with permission required at trading desk level. Under this approach, capital requirements are the sum of:

- An expected shortfall (ES) calculation – which incorporates the risk of losses in a firm's trading positions due to movements in market variables.
- A default risk charge (DRC) – which measures the jump-to-default risk of credit and equity positions in a firm's trading book, and.

- A separate capital requirement for non-modellable risk factors (NMRFs).

The PRA aligns with this approach but:

- Is more prescriptive around NMRFs by requiring firms to develop and document capital requirement methodologies for individual NMRFs. The PRA also proposes requirements for recognition of NMRFs in back-testing.
- Proposes simplification of the modelling approaches for positions in CIUs, subject to tests to ensure they are appropriately conservative
- Proposes additional prescription around how non-trading book FX and commodity positions are reflected.

Beyond the proposed implementation of IMA, the PRA also proposes the introduction of a rule requiring firms to hold additional capital requirements for material deficiencies in risk capture in their internal models.

Credit Valuation Adjustment and counterparty credit Risk

The three new approaches introduced by the PRA for calculating CVA risk requirements are consistent with Basel:

- Fall-back Alternative Approach (AA-CVA) – for firms with limited non-centrally cleared OTC derivatives. Firms using this approach would set their CVA capital requirements equal to 100% of their counterparty credit risk capital requirements
- Basic Approach (BA-CVA) – either reduced or full, which is available to all firms (with no approval or notification needed). The PRA aligns fully to Basel on BA-CVA, except where it proposes a recalibration of reduced risk weights for transactions with pension fund counterparties by introducing a new risk weight category
- Standardised Approach (SA-CVA) – for use by firms that have supervisory approval. Calculation relies on firm computed CVA sensitivities to counterparty credit spread and market risk factors. The PRA is aligned to Basel but with a recalibration of risk weights for pension fund transactions (to introduce counterparty credit spread delta risk calculations). To improve consistency of CVA capital requirement calculations across firms, the PRA proposes that the SA-CVA capital requirements would need to be calculated from a regulatory CVA measure instead of each firm's accounting CVA measure

Also consistent with Basel:

- Firms may use a combination of BA-CVA and SA-CVA but would need to justify their approach to the PRA when applying to use SA-CVA
- CVA capital requirements will need to be calculated by all firms undertaking covered transactions in both the non-trading book and trading book

The PRA proposes the following additional changes beyond the Basel specifications:

- An increase in the scope of application of the CVA risk framework to include exposures to sovereigns, non-financial corporates, and pension funds, considered to have material CVA risk
- Retention of the existing CRR exemption from CVA capital requirements for client clearing transactions
- Retention of the existing CRR exemption from CVA capital requirements for specific intragroup transactions that meet the EMIR requirements
- The introduction of an additional approach where, following notification to the PRA, both domestic and cross-border intragroup transactions can be exempted from CVA capital requirements
- A transitional arrangement to CVA capital requirements for legacy trades with previously exempt counterparties
- A reduction in the SA-CCR alpha factor from 1.4 to 1 for transactions with pension funds and non-financial counterparties

<u>Operational risk</u>

Consistent with Basel 3.1 standards the PRA proposes to:

- Replace all existing operational risk capital requirements with a single standardised approach (SA)
- Introduce a new calculation for Pillar 1 operational risk capital requirements based on the Business Indicator Component (BIC) multiplied by the Internal Loss Multiplier (ILM)
- Exercise national discretion to set the ILM equal to 1

The PRA also proposes to:

- Continue to apply supervisory judgement regarding the relevance of past losses to future operational risk by using its more sophisticated approach under the Pillar 2 framework
- Maintain the requirements for firms to evaluate and manage their exposure to operational risk as set out in the policies and processes in the CRR

<u>Output floor</u>

Consistent with the Basel standards, the PRA proposes to apply an output floor of 72.5% to RWAs to set a lower limit (floor) for the capital requirements produced by internal models (IM). RWAs will be calculated as the higher of the total RWAs calculated using all approaches that they have supervisory approval to use (including IM approaches) or 72.5% of RWAs calculated using only standardised approaches. The PRA proposes that this floor applies to in-scope firms as follows:

- On a consolidation basis only, at the UK consolidation level of UK-headquartered groups
- On an individual basis to UK stand-alone firms
- On a sub-consolidated basis for RFB (ring-fenced bank) sub-groups, or individual basis where the RFB is not part of a ring-fenced sub-group.

- The output floor requirement will not apply to UK-based subsidiaries of banking groups headquartered overseas that are subject to group consolidation outside the UK, although the PRA may consider extending the requirement if it considers there to be a prudential case to do so

The PRA proposes to engage with firms originating significant risk transfer (SRT) securitisations, including during the output floor transition period, to understand the impact of the proposed use of standardised methodologies for securitisations.

In line with Basel 3.1 the output floor will be phased in from 50% to 72.5% over five years.

Interactions with the PRA's Pillar 2 Framework

No new Pillar 2 policies are announced in relation to this CP. The PRA plans to review P2A methodologies more fully in 2024. However, it is currently considering:

- How Pillar 2A operational risk, market risk and credit risk methodologies interact at a high level with the proposed changes to Pillar 1 risk-weighted asset (RWA) approaches set out in this CP
- At a high level, the consequential impacts to capital buffers including the PRA buffer
- The timing and setting of firm-specific capital requirements.

Disclosure (Pillar 3)

In order to reflect the proposals, set out in the CP, the PRA proposes to adopt the Basel 3.1 disclosure templates, without material deviations to the content or format.

To maintain proportionality, the PRA proposes that large and listed firms disclose at the minimum frequency prescribed in the Basel 3.1 standards. All other firms would disclose the proposed templates at a frequency no greater than the existing minimum frequency of their Pillar 3 report.

Reporting

Where existing reporting requirements would become partly or entirely redundant due to the proposed revision of RWA requirements, the PRA proposes to replace the existing templates entirely with new templates.

ESG & Disclosures

UK Transition Plan Taskforce consults on disclosure framework — see article

FCA consults on UK Sustainability Disclosure Requirements (SDR) and investment labels – *published its highly anticipated consultation (PDF 2MB) on proposed Sustainability Disclosure Requirements (SDR) and investment labels. Overview of the FCA's proposals*

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

- Sustainable investment labels for investment products based on the nature of the product's investment objective and how it purports to promote positive sustainability outcomes.
- Consumer-facing product-level disclosures that summarise the sustainability characteristics of products with a focus on retail investors.
- More detailed sustainability disclosures aimed at a broader range of stakeholders, including pre-contractual and ongoing performance disclosures at product level, and entity-level disclosures.
- Product naming and marketing rules to prevent firms using sustainability-related terms in product names and retail-facing marketing materials unless the product in question qualifies for one of the sustainable labels.
- A general "anti-greenwashing rule" for all regulated firms.
- Rules to ensure distributors provide sustainability information to consumers.

The wider UK context

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

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

Firms and products captured by the requirements

Firms that manage investment products for retail investors and their products will be captured by the product labelling and disclosure rules. These include wealth, fund and asset managers (specifically, firms providing portfolio management services such as UK MiFID firms, as well as UK UCITS Man Cos and UK AIFMs).

There are limited exclusions, including feeder funds or funds in the process of winding up. Some of the product level disclosures apply in a modified way for portfolio management services and UK AIFMs which manage unauthorised AIFs — for example, firms will not be required to produce product level disclosures in connection with portfolio management services but will be required

to provide access to the relevant disclosures for the underlying products. Overseas funds are not yet in scope but may be in the future.

Distributors of in-scope investment products, including platforms and financial advisers, will be subject to more limited requirements. These centre around displaying labels prominently and making the labels and consumer facing disclosures available to investors. Although overseas products are currently out of scope, distributors of such products to retail investors will need to display a warning that the products are not subject to the UK requirements.

All FCA-regulated firms will be impacted by a new anti-greenwashing rule, which will reaffirm existing requirements, that information provided to consumers is clear, fair and not misleading, and link them directly to sustainability claims. The rule will also capture the approval of financial promotions.

Product labels

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

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

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

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

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

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

Product level — consumer-facing disclosures

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

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

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

Product level — more detailed disclosures for a broader audience

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

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

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

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

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

Entity-level disclosures

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

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

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

Naming and marketing rules

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

Interaction with EU requirements

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

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

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

Considerations for firms

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

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

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

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

Provisional implementation timeline

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

Corporate Sustainability Reporting Directive (CSRD) adopted by EU; The European Parliament and Council have now both adopted the Corporate Sustainability Reporting Directive (CSRD) which will expand the scope and requirements of the EU Non-Financial Reporting Directive (NFRD) and require approximately 50,000 EU companies to report against the new European Sustainability Reporting Standards (ESRS).

Member States now have 18 months to implement the new rules in phases, depending on entity size:

- Reporting in 2025 on financial year 2024 for companies subject to the NFRD — large public-interest entities with more than 500 employees
- Reporting in 2026 on financial year 2025 for large companies not already captured by the NFRD, if they have more than 250 employees or €40 million in turnover or €20 million in total assets
- Reporting in 2027 on financial year 2026 for listed SMEs except micro undertakings, small and non-complex credit institutions and captive insurance undertakings — possibility of voluntary opt-out until 2028
- Reporting in 2029 on financial year 2028 for third-country undertakings

European Sustainability Reporting Standards (ESRS) submitted to the European Commission; Shortly after the adoption of the CSRD, the European Financial Reporting Advisory Group (EFRAG) submitted its first set of 12 draft European Sustainability Reporting Standards (ESRS) to the European Commission.

- Changes have been made to all the draft standards based on consultation feedback. These are mostly minor, including adding definitions and better referencing internally and between standards to ensure consistency of application. There is also a more granular definition of materiality that aligns with existing standards such as GRI and ISSB S1. Following scrutiny by the European Parliament and Council, the standards are expected to be adopted as delegated acts in June 2023.

ESAs propose disclosure for fossil gas and nuclear energy investments; At the end of September, the ESAs delivered amended draft Regulatory Technical Standards (RTS) for disclosures required under the SFDR, to reflect the inclusion of natural gas and nuclear power generation in the EU Taxonomy. Key amendments:

- Bring the RTS wording broadly in line with the Complementary Delegated Act (CDA) to explicitly require firms to report the amount and proportion of Taxonomy-aligned activities linked to natural gas and nuclear in their KPIs
- Update the forthcoming mandatory pre-contractual and periodic disclosure templates for SFDR Article 8 and 9 products to show the proportion of investments in gas and nuclear taxonomy-aligned activities
- Include a 'yes/no' question in pre-contractual and periodic disclosure templates regarding whether products intend to or have invested in natural gas or nuclear taxonomy-aligned activities. If the answer is "yes", further disclosure of the relevant proportion of investments is required
- The implementation date for the amended RTS will be determined by the European Commission, but we would expect the timing to be aligned with that of the CDA and SFDR level two templates which come into effect on 1 January 2023.

TCFD 2022 Status Report; The TCFD's 2022 status report provides an overview of firms' progression on climate-related financial disclosures over the past five years. Overall, the report

finds that the percentage of companies disclosing TCFD-aligned information continues to grow, but that more urgent progress is needed:

- In 2021, 80% of companies disclosed in line with at least one of the recommended disclosures, 40% disclosed in line with at least five, and only 4% disclosed in line with all eleven. All regions significantly increased their levels of disclosure over the last three years
- Average disclosure levels across the eleven recommended disclosures were 41% for banks and insurance companies
- Over 60% of asset managers and 75% of asset owners report to their clients and beneficiaries. Nearly 50% of asset managers and 75% of asset owners reported information aligned with at least five of the eleven recommended disclosures
- The availability and quality of climate-related financial disclosures has increased since 2017 — 95% of respondents reported increases in availability and 88% improvements in quality
- 90% of investors and other users incorporate climate-related financial disclosures in financial decision-making — 66% of these factor disclosures into the way they price financial assets
- Of the eleven recommended disclosures, the resilience of companies' strategies under different climate-related scenarios continues to have the lowest level of disclosure

The Financial Stability Board (FSB) has asked the TCFD to publish a further status report in 2023 to maintain momentum during the period until the ISSB's global baseline standard is agreed and its implementation can be monitored.

TNFD framework v0.3; The Taskforce on Nature-related Financial Disclosures (TNFD) has released the third iteration of its beta framework. This is the last iteration before a final consultation is launched in March 2023, with the full framework expected to be finalised in September 2023.

v0.3 contains significant updates to all four pillars of the framework — governance, strategy, risk management and metrics and targets. Three new baseline disclosures are recommended for all reporting entities, to enhance traceability, characterise the quality of stakeholder engagement and demonstrate how nature and climate targets are aligned and contribute to each other. In addition, exposure and magnitude metrics are introduced. New guidance on performing risk assessments in line with TNFD recommendations is also provided and a Tools Catalogue and Risk and Opportunity Register provide resources for organisations to use when performing their risk assessments.

Taxonomy developments; GTAG advice on the development of UK Green Taxonomy; The Green Technical Advisory Group (GTAG)'s report, advising the UK government on the development of its Green Taxonomy, focuses on four key themes:

- How to approach onshoring the EU framework, on which the UK Green Taxonomy will be based, at a time when the UK has set out a policy ambition to move further and faster than the EU in some areas of climate change

- Optimising the taxonomy's international interoperability, given that 80% of UK-managed assets are invested in international capital markets
- Streamlining 'Do No Significant Harm' to be usable and useful for reporting entities
- Setting out a wide range of potential taxonomy use cases

The GTAG recommends that the government revises its original timeline for consultation on and finalisation of the Technical Screening Criteria (TSC) for the first two of the six environmental objectives of the Taxonomy. As the previously proposed deadline of end-2022 is no longer feasible, the GTAG suggests that the timeline be amended to allow consideration of points raised in this report and future GTAG papers.

PSF guidance on EU Taxonomy 'minimum safeguards' criteria; In October, the PSF published final recommendations to the European Commission on how to meet the EU Taxonomy 'minimum safeguards' criteria. There was previously no guidance in this area. The recommendations will be considered by the European Commission and, if approved, will form part of the EU Taxonomy usability toolkit.

The PSF proposes that compliance with 'minimum safeguards' should be defined for four core topics: human rights (including workers' rights), bribery / corruption, taxation, and fair competition. Crucially, the PSF does not consider it necessary to implement new legislation or regulations, such as an EU Social Taxonomy, to achieve compliance with the 'minimum safeguards' criteria but notes that requirements within the Sustainable Finance Disclosure Regulation (SFDR), the Corporate Sustainability Reporting Directive (CSRD), Corporate Sustainability Due Diligence Directive (CSDDD) can achieve this purpose.

PRA feedback on SS3/19 expectations – see article

ECB thematic review of climate and environmental risk – see article

ISSB mandates use of climate scenario analysis; The International Sustainability Standards Board (ISSB) announced in November that firms will be required to use climate-related scenario analysis to inform their resilience assessments in order to help identify climate-related risks and opportunities and support their climate disclosures. The ISSB will:

- Provide guidance on how to undertake scenario analysis, building on TCFD guidance on quantitative, partially quantitative, and qualitative analysis
- Do further work to clarify the criteria for an entity to select a method of analysis, ensuring that firms' analyses are commensurate with their size, capabilities, and level of exposure to climate-related risk

Firms will be required to make annual disclosures on climate resilience, even if scenario analysis is not conducted annually. These changes will be reflected in the final IFRS Sustainability Disclosure Standard S2, expected to be released by the end of this year.

FSB reports on supervisory and regulatory approaches to climate-related risks; In October the Financial Stability Board (FSB) published a final report on supervisory and regulatory approaches to climate-related risks. Whilst the report is addressed to supervisors rather than

individual firms, it provides useful insight on regulatory expectations and areas of likely focus going forward. In particular, the report urges supervisors to identify data requirements and drive standardisation in definitions and regulatory reporting across jurisdictions. It also encourages them to enhance their scenario analysis toolkits. The report notes that micro-prudential tools are not yet sufficiently able to address the cross-sectoral, global and systematic nature of climate-related risks but that work is underway in the EU and UK to examine the use of risk buffers and explore capital adequacy mechanisms.

A further report in November, this time issued jointly with the Network for Greening the Financial System (NGFS), considers the adequacy of climate scenario analysis across financial authorities and at individual firm level. It notes that tail risks and spillovers associated with climate change, and their measure of exposure and vulnerability in scenario analysis, are likely understated. Crucially, the FSB and NGFS note that many exercises do not capture second-round effects such as abrupt asset price changes that result from fire sales during a shock. This report again calls for greater cross-border cooperation to share both knowledge and practices, and to issue robust guidance for firms.

ESMA consultation on the use of ESG or sustainability-related terms in fund names; ESMA is consulting until 20 February 2023 on the use of ESG or sustainability-related terms in fund names. The consultation reflects both the increasing demand for ESG-related investments and concerns that there is no effective application of sustainability criteria, such as the EU Taxonomy. ESMA proposes that:

- Where a fund name has any ESG-related words in its name, a minimum of at least 80% of its investments should be used to meet environmental, social or sustainable objectives
- Where a fund name uses the word 'sustainable' or any other term derived from 'sustainable', there would be an additional threshold stipulating that 50% of investments would need to be allocated to "sustainable investments" (those that meet the definition set out under SFDR)

ESMA guidelines; In September, ESMA published Final Guidelines on the MiFID II suitability requirements (following the introduction of requirements in August for firms to consider investors' sustainability preferences in suitability assessments).

MiFID II and associated guidelines have been updated to reflect changes in the following categories:

- Informing clients on sustainability preferences
- Collecting sustainability preference information from clients
- Assessing sustainability preferences
- Organisational requirements — staff must receive appropriate training on sustainability topics. Records of clients' sustainability preferences and any updates must be kept

The guidelines will apply from six months after their publication on ESMA's website (extended from the original two months proposed).

In addition, in July, ESMA launched a consultation to update its 2017 MiFID II product governance guidelines and align them with the November 2022 MiFID II sustainable finance amendments. The consultation closed on 7 October 2022 and ESMA expects to publish a final report in Q1 2023.

ESAs' clarifications on SFDR; The ESAs published a Q&A in November to clarify further aspects of the Sustainable Finance Disclosure Regulation "Delegated Regulation" - the "level two" requirements that take effect from 1 January 2023. The Q&A covers 60 questions over six topics and follows publication of other clarification questions in September. Most of the questions relate to Principal Adverse Impact (PAI) disclosures and taxonomy-aligned investment disclosures.

The ESAs previously sent questions to the European Commission for clarification on 9 September 2022, but these have not yet been answered.

Separately, the ESAs wrote to the European Commission in October to notify it that they will be unable to meet the April 2023 deadline for the review of the SFDR PAI and financial product disclosures, and that the mandate may be delayed by up to six months.

ESAs Call for Evidence on greenwashing risks; The ESAs have launched a Call for Evidence to understand the main features, drivers and risks associated with greenwashing practices across the financial institutions within their remits. This Call for Evidence will feed into a previous request from the European Commission, which asked for the ESAs' views on the supervision of greenwashing risks and whether the current supervisory response was adequate. The ESAs are seeking to collect:

- Views from stakeholders on greenwashing and what the main drivers of it may be
- Examples of potential greenwashing across the financial sectors within their remit
- Data to help them have a concrete understanding of the scale of greenwashing, and to identify which areas are most at risk of greenwashing practices

The ESAs have asked for information to be provided at firm and product level and to include examples relating to marketing materials, social media claims, website content etc. The consultation will run until 10 January 2023.

UK Voluntary Code of Conduct for ESG data and ratings providersl The FCA has announced the formation of a working group to develop a voluntary Code of Conduct for ESG data and ratings providers. The FCA has previously expressed its support for regulatory oversight of ESG data and ratings providers, and while HM Treasury considers this position, the FCA has in the meantime convened a group co-chaired by M&G, Moody's, London Stock Exchange Group and Slaughter and May. The voluntary Code of Conduct will aim to foster an effective, trusted and transparent market. The group's first meeting will be later this year.

Proposed amendments to EU Corporate Sustainability Due Diligence Directive; Non-binding recommendations for amendments to the scope and requirements of the proposed EU Corporate Sustainability Due Diligence Directive (CSDDD) were submitted to the European Commission in October by the European Parliament. The CSDDD would introduce requirements

for company directors to ensure that they steward companies in a manner that is consistent with the EU's sustainability strategy, including a 1.5 °C global warming pathway. Of the 98 amendments put forward, the most significant include:

- The financial sector, including the provision of loans, pensions, risk management, payment services, insurance and reinsurance, investment services and other financial services, to be reclassified as "high-impact"
- All direct and indirect business relationships to be in-scope
- Small and medium sized undertakings to be part of the value chain considered, having previously been excluded
- Scope to expand **from** EU companies with more than 500 employees, worldwide net turnover over EUR150m *or* in a high-impact sector with more than 250 employees and worldwide net turnover over EUR 40m **to** include EU companies with more than 250 employees and worldwide net turnover over EUR 50m *or* in a high impact sector with more than 50 employees and worldwide net turnover over EUR 10m
- Executive directors to set sustainable investment targets of a minimum of 50% when establishing performance measurement criteria for determining variable remuneration

The European Council confirmed its position on the CSDDD on 1 December and has taken a narrower view on which firms should be captured, including only:

- EU companies with more than 1,000 employees and EUR 300m net worldwide turnover
- Non-EU companies with EUR 300m net worldwide turnover generated in the EU

The positions will now be considered by the European Commission. Based on the standard timetable for the EU legislative process, CSDDD is unlikely to come into effect until 2025 at the earliest.

EU Parliament adopts legislation for company board gender targets

The EU Parliament has adopted a Gender Balance Directive that will require the boards of large EU listed companies to meet minimum female representation targets — at least 40% of non-executive directors or 33% across all board members. The Directive will come into effect from 30 June 2026 and will be enforced at a national level. It will apply to companies that are incorporated in the EU and are listed on an EU-regulated market. SMEs will be exempt and are defined as companies that have less than 250 employees and an annual turnover of less than EUR 50 million, or whose balance sheet total is less than EUR 43 million. In-scope companies will also have to provide information to regulators and on their website regarding the gender representation on their boards.

2022 cannot be seen as a complete write-off for the ESG agenda. There were monumental strides in the policy push for a global green energy transition. *The International Energy Agency reported that the world is set to add as much renewable power in the next five years as it did in the past twenty. This is partially due to the global energy crisis and ambitious regulatory and policy reforms in countries like the US, China and India.*

- The year also saw the resilience of collaboration by market actors in the face of challenging market conditions and a vocal anti-ESG backlash. For example, the Glasgow Financial Alliance for Net Zero continued to grow in membership to over 500 financial firms, despite being caught in the cross-hairs of the politicised anti-ESG movement in the US, anti-trust critiques and a challenging de-coupling from the UN's Race to Zero criteria. We saw similar collaborative ambition from the corporate world, for example, with the launch of the Corporate Coalition for Innovation and Technology toward Net Zero founded by six global cross-sector businesses; Bechtel, GE, GM, Honeywell, Invenergy, and Johnson Controls.
- The progress in amplifying more voices within the climate conversation this year is yet another reason to be optimistic. Developing nations banded together to push for and achieve an historic agreement on the Loss and Damage Fund and to progress adaptation funding at COP27.
- We believe this cross-regional policy push and cross-sectoral collaboration will help maintain the ESG momentum over 2023.
- Governance
- The 'G' of ESG is often considered table stakes and does not attract the same level of attention as the 'E' and, increasingly, the 'S'. However, appropriate and robust governance structures and processes within companies are essential for the success of the ESG agenda as a whole.
- Historically, ESG has struggled to find a clear home within corporate structures; therefore, board-level accountability for ESG has remained an elusive metric. That dynamic appears to be changing with the rise of the Chief Sustainability Officer (CSO) as a C-suite role within corporates. PwC reported earlier this year that of the 1,640 companies they surveyed, just under one-third now had a formal CSO role, a significant increase from the position ten years ago.
- The role of the board and senior management in embedding ESG within the organisational fabric is gaining increased traction. One key manifestation of this evolution is the growing focus on aligning executive incentives with ESG targets and the integration of ESG metrics in remuneration structures. The Investment Association's Letter to remuneration committee chairs of FTSE 350 companies and the Financial Conduct Authority's Dear Remuneration Chair Letter in the UK highlighted the growing market expectations of such remuneration. A position supported by the proxy voting guidelines issued by Glass Lewis and ISS for 2023.
- Investor and supervisory expectations on diversity and inclusion also gained momentum. 2022 has seen the EU adopt its Gender Balance Directive and the UK introduce board diversity targets.
- Transactional
- Despite the geopolitical upheaval and market volatility that shaped 2022, there has been a steady demand for sustainable investments, allowing the market to hold up well against the overall negative downturn. While, global sustainable funds attracted USD 22.5 billion of net new money in the third quarter of 2022, less than the revised USD 33.9 billion of inflows in the second quarter, they still held up better than the broader market, which experienced USD 198 billion of net outflows over the period. Europe continued to make up the lion's share of the sustainable fund landscape, with 82% of global sustainable fund assets. It also remains by far the most developed and diverse ESG market, followed by the U.S., which housed 12% of global sustainable fund assets through September 2022 (Morningstar, Global Sustainable Fund Report).

- So, while not immune to market volatility, investors' growing desire for investments that suit their sustainability choices has allowed the market to stay resilient in 2022. Businesses continue to innovate at pace in launching products and services focused on ESG, whether that be structuring financial products to facilitate the climate transition, manufacturing goods with a reduced environmental footprint or launching funds with a sustainability-focused objective. The market has also been bolstered by policies that aim to incentivise the renewables sector and to support the reduction of waste and pollution, through proposals such as the pivotal US Inflation Reduction Act and the UK's Plastics Packaging Tax.
- However, the ESG market continues to face a number of challenges. The volume of regulation has increased the complex compliance uplift for sustainability-focused products and services. The politization of ESG has posed another headwind. For example, 2022 saw the rise of the anti-ESG wave in the US, with Texas leading the way and blocking 10 companies and 348 investment funds on the basis that ESG-driven investing was "harmful" to states' economies. Other 'red' states soon followed. This battle will no doubt continue into 2023 (see our October ESG View and watch the recordings of our ESG December event *Navigating the Rising Tide of ESG Policy, Regulation and Litigation across the US, Europe and the UK* for a recap on these developments).
- Regulatory
- A tidal wave of regulation seems like a fitting description of what we have seen in 2022 as the global ESG framework of voluntary codes and guidance continues to be replaced by codified mandatory obligations. While Europe continues to lead the way, the UK, US and Asia-Pacific have also taken active steps to legislate on net zero.
- Developing a green taxonomy continued to be a primary focus for many regulators in 2022, with Asia-Pacific particularly pushing ahead. At the beginning of the year, Indonesia launched the country's first green taxonomy as part of its Sustainable Finance Roadmap Phase II. In May, Singapore's Green Finance Industry Taskforce, issued its second consultation, building on its January 2021 proposed taxonomy, which it aims to finalise in 2023. And just this month, the Australian Sustainable Finance Institute Taxonomy Project, published for consultation its proposed framework for developing Australia's finance taxonomy. As many countries are pushing ahead, the UK has hit a road-block and announced it will not finalise its taxonomy legislation by 1 January 2023, as planned. Taking a cautious approach, the UK seeks to watch and learn from the EU and will revisit its strategy in 2023.
- In efforts to ensure investors have access to transparent and trusted data, climate disclosure reporting continued to hold centre stage in 2022. With the EU remaining focused on preparing for phase 2 of the Sustainable Finance Disclosure Regulation, the UK has now followed in its footsteps by proposing its own Sustainable Disclosure Requirements regime. The US and Australia have also taken steps towards their own climate-related disclosure regimes that are yet to be finalised. In 2022, we also saw the proposed drafts of the climate disclosure standards from the International Sustainability Standards Board and the European Financial Reporting Advisory Group, all of which we will hear more about in the new year.
- 2022 also saw the focus on climate expand to nature. In October, the WWF's 2022 Living Planet Report revealed that biodiversity around the world is crashing at a startling rate, with global wildlife populations diminishing by 69% in the last 48 years. Such reports have had a sobering effect, and biodiversity seems to be coming to the top of the

agenda. Ahead of the UN Biodiversity Conference (COP15), the Taskforce on Nature-related Financial Disclosures has released the third version of its beta framework for consultation, and the Global Reporting Initiative has opened its revised GRI Biodiversity Standard for comment. There is an urgency that is being felt globally, which has culminated in the adoption of an ambitious Kunming-Montreal Global Biodiversity Framework at COP15, which ended this week.

- As the world began its post pandemic recovery and faced inflation and rising living costs, social issues also attracted more regulatory attention in 2022. In September, the Global Reporting Initiative announced its intention to enhance human rights into its disclosure requirements. In the same month, the Japanese government published its Guidelines on Respecting Human Rights in Responsible Supply Chains. Whilst the EU's Corporate Sustainability Due Diligence Directive continues to be held up by fierce negotiations, the Corporate Sustainability Reporting Directive was finally published in the official journal last week, introducing detailed disclosures under the 'S' pillar. The EU also saw this year the adoption of the Women's on Boards Directive and a proposal to apply a ban on products tainted by forced labour.
- Reputational
- In 2022, ESG reputational risks and rewards became palpable with increased scrutiny across sectors. We saw the conversation on ESG move away from one of 'ambitious commitments' to 'implementation' and 'action'.
- The UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (UNHLEG) released a timely report containing ten recommendations to increase integrity, transparency and accountability to net zero claims by non-state actors. The message was received loud and clear by all - there will be "zero tolerance for greenwashing" moving forward. Greenwashing litigation and regulatory enforcement risks continued to be of concern and reinforced the message of UNHLEG (as discussed within the below 'Risk Management' section). Furthermore, shareholder activism continued to drive the ESG agenda and put companies under the spotlight. There were more ESG-related shareholder proposals filed this year than in any previous proxy season, with key themes being transparency on governance and climate commitment integrity. In the US, shareholders called for big tech firms to have greater tax transparency, while in Europe, shareholders may be taking a car manufacturer to court to require climate-related lobbying transparency.
- Interestingly, environmental filings were outnumbered by social ones this year, with over a third of environmental proposals withdrawn and acted upon outside of the voting procedure (PRI, 2022). Given the less quantifiable nature and more subjective approach to 'S' issues, we saw more nuanced conversations on these shareholder resolutions. Companies face challenging decisions in balancing the 'E', 'S' and 'G' and competing fiduciary obligations. We anticipate that these more nuanced and intentional conversations will continue in the next proxy season.
- The increased focus on integrity and greater scrutiny have also meant a rise in 'green bleaching' and 'green hushing'. This emerging phenomena is seen when companies actively refrain from making ESG-commitments in order to avoid potential ESG disclosure obligations and mitigate any associated risks. It's clear that market-actors are trying to navigate the choppy waters of reputational risk by proactive means; however, with increasing mandatory disclosure rules, it's unclear how productive and enduring these practices will be.
- Risk Management

- 2022 has seen a number of trends for ESG related litigation and enforcement action, which companies should consider as part of their risk management.
- The courts have shown a willingness to hear and rule on climate litigation. For example, in July, the English High Court ruled that the UK government's plan to reduce greenhouse gas emissions to net zero by 2050 is too vague and therefore unlawful. The Court then ordered the UK government to publish an updated climate report by the end of March 2023, setting out further detail on how its net zero goal will be achieved. There have been similar decisions across Europe, such as in Spain and Germany. These types of litigation demonstrate the increasing willingness of the judiciary to enforce climate legislation, giving it teeth. We are also starting to see the mounting pressure on governments to lower emissions passed on to corporates.
- The courts have also had an increased willingness to hear claims holding corporates accountable for the actions of their offshore subsidiaries. The English Court of Appeal held that claims brought in the English courts by over 200,000 claimants arising out of the 2015 collapse of the Fundão Dam in Brazil can proceed. There have been similar movements by the judiciary in Germany (Saul Luciano v RWE) and claims in France in relation to Ugandan mining projects. Companies should see it as a stark warning - they can be held to account in their local courts for the actions of their foreign subsidiaries and joint ventures.
- Greenwashing and mis-selling claims continue to be a primary focus for NGOs and climate activists as well as regulators. The investment management sector has seen multiple cases of enforcement against asset managers both in the US and in Europe. Additionally, climate litigation against corporates continues to grow. Actions have been brought across the globe, often focused on net zero claims. Several actions are being brought by the Advertising Standards Authority in the UK. For example, banks and supermarkets have been warned over using certain adverts to 'greenwash' their reputations. The voice of NGOs and activists continues to grow in strength as they increasingly look to effect change as shareholder activists

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Commodities

Main results - Extraordinary Transport, Telecommunications and Energy Council (Energy), 13 December 2022; EU energy ministers discussed a proposal for a Council Regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices.

Following last week's note on the disagreements across countries, institutions and market participants regarding Gas Caps etc in the upcoming EU_Energy Ministers Council Meetings at the start of this week and the ECOFIN on Thursday: *A Revised third version of the EU Commission Proposals has been circulated over the weekend to attempt to find a way forward*

- Despite the push to include physically delivered trades, the OTC exclusion survives, despite the venue aspects being widened to OTF/MTF. We assume that the "OTC" element still means C6 excluded physical WEPs traded on an OMP (??)

- As per previously, the EC considered that this would/could jeopardise the security of supply and so recital 32 remains untouched:

  - (32) "*The bidding limit should not affect over-the-counter ('OTC') transactions, as including them would raise serious monitoring issues and may lead to problems with security of supply*"
- *Rather it now and newly seeks to capture 'regulated market operators' means an operator trading on a regulated market. 'regulated market' as defined in Article 4(1), point (21), of Directive 2014/65/EU, i.e. MIFID*
  - Noting that the exchanges didn't like the exemption, citing that it could encourage flows onto OTC. Now the EC specifies that it should not jeopardise either the security of supply, nor prevent market-based intra-EU flows of gas, nor affect the stability and orderly functioning of energy derivative markets….
- Where ICE front-month TTF derivative settlement price > **Eur 222 and** is > **Eur 35 over LNG for 5 consecutive trading days;** then ACER shall publish in a clear and visible manner on its website a 'market correction notice.' Once activated by ACER, the dynamic bidding limit shall apply at least for 20 trading days,
- The references to S&P LNG price appraisals are removed.
- There is nthg in this proposal referencing Article 15 of the October proposal regarding Power market intra-day circuit breakers (which doesn't mean the October proposal is not coming)

Changes:

1. Adds explicit note on efforts of state-subsidised entities to buy gas for storage without consideration of the impact of uncoordinated purchasing on prices contributed to driving up TTF prices (per the Dutch proposal to restrict to these) [9a]
2. Expands scope to:
   a. "Main TTF derivatives market" - now including OMP C6 Trades**
   b. "One to three months ahead" [i.e. not D/A]
   c. *"It is therefore necessary to establish a temporary market correction mechanism for natural gas transactions in the main month-ahead TTF derivatives markets with maturities between month-ahead and three-month ahead, as an instrument against episodes of excessive high gas prices with immediate effect."*
3. "Market correction event" is defined; Where ICE front-month TTF derivative settlement price > Eur 222 and is > Eur 35 over LNG for 5 consecutive trading days; then ACER shall publish in a clear and visible manner on its website a 'market correction notice.' Once activated by ACER, the dynamic bidding limit shall apply at least for 20 trading days,
4. A legislative "*Market Correction Mechanism*", has been entirely replaced by a "*temporary dynamic price corridor on natural gas transactions*."
5. ** it should apply to natural gas transactions in the TTF Virtual Trading Point, operated by Gasunie Transport Services B.V.; other Union gas trading hubs may be linked to the corrected TTF spot price via a dynamic price corridor; it should be without prejudice to over-the-counter gas trades, not jeopardise the Union's security of gas supply, depend on progress made in implementing the gas savings target, not lead to an overall increase in gas consumption, be designed in such a manner that it will not prevent market-based intra-EU flows of gas, not affect the stability and orderly functioning of energy derivative markets, and take into account the gas market prices in the different organised market places across the Union.
6. "*It is therefore appropriate to limit the intervention to the TTF month-ahead to three-month ahead settlement price, not only to target the most used and liquid markets but also to avoid arbitrage and minimise the circumvention of the mechanism*."
7. Oddly the mechanism seems only now to be triggered by the ICE contract [rather than by the physical price of gas]
   a. The mechanism should introduce a dynamic safety ceiling for the price from month-ahead to thee-month ahead TTF-derivatives. The dynamic ceiling should be activated if

the TTF-derivatives price reaches a pre-defined level, and if the price hike does not correspond to a similar hike at regional or world market level.

8. The references to S&P LNG price appraisals are removed.
9. 17a
    a. A dynamic safety ceiling should therefore ensure that trading orders which would be significantly above LNG prices in other regions of the world are not accepted. Appropriate benchmarks should be used to determine a reference price reflecting global LNG price trends. The reference price should be based on LNG price assessments linked to representative of the European trading hubs market conditions and, due to the particular importance of the United Kingdom and Asia as a competitor competitors in the global LNG market, also on an appropriate benchmark for the United Kingdom and Asian regions. LNG is an appropriate proxy for gas price developments at global level.
    b. In contrast to pipeline gas, LNG is traded on a world-wide market. Therefore, LNG prices, such as those at Mediterranean or North West exchanges, are directly influenced by the development of the global LNG market and are usually closer to better reflect the world market price level than pipeline-dominated benchmarks. LNG prices at Mediterranean or North West exchanges provide an appropriate indication gas price developments at global level and can serve as benchmark to assess whether extreme price hikes are based on underlying changes of demand or supply or on a malfunctioning of price levels in continental hubs, such as the price formation mechanism in the Union. The basket of LNG price assessments taken into account should be sufficiently broad to be informative even in case a specific LNG price assessement should not be available on a given day.TTF, diverge abnormally from international prices.
10. 17aa [new] – wider use of PRAs who are BMR registered
    a. The sample of LNG prices taken into account should be sufficiently broad to be informative even in case a specific LNG price should not be available on a given day. In view of building a representative basket of European and international prices and in order to ensure that the entities providing the price information are subject to relevant EU regulation, price assessments should be selected by reporting agencies which are listed in the Benchmark Registry established by the Benchmarks Regulation (EU) 2016/1011 and supervised by ESMA. As timely information is key for the dynamic market correction mechanism, only price information from entities providing information relating to the day of publication should be taken into account. In order to allow ACER to exercise its market supervision duties under this Regulation, and to calculate the reference price on time, it is necessary to oblige the reporting agencies publishing price assessments to provide assessments to ACER already by [21:00] CET;
    b. while such reporting obligations regarding existing data do not place significant additional burden on the reporting agencies and are frequent in energy and financial market regulation, ACER should ensure confidential treatment of the information received, protect any intellectual property rights related to the information and use it solely for regulatory purposes. ACER should be able to issue guidance on the format the relevant data have to be provided.
11. 17ab [new] – NBP to be a part of an LNG basket (!)
    a. Due to its high liquidity, it is appropriate to include also front-month derivatives related to the UK National Balancing Point ('NBP'). The daily price assessment carried out by ACER pursuant to Article 18 of Regulation (EU) XXXX/2022 should be part of the basket of LNG price assessments
12. 17b [new] – spread to LNG
    a. While the benchmarks taken into account for the reference price are a good proxy for global LNG price trends, they cannot simply substitute TTF-derivate prices. This is mainly because the reference price reflects prices at different locations than TTF. For instance, they do not take account the transportation costs to move the gas from the LNG terminal to where the TTF hub is located. TTF prices are therefore usually higher than the prices

taken into account for the reference price. The difference amounted to EUR 35 €/MWh on average between June and August 2022. Furthermore, it is of key importance for the security of supply that the corrected TTF-derivative price is set at a sufficiently high level to still attract LNG imports from other regions in the world. As security of supply premium should therefore be put on the reference price for the calculation of the corrected TTF-derivative price.

13. 17b [new] – ceiling to be adjusted in a dynamic manner and on a daily basis
    a. In line with the conclusions of the European Council of 21.10.22, the safety ceiling should not be static, but be adjusted in a dynamic manner and on a daily basis. The publication of a daily settlement price allows the ceiling to remain in line with LNG market developments, and to preserve the price formation process on exchanges and mitigate possible impacts on the orderly functioning of derivatives markets. A dynamic design of the safety ceiling will also reduce risks for Central Counterparties and limit the impact on participants in futures markets, such as clearing members and their clients.
14. 20 – adds rationale for the ceiling to be "far away" – but removes the fixed trigger
15. 29 – adds TV restrictions when triggered T+1 after ACER announcement
    a. Once the conditions for activation are met, ACER should publish a notice immediately on its website informing of the fact that the triggering conditions for the activation of the mechanism have been met. The following day, regulated market operators should not accept any orders above the dynamic bidding limit and TTF derivatives market participants should not submit any such orders. Regulated market operators and TTF derivatives market participants should monitor the website of ACER where the daily reference price should be published.
16. 33 – deactivation trigger after 1 month if at Eur 220
    a. The market correction mechanism should therefore be automatically deactivated, after one month if when the dynamic bidding limit is at below [220]EUR for a certain period. As for the activation, the deactivation of the mechanism should not require any assessment by ACER or the Commission, but should happen automatically when the conditions are fulfilled.
17. 36 – Adds force majeur type exclusions
18. 41a – New – Adds ECB Validation / Systemic Risk assessment

ICE warns EU gas price cap could add to market costs if plan enacted; *Gas traders would be forced to find another $47bn in margin payments, double current levels, if a revised plan by Brussels to cap Europe's main gas benchmark futures contract went ahead, the market's operator Intercontinental Exchange has warned.*

- The stark warning from ICE comes as EU member states are trying to agree a deal over a gas price cap before the end of the year. ICE's calculations were based on the price of TTF trading at about €150/megawatt hour, roughly its current level.
- EU governments are pushing for a cap on the Dutch TTF futures market, the region's main market for trading and setting the price of gas. Brussels has revised a plan in which the cap would be triggered when TTF futures prices hit €220 per megawatt hour for five days and are €35 per MWh higher than average prices for liquefied natural gas.
- ICE said costs for market participants would rise even further because Brussels wanted to expand its plan from including only month-ahead futures contracts to ones that settled three months hence. That would mean ICE could not subtract all of traders' offsetting payments against one another, as a clearing house normally does. ICE had initially forecast traders and users would have to stump up another $33bn in margin, payments they make as insurance to secure their deals.
- "A margin increase of this scale could destabilise the market. We are deeply concerned about whether the market can cope with meeting margin calls of this size," said ICE in a statement. The

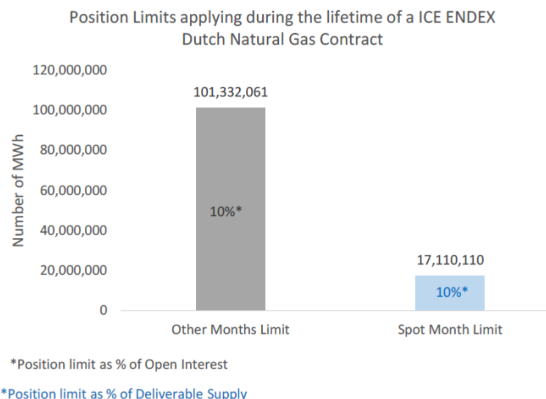
exchange warned that a cap would raise the prices for consumers as companies would need to charge more to compensate for the higher risks they were taking by buying elsewhere in the market.

Mind the cap; *EU governments are inching towards agreement on a gas price cap but even as energy ministers arrive in Brussels to discuss it today there are only dim glimmers of hope for a deal.*

- The so-called market correction mechanism, proposed by the European Commission last month, was designed to put a ceiling on gas prices when they reached a level that was considered “excessive”. In the commission’s mind this was when prices on the European benchmark index hit €275 per megawatt hour for 10 days and were €58 per MWh above global liquefied natural gas prices.
- Member states have been steadily bringing that number down and cutting the number of days as they attempt to negotiate a compromise that will satisfy a contingent of around 15 countries in favour of a cap and a hardline of mostly northern European countries, including the Netherlands and Germany, which are vehemently against.
- The latest proposal suggests a cap at €220 per MWh for five days — a difference of €35 per MWh to the LNG price — a widening of the number of references used to monitor LNG prices and a near-rewrite of the mechanism used to suspend and review the cap. “Member states are moving very reluctantly,” a senior EU diplomat said. “Where the two opposing camps are coming from, they are coming from two different worlds.”
- With freezing temperatures across the continent this week, ministers are finding themselves under increasing pressure and not just from citizens to reach an accord. Commission president Ursula von der Leyen said yesterday that “a lot of work has been done, the technicalities are set, so what we need now is agreement on what kind of price cap . . . I very much hope we will come to a conclusion within the next days”.
- Meanwhile the Intercontinental Exchange revised its warning about a price cap, saying that gas traders would be forced to find another $47bn in margin payments, double current levels, if the revised cap was approved.
- Two other proposals that would help ease the critical energy situation — an agreement for member states to combine forces to buy gas and another to speed up the permitting procedure for renewable power — are being held until an agreement can be reached on the elusive price cap.
- Von der Leyen noted that there was “drastically increasing” interest in the joint purchasing platform and repeated that she hoped a deal would be reached “in the coming days”. But despite nudges from the commission, diplomats were not enthusiastic about progress at a last-ditch meeting of EU ambassadors, who have already met for more than 20 hours on the topic since Wednesday.
- One senior EU diplomat said tentatively that “a landing zone is beginning to form”, but another disputed this saying there were still “incompatible expectations as to what this thing is going to do [and] when that is the case it is very very difficult to reconcile incompatible expectations”.
- If ministers cannot agree today, the issue could get bumped up to leaders when they meet in Brussels on Thursday. Given the technicality of the proposal, diplomats are trying to avoid this at all costs. But with the International Energy Agency warning of a 30bn cubic metre shortfall in EU gas supply next year and amid fears of similar price spikes to those witnessed by the bloc in the summer as a result, every meeting between member states on the subject will count

ESMA supports position limits for TTF gas futures https://www.esma.europa.eu/press-news/esma-news/esma-supports-position-limits-ttf-gas-futures

- Opinion on position limits on ICE Endex Dutch TTF Gas contracts; https://www.esma.europa.eu/document/opinion-position-limits-ice-endex-dutch-ttf-gas-contracts-0
- 20th December published an Opinion on the proposed position limits for the ICE Endex Dutch Title Transfer Facility (TTF) Gas contracts.
- ESMA agrees with the position limits notified by the Dutch Authority for the Financial Markets (AFM) for the ICE Endex Dutch TTF Gas futures and options contracts. ESMA found that those limits are consistent with the objectives established in MiFID II and with the methodology developed for setting the limits.
- The proposed position limits are based on the most recent available data for deliverable supply and open interest to reflect the latest market developments in the ICE Endex Dutch TTF gas contracts, including the sharp decrease in delivery of Russian gas to the EU.
- Next steps: In the Opinion, ESMA invites the AFM to closely monitor developments in the ICE Endex Dutch TTF contracts and to resubmit position limits on a timely basis in case of any relevant changes to deliverable supply or open interest.



Ice's threat to move gas futures trading deemed credible; Experts warn Ice's track record adds weight to its warning the products could move out of the EU due to the price cap

- Gas trap. Setting a ceiling on the price of European gas would do more harm than good. European Union energy ministers will meet on Monday to try and agree on the cap, which backers believe will prevent gas prices from spiralling out of control.
- The reality looks different. Under the latest proposal, the cap may be set at 220 euros per megawatt hour for the most liquid future contracts exchanged at the Dutch Title Transfer Facility, Europe's gas benchmark. This is well below the 275 euro per MWh ceiling which the European Commission initially proposed. One-month future prices currently trade at 116 euros per MWh.
- The level the EU may agree on increases the risk of triggering the cap. Furthermore, capped contracts may be considered more risky, and thus require a larger amount of collateral for gas to be bought and sold. The Intercontinental Exchange, which handles the majority of TTF future contracts, believes the additional cost would be $47 billion.
- The biggest risk, however, is that players would simply leave the EU. ICE could move trading to London, while leaving the physical delivery in the Netherlands. It already operates a similar dual arrangement for diesel contracts. Traders could even opt to buy TTF contracts on the Chicago Mercantile Exchange. The EU may still go ahead and impose its cap. But locking the stable door after the horse has bolted would look futile.

Report warns European gas price cap will increase margin needs Energy firms could face a $47 billion increase in margin requirements if the draft European gas price cap comes into force, according to an

Intercontinental Exchange-commissioned report from consultancy Oxera. A statement from ICE notes that the report's "margin assessment justifies a pause while the full consequences of the price cap proposal can be assessed by EU authorities with a mandate for financial stability and security of supply." Futures & Options World

Following the publication of details around the data reporting element of the Council Regulation relating to the LNG price assessment and benchmark published by ACER on 20th December (*The reporting guide can be found here and registration guide here.*), the regulation together with several others, including the Market Correction Mechanism, have been published in the Official Journal last week.

- The document can be found here.
- This sets the start of data collection on the 13th of January 2023.

ACER; New data collection and reporting obligations for LNG price assessment – Register now; *On 24 November 2022, the Council reached political agreement on the Regulation "Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders", which will soon enter into force.*

- The Regulation tasks ACER with producing and publishing a new daily Liquefied Natural Gas (LNG) price assessment two weeks after the date of entry into force of this Regulation, and grants ACER the powers to collect LNG market data.
- As of today, 20 December 2022, LNG market participants who need to comply with their reporting obligation under the Regulation will be able to register and submit their LNG market data to ACER via a dedicated data collection platform, called TERMINAL.
- To send the data to ACER, LNG market participants must be registered in the Centralised European Register of Energy Market Participants (CEREMP) and also in TERMINAL.
- ACER provides step by step guidance to LNG market participants on how to register. Read more.

For comment: There appears to be a risk here that ACER seek reports from arrangers [CF. PPAT type definition], rather than counterparties to the LNG transactions [cf. EMIR type reporting rules]. Clearly would bring in all sorts of complications: overseas reach; data adequacy; partial reporting; duplicate reporting; absence of standards; absence of validation etc *On Wednesday afternoon ACER published details of how to report data relating to the Council Regulation [Regulation 2022/0339 (NLE)] first published in October to support the publication of an LNG price assessment and benchmark.*

- The reporting requirement is separate to REMIT (*but deploys its provisions*) & turns on the definition of being an ***"LNG market participant"*** *[which is different to being an LNG market counterparty]*

- *"According to Article 20(4) of the Regulation, LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, where possible using already existing and available procedures."*
- *LNG market participants* are defined as: "***any natural or legal person, irrespective of that person's place of incorporation or domicile, who engages in LNG trading"***
    - i.e., those engaged in [***LNG trading'***] either the purchase or sale of LNG cargoes destined for delivery in the Union) should be subject to the obligations and prohibitions that apply to market participants according to Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency ('REMIT').
        - REMIT prescribes that market participants entering into transactions under REMIT shall register with the national regulatory authority (NRA) in the Member

State in which they are established or resident, or, if they are not established or resident in the Union, in a Member State in which they are active.
  - Consequently, all LNG market participants falling under the scope of "*Regulation on Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders,*" shall be registered with the relevant EU NRA and listed in CEREMP.
  - This regulation and reporting requirement is in addition to REMIT and has a different wider scope, defined by Article 2 of the regulation as: '***LNG trading'*** which means -> "*bids, offers or transactions for the purchase or sale of LNG:*
    - *(a) that specify delivery in the Union, or*
    - *(b) that result in delivery in the Union, or*
    - *(c) in which one counterparty re-gasifies the LNG at a terminal in the Union"*
  -
- The reporting guide is attached and can otherwise be found here and registration guide here.

- Affected market participants must be registered in the REMIT "CEREMP" database and also register and report data via a new system ("Terminal").
- Reports are to be submitted to the Terminal system by 6pm on the day of the relevant event.

In order to facilitate the understanding of the type of transactions that fall outside the scope of the data collection, the following non-exhaustive list indicates LNG data that is excluded from the reporting:

- Long-term portfolio framework contracts
- In-tank transactions, bids and offers at re-gasification terminals
- Small scale LNG transactions where the physical delivery involves specialised vessels with a capacity less than 75,000 cubic meters of LNG
- LNG truck loading and unloading
- Cargo swaps, such as for the optimisation of regasification capacities
- Intragroup transactions
- Transactions at virtual storages

EU Council formally adopts temporary mechanism to limit excessive gas prices; The Council formally adopted a regulation that sets a market correction mechanism to protect citizens and the economy against excessively high prices. The regulation aims to limit episodes of excessive gas prices in the EU that do not reflect world market prices, while ensuring security of energy supply and the stability of financial markets.

- EU energy ministers reached a political agreement on the Council regulation on 19 December 2022. The regulation was adopted today by written procedure. It will now be published in the EU Official Journal and enter into force on 1 February 2023. The provisions related to the bidding limit will enter into force on 15 February. The regulation will apply for one year.
- Outcome of the written procedure (with votes)
- COUNCIL REGULATION Establishing a market correction mechanism to protect citizens and the economy against excessively high prices
- Council agrees on temporary mechanism to limit excessive gas prices (press release, 19 December 2022)
- Proposal for a Council regulation establishing a gas market correction mechanism
- Energy prices and security of supply (background information)

Reporting starts within 2 weeks of the regulation coming into force which is aimed to be within Q1 2023.

Context:

- COUNCIL REGULATION 2022/0339(NLE) on Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders ('the Regulation') tasks ACER with creating an objective LNG price assessment tool by collecting real-time information on all daily LNG transactions.
  - The Regulation grants ACER the necessary powers to collect the transaction data needed for the establishment of the LNG benchmark, extending for the execution of this task the competences already conferred to ACER under Regulation (EU) No 1227/20112 and Commission Implementing Regulation (EU) No 1348/20143 (collectively referred to as 'REMIT').
  - The provisions set out in the Regulation shall enable ACER to create a comprehensive dataset of all LNG deliveries in the Union, with the aim of establishing an LNG benchmark, contributing to market transparency and effectively, lowering wholesale prices for gas without distorting competition in the EU energy markets.
  - According to Article 20(3) of the Regulation, 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 market data.
  - The purpose of this document is to provide a comprehensive guidance to LNG market participants on how to report LNG market data to ACER in accordance with the requirements specified in the Regulation, thus enabling them to adequately fulfil their reporting obligation.
- Recalling that this relates to the late October regulation proposed by European Commission DG Energy which amongst other things:
  - Proposes centrally administrated circuit breakers for wholesale power market venues
  - Looks at having a "central buyer" for gas
  - Creates constraints TTF
  - Proposes a new benchmark which better incorporates LNG prices

ACER Guidance on reporting LNG market data

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EU Member States agree gas market correction mechanism; *On 19 December 2022 the European Union (EU) Member States agreed their position on a [Proposal for a Council Regulation establishing a market correction mechanism](). By means of background, the legislative proposal was published by the European Commission ("the Commission") on 22 November 2022 (please see our [blog note]()). While the text available is still in a draft version and will be subject to a formal approval and publication, it does reflect the political agreement reached. Key points to note:*

- Scope: The draft Council regulation introduces a market correction mechanism that will apply to "TTF derivatives" and "derivatives linked to other Virtual Trading Points", both being defined terms under the draft law. Accordingly, "TTF derivative" is a derivative traded on an EU regulated market, "the underlying of which is a transaction in the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V.". Initially (as of 15 February 2023) the correction mechanism can only be applicable to TTF derivatives, but the legislation also sets out a mechanism for the Commission to extend it to "derivatives linked to other Virtual Trading Points". The gas market correction mechanism will not apply to OTC trades, day-ahead exchanges, and intra-day exchanges.

- Activation mechanism: The market correction mechanism will be automatically activated if the "market correction event" occurs: (1) the month-ahead price on the Title Transfer Facility (TTF) exceeds 180€/MWh for three working days and (2) the month-ahead TTF price is 35€ higher than a reference price for LNG on global markets for the same three working days. While the

mechanism is active, transactions concerning the in-scope natural gas futures and including "dynamic bidding limit" will be prohibited. The dynamic bidding limit is the reference price for LNG on global markets plus 35€/MWh. If the reference price for LNG is below 145€, the dynamic bidding limit will remain at the sum of 145€ and 35€. Once activated, the dynamic bidding limit will apply for at least 20 working days.

- Deactivation mechanism: If the dynamic bidding limit is below 180€/MWh for last three consecutive working days, it will be automatically deactivated. The dynamic bidding limit will also be automatically deactivated, at any time, if a regional or a Union emergency is declared by the European Commission according to the security of supply regulation, notably in a situation where the gas supply is insufficient to meet the gas demand ('rationing').

- Suspension mechanism: The market correction mechanism can be suspended by the Commission, by means of an implementing decision, if gas demand increases by 15% in a month or 10% in two months, LNG imports decrease significantly, or traded volume on the TTF drops significantly compared to the same period a year ago.

- Next steps: The Council Regulation is due to enter into force on 1 February 2023 and the correction mechanism in respect of TTF derivatives can apply as of 15 February 2023. By 23 January 2023, ESMA and ACER are required to publish a preliminary data report concerning the introduction of the market correction mechanism. By 1 March 2023 both authorities are required to submit a report to the Commission assessing the effects of the market correction mechanism on financial and energy markets and on security of supply and verifying whether the key elements and the scope of the market correction mechanism are still appropriate in the light of financial and energy market and security of supply developments. Taking into account the said reports, by 31 March 2023 the Commission will propose amendments to exclude hubs other than the TTF from the regulation in case their inclusion has negative effects on the functioning of the mechanism. By 1 November 2023, the Commission will carry out a review of the regulation in view of the general situation of the gas supply and based on that report, it may propose to extend its validity. The Commission may also propose an extension of the correction mechanism to OTC trades.

ACER casts doubt on bloc's 'untested' new gas price cap - *warns that deal is unlikely to lower costs if countries keep rushing to fill depleted reserves; The EU's energy regulator has warned that the bloc's new gas price cap was unlikely to lower costs for consumers or businesses if countries kept on rushing to fill their depleted reserves, calling the mechanism agreed by ministers this week "unprecedented, untested". Christian Zinglersen, director of the EU's joint energy agency Acer, said he would be "reluctant to rely on this gas price cap" alone to prevent the types of price spikes that roiled Europe's energy markets in the summer following Russia's invasion of Ukraine.*

- The emergency cap, which set a limit of €180/MWh (per megawatt hour) on the cost of gas traded in the bloc, was sealed on Monday as Brussels stepped up its effort to prevent a repeat of the price surges that resulted from member states' rushing to source alternative supplies ahead of winter. EU policymakers fear that further price increases could prompt social unrest and destroy industrial output. The mechanism will be triggered when prices reach €180 and sit at €35/MWh or more above global LNG prices. Prices on the EU's benchmark Dutch Title Transfer Facility were about €107/MWh on Tuesday, equivalent to roughly $180 per barrel in oil terms. At the height of the charge to refill gas storage in August, prices hit a record high of more than €300/MWh. EU energy commissioner Kadri Simson said, after energy ministers approved the cap, that "with such a mechanism in place, Europe will be better prepared for the next winter season".

- However, Zinglersen said that discussions over the price cap — which came after months of pressure from mostly southern European states — had used up political bandwidth in Brussels which might have better focused on other measures to quell the energy crisis. "Obviously negotiating back and forth with the gas price cap... does risk crowding out these other things, which hopefully are slightly less controversial but still super important," he said, adding it was "a difficult creature. It's unprecedented, it's untested." It would be better to focus on implementing measures that fell "below the political radar", the regulator said.
- One example would be to better regulate the filling of gas containers so that it happened gradually, to prevent spikes in demand in an already tight global market. Others include keeping focus on demand reduction and improving the flow of electricity between member states as even net exporting countries can often require sizeable imports of power as demand fluctuates. "Keeping these energy flows going whether it's gas or electricity is really a make-or-break moment for the EU over the winter and beyond," Zinglersen added.
- Since Russia cut supplies to the EU, demand for shipped LNG has vastly increased and affected prices. The potential for China to further ease its Covid lockdowns has prompted fears of a more challenging LNG market next year. To leverage the bargaining power of the EU, Brussels has created a joint purchasing platform for gas, in another piece of legislation signed off by ministers on Monday.
- Maroš Šefčovič, European Commission vice-president, who held a meeting with 32 interested energy companies on Tuesday, said the commission's "immediate priority is to take all necessary steps towards demand aggregation and joint tendering well before gas-storage filling season begins next year".
- Zinglersen said the EU had important lessons to learn from its efforts to quell the energy crisis and should focus on infrastructure to ease congestion. Transmission system operators who manage pipelines have benefited from a 70-fold rise in congestion charges — fees paid to grid operators when demand is greater than supply for the interconnector — due to the change of supplies coming into the bloc, he noted. "In the past, you had infrastructure which was predicated upon huge pipeline volumes coming from east to west.... from Russia towards greater parts of Europe, and now that is much less. And, who knows, maybe next year it will be almost non-existent," he warned.
- The International Energy Agency has said that, without Russian gas supplies, the EU could face a shortfall of 30bn cubic metres next year, almost the annual consumption of the Netherlands.

Reporting on the EU Energy Minister's Final Pre-Xmas Compromise on a Gas Cap @ Eur 180; EU seals deal on gas price cap after months of wrangling; *Czech minister Jozef Síkela announced a deal on a gas price cap on Monday (19 December), wearing a sweatshirt with his now famous phrase: "We will convene as many Energy Councils as necessary".*

- EU energy ministers reached a deal on Monday (19 December) to limit excessive gas prices, following months of debate over whether or not to implement a price cap on imports into Europe.
- Under the agreement, gas prices on the EU's main trading hub will be capped should they exceed €180 per megawatt-hour (MWh) for three consecutive working days and if they are higher than global gas prices by more than €35/MWh for the same three days. "From the start, there was a common goal: keeping prices under control while at the same time preserving securing security of supply. Today, we achieved this goal," said Belgian energy minister Tinne Van de Straeten whose country was one of the biggest proponents of the cap.
- The measure – formally known as the market correction mechanism – would see prices of month-ahead, three-month ahead and year-ahead derivatives capped at a certain level depending on the global price of liquified natural gas (LNG).
- Implemented initially for a year, it could also be extended to other trading hubs via a second legislative proposal from the European Commission, due by the end of March, according to a room document. "We welcome the agreement of EU ministers on a gas price cap of €180/MWh,

and which includes a cap on all European hubs," the Polish government, which was also pushing for the cap, said on Twitter.

- Countries like Germany were not convinced, however, saying a price limit risked jeopardising security of supply by limiting the ability of companies to buy liquified natural gas on world markets. While Berlin eventually traded more ambition in renewables legislation for its support, Hungary voted against the measure and both the Netherlands and Austria abstained. "I remain worried about major disruptions on the European energy market, about the financial implications and, most of all, I am worried about European security of supply," said Dutch energy minister Rob Jetten.
- Meanwhile, Germany's Robert Habeck pointed to new safeguards to assure journalists that a gas shortage would be prevented. "I can say that with the instruments that we have introduced as safety buffers, as observation time, we have been given enough instruments to prevent this," he said.

Czech EU presidency ready to outvote Germany on gas price cap; *The Czech EU Council Presidency wants to reach a deal on gas price caps during the upcoming energy council on Monday, saying it will likely forego consensus and favour qualified majority voting as countries like Germany are not fully on board with the idea.*

- *A 'dynamic bidding limit'*; The measure will be in place for a year from 15 February 2023. The energy regulatory agency (ACER) will monitor markets and, if the triggers are met, publish a notice on its website, preventing transactions above a "dynamic bidding limit". This limit will be formed of the reference price for LNG plus €35/MWh.
- There will also be a price floor whereby, even if the reference price for LNG is below €145/MWh, the price cannot drop lower than this plus €35. Once activated, the dynamic limit will be in place for at least 20 working days. It can be automatically deactivated either by the dynamic bidding limit dropping below €180/MWh for three consecutive working days or if a regional or union wide energy emergency is declared.
- *Lower thresholds, more safeguards*; The triggers for the cap are significantly lower than the European Commission's original proposal, which was called useless by many countries as it would not have prevented the price spike experienced in August this year.
- A lower cap means the mechanism is more likely to come into effect and be in place for longer, said Jack Sharples, a research fellow at Oxford Institute for Energy Studies on Twitter. For instance, this year month-ahead prices on the EU's main gas trading hub were above €188/MWh – a previously floated level for the cap – for 43 days and consecutively for 40 days around August.
- Asked about the drop from the Commission's original proposal to the agreed level, EU energy chief Kadri Simson said: "We warned the member states about the risks and, if parameters would be lowered, then safeguards have to be strengthened and this is exactly what has happened." "There are now some additional safeguards in place," she added.
- The Czech minister in charge of the talks Jozef Síkela later explained the safeguards in a press conference. "The mechanism will be automatically deactivated in several cases: once the LNG price plus the premium drops back below €180 or in case the Commission declares an emergency," he told journalists. "The mechanism can also be suspended in case of increased gas consumption, decrease of trades on the TTF or between the member states or a decrease of quarterly LNG imports," he added.
- However, with all of the safeguards, it is difficult to see the ultimate impact the measure could have, commented Simone Tagliapietra, a senior fellow at the Bruegel economic think-tank in Brussels.
- *Renewables and gas solidarity laws unlocked*; The agreement also means the EU has unlocked two other pieces of emergency legislation that were merged into a package at a previous energy ministers meeting. This includes measures to boost European solidarity around gas supplies, like

mandatory joint purchasing and a fall-back agreement between countries in case of a supply emergency.

- The agreement also unlocks a law to speed up the rollout of renewables by temporarily granting them "overriding public interesting" and cutting down on permitting times. "The IEA tell us we need 60 gigawatts of solar by next winter. Those projects are all tied up in bureaucratic processes – this regulation unlocks masses of solar potential, right when we need it most," said Walburga Hemetsberger the CEO of industry group Solar Power Europe.
- In order to get Germany on board with the gas price cap, the permitting law was also made more ambitious, with elements on permitting grids made faster and simpler.
- *Emergency measures for energy crisis in limbo after pressure for price cap*; New measures to tackle the energy crisis, including speeding up permits for renewables and boosting solidarity between EU countries, have been left in limbo following a push to link them to a controversial price cap for gas.

EU energy ministers reach deal on gas price cap; *Officials set €180/MWh limit after Germany agrees to deal despite fears it would threaten continent's supplies The price cap should come into force on February 15 and is the latest attempt to curb soaring energy prices in the EU*

- EU energy ministers have reached an agreement to cap gas prices in the bloc when they hit €180 per megawatt hour for three days despite fears that such an intervention will fail to calm markets and could threaten Europe's gas supplies. The cap, which should come into force on February 15, is the latest attempt to curb soaring energy prices in the bloc and help consumers after Russia reduced much of its gas exports to Europe. "We have solved the last piece of the energy puzzle," said Jozef Sikela, the Czech energy minister whose country holds the rotating EU presidency. "It took some time to agree on something that I think is a balanced compromise with equally shared pain between two camps."
- Germany, which had been strongly opposed to the cap because of fears that it would cause valuable gas supplies to be redirected from Europe to higher paying regions, eventually agreed after safeguards were introduced to make it quicker to remove the limit if there was a risk of gas shortages. The Netherlands and Austria, which had also been against the cap, abstained in the final vote and Hungary voted against. "Sometimes it's all about damage control, and we achieved quite a lot of that if you look at the fine print," said one senior German official. Berlin also secured a commitment to speed up separate legislation designed to ease procedures for approving renewable power projects, Sikela said.
- Hungary's foreign minister Peter Szijjarto described the cap as a "very bad proposal" but said that Budapest had secured a "small achievement" that meant it did not need to consult the European Commission if it needed to modify its long-term gas contracts with Russia as a result of the measure.
- Several market operators, including ICE, the operator of the benchmark European TTF gas contract, have warned that a cap risks an increase in volatility as traders would circumvent it through unregulated over-the-counter trades. "We have consistently voiced our concerns about the destabilising impact a TTF price cap will have on the market.... We are reviewing the details of the announced market correction mechanism, its technical feasibility, the impact on financial stability, and whether ICE can continue to operate fair and orderly markets for TTF from the Netherlands as per our European regulatory obligations," it said following Monday's agreement.
- The Dutch energy regulator AFM said that it "believes the proper functioning of the gas futures market benefits most from measures that support efficient price formation and stable liquidity".
- The cap will initially apply to gas contracts traded on all European trading hubs for supplies one month, three months and a year ahead. Prices must also be €35/MWh above an average of global liquefied natural gas prices for three days in order to be triggered. Over-the-counter deals may be included at a later stage subject to review by Brussels.

- After the announcement, month-ahead gas futures on the Netherlands-based benchmark were down about 8 per cent at €107/MWh, far below a high of more than €340/MWh in August but still well above the €69/MWh at the end of 2021.
- Monday's meeting was seen as the last chance for ministers to find an agreement on one of the EU's most divisive pieces of energy policy this year. "I remain worried about major disruptions on the European energy market, about the financial implications and, most of all, I am worried about European security of supply," he said.
- The Kremlin described the measure as "a violation of the market pricing process" and that Russia would "thoroughly weigh the pros and cons" while preparing its response to the EU move.
- The €180/MWh ceiling is almost €100/MWh less than the commission's first proposal last month, when it suggested a mechanism to limit prices when they reached €275/MWh for 10 consecutive days. That proposal was branded "a joke" by several ministers as it would not have been activated even when prices in the bloc hit record highs in August.
- The gas price cap deal allows legislation on permitting renewable energy projects and another proposal for bloc-wide joint purchases of gas to take effect after several countries threatened to vote against them unless a limit on gas prices was agreed.

UK Chancellor announces change to UK Ancillary Activity Test; *Jeremy Hunt, the UK's Chancellor of the Exchequer, announced a series of changes on Friday to Financial Services legislation as part of the "Edinburgh Reforms". His speech included a commitment to review the MIFID II Ancillary Activity Test (under UK legislation) before the end of Q1 2023, by saying:*

- *[the government] "Will bring forward secondary legislation in Q1 2023 to remove burdens for firms trading commodities derivatives as an ancillary activity, for example, when manufacturers seek to fix the future price of their purchases of specific raw materials.".*
- The full speech can be found here.
- This follows a temporary change issued by the FCA last year before the end of Q1 calculation deadline (see here). The consultation run as part of the Wholesale Market Review (see here) suggested moving the test to a qualitative one, in contrast to the updated quantitative tests now used in the EU (see here).

Power to RepowerEU; *It has been a week of late nights for those trying to finalise negotiations on large parts of the EU's efforts to cut its carbon emissions and up its energy supply. In the early hours yesterday, lawmakers from the European parliament and Czech negotiators representing the member states agreed a provisional deal on a carbon border tax for the EU which, if implemented, would be a world first.*

- This morning, they clinched agreement in principle on RePowerEU, the legislation announced by the European Commission in May designed to wean the bloc off Russian hydrocarbons. The biggest fight was over financing an additional €20bn worth of grants needed for RePowerEU to hit the estimated €210bn worth of investment the commission reckons the bloc needs before 2027 for the plan to work.
- Member states, after a series of heated discussions in the early autumn, agreed that 75 per cent of the money could come from the Innovation Fund, which is targeted to investments in clean technologies, and 25 per cent could be found by selling more permits to companies to cover their emissions.
- The European parliament, however, wanted all of the €20bn to come from the sale of emissions allowances, essentially allowing companies to pollute more for the next few years. It also insisted on 20 per cent of the fresh money to be made available immediately to member states "as pre-financing", said Siegfried Mureşan, the Romanian centre right MEP spearheading the negotiations.

- Several EU countries were strongly opposed to messing around with the EU's emissions trading system, even if they feel it is better than the commission's original proposal which was to sell emissions permits from its reserve fund thereby allowing more pollution.
- **The two sides struck an early morning compromise: the Innovation Fund would provide 60 per cent and ETS allowances 40 per cent. The 20 per cent pre-funding was agreed.** Countries can also transfer money from other EU budgets, such as cohesion funds, to spend on RePowerEU. "Member states will benefit from increased pre-financing to quickly implement reforms and investments," said Mureşan. "We delivered on what we promised." The provisional deal will need to be rubber stamped by member states and the full parliament.

Traders Demand LME Hands Over Info On Nickel Crisis Motive; A U.S hedge fund and four other companies asked a London judge on Friday to order the London Metal Exchange to hand over information on the decision-making that led it to halt billions of dollars of nickel trades in March.

Hedge funds tell court LME nickel crisis cost $95M A number of hedge funds told a London court that the suspension of nickel trading by the London Metal Exchange resulted in a combined $95 million in losses for the funds. The "effects of [LME's decisions] were to benefit certain participants, like short sellers," said the funds' lawyer Paul McGrath. BNN Bloomberg (Canada)

- A group of hedge funds led by AQR Capital Management LLC said that they lost a combined $95 million during a turbulent few days when the London Metal Exchange controversially canceled billions of dollars in nickel trades and suspended the market. The group of funds on Friday applied to force LME to hand over information relating to two key phone calls on March 8, the day that the trades were canceled. AQR Chief Investment Officer Clifford Asness has been among the most vocal critics of the LME's actions during the crisis, describing the events as "one of the worst things I've ever seen." /jlne.ws/3PDOYiz

Membership Resignation: Arraco Global Markets Limited (In Administration); LME; 1. Notice is hereby given that The London Metal Exchange (LME) has approved the resignation of the following RIB Tier 2 Member pursuant to Regulation 10.3(a) of Part 2 of the LME Rulebook: Arraco Global Markets Limited (In Administration) /jlne.ws/3vimcfa

High Court tosses out case by LME traders for disclosures on nickel debacle; Hedge fund AQR and other market participants were seeking more information on exchange's decision to cancel trades; A London court has dismissed a case by hedge fund AQR Capital Management and other market participants against the London Metal Exchange, relieving the bourse from a request to disclose further information about its March decision to cancel billions dollars' worth of nickel trades. /jlne.ws/3hLaq8L

Brokerage Loses Appeal Over $283M Metal Fraud Pay-out; The Court of Appeal has dismissed efforts by a brokerage house to cut a $284 million pay out to ED&F Man over fake receipts for the purchase of nickel, rejecting arguments that the commodities trader had not lost out. Read full article »