



UK MiFID –
Trade Transparency

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23 May 2024

Agenda

1 SRF Regulatory Updates

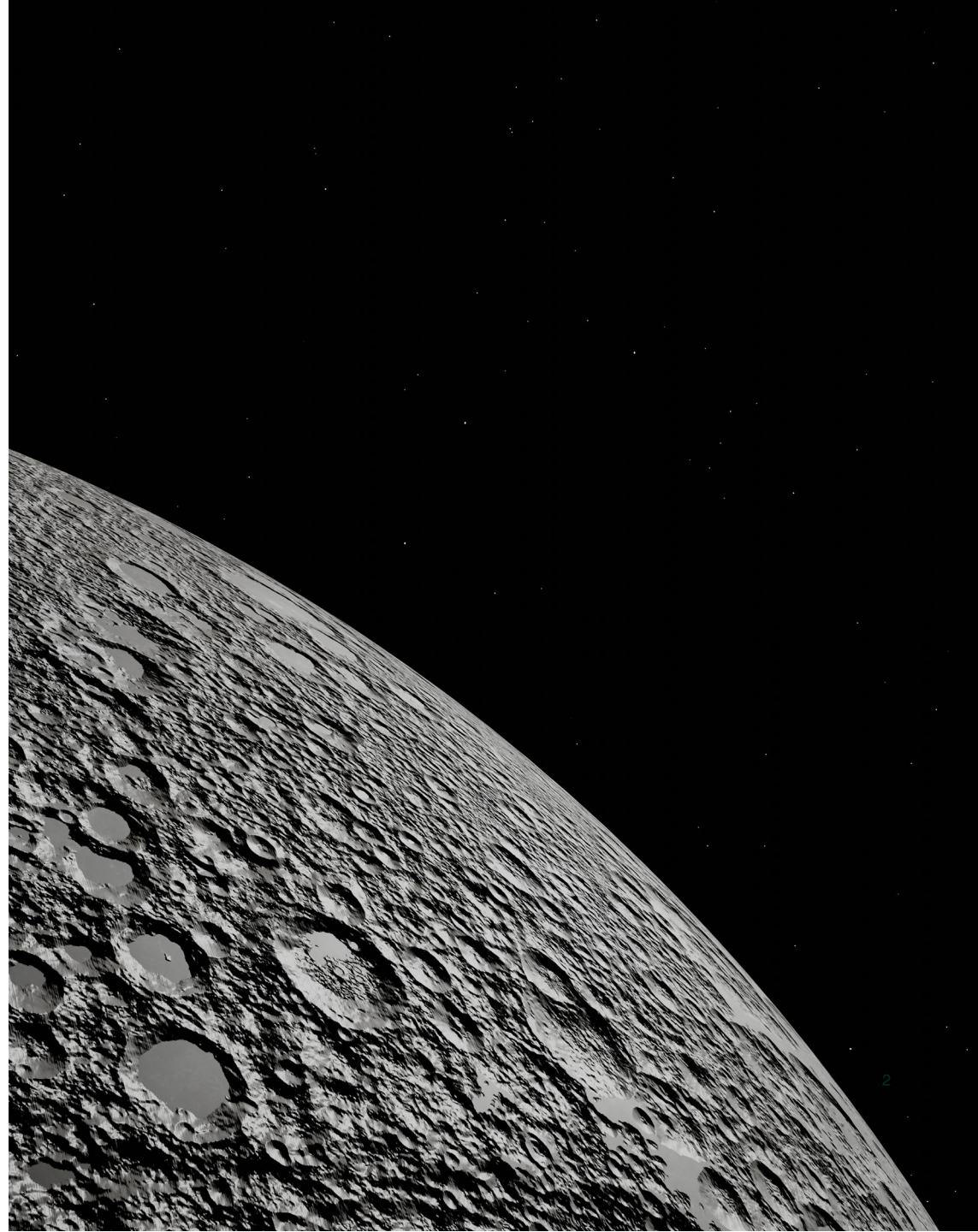
2 Trade Transparency - overview

3 Trade Transparency – equities

4 Trade Transparency – bonds, derivatives, structured finance products, emission allowances

5 Systematic Internalisers

6 Consolidated Tape

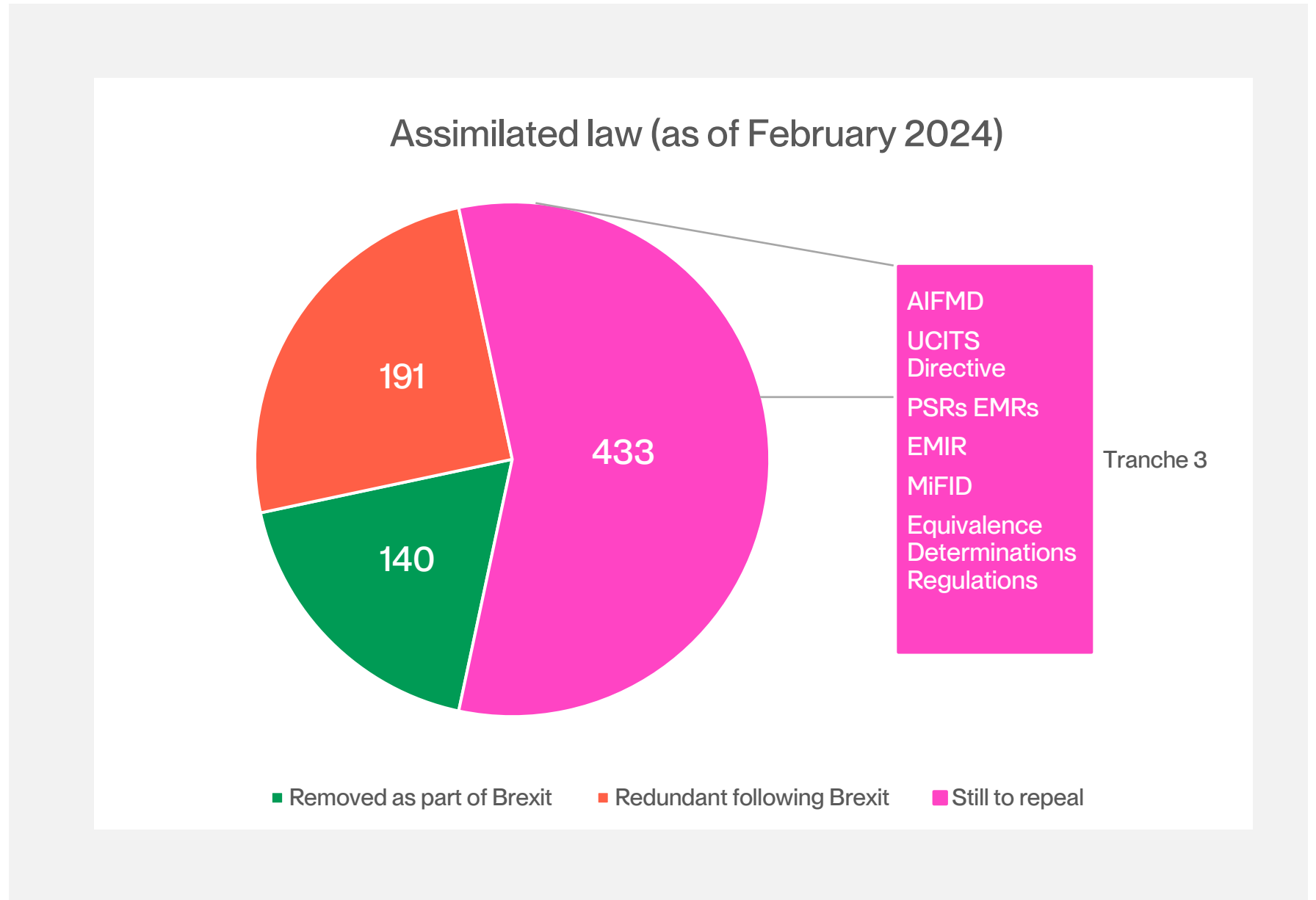


The news....



Progress in delivering the Smarter Regulatory Framework

- ◆ HMT delivering the SRF update (March 2024)
- ◆ Treasury Committee report on first year of progress on implementing Edinburgh reforms and HMT response



Delivering an agile regulatory regime



PRA must issue decision notice to applicant firms. Decision can either:

- ◆ Grant permission to disapply or modify specified rules
- ◆ Refuse permission
- ◆ Impose conditions on permission
- ◆ Vary or revoke an existing permission

Where permission is given, PRA must publish decision notice (ensure transparency)

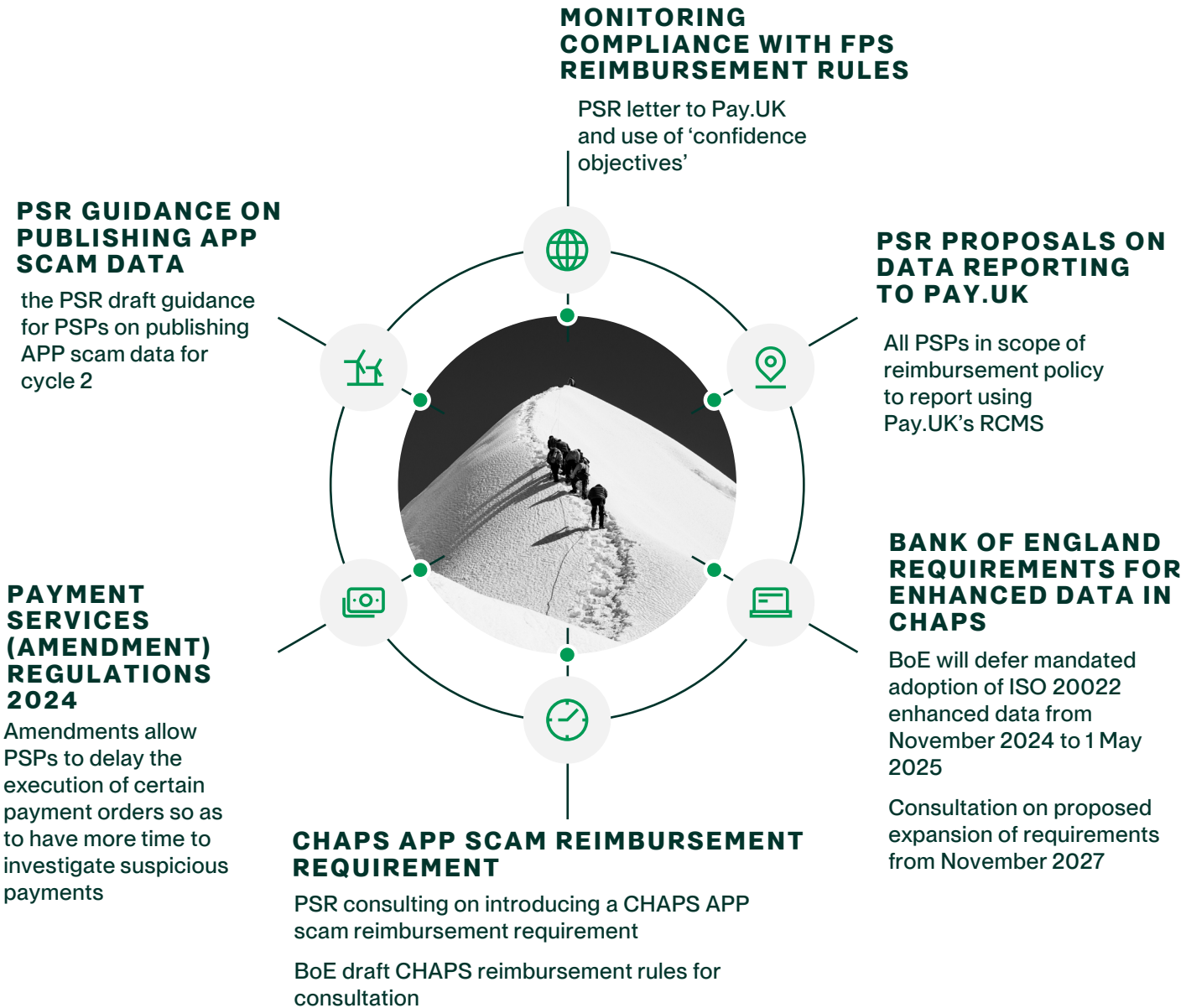
Affected firms may challenge a decision, referring it to the Upper Tribunal (Tax and Chancery Chamber)

FINANCIAL SERVICES AND MARKETS ACT 2000 (DISAPPLICATION OR MODIFICATION OF FINANCIAL REGULATOR RULES IN INDIVIDUAL CASES) REGULATIONS 2024

- ◆ S138BA FSMA
- ◆ Agile regulatory regime one of the key objectives of the SRF
- ◆ Regulations introduce procedural requirements



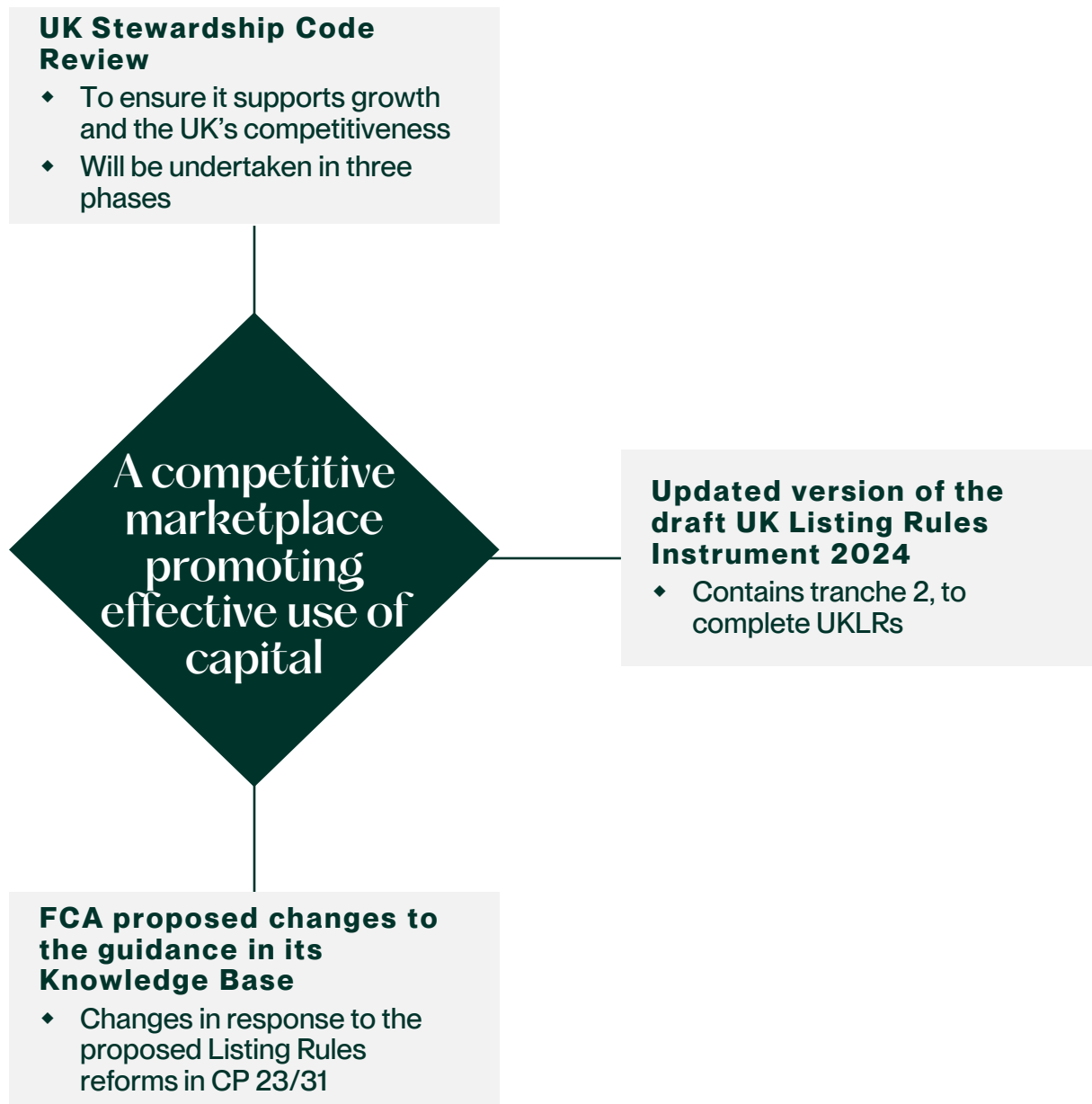
PSR consulting on draft guidance on how it proposes to make decisions on whether to grant an extension or exemption to a specific direction or requirement



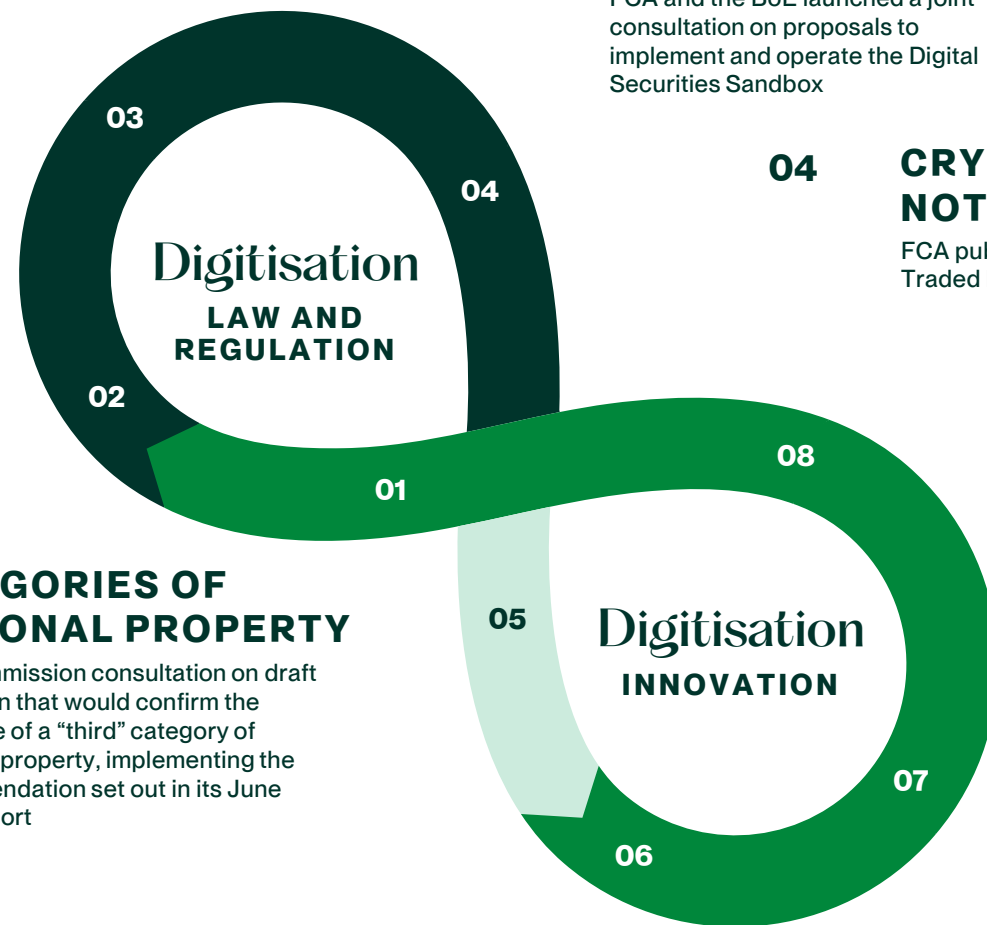
Payments regulation

Progress continues on APP fraud reimbursement requirement preparations

Primary capital markets reforms



Emerging technologies, markets and innovations



01 PRIVATE INTERNATIONAL LAW ISSUES

Law Commission call for evidence to help identify issues of private international law that arise from the digital, online, and decentralised contexts in which modern digital assets and electronic trade documents are used

02 CATEGORIES OF PERSONAL PROPERTY

Law Commission consultation on draft legislation that would confirm the existence of a “third” category of personal property, implementing the recommendation set out in its June 2023 report

05 REGULATORS' UPDATES

PRA/BoE believe their regulatory framework appropriately supports the delivery of the benefits that AI/ML can bring, while addressing the risks, in line with the principles set out in the government’s AI White Paper.

The FCA welcomes the government’s principles-based, sector-led approach to AI and is focused on how firms can safely and responsibly adopt the technology and on understanding what impact AI innovations are having on consumers and markets

03 DSS SANDBOX

FCA and the BoE launched a joint consultation on proposals to implement and operate the Digital Securities Sandbox

04 CRYPTOASSET EXCHANGE TRADED NOTES

FCA published a statement on its position on cryptoasset Exchange Traded Notes (cETNs) for professional investors

08 PISCES

HMT consultation on the regulatory framework for the proposed new Private Intermittent Securities and Capital Exchange System (PISCES), as part of the Spring Budget 2024

07 BIG TECH DATA ASYMMETRY

FCA feedback statement and next steps

06 AI AND DIGITAL HUB

Digital Regulation Cooperation Forum AI and Digital Hub pilot advisory service

Markets related updates

01 FCA / BoE Q&As related to the derivative reporting framework under UK EMIR

02 The Securitisation (Amendment) Regulations 2024 (Draft)

03 FCA and PRA policy statements and final rules for the securitisation market

04 FCA published a consultation paper on payment optionality for investment research

05 Accelerated Settlement Taskforce report and government's response

06 Markets in Financial Instruments (Equivalence) (US) (Commodity Futures Trading Commission (CFTC)) Regulations 2024

07 FCA response to HoL FS Regulation Committee in relation to cost disclosure requirements for listed investment companies.

08 Issue 78 of Market Watch - FCA's supervisory observations covering the completeness and accuracy of instrument reference data (IRD) under RTS 23



The role of the financial system in the UK's Net Zero Target



THE FINANCIAL SECTOR AND THE UK'S NET ZERO TRANSITION

UK government response to the House of Commons' Environment Audit Committee's report on the financial sector and the UK's net zero transition



THE SDR AND INVESTMENT LABELS REGIME AND PORTFOLIO MANAGEMENT

FCA consultation on proposed labelling and SDR requirements for portfolio managers. Largely mirrors those introduced for asset managers in November 2023



IMPLEMENTATION UPDATE RELATING TO ECONOMY-WIDE SDR

Summary of how SDR fits together across the financial services sector, wider economy, and when engagement with the proposals is needed



TRANSITION FINANCE MARKET REVIEW

To report on how best to create conditions for scaling transition focused capital raising, maximising the opportunity for UK based financial services and the UK as a global hub



SUSTAINABILITY REPORTING STANDARDS

Department for Business & Trade published a framework and terms of reference for the development of UK Sustainability Reporting Standards

Overseas Funds Regime

HMT/FCA ROADMAP

Roadmap explains how the OFR is intended to be opened to EEA funds authorised under the UCITS Directive and confirms the extension of the temporary marketing permissions regime (TMPR) until the end of 2026

It sets out a timeline for implementing the OFR and gives an overview of the key stages of the process for applying for recognition of funds under the OFR

FCA INFORMATION ON APPLICATIONS

Gateway to new schemes opens on 2 September and they will be able to apply at any time from that date without a landing slot

Schemes operating under the TMPR will be allocated three-month landing slots: for operators of stand-alone EEA UCITS, these are likely to start in October. Operators of umbrella UCITS will be allocated by alphabetical order of the fund operator's name from November onwards

FSMA 2000 (OVERSEAS FUNDS REGIME (OFR)) (EQUIVALENCE) (EEA) REGULATIONS 2024

All 30 EEA States have been determined by HMT as equivalent for the purpose of section 271A FSMA 2000, with regards to EEA-authorized UCITS, except for those that are EEA-authorized as MMFs

Adapting the Solvency II framework to the UK insurance market

PRA SECOND POLICY STATEMENT

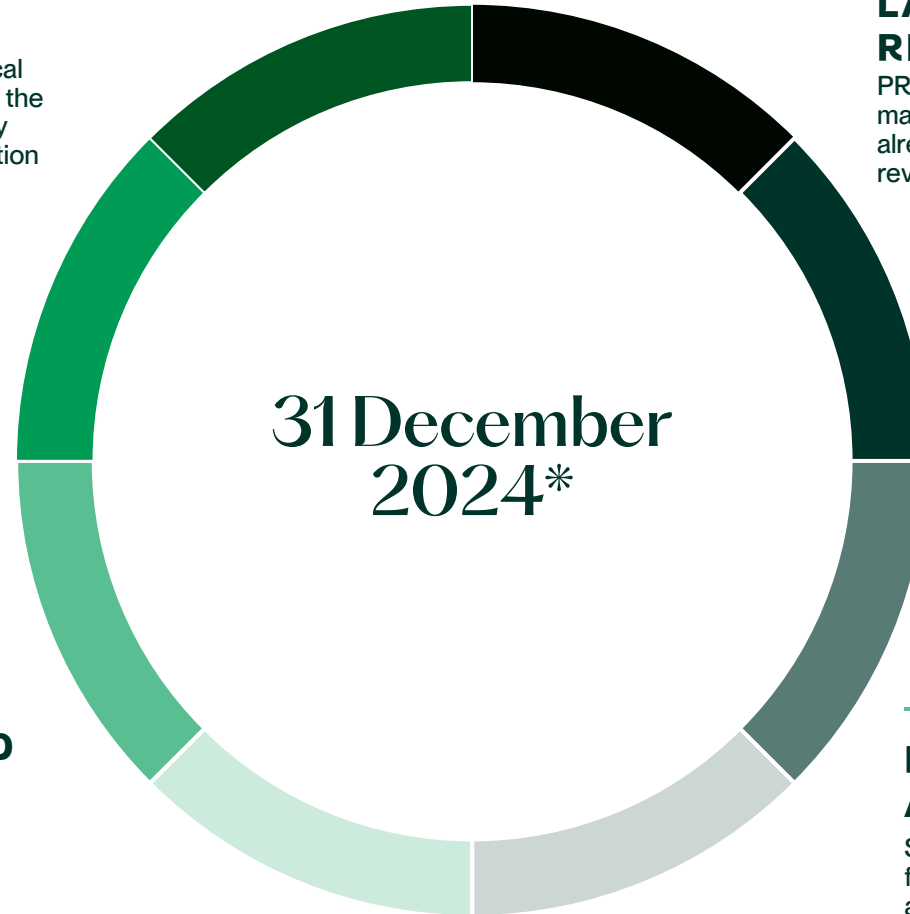
Aspects of Solvency II reform: Transitional Measure on Technical Provisions calculation (with a new statement of policy), rules on the use of internal models (new statement of policy and supervisory statement), group Solvency Capital Requirement (SCR) calculation (new statement of policy), capital add-ons (new statement of policy), requirements for third-country branches, a new 'mobilisation' regime, and amendments to the Solvency II size thresholds

SUPERVISORY REPORTING AND DISCLOSURE REQUIREMENTS

PRA final policy for phase 2 - focused on solo firms of all sizes and business lines

DRAFT INSURANCE AND REINSURANCE UNDERTAKINGS (PRUDENTIAL REQUIREMENTS) (AMENDMENT AND MISCELLANEOUS PROVISIONS) REGULATIONS 2024

Amend legislation to ensure the UK insurance regulatory regime functions as intended following implementation of the Solvency II reforms and the revocation of assimilated law



RESTATEMENT OF ASSIMILATED LAW FOLLOWING SOLVENCY II REVIEW

PRA consultation proposes the restatement into PRA policy material of those parts of the Solvency II regime that have not already been subject to consultation as part of the Solvency II review

THE INSURANCE AND REINSURANCE UNDERTAKINGS (PRUDENTIAL REQUIREMENTS) (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

Concern the revocation of provisions relating to the MA in the Solvency II Regulations 2015 and the Commission Delegated Regulation (EU) 2015/35 (UK Solvency II Delegated Regulation), to ensure that the new MA regime functions as intended and that MA approvals in force immediately before 30 June 2024, remain valid

PRA STATEMENT ON MATCHING ADJUSTMENT REFORMS

Statement covers treatment of existing approvals and existing fixed assets, triggers for variations of MA permissions, MA attestations, voluntary fundamental spread additions, notching of the fundamental spread and the sub-investment grade MA cap

*** MA REFORMED REGIME FROM 30 JUNE 2024**

Ensuring operational resilience

01

HMT approach to designating critical third parties (CTPs) and interaction with financial regulators

02

BoE Financial Stability in Focus report and the FPC's macroprudential approach to operational resilience

03

BoE approach to its power to temporarily restrict or prohibit discretionary payments to employees, shareholders or recognised UK CCPs in severe circumstances to ensure the continuity of critical clearing services

International relations

TRADE (COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP) ACT) 2024

Indo-Pacific free trade agreement

Month 2024

The UK is now in a position to join the CPTPP later this year

Secondary legislation anticipated

Other parties also have to complete their domestic processes to ratify UK accession

HOUSE OF LORDS REPORT ON THE BERNE AGREEMENT

UK-Switzerland Agreement on the Mutual Recognition of Financial Services

April 2024

Committee calls on Government to:

- ◆ consider expanding scope of agreement
- ◆ Continue to pursue this approach with other markets
- ◆ Examine other pathways to lower regulatory barriers to trade in financial services

More procedural updates

01

- ◆ PRA policy statement on review of rules
- ◆ PSR statement of policy on framework for reviewing generally applicable requirements
- ◆ New website for PRA Rulebook
- ◆ House of Lords Financial Services Regulation Committee inquiry into the secondary international competitiveness and growth objective

02

- ◆ FCA and PRA business plans 2024/25
- ◆ PSR Annual Plan and Budget
- ◆ PSR mid-point review of five-year strategy

03

- ◆ Revised MoU between the FCA and the BoE
- ◆ BoE and PRA consultation on proposed changes to their approach to enforcement
- ◆ Ongoing debate relating to FCA's proposals to publicise enforcement investigations

04

- ◆ Financial Services and Markets Act 2023 (Commencement No. 5) Regulations 2024
- ◆ Bank of England Levy (Amount of Levy Payable) Regulations 2024
- ◆ Financial Services and Markets Act 2023 (Commencement No 6) Regulations 2024

Trade Transparency – overview



MiFIR transparency

– *the history*

The trade transparency requirements are set out in articles 3 to 21 of MiFIR (UK and EU), and are supported by technical standards which set out specific detail of the prescriptive requirements.

MiFID 2 Pre-trade transparency

- ◆ **Trading venues** must make public current bid and offer prices and the depth of trading interests at those prices that are advertised through their systems for equity and non-equity instruments that are traded on that trading venue.
- ◆ Information must be made available to the public on a continuous basis during normal trading hours.
- ◆ **SIs** have to make public firm quotes in respect of equity and non-equity instruments traded on a trading venue (TOTV) for which they were SIs and for which there is a **liquid market**. Protect liquidity Vs transparency – a balance.

MiFID 2 Post-trade transparency

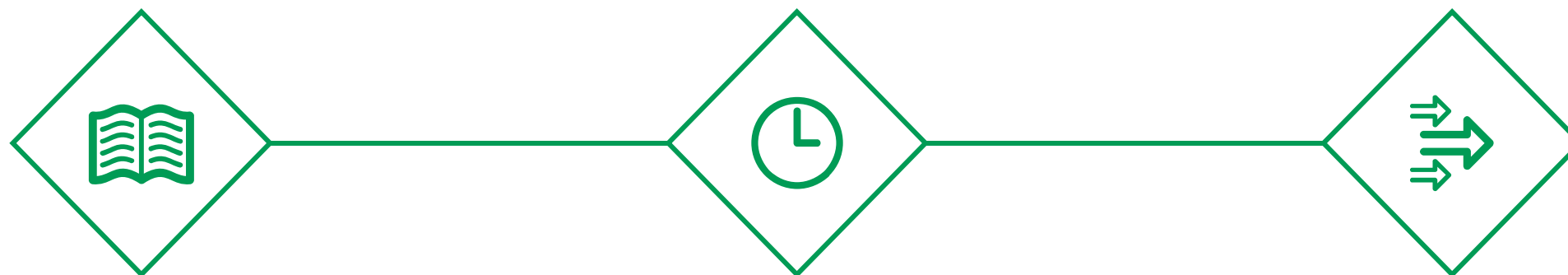
- ◆ **Trading venues** must make public the price, volume and time of the transaction executed in respect of equity and non-equity instruments that are traded on that trading venue.
- ◆ Information must be made public as close to real time as is technically possible.
- ◆ **Investment firms (including SIs)** concluding transactions OTC in equity and non-equity instruments traded on a trading venue must make public through an APA the volume, price and time of those transactions.

The financial crisis has exposed weakness in the transparency of financial markets which can contribute to harmful socioeconomic effects. Strengthening transparency is one of the shared principles to strengthen the financial system...In order to strengthen the transparency and improve the functioning of the internal market for financial instruments, a new framework should be put in place.

MiFIR, Recital (1)

UK overview – MiFID and the *Smarter Regulatory Framework (SRF)*

Review and reform to UK on-shored and implemented MiFID legislation has formed part of tranches 1 and 2 of the SRF work carried out to date, and will form part of the tranche 3 work commencing in 2024.



MiFID II framework review

- ◆ Wholesale Markets Review (SRF tranches 1 and 2)
- ◆ FCA PS 23/4 (equities) and FCA CP 23/32 (non-equities)

Tranche 3 work (2024 onwards)

- ◆ MiFID Org Regs (Organisational requirements and operating conditions for investment firms)
- ◆ Transaction reporting

Key replacement primary legislation to date

- ◆ FSMA 2023 transitional amendments to MiFIR and the MiFI Regulations 2017
- ◆ Data Reporting Services Regulations 2024

Trade Transparency – equities



UK pre-trade transparency *for equities – waivers*

Reference price waiver

- ◆ Updates made to UK RTS 1 (article 4)
- ◆ Came into force 28 April 2023
- ◆ Purpose: to allow reference prices derived from non UK trading venues
- ◆ Changes also include amending the definition of most relevant market in terms of liquidity (MRMTL)
- ◆ MRMTL changes impact the tick size regime as well

Order management facility waiver

- ◆ Updates made to UK RTS 1 (article 8)
- ◆ Came into force 28 April 2023
- ◆ Purpose: to remove previous minimum threshold (of €10,000) and allow trading venues to tailor the threshold appropriately

UK changes to post-trade transparency for equities

Amendments made to RTS 1 (consulted under CP12/22 and published in final report PS 23/24) and came into force on 28 April 2024.

Deferrals:

Considered a deferral for transactions in exchange traded funds (ETFs) priced at net asset value

Alignment:

- Streamlining Articles 2 and 6 with Article 13 of RTS 1
- Extended the definition of benchmark under RTS 1 to include trades priced at the closing market price

Improving the information content of trade reports:

- Deleted certain flags and aggregated others
- Amended the content of “Price” and “Price currency” reporting fields
- No changes to the transaction reporting fields under RTS 22

FCA changes

Exemptions:

Modified and expanded the list of transactions exempted under Article 13 of RTS 1:

- Maintained the cross-reference to Article 2(5) of RTS 22 but removed duplications
- Extended the exemption for inter-fund trades
- Extended the give-up and give-in exemption to request for market data (RFMD) transactions
- Introduced an intragroup exemption
- Clarified the clearing exemption

Introduced a **new designated reporter regime**

Trade
Transparency –
bonds,
derivatives,
structured
finance products,
emission
allowances



FCA consultation on bond *and derivative transparency*

The FCA published its consultation paper CP 23/32 in December 2023 on this topic, which follows on from the conclusions and findings of the Wholesale Markets Review.

Key areas covered by the consultation

- 1** Proposals for the scope and calibration of transparency requirements
- 2** Changes to waivers, deferrals and exemptions
- 3** Updating the content of post-trade information (fields and flags)
- 4** Changes to the systematic internaliser regime

On timing...



Consultation closed on 6 March 2023.
Policy Statement to follow around Q4
2024 (with implementation 12 months
later)

FCA CP 23/32 – improving transparency for bond and derivatives markets

Table 2: Summary of the proposed transparency regime

	Trading venues	Investment firms	
Pre-trade	Category 1 and 2 Pre-trade transparency applies depending on the characteristics of the market model. Waivers available for LIS orders, packages, negotiated transactions.	Category 1 and 2 No obligation.	No distinction between SIs and other investment firms No pre-trade obligations for investment firms Voice trading and RFQ systems to be fully excluded and in a simpler way than current waivers. Electronic order books and periodic auctions still in scope.
	Category 1 Size of LIS orders set in our Handbook.		Tweaks to the pre-trade waivers available
Post-trade	Category 1 Real-time reporting unless the trade is above the LIS threshold. The size of LIS thresholds and the type and the length of the deferral set under our Handbook.		Trading venues responsible for setting transparency requirements for category 2 instruments Simplification of deferral regime into new LIS deferral
	Category 2 Post-trade transparency set by the trading venue in line with criteria in our rules.	Category 2 No obligation to report.	No post-trade obligations for investment firms in relation to category 2 instruments
Category 1 instruments: bonds traded on UK trading venues; certain OTC derivatives subject to the clearing obligation. Category 2 instruments: a derivative or SFP which is not a Category 1 instrument or an emission allowance/emission allowance derivative.			New categorisation of instruments. Note: FX derivatives, single name CDS and around 30% of the liquidity in rates derivatives are excluded from Cat 1.

Systematic internalisers



Systematic *internalisers* – overview

1 Key changes (UK and EU)

- ◆ Qualitative definition
- ◆ Mid-point crossing
- ◆ Minimum quote sizes
- ◆ New designated publishing entity (DPE) and designated reporter (DR) regimes

2 Challenges (UK and EU)

- ◆ Future minimum quote sizes still not clear
- ◆ Broad definitions potentially unhelpful
- ◆ Potentially significant divergence between definitions



UK – systematic internaliser *definition guidance*

The FCA's consultation paper CP 23/32 proposed certain refinements to the systematic internaliser definition. The current definition was amended in UK MiFIR by FSMA 2023.

(12) “systematic internaliser” means an investment firm which deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system and which:

- a) does so on an **organised, frequent, systematic and substantial basis**, or
- b) has chosen to opt in to the systematic internaliser regime;

(12A) for the purposes of point (12), whether dealing is taking place on a basis that is organised, frequent, systematic and substantial is to be determined in accordance with rules made by the FCA

CP 23/32 proposals

- ◆ Changes to FCA handbook glossary to define ‘organised, frequent, systematic and substantial’
- ◆ Revocation of quantitative calculations in MiFID Org Reg
- ◆ Updates to FCA perimeter guidance on interpreting the new definition

UK – proposed systematic *internaliser* guidance

FCA glossary – new systematic internaliser definition

An investment firm which:

- (a) is dealing on own account when executing client orders outside a UK RIE, UK MTF or UK OTF without operating a multilateral system; and
- (b) either
- (i) does so on an organised, frequent, systematic and substantial basis; or
 - (ii) has chosen to opt-in to the systematic internaliser regime.

For these purposes:

- (A) Dealing takes place on an ‘organised, frequent, systematic and substantial’ basis where it is:
- (i) carried on in accordance with rules and procedures in an automated technical system, such as an electronic execution system, which is assigned to that purposes;
 - (ii) available to counterparties on a continuous or regular basis; and
 - (iii) held out as being carried on by way of business, in a manner consistent with Article 3(2)(a) of the Business Order in respect of the relevant financial instrument.

FCA PERG guidance – new guidance on what ‘held out as being carried on by way of business’ means

Test takes into account several factors:

- ◆ the extent to which the activity is conducted or organised separately;
- ◆ the monetary value of the activity; and
- ◆ Its comparative significance in terms of revenue by reference to the firm’s overall activity in the market for the relevant financial instrument

Designated publishing *entities and reporters*

1 Designated publishing entities (EU)

- ◆ Proposed as part of the EU's MiFID/MiFIR review
- ◆ MiFIR amending regulation confirms rationale to introduce status to allow firms to be responsible for publication without needing to opt in to hold SI status
- ◆ Recital 15 confirms this “has placed disproportionate requirements on such investment firms”

2 Designated reporters (UK)

- ◆ Suggested during Wholesale Markets Review to provide clarity for investment firms subject to post-trade transparency
- ◆ Like the EU rationale, separates systematic internaliser status from post-trade transparency requirements
- ◆ FCA proposals made in CP 22/12 and rule changes confirmed in PS 23/4

Designated publishing entities and designated reporters – *regulatory framework*

Designated publishing entities (EU) (DPEs)

- ◆ Status applies at **asset level**
- ◆ Changes made to EU MiFIR (new article 21a) which is a **new article for designated publishing entities**
- ◆ EU MiFIR changes in force from 28 March 2024 but deadline for ESMA to publish register is **29 September 2024**
- ◆ Updated EU MiFIR provides that:
 - ◆ if one firm is a DPE, they are responsible for publication via an APA
 - ◆ if neither firm is a DPE, or both firms are DPEs, the selling firm must publish via APA

Designated reporters (UK) (DRs)

- ◆ Status applies at **entity level**
- ◆ Changes made to UK RTS 1 (article 12) and UK RTS 2 (article 7) which relate to **post-trade transparency obligations** (under articles 6 and 20 UK MiFIR)
- ◆ Changes come into force on **29 April 2024**
- ◆ Updated requirements provide that:
 - ◆ if one firm is a DR, they must publish via APA
 - ◆ if neither firm is a DR, the selling firm must publish via APA
 - ◆ if both firms are DRs, the selling firm must publish unless it arranges for the buying firm to publish

Consolidated Tape



Consolidated tapes (UK and EU)

UK

Wholesale Markets Review proposals (2021/2)

1

2

June 2023: FSMA 2023 gave HMT and FCA relevant powers

3

July 2023: Draft Data Reporting Services Regulations and FCA consultation paper on CT framework published

4

November 2023: SI laid and PS published

EU

1

MiFID/R Review proposals (2021/2)

2

June 2023: Political agreement on equities CT

3

Q3 2023: Ongoing discussion in technical trilogues

4

March 2024: publication in OJ of directive and regulation

Consolidated tapes – interaction *between UK and EU*



**Both UK and
the EU are
prioritising CT
for bonds**

**Both UK and EU
may end up with
similar timing (Q4
2025/Q1 2026)**

Also market data work:

- ◆ EU – Q2 2024 consultation on cost of market data and reasonable commercial basis
- ◆ UK – Wholesale Data Market Study (findings published 29 February 2024)

CP 23/15 – FCA Policy Statement

The main areas where the FCA has made changes to its consultation proposals are:

- ◆ **Value-added services.** The CTP will not be permitted to provide value-added services, due to concerns over its ability to gain a dominant market position. The FCA requires that any value-added services must be provided by a separate legal entity (but can be in same group as the CTP).
- ◆ **Historical data.** The CTP will be required to offer a historical data service, which must be sold to subscribers separately to the live CT.
- ◆ **Payment to data providers.** The FCA is now proposing to require the CTP to make payments to data providers to cover their costs of connecting to the CTP (see CP 23/33)

Other changes have also been confirmed:

- ◆ **New TVs and APAs** will be required to connect to the CTP and provide data as soon as possible, rather than within six months as previously proposed.
- ◆ **A stronger role for data users** in the CTP's governance arrangements via membership of the Consultative Committee.

Proposed scope of the CT unchanged, which will not include exchange traded commodities (ETCs) or exchange traded notes (ETNs) in the first instance.

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