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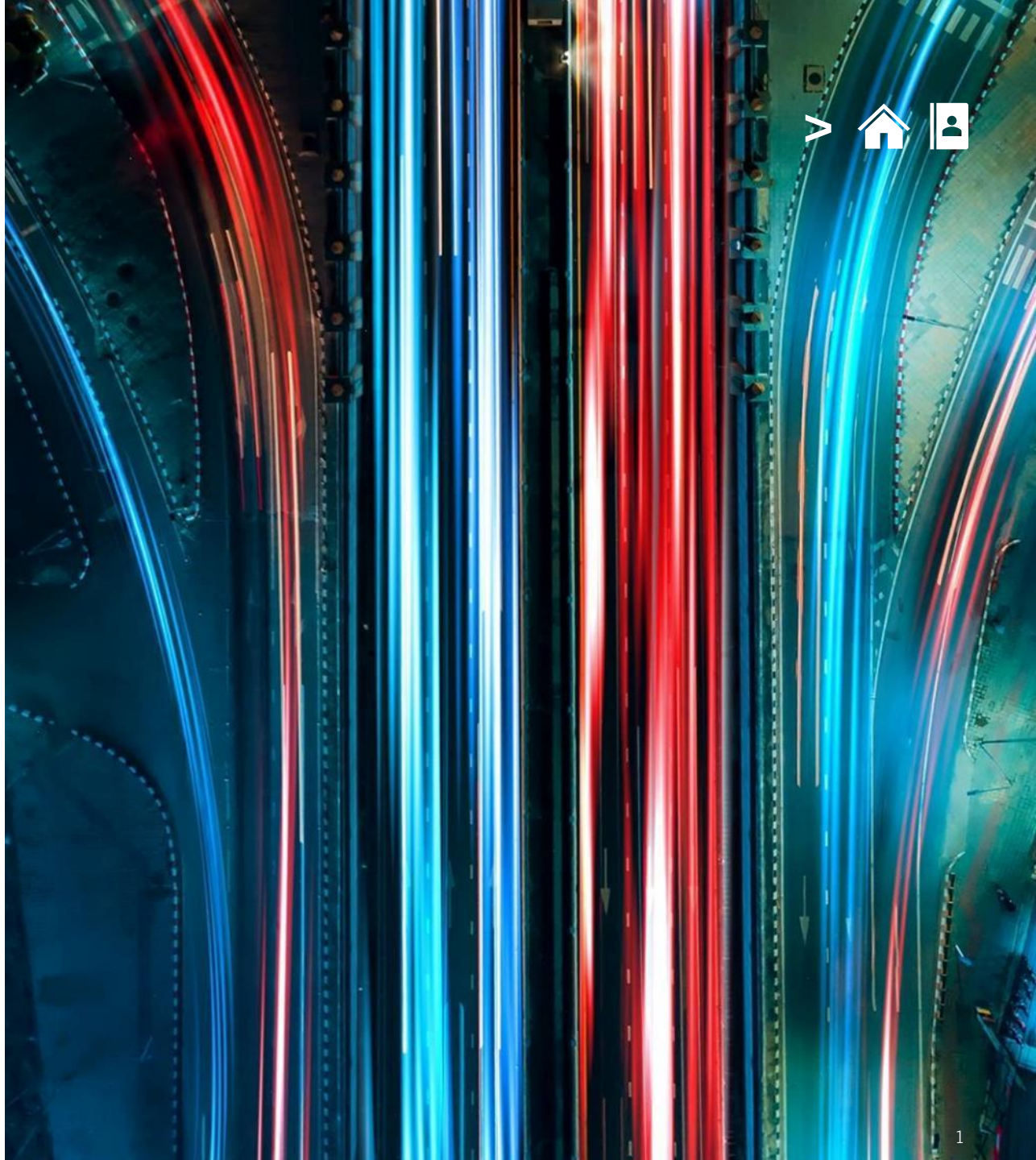
Financial Regulation Legal Outlook 2025

Asset management



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Asset management: contents

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01 Financial regulation for asset management: key upcoming events

Further resources

- Financial Regulation Horizon Scanner
- Sustainable Finance Global Tracker (subscription only)

UK

2025

- **Wholesale Markets** 2025 - FCA to publish consultation and policy statement on transaction reporting
- **Wholesale Markets** 2025 - FCA policy statement on post-trade risk reduction services expected
- **Wholesale Markets** 2025 – FCA industry engagement on equity CTP with FCA CP to follow during 2025
- **ESG / Conduct & Culture** 2025 - FCA and PRA to publish policy statement on diversity & inclusion proposals
- **Conduct & Culture** 2025 - FCA, PRA and HMT to publish outcomes from review of SMCR
- **Conduct & Culture** 2025 - FCA to publish policy statement on tackling non-financial misconduct

Early 2025

- **Funds** During 2025 – FCA to finalise rules on Consumer Composite Investments (CCIs)
- **ESG** Early 2025 - HMT expects to legislate on ESG ratings providers
- **Digital Assets** Early 2025 - HMT to consult on draft legal provisions for cryptoasset regime including stablecoins
- **Conduct & Culture** Q1 - FCA to review firms' treatment of customers in vulnerable circumstances
- **Conduct & Culture** Q1 - FCA to set out its approach on a review of its retail conduct requirements
- **Wholesale Markets** Q1 - FCA policy statement on UK commodity derivatives regime expected

Jan

- **ESG** Early 2025 - If Government legislates on SDR and labelling for OFR funds, the FCA is likely to consult on related rules and guidance
- **Funds** H1 - HMT and FCA expect to put in place a new UK retail disclosure regime for Consumer Composite Investments (CCIs)
- **Supervisory** H1 - FCA and FOS to publish next steps on modernising the consumer redress system
- **ESG** H1 - UK Stewardship Code to be updated

Feb

- **Digital Assets** Q1/Q2 - FCA to consult on cryptoasset regime, including on stablecoins, custody and prudential requirements

Mar

- **Supervisory** End of Mar - FCA Board to reach decision on its transparency of enforcement investigations and revised enforcement guide
- **Wholesale Markets** 31 Mar - Deletion of non-equity pre-trade transparency requirements for SIs and RFQ/voice trading systems becomes effective
- **Wholesale Markets** 31 Mar - End of transition period for UK counterparties to report on outstanding derivatives to comply with UK EMIR Refit framework
- **Operational Resilience** 31 Mar - Deadline for firms and FMIs to have sound, effective and comprehensive operational resilience strategies, processes and systems

Apr

- **Supervisory** Spring - The Financial Services Growth and Competitiveness Strategy is to be launched
- **Wholesale Markets** Q2 - FCA to publish consultation on changes to the SI regime
- **ESG** Q2 - FCA to publish policy statement on extending SDR rules to portfolio managers
- **ESG** 2 Apr - Firm's relying on the FCA's temporary extension for complying with the naming & marketing rules must fully comply

May

- **Funds** By end of H1 - FCA to consult on draft rules for consumer investment and pensions as part of 'Advice Guidance Boundary Review'
- **Wholesale Markets** May - Private Intermittent Securities and Capital Exchange System (PISCES) is expected to be established (with FCA to finalise rules for PISCES operators before then)

Jun

- **Wholesale Markets** End of H1 - FCA to publish final rules on public offer platforms

Jul

- **Wholesale Markets** H2 - PRA and FCA policy statements on MiFID Org Reg requirements expected
- **Digital Assets** Q3 - FCA to consult on cryptoasset regime including conduct and firm standards for all RAO activities, admissions & disclosures, and market abuse
- **ESG** By Jul - HMT expects to endorse UK SRS standards (IFRS SDS)

Aug

Sep

- **Financial Crime** 1 Sep - Failure to prevent fraud offence comes fully into force

Oct

Nov

Dec

- **Wholesale Markets** 1 Dec - FCA rules on transparency for bonds and derivatives and the new SI definition come into force
- **ESG** 2 Dec - SDR entity level reporting for large assets managers (AUM) >£50bn come into force
- **Wholesale Markets** End of 2025/early 2026 - UK bond CTP expected to be operational

EU

2025

- **Wholesale Markets** 2025 - IOSCO to publish final report on pre-hedging
- **Funds** 2025 - ESMA will develop technical standards and guidelines on AIFMD II
- **Funds** 2025 - ESMA to publish report on disclosures and the integration of sustainability risks in investment funds

Early 2025

- **Wholesale Markets** Q1 - Fourth ESMA consultation paper on RTS following MiFIR amendments covering derivatives-related changes expected
- **Retail Investment** Q1 - Trilogues to commence on EU Retail Investment Strategy
- **Prudential** Q1/Q2 - ESMA advice to Commission on review of IFR/IFD expected

Jan

- **ESG** 1 Jan - ESG Ratings Regulation entered into force
- **Wholesale Markets** 3 Jan - ESMA launched selection procedure for CTP for bonds (selection expected early Jul 2025)
- **Operational Resilience** 17 Jan - DORA became applicable

Feb

- **ESG** 26 Feb - Commission to potentially propose an "omnibus" regulation to simplify ESG reporting requirements
- **AI** 2 Feb - Provisions on prohibited AI systems take effect under the EU AI Act
- **Wholesale Markets** 3 Feb - Designated publishing entity regime for post-trade reporting starts to apply

Mar

Apr

- **Operational Resilience** 30 Apr - Deadline for first submission of the registers of information on contractual arrangements of the financial entities with ICT third-party service providers to the ESAs under DORA
- **Wholesale Markets** Q2 - Final ESMA advice to Commission on Level 2 investment research changes
- **Wholesale Markets** Apr - ESMA to submit final draft RTS 3, RTS 7a (inc. circuit breakers), ITS on SI notifications following MiFIR amendments and RTS on order execution policies. ESMA to consult on RTS 2 (derivatives and packages transparency).
- **Wholesale Markets** Q2 – OJ publication of revised RTS 1 & 2, CTP-related RTS, RCB RTS and clock synch RTS expected, with some changes applicable shortly after and others phased in

May

- **AI** 2 May - 'Codes of Practice' under the EU AI Act should be ready
- **Wholesale Markets** By 8 May - Commission to revise REMIT Implementing Regulation to define new data reporting requirements
- **ESG** 21 May - Deadline for existing funds to comply with ESMA's guidelines on fund names using ESG or sustainability-related terms

Jun

- **Wholesale Markets** By 29 Jun - ESMA to commence tender process for equities CTP. ESMA to consult on RTS for CTP incident reporting
- **ESG** Mid-2025 - A potential L1 review of SFDR

Jul

- **Financial Crime** 1 Jul - The new EU AML authority (AMLA) will be established
- **ESG** Q3 - EBA to incorporate ESG and greenwashing considerations into existing EBA legal instruments on retail conduct and consumer protection
- **Open Finance** Q3 - Possible publication in the OJEU of agreed text on the Financial Data Access Regulation (FIDA)
- **Operational Resilience** H2 - The first designation of critical third parties under DORA is expected
- **Wholesale Markets** By Jul - ESMA to submit final draft RTS 23 (reference data), RTS 22 (transaction reporting) & RTS 24 (order book data)

Aug

- **AI** 2 Aug - Provisions under the EU AI Act on notifying authorities, general-purpose AI models, governance, confidentiality, and most penalties takes effect

Sep

- **Wholesale Markets** 29 Sep - Deadline for Member States to implement changes to MiFID II following EU MiFID Review, with underlying Level 2 changes (e.g. in respect of commodity derivatives regime) to apply from that date

Oct

- **Funds** Oct - ESMA to submit market report to the Commission on costs and performance of EU retail investment products
- **Wholesale Markets** Oct - ESMA to submit final draft RTS 2 (derivatives and packages transparency)

Nov

Dec

- **Retail Investment** End of 2025 - Firms will need to implement the EU Retail Investment Strategy
- **Wholesale Markets** End of 2025/early 2026 - EU bond CTP expected to be operational, with RTS 2 changes on bond transparency expected to apply ahead of this
- **Wholesale Markets** By Dec – ESMA to submit final draft RTS on issuer-sponsored research and on CTP incident reporting

Supervisory · Wholesale Markets · ESG · Operational Resilience, AI, Digital Assets · Payments · Financial Crime · Prudential · Retail Investment · Culture & Conduct

02 ESG: sustainability disclosures – entity level

EU Corporate Sustainability Reporting Directive

The first cohort of companies subject to the EU's CSRD – large undertakings previously subject to NFRD – will make their first sustainability reports in FY2025 and have already done significant data gathering for that milestone.

Adoption of the directive itself in 2023 was only the first part in establishing the legal and compliance obligation. The directive needs to be supplemented by **ESRS** – European Sustainability Reporting Standards – which detail the sustainability information that companies will need to report on in accordance with the CSRD and it needs to be **transposed** into Member State law.

CSRD ESRS

The first set of ESRS – being the sector agnostic reporting standards – have applied since the beginning of 2024. CSRD also requires the adoption, by 30 June 2024, of **sector-specific ESRS**, with information specific to the sectors in which a company operates; and ESRS for certain **non-EU companies** with business in the EU meeting certain thresholds.

These two ESRS have been delayed by two years (adoption by 20 June 2026). The delay is said not to change the reporting timelines. Later adoption of sector-specific standards for EU companies just affects the extent of reporting, as the sector-specific part about companies' impact will not be required before 2026. Since general reporting obligations for non-EU companies will only start to apply in 2028, the EU institutions consider that adoption of the ESRS in 2026 will still provide those companies sufficient time to prepare.

CSRD Transposition

As a directive, the CSRD must be transposed into Member State law. The transposition deadline passed on 6 July 2024, with 17 Member States penalised for having missed the deadline. Transposition is important as the directive may be "gold-plated" in national implementations.

Companies in the first disclosure cohort where transposition has not yet been finalised are in the difficult situation of having to proceed for their first reports at least as if the directive were directly applicable. Those companies whose obligation will be triggered in one of the subsequent phases will be closely following the emerging details of the transposition and must be nimble to factor its terms into their own disclosure programmes.

Proposal for an Omnibus regulation?

The Commission has indicated that it intends to propose an "omnibus" regulation to reduce bureaucratic burdens and streamline reporting to avoid redundancies and overlaps. In a speech, Von der Leyen stated the Commission plans to include the EU Taxonomy Regulation, CSRD and the Corporate Sustainability Due Diligence Directive in this possible future Omnibus Regulation. She also stressed that the Commission does not wish to amend the content of those laws but merely simplify reporting requirements. This is one to watch in 2025; with the next announcement expected on 26 February.

UK corporate sustainability disclosure

In-scope firms – including listed companies and asset managers/asset owners – have been subject to the TCFD reporting obligations in the FCA's ESG Sourcebook from 2021. Some entities have been subject to obligations contained in Companies Act 2006 / LLP Act since April 2022.

The next step to impact corporate sustainability disclosure requirements is development of the UK's approach to the International Sustainability Standards Board's (ISSB) standards. The government will consult on mandating reporting by the UK's largest companies against UK ISSB standards in Q1 2025. This will be followed by an FCA "Sustainability Disclosure Standards" consultation on what this means in terms of the specific obligation on firms.

With much of the UK SDR and labelling regime already applicable, firms will focus on the obligation to publish an annual entity level sustainability report. All in-scope regulated asset managers (regardless of whether using sustainability labels or not) will be obliged to report on how they manage sustainability risks and opportunities within their governance, strategy, risk management, and metrics and targets. The first reports are due by 2 December 2025 for larger asset managers (above £50bn in assets under management (AUM)) and 2 December 2026 for smaller asset managers (above £5bn in AUM). Smaller firms are encouraged to produce voluntary reports.

The Financial Reporting Council's (FRC) Annual Review of Corporate Reporting 2023/24 includes findings on sustainability reporting issues and recommendations for a focus on clarity and materiality. The FRC plans a thematic review in the winter of 2024/25 to assist compliance with the Companies Act 2006 climate-related financial disclosure requirements.

Learn more

General resources:

- Sustainable Futures blog
- ESG monthly newsletter and sign-up
- Linklaters /AFME Report "Sustainable Finance in Europe: Regulatory State of Play"
- Sustainable Finance Survival Guide

EU resources:

- CSRD Demystified podcast series
- CSRD Transposition tracker
- CSRD ESRS delays
- CSRD: status of reporting standards for non-EU companies
- Sustainable Futures blog: CSRD posts

UK resources:

- Autumn 2024: UK Governance and Risk Guide
- Initial UK guidance on SDS

02 ESG: sustainability disclosures – product level

EU Sustainable Finance Disclosure Regulation

SFDR Level 1 review

Since its consultation on a comprehensive review of the SFDR Level 1 framework in December 2023, there has been no further word from the Commission on next steps. With detailed questions on potential changes to the disclosure requirements for financial market participants and the potential establishment of a labelling system for financial products, there is a lot to think about – and legislators will no doubt be watching closely to learn from the experiences of others (such as the FCA as it implements its SDR and labelling regime). In the meantime, in June 2024, the ESAs gave their own opinions on the topic, the highlights of which included proposals for the introduction of "simple and clear categories" and/or sustainability indicators for financial products, clarity to the key definition of "sustainable investment" and the disclosure of further information around key adverse impact indicators. It will be for the Commission to decide how to take forward these proposals. With no explicit commitment from the Commission on whether there will in fact be an SFDR review and if so, the timing or its content, this is one to watch in 2025.

Changes to SFDR RTS

Whilst the future shape of the Level 1 SFDR is under discussion, further communications on the proposals to make significant changes to the Level 2 RTS are awaited. The Commission had been due to make a decision on endorsement in Q1 2024 on the ESAs proposals to amend the SFDR RTS in areas such as PAI disclosures, the SFDR DNSH test and product level disclosures. We will have to wait to see whether this will be forthcoming in 2025. If endorsed, the proposals will have significant implications for financial market participants – who will need to revisit their SFDR product and website disclosures (given the changes proposed to the templates and data points) and their entity-level PAI and DNSH methodology and disclosures (given the various changes to PAI indicators).

EU Fund names guidelines

In the meantime, and pending Level 1 SFDR review, ESMA's guidelines on funds' names using ESG or sustainability related terms serve as an important stop-gap solution to give greater transparency to investors. The Guidelines, have been applicable since 21 November 2024. The transitional period for funds in existence before the application date expires on 21 May 2025.

UK SDR and Labelling Regime

With the final policy statement on the FCA's SDR and labelling regime having been published in November 2023, the rules have been implemented on a staggered basis – with first the anti-greenwashing rule (applicable to all regulated firms who make sustainability related claims about their products and services) effective from 31 May 2024. In scope firms have been able to use SDR labels since 31 July 2024, and as of 2 December 2024, the naming and marketing rules have been in effect. This means that even where no sustainability label is applied to a fund, where sustainability related terms are used in a fund's name:

- Strict naming rules must be met.
- There must be a brief statement that the product does not have a sustainability label and why is prominently displayed.
- Consumer-facing disclosure (where relevant), pre contractual disclosure and ongoing product disclosure requirements must also be complied with.

Some firms with funds currently using one or more of the terms 'sustainable', 'sustainability' or 'impact' (or a variation of those terms) in the name of that fund (intending either to use a label, or to change the name of that fund) will have availed themselves of the FCA's limited temporary flexibility meaning that, provided that a completed application was submitted to the FCA before the 1 October deadline, those funds have until 5pm on 2 April 2025 to comply with the naming and marketing rules. Firms should bear in mind that the FCA expects them to comply with the rules as soon as they can, without waiting until the April deadline.

Extending the regime to OFR funds and portfolio managers

A consultation on proposals to bring separate account managers within scope of the SDR and labelling rules closed in June 2024. The FCA is considering the feedback and expects to publish a Policy Statement and further information about implementation in Q2 2025.

A decision is yet to be made on whether the regime will be extended to OFR funds. Treasury's consultation (originally expected in Q3 2024) is yet to be published. If the Government does decide to extend the SDR to OFR funds, we expect legislation to be laid in short order, followed swiftly by an FCA consultation on its related rules and guidance.

Learn more

General resources:

- Sustainable Futures blog
- ESG monthly newsletter and sign-up
- Sustainable Finance Survival Guide

EU Resources:

- EU SFDR Level 2 state of play
- Commentary on the Commission's consultation on SFDR Level 1
- ESAs' recommendations on SFDR Level 1 Review
- The latest on the ESMA Fund Names Guidelines
- Commentary on the ESMA Fund Names Guidelines

UK Resources:

- FCA guidance on the UK SDR and labelling regime
- UK: FCA consultation on proposals for "minor amendments" to AGR and SDR
- The latest on SDR implementation pre-contractual disclosures
- FCA's consultation on extending the SDR to portfolio management services

02 ESG: transition plan requirements

Heading towards a global transition plan framework?

The International Sustainability Standards Board (ISSB) announced in June 2024 that the IFRS Foundation (which is responsible for the ISSB) has assumed responsibility for the materials developed by the UK Transition Plan Taskforce (TPT) to help streamline global transition planning. In the near term, the IFRS Foundation expects to use the relevant TPT materials to develop educational materials for users and preparers of transition plans across the globe. Over time, the IFRS Foundation may make further use of these materials when considering the need to enhance the formal application guidance within IFRS S2 (the ISSB climate disclosure standard). The IFRS will host the TPT materials on its Sustainability Knowledge Hub.

EU transition plan developments

Transition plan obligation in CSRD

CSRD requires all in scope-entities to disclose transition plans if they have one, or if not, explain why they do not, and when they plan to build one.

EFRAG, the technical advisor to the Commission responsible for the CSRD's European Sustainability Reporting Standards, has published draft implementation guidance for transition plans for climate change mitigation. The draft guidance is intended to clarify climate transition plan disclosure requirements under ESRS E1 (the climate change reporting standard). Final guidance is expected in early 2025.

Transition plan obligation in CS3D

For the first time an obligation to have a transition plan, as well as specific requirements around its content, disclosure and updates, is being imposed through the EU's CS3D.

The required transition plan must include time-bound targets set for 2030 and in five-year steps up to 2050 including, where appropriate, absolute emission reduction targets for Scope 1, 2 and 3 (for each significant category), an explanation and quantification of the investments and funding supporting the implementation of the plan and a description of the role of board / management body in achieving the targets. It must be updated every 12 months, contain a description of the progress made towards targets and be reported publicly.

Guidance on CS3D transition plans, engagement with stakeholders and information sharing is expected to be published by July 2027 with the first CS3D transition plans due to be published in 2029.

Overlap and interaction of CSRD and CS3D obligations

Many firms will be subject to both CSRD and CS3D, and many third-country ultimate parent undertakings will be caught by CSRD before being caught by CS3D. The good news is that if an undertaking reports a transition plan under CSRD, it will be deemed to have met its CS3D transition plan obligations. However, if an undertaking's CSRD transition plan is partial/qualified (e.g. if it excludes scope 3 emissions), it is uncertain whether the undertaking will have done enough to be deemed to have met its CS3D obligations.

CRD VI: prudential transition plans

CRD VI, which has been in force since July 2024 and is currently undergoing Member State transposition, also contains transition plan requirements (Art 76(2)): credit institutions are required to deliver risk-based transition plans. It remains to be seen whether there are proportionate developments to the prudential regime for investment firms which introduce related requirements.

UK transition plan requirements

At present in the UK, TCFD reporting, mandated through the Listing Rules and ESG sourcebook supports disclosure of key information from a transition plan if an entity has one. As successive governments have moved towards making transition plans and their disclosure mandatory, the UK's Transition Plan Taskforce was appointed to develop (at first) a voluntary framework for transition plan contents. We now await a consultation from the government on mandating transition plan disclosure. This is expected in H1 2025 and will be followed by an FCA consultation that starts with transition plan disclosure considerations for listed issuers.

Learn more

General resources:

- Explore climate transition planning & finance
- Linklaters/AFME report on climate transition plans for the European financial services sector
- Latest developments on transition plans
- Sustainable Futures blog
- ESG monthly newsletter and sign-up
- COP 29: what was decided and what does it mean?
- COP16: key takeaways from the global biodiversity summit

EU resources:

- EU CSRD: EFRAG publishes draft Transition Plan Implementation Guidance
- Podcast EU CS3D explained: CS3D and transition plans
- CS3D podcast series

UK resources:

- Outcomes of the Transition Finance Market Review
- UK TPT publishes final recommendations

02 ESG: due diligence requirements

EU Corporate Sustainability Due Diligence Directive (CS3D)

Following a roller-coaster legislative process that began in February 2022, the new CS3D was published in the Official Journal of the EU on 5 July 2024. EU Member States need to adopt implementation acts by 26 July 2026 that will start to apply from mid-2027 to mid-2029 for in-scope companies depending on their size.

An active obligation to make a positive change

CS3D represents an evolution from disclosure and reporting type regimes to regimes including active obligations to make a positive change. Under the new rules, in-scope companies will be subject to far-reaching obligations to establish and implement processes to identify and take action in relation to the adverse human rights and environmental impacts of their operations, as well as those in parts of their value chains. The regime can apply outside the EU in terms of the companies it brings into scope, the diligence that needs to be undertaken worldwide, and the indirect effects the new rules will have as they are cascaded up and down value chains.

Transition plan obligation

For the first time, in-scope companies must adopt and implement climate transition plans and set climate targets in line with the Paris Agreement in a bid to set the course for a move to a lower carbon economy.

Partial carve-out from due diligence obligation for financial services

The chain of activities in scope of the due diligence obligation excludes the downstream business partners of regulated firms that are receiving their services and products. This position should be monitored: this partial carve-out is subject to review no later than two years after that CS3D's entry into force (so by July 2026). In any event, the carve-out may make little difference to the information burden – one person's downstream will be another's upstream.

How does the CS3D relate to other due diligence regimes?

The CS3D is the "default" EU due diligence regime and it expressly provides that its obligations are without prejudice to other, more specific EU regimes (e.g., the Conflicts Minerals Regulation, the Deforestation Regulation, the Batteries Regulation and the Forced Labour Ban Regulation), meaning that if a provision of the CS3D conflicts with another EU regime providing for more extensive or specific obligations, the latter prevails.

It will be critical to follow the terms of Member States' transpositions given their capacity for gold-plating – especially jurisdictions which already have a similar framework. It remains to be seen whether, and how, the two key existing national regimes in the EU – the French *Loi relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre* (focused on private enforcement) and the German *Lieferkettensorgfaltspflichten gesetz* – will be adapted.

EU Deforestation Regulation

The EUDR prohibits operators and traders from placing or making available on the EU market, or exporting from the EU, certain commodities and derived products, unless they are "deforestation-free", have been produced in accordance with the relevant legislation of the country of production, and are covered by a due diligence statement.

Its application has been delayed until 30 December 2025 for large in-scope companies and 30 June 2026 for small and micro enterprises.

Financial services need to consider their scope, paying special attention to any commodities-related business. Furthermore, the Commission must reassess the need to include financial institutions in the scope of the EUDR by 30 June 2025 (oddly, before the EUDR will apply – watch this space!)

UK human rights due diligence equivalent?

The UK's Modern Slavery Act 2015 (MSA) has been overtaken in its ambition by regimes like the EU's CS3D.

In October 2024, the House of Lords Select Committee on the MSA published its report "The Modern Slavery Act 2015: becoming world-leading again" with recommendations for how the UK can reform its existing legislation to bring it in line with international best practice.

The recommendations relate to areas like supply chain due diligence, import bans, mandatory reporting requirements and enforcement.

The influence of this report on the new Government's legislative agenda remains uncertain, particularly as human rights and supply chains did not feature at the Labour conference in September nor in Labour's election manifesto.

Learn more

General resources:

- Business and Human Rights resources
- Sustainable Futures blog
- ESG monthly newsletter and sign-up
- Linklaters /AFME Report "Sustainable Finance in Europe: Regulatory State of Play"
- Sustainable Finance Survival Guide

EU resources:

- EU Tracker: status of ESG proposals
- CS3D Summary of scope and application
- FAQs on the CS3D
- CS3D podcast series
- Webinars on CS3D for the financial services
- French Duty of Vigilance Law
- German Supply Chain Diligence Act

UK resources:

- UK proposals to reform of Modern Slavery Act

02 ESG: ESG ratings regulation

EU ESG Ratings Regulation

The ESG Ratings Regulation (ERR) entered into force on 1 January 2025. It will apply 18 months following its entry into force - from 2 July 2026.

Authorisation requirement

ESG ratings providers will need to be authorised and supervised by the European Securities and Markets Authority (ESMA) and comply with certain transparency and organisation requirements. Whilst other already-regulated financial services firms benefit from certain exemptions from authorisation, they must still comply with new transparency requirements when producing ESG ratings in the context of existing products. This is imposed partly through the ERR (and forthcoming regulatory technical standards) and partly through amendments to the Sustainable Finance Disclosure Regulation (SFDR).

Exemptions – ambiguity for financial services firms

The ERR does include numerous exemptions from its scope. However, a key question is how it applies to financial products of financial services firms that happen to include ESG ratings. This could include sustainable investment products that disclose ESG ratings on investments, or investment research that includes an ESG rating. The ERR includes several exemptions relevant to this although how they interact is not entirely clear. Impacted firms will therefore need to consider these exemptions in detail – see our note in the "Learn more" sidebar.

Practical implications

Firms which intend to become authorised as ESG ratings providers should assess the compliance obligations in the ERR and prepare for authorisation.

Firms relying on exemptions to avoid authorisation should firstly assess their products and services to determine if they constitute ESG ratings. Following this, the applicability of exemptions will need to be considered in detail, as well as compliance with the disclosure obligations that accompany certain exemptions.

UK proposal to regulate ESG ratings providers

HM Treasury has responded to its 2023 consultation on regulating ESG ratings providers and has released draft legislation which applies to both UK and overseas based ESG ratings providers. The draft legislation was open for technical feedback until 14 January 2025. The overall process of designing, developing and commencing the ESG ratings regulatory regime is expected to take approximately four years, with the government aiming to lay the legislation before Parliament in early 2025.

Proportionality, but be careful with the exclusions

The draft rules have been prepared with proportionality in mind, with a clarified scope (with the activity of providing ESG ratings drafted more narrowly than in the original consultation) and a range of exclusions including an exclusion for ratings produced as part of another regulated service. Firms will need to consider these carefully – whilst many firms not seeking to be regulated ESG ratings providers may benefit from this regulated services exclusion there does appear to be a gap for certain firms operating cross border into the UK (for example where operating in reliance on the OPE). The government is still considering its approach to firms that access the UK via other market access arrangements – namely with respect to credit ratings, benchmarks and overseas funds. Whilst it appears appropriate for an exclusion to extend to firms providing such products and services – and the government has drafted this in – it is still deciding how best to set the parameters of the exclusion here.

Territorial scope

The key focus of the proposed regulation is the protection of users in the UK market. To avoid overseas ESG ratings providers seeking to avoid regulation by producing an ESG rating that they then make available to a user in the UK via a separate distributor outside the UK, the rules explicitly seek to close this loophole. This approach to territorial scope is quite similar to the approach taken in the EU ERR, and both the UK and EU seem keen to ensure overseas ESG ratings providers are captured.

Voluntary industry Code of Conduct

Just a reminder of the UK's voluntary Code of Conduct for ESG Ratings and Data Product Providers which was launched by IRSG and ICMA in December 2023 and sits alongside any legislative framework.

Learn more

General resources:

- Sustainable Futures blog
- ESG monthly newsletter and sign-up
- Linklaters /AFME Report "Sustainable Finance in Europe: Regulatory State of Play"
- Sustainable Finance Survival Guide

EU resources:

- EU: ESG Ratings Regulation moves one step forward
- EU ESG Ratings regulation: the obligation, scope and timing
- EU proposal to integrate ESG factors into credit ratings

UK resources:

- Highlights from UK Treasury consultation response and draft legislation
- UK Code of Conduct for ESG Ratings and Data Products Providers

02 ESG: key upcoming events

Further resources

- Financial Regulation Horizon Scanner
- Sustainable Finance Global Tracker (subscription only)
- Linklaters /AFME Report "Sustainable Finance in Europe: Regulatory State of Play"

UK

In 2025
FCA and PRA to publish policy statement on diversity & inclusion proposals

Q1 2025
UK Government to consult on draft UK Sustainability Reporting Standards (SRS) followed by endorsement decision and publication

Early 2025
HMT expects to legislate on ESG ratings providers

Early 2025
If Government legislates on Sustainability Disclosure Requirements (SDR) and labelling for Overseas Funds Regime (OFR), the FCA is likely to consult on related rules and guidance

H1 2025
UK Stewardship Code to be updated

2 April 2025
Firm's relying on the FCA's temporary extension for complying with the naming & marketing rules must fully comply

Q2 2025
HMT to potentially consult on disclosure requirements against UK SRS for UK companies that do not fall within the FCA's regulatory perimeter

Q2 2025
FCA to publish policy statement on extending SDR to portfolio managers

By July 2025
HMT expects to endorse UK SRS (IFRS SDS)

Late second half of 2025
Sustainability-related disclosures in prospectuses for ESG bonds expected to be in force pursuant to the changes to the UK prospectus regime in train

2 December 2025
SDR entity level reporting for large assets managers (AUM) >£50bn come into force

1 January 2026
UK SRS to potentially come into effect

2 December 2026
FCA SDR entity-level disclosures rules extended to firms with AUM >£5bn

EU

1 January 2025
Application of the CSRD to large companies and parents of large groups not already in scope

26 February 2025
Commission to potentially propose an "omnibus" regulation to simplify ESG reporting requirements

Q1 2025
EBA expected to consult on updating Pillar 3 ESG ITS

H1 2025
European Commission review of Disclosure Delegated Act

Q2 2025
EFRAG to publish Transition Plan Implementation Guidance under ESRS

March-June 2025
EU Green Bond Regulation consultation on remaining technical standards

21 May 2025
Deadline for existing funds to comply with ESMA's guidelines on fund names using ESG or sustainability-related terms

Mid-2025
A potential European Commission review of SFDR Level 1

Q3 2025
EBA to incorporate ESG and greenwashing considerations into existing EBA legal instruments on retail conduct and consumer protection

Q3 2025
EBA to publish amendments to Pillar 3 ITS in relation to ESG risks

30 December 2025
Deforestation Regulation starts to apply for large operators and traders (Applies to micro and small enterprises on 30 June 2026)

1 January 2026
All listed SMEs, small and non-complex credit institutions and captive insurance undertakings in-scope of CSRD

11 January 2026
EBA guidelines on the management of ESG risks start to apply to most banks and financial institutions

H1 2026
IOSCO expects to publish final report on recommendations on sustainability-related requirements in asset management

5 June 2026
Amendments to prospectus content requirements in force under the EU Prospectus Regulation for all ESG bonds subject to the EU Prospectus Regulation, including for 'European Green Bonds' and for issuers "opting-in" to the voluntary disclosure regime under the EU Green Bond Regulation

30 June 2026
Adoption of sector specific ESRS (delayed from June 2024)

26 July 2026
Deadline for EU Member States to transpose CSDDD into their national laws

2026
Art. 8 Taxonomy Disclosure of Green Asset Ratio (GAR) on trading portfolio

26 July 2027
Application of CSDDD to EU companies with more than 5,000 employees and EUR 1,500,000,000 worldwide net turnover. Application to non-EU companies that generated more than EUR 1,500,000,000 in the EU

1 January 2028
Application of the CSRD for non-EU companies (TBC)

26 July 2028
Application of CSDDD to EU companies with more than 3,000 employees and EUR 900,000,000 worldwide net turnover. Application to Non-EU companies that generated more than EUR 900,00,000 in the EU

26 July 2029
Application of CSDDD to all other in-scope companies

2029
Listed SMEs and small & non-complex FIs report under ESRS (mandatory). Certain third country undertakings report under ESRS

2025
- Disclosure of Banking Book Taxonomy Alignment Ratio (BTAR) by financial institutions on a voluntary basis
- ESMA to publish guidance on sustainability claims to financial market participants
- ESMA to develop technical standards under the Green Bond Regulation
- EFRAG work on sectorial European Sustainability Reporting Standards (ESRS) for financial sector
- Undertakings previously subject to Non-Financial Reporting Directive (NFRD) report under ESRS

2025 Q1 · 2025 Q2 · 2025 Q3 · 2025 Q4 · 2026 · 2027 · 2028 · 2029

03 Funds and fund marketing: EU AIFMD and UCITS Directive review

The story so far

Since its publication in the Official Journal of the European Union over a decade ago, the Alternative Investment Fund Managers Directive has fundamentally changed the way alternative fund managers operate, building a new landscape for managing and marketing alternative investment funds in the EU and EEA – and the funds industry, together with regulators, has largely found a way to make AIFMD a success story. However, since its inception, the plan was always to review the framework to ensure that it is fit for purpose.

In the EU, the first stage of this process was completed earlier last year with the publication of a directive to amend AIFMD in the Official Journal on 26 March 2024, and the rules came into force on 15 April 2024. In the UK, the FCA is focused on tailoring the regime to the UK market, and consultation is now due.

EU AIFMD and UCITS Directive Review

Overall, the changes being introduced by AIFMD 2.0 represent an evolution rather than a revolution in approach. Some changes, such as the increased flexibility for depositaries, are responsive to market demands (although a full passport remains out of reach for now), whereas other changes, such as the new loan origination framework and heightened liquidity management rules, are a reflection of market developments since AIFMD came into effect in 2013 and an increasing need for regulators to have greater oversight of these activities.

The devil is in the detail however, and Member States have until April 2026 to implement the new rules into their national laws. AIFMs will need to carefully consider how individual Member States implement the regime. The amending Directive also empowers ESMA and the Commission to develop and adopt further detailed rules and guidance in the form of "Level 2" implementing measures and binding technical standards, and further recommendations and guidelines in "Level 3" measures.

ESMA's consultations on draft RTS on LMTs, and on guidelines on selecting and calibrating LMTs for both liquidity risk management and mitigating financial stability risks, closed in October 2024. Draft RTS are to be submitted to the Commission by 16 April 2025, and a final report containing its guidelines is due by the same date. On 12 December 2024, ESMA published its draft RTS on requirements with which loan-originating AIFs will need to comply in order to maintain an open-ended structure. The consultation closes on 12 March 2025, with ESMA expecting to publish a final report by Q3/Q4 2025.

What should firms be thinking about now?

Although it is still a developing picture, now is the time to think about existing and new products, and how they might be impacted by EU AIFMD 2.0. This will include firms:

- Analysing all of their existing AIFs (not just direct lending AIFs) to determine whether they are within scope of the loan origination rules.
- Assessing the impact of the related transitional provisions on any in scope AIFs.
- If intending to rely on the shareholder loans carve out, reviewing and possibly updating any relevant instruments.
- Where designing new products at this stage, giving thought to whether it would be helpful to, to the extent relevant and possible, comply with the new rules, to ensure future-proofing.

Learn more

- AIFMD 2.0 Level 1: Complete, Level 2: Loading....
- Alternative Investment Fund Managers Directive (AIFMD) Microsite
- Asset Management Spotlight webinar on AIFMD II

03 Funds and fund marketing: UK AIFMD developments

UK AIFMD

The changes being made to AIFMD in the EU will not automatically be made to the corresponding rules in the UK, and there is currently no indication the UK will follow any of these changes. However, the FCA is considering what, if any changes to make to the UK rulebook, and has been listening to industry requests to retain the core framework of the existing UK AIFMD, while making it more proportionate in some areas and more tailored to the UK market.

With this in mind:

- The FCA would like to use a set of consistent rules across all managers of alternative funds. Rather than a "cliff edge" resulting in different rules applying depending on whether a manager is above or below an AuM threshold, it is exploring ways to ensure the regime operates proportionately depending on the nature and scale of a firm's business. The FCA will work with the Treasury to explore how to make regulation work better for "small registered", "small authorised", and "full scope" managers.
- The FCA are considering modifications to the AIFMD rules which prevents full-scope AIFMs from carrying out other activities within the same legal entity.
- The FCA is considering if changes could be made to ease some of the reporting requirements, such as the requirement to report to regulators when a fund is newly established, when there are any material changes to a fund, when there's an acquisition or disposal of major holdings and in relation to the control of non-listed companies.

Next steps

The FCA had been expected to consult on amending UK AIFMD and re-evaluating the UK AIFMD rules for non-UCITS retail funds in 2024, with a review of the regulatory reporting regime in 2025. With the first deadline having been missed, we are now expecting this consultation to come in 2025.

Learn more

- FCA Dear CEO letter to Asset Managers & Alternatives on its updated supervision strategy for the sector
- FCA speech to investment managers on the future of finance

03 Funds and fund marketing: UK overseas funds regime

Gateway is open

The UK Government enacted a new Overseas Funds Regime (OFR) in the Financial Services Act 2021, providing a fast-track framework for non-UK funds (including UCITs established in the EEA) to be recognised and registered for marketing to retail investors in the UK after Brexit. Operationalisation of the regime has been a long time coming and it is a positive step that the gateway has been open since September 2024 for standalone funds and new umbrella funds – and the process for recognition has also begun for funds in the Temporary Permissions Regime. Looking ahead to 2025, this process will continue. Further, we expect headway to be made on the open questions as to whether, and if so, the extent to which the UK Sustainability Disclosure Requirements and labelling regime will be extended to include funds recognised under the OFR.

The recognition process

Standalone funds and new umbrella schemes can apply for recognition at any time. In terms of funds in the TMPR, there are so many such funds that the FCA is running a "landing slot" system. The landing slot for all TMPR standalone UCITS funds opened on 1 October 2024 and ran to 31 December 2024. Slots for TMPR umbrella schemes are assigned alphabetically by operating firm name with a new landing slot opening each month in an overlapping sequence of three-month tranches from 1 November 2024 to 30 September 30 2026.

It is important for funds to watch out for communications from the FCA as funds which fail to apply during their allocated landing slots will be removed from the TMPR. These funds will then no longer be recognised funds and so will not be able to be marketed to UK retail investors until a successful application for recognition has been completed.

The process kicks off with the Chief Compliance Officer of the fund receiving a "direction" from the FCA via email eight weeks before the slot opens, telling the fund how to apply for OFR recognition. The fund operator may then apply at any point within the landing slot (but no later) by submitting the application form and supporting documentation and paying the requisite fee via the FCA "Connect" portal.

Once recognised, OFR fund operators will be subject to ongoing obligations. This will include the UK financial promotions regime. It will also include rules related to marketing under the new retail disclosure regime which will come into effect from 2025 (see overleaf).

Will the SDR apply to funds recognised under the OFR?

When it published its policy statement on the UK SDR and labelling regime, the FCA made clear that a level playing field, with the same broad requirements applying to all products marketed in the UK was of key importance.

The question of whether the regime should be extended to OFR funds is however in the first instance a question for Treasury – whilst the Joint Roadmap on the OFR issued in May 2024 did not confirm Treasury's policy position, it did set a timeline for that decision to be made.

The first step will be a Treasury consultation. Originally expected in Q3 2024, we expect this to now land in 2025. If the Government does decide to extend the SDR to OFR funds, we expect legislation to be laid in short order, followed swiftly by an FCA consultation on its related rules and guidance.

Learn more

- Overseas Funds Regime – User Guide
- Navigating the FCA's Overseas Funds Regime
- Webinar on the FCA's Overseas Funds Regime

03 Funds and fund marketing: UK Consumer Composites Investments/EU PRIIPs

A new UK retail disclosure regime and EU PRIIPs proposals

With the legislation surrounding PRIIPs having been one of the more contentious pieces of financial regulation in recent times, 2024 has seen us move one step closer to new rules in both the EU and the UK. With targeted changes currently in negotiation for the EU PRIIPs regime, and the FCA having been granted new powers to construct and deliver a new retail disclosure regime to replace the UK PRIIPs regime, we look towards 2025 for further detail on the coming changes – and a key focus for stakeholders remains on the extent of the resulting divergence between the UK and EU rules.

UK Consumer Composite Investments (CCIs)

Legislation granting the FCA rule-making powers to construct a new retail disclosure framework for CCIs, which will replace the UK PRIIPs regime and will be tailored for the UK market, entered into force in November 2024. Importantly these new rules:

- Replace the concept of a PRIIP and define products in scope of the UK framework as "consumer composite investments".
- Regulate manufacturing, advising and offering a CCI to a UK retail investor via the designated activities regime.

The new statutory instrument does not prescribe the actual disclosure requirements – that detail is the subject of the FCA's consultation published on 19 December 2024. The consultation closes on 20 March 2025, with a final policy statement expected later in 2025, albeit it is not clear whether this can still be expected in H1 2025 as originally indicated by the Treasury and the FCA back in September 2024, or if this will now come later in the year.

The FCA intends the CCI regime to be a simpler, more flexible and proportionate system which is "tailored to the UK" but of course the devil is in the detail and firms will need to consider the new rules carefully to understand the obligations imposed upon them.

The FCA intends for the CCI regime to come into force when its Policy Statement is published but with "a substantial" proposed 18-month transitional period.

While firms will be able to start moving to the new regime sooner, existing PRIIPs KIDs and UCITS KIIs (or equivalent disclosures) communicated in line with current obligations will be considered compliant until the transition period ends. For UCITS , UK NURS and OFR funds, product information which complies with the KII Regulation will be permitted until the exemption from the PRIIPs disclosure regime expires (currently the end of 2026).

EU PRIIPs

The reforms to the EU PRIIPs Regulation forms part of the EU's wider Retail Investment Strategy (on which see further overleaf). Now that all three EU legislators have reached their negotiating positions on the RIS package, interested parties are poised for trilogues to commence.

Key proposals to watch out for, where divergence exist between the legislators' positions, include:

- **Scoping,** particularly in the context of nuances proposed by the Council.
- **Contents of the new sections of the PRIIPs KID,** including the new "Product at a glance" section and the proposed sustainability section – and which of the additions proposed by the Parliament and Council to the Commission's original draft will survive the negotiations.
- **Page limit:** given that the KID 3-page limit is already challenging, the Parliament's proposal to increase this to 4 pages is welcome – the Council however currently contend the existing limit should continue to apply.
- **The level of prescription in respect of multi option products,** with the Council proposing a comparison tool for the different investment options.
- **Timing of PRIIPs changes** i.e. whether they will apply 18 months or 24 months from the date the delegated act has been published in the OJ.

Any amendment to the PRIIPs KID, or the way the information is accessed by, or presented to, investors, will require changes to firms' systems and processes – and an assessment of related regulatory risks. For that reason, firms will need to keep a close eye on the RIS process in 2025.

Learn more

UK Resources:

- The Consumer Composite Investments (Designated Activities) Regulations 2024 entry into force
- RIP to PRIIPs. Hi to CCIs. The detail of the FCA's December 2024 consultation

EU Resources:

- The three EU legislators' positions on the Retail Investment Strategy

04 Retail investor focus: Retail Investment Strategy

Ready for trilogues?

With the three EU legislators reaching their positions on the Retail Investment Strategy package in mid-2024, trilogues will begin in 2025. A "direction of travel" has emerged on some topics (e.g. costs and charges disclosures will not be re-introduced for eligible counterparties and professional clients that do not currently receive them) but differences remain on other key topics as follows.

Value for money (VFM)

The Commission proposes that manufacturers and distributors assess their products and pricing against ESMA-produced cost and performance benchmarks as part of their VFM assessments. The Parliament and Council instead advocate for internal "peer grouping" analysis, giving firms greater flexibility. Both legislators also envisage EU "supervisory" benchmarks which would allow local regulators to identify "outlier" products. The Council (unlike Parliament) suggests that these supervisory benchmarks could be used by manufacturers or distributors for their own internal VFM processes (as an alternative to firms setting out their own internal peer-grouping analysis).

Inducements

The Commission, but not the Council or Parliament, proposes an inducement ban between "execution only" service providers and product manufacturers. The Parliament instead proposes an option for Member States to have their own inducement bans, and significant enhancements to the requirements for firms to meet before accepting or paying third-party inducements.

Suitability and appropriateness

The Commission's proposal to enhance suitability assessments by requiring firms to consider the client's need for portfolio diversification would be revised under the Parliament and Council positions, including acknowledging that it may not always be possible for firms to get information on clients' existing portfolios. There is also divergence on other aspects, such as whether appropriateness assessments should consider a client's capacity to bear losses.

Best interest of the client

The Commission proposal for investment advisers to act in the "best interest of the [retail] client" would require firms to advise on an "appropriate range" of products, recommend the most cost-efficient suitable product and recommend at least one product without "additional features" which are not "necessary". The Parliament and Council both suggest changes to this test (such as deleting the requirement to offer products without additional features), but major differences between the positions exist (as, for example, the Council would see aspects of the test moved into the suitability assessment).

Professional client opt-up criteria

All three legislators propose changes intended to make it easier for individuals and companies to opt up to professional client status. However, the devil is in the detail as diverging views have emerged on how best to achieve this.

PRIIPs KID

The three legislators' positions on changes to the PRIIPs Regulation and KID requirements include different views on the page limit and new sections in the KID (e.g. the contents of the new sustainability section), personalisation and layering of KID information, how performance could be presented in KIDs and the level of prescription in respect of multi option products (with the Council proposing a comparison tool for the different investment options). See the previous page for more detail on the EU PRIIPs KID proposals.

Other changes

The Retail Investment Strategy covers many other amendments to the current rules which will be impactful. These include enhanced requirements on marketing communications (including when using finfluencers), risk warnings and competency requirements for financial advisers. There are also enhancements to reporting requirements and regulatory powers in the context of the cross-border provision of services.

Implementation timings

The Commission proposal would see Member States having to implement changes to MiFID II (and other sectoral directives) within 12 months, with the revised requirements applicable 6 months later. Both the Council and Parliament would significantly extend the implementation timeline.

Learn more

> EU Retail Investment Strategy reaches milestone, ready for trilogues...

04 Retail investor focus: UK Consumer Duty

2024 saw the Duty become fully operational: Firms also submitted their first annual board reports – an integral part of a suite of Consumer Duty governance mechanisms firms have introduced. Meanwhile the FCA is maintaining its Consumer Duty focus though its activity has tapered off following its headline webinar (conducted jointly with the FOS) on 31 July.

As well as feedback on progress to date, the FCA used the webinar to launch its Call for Input reviewing FCA requirements following the introduction of the Consumer Duty, responding to which occupied much of the Autumn; FCA feedback is expected in Q1 2025. The CFI asked stakeholders to input on areas of current regulation that could be removed/revised in favour of greater reliance on consumer duty 'outcomes'. Arguably somewhat premature (given the novelty of the Duty), the CFI proceeds on the (untested) assumption that outcomes automatically simplify regulation. In fact, there is considerable ambiguity surrounding many aspects of the Consumer Duty, which the FCA has sought to manage by publishing a proliferation of guidance and feedback. This does not simplify anything and significantly increases compliance cost as firms assess the implications of this ongoing flow of information. The FCA remains under pressure to ensure that the Duty – its flagship consumer protection regime – does not prevent firms from generating growth.

Areas for development: There is still plenty for firms to work in here. The FCA reported in February on good practice and areas for improvement, including:

- **Culture, governance and monitoring:** particularly ownership of the Duty across the business and the importance of data and monitoring (the data point was expanded on in later feedback e.g. here).
- **Vulnerability:** some firms (particularly in wealth) are still failing to identify and support vulnerable customers. All firms that deal directly with retail customers should work towards a 'single customer view'. The FCA will publish a review of firms' treatment of vulnerable customers and customer support in Q1 2025. A speech in October provided an outline framework for approaching this sensitive topic.
- **Products:** some firms remain unaware that they are within scope of the Consumer Duty. Inter-firm information sharing remains a challenge. The FCA wants to see more effective sharing within distribution chains.
- **Value**: the FCA pressed firms to take a 'holistic' approach and better evidence assertions that products offer 'fair value'. In September the FCA published a review of firms' assessments of value over the first year of the Duty's operation, summarising the results of studies into GAP insurance, cash savings and interest held by platforms. The GAP insurance study was particularly impactful: the FCA required over half of the firms offering this product to stop doing so until they improved their fair value assessments.
- **Understanding:** firms were challenged on aligning products to customer risk appetite and charges disclosures. Financial promotions remains a concern, with some approvers apparently making little reference to the Duty (particularly in the crypto-asset space).
- **Support:** The FCA wants to see more staff training for complex conversations, with a commitment to finding tailored solutions for customers in distress. The 2024 HSBC, VW and TSB final notices provide a useful benchmark for firms here (despite being decided under Principle 6 not 12). Firms should be designing customer journeys that support good outcomes.

The FCA imposed an OIREQ on London Stone for failings including a breach of cross-cutting rule one, the obligation to act in good faith. London Stone's custodian had threatened to terminate its agreement with the firm unless it improved its charging practices, suggesting it had carried out its own assessment the London Stone's treatment of its customers.

Redress takes centre-stage: Activity this Autumn in the motor finance space and the issue of the joint FCA/FOS Call for Input on modernising the redress framework could have significant future impact on firms in scope of the Duty. It is interesting to consider how the Court of Appeal might have analysed the position in Wrench, Hopcraft and Johnson had the Duty been in force. The CFI considers the issue of conflicting interpretations of FCA rules being taken by the FOS, a concern for many firms as the Duty, with its inherent ambiguity, becomes part of BAU compliance.

Closing the advice gap: The FCA is making progress on its "Advice/Guidance Boundary review". The FCA's December 2024 consultation on proposals for a "targeted support" regime for the pensions sector closes in February 2025. We can expect broader proposals for the retail investment context, and proposals for "simplified advice" to follow in H1 2025, including a consultation on draft FCA rules that will apply across retail investments and pensions. Firms wishing to provide guidance or education to investors will want to see the proposed rules give greater comfort as to how they can avoid straying into providing regulated investment advice.

Learn more

- Our insights webpage on the Consumer Duty
- Key considerations when compiling your board report
- FCA fine HSBC for unfair treatment of customers in financial difficulty
- The FCA permits the return of GAP insurance
- Welcome FCA guidance on monitoring under the consumer duty
- Re-dressing redress
- The FCA's latest consumer duty value messaging
- Significant Court of Appeal judgment on FCA's redress powers
- FCA Consumer duty webinar (frogs and all)
- The FCA's November 2024 feedback statement on its Advice Guidance Boundary Review
- Advice Guidance Boundary Review: the FCA's consultation on a proposed new regime of targeted support for pensions

05 Digital assets and tokenisation

Roadmap to UK licensing regime

There were high expectations that 2024 would be a landmark year for the regulation of cryptoassets in the UK. In the end, this did not materialise. The government has, however, promised legislation "as early as possible" in 2025.

Currently UK cryptoasset exchange and custodian wallet providers must register with the FCA for AML supervision purposes. The financial promotion regime restricts who can market cryptoasset activities to UK consumers and how, including additional rules for direct offers of cryptoassets. The next step is to regulate cryptoasset activities within the licensing regime.

Having planned to prioritise stablecoin regulation, HMT now says that it will set new regulated activities for stablecoins at the same time as other cryptoassets. It also no longer plans to apply UK payments regulation to stablecoin activities and will instead focus regulating the management of the backing assets.

Once HMT sets the regulatory framework, regulators will make the rules. The FCA has started on its crypto policy roadmap. A discussion paper on admission to trading and market abuse rules will be followed by draft rules on, for example, the backing and redemption of stablecoins and custody requirements.

Managing MiCAR

The UK is playing catch-up with (or, depending on your point of view, benefitting from second mover advantage over) the EU's comprehensive Markets in Cryptoassets Regulation. MiCAR applies in full as of 30 December 2024, subject to transitional measures. Those transitional measures include allowing existing cryptoasset service providers an extra 12-18 months to adhere to the regime, depending on where in the EU they are based.

Activities that are regulated as cryptoasset services under MiCAR include providing portfolio management on cryptoassets. UCITS ManCos and AIFMs will need to notify their regulator if they intend to provide cryptoasset services.

ESMA and the EBA continue to work on extensive MiCAR technical standards and guidance. Notably, the Commission's rejection of proposals on the information to be included in CASP authorisation applications caused ESMA to call on the Commission to beef up the MiCAR legislation in relation to cybersecurity standards and senior managers.

The rise of tokenisation

The UK government has highlighted the "transformative potential" of distributed ledger technology in financial services. 2025 will see more progress on turning that potential into reality.

Fund tokenisation – issuing a unit or share of a fund as a digital token recorded and traded on a blockchain – is seen by many as the next major innovation for asset management. Benefits include quicker settlement, simplified records and reduced fund administration costs.

A first step towards tokenisation could be for a fund manager to run its register of units as a private, permissioned blockchain but continue to settle transactions off-chain. A group of industry experts recently concluded that the UK regulatory framework is not a barrier to firms implementing this baseline model.

The next step would be to develop an open, public blockchain which allows for on-chain settlement. Industry groups are currently exploring two use cases which involve:

- the use of tokenised money market fund units as collateral under the UK regime for non-centrally cleared derivative contracts; and
- fully on-chain investment markets, with tokenised funds investing in tokenised securities.

Firms can test fund tokenisation use cases via the FCA's regulatory sandbox or HMT's Digital Securities Sandbox which is designed to help firms use DLT for trading and settlement of securities.

As the take-up of tokenisation increases across the industry, systemic regulatory concerns may grow around financial stability, operational resilience and the integrity of blockchains. The Financial Stability Board has encouraged national regulators to monitor tokenisation adoption, the vulnerabilities associated with it and how these can be managed within the regulatory framework.

Enforcement

2023-2024 saw a record 21 financial crime prosecutions including against an unregistered crypto businesses, an insider dealing conviction, and nine "finfluencers" charged with offences in connection with the promotion of an unauthorised forex trading scheme. We also saw supervisory action restricting promotions in response to efforts to circumvent Google's advertising policy.

Learn more

- FCA takes first step on its crypto roadmap
- UK Digital Securities Sandbox – the final framework
- Technology Working Group sets out its vision for implementing UK fund tokenisation

06 AI regulation and operational resilience

Goldilocks AI regulation

In response to the breakthrough of artificial intelligence, policymakers face the "Goldilocks problem" of balancing innovation and risk. The challenge is getting this balance right when AI's capabilities are still emerging and future market developments are uncertain.

EU's been regulating my AI?

The EU has set out its stall for regulating AI. Its flagship AI Act will be phased in over the next few years. One of the near-term actions for EU firms is to meet the high-level AI literacy requirement. This involves training staff on AI and how the firm uses it. The Commission will share guidelines on this in Q4 2025.

More consequential obligations are still to come. Which rules apply under the Act depend on the role being played (e.g. deployer, provider, distributor) and the risk of the AI system. In 2025 asset managers will continue working through the high-risk AI use cases as part of their impact analysis for the Act, as well as considering how other aspects of the Act could apply to them directly or indirectly.

Scope is a key part of this exercise. The Act defines AI system broadly but the Commission is due to release guidance on this definition which may help to narrow its impact. The Act also has extraterritorial effect, applying to uses of AI that have an impact in the EU.

This AI regulation is just right

In the UK the Labour government says it will impose some requirements on developers of the most powerful AI models but, for now, this is unlikely to translate into a regulatory regime à la the EU AI Act.

In the meantime, the FCA and Bank of England believe their existing rulebooks are sufficient to regulate AI risks. For example, firms should consider their obligations under the Consumer Duty when rolling out AI-enabled customer support. The regulators have hinted that guidance is forthcoming on what reasonable steps Senior Managers should take with respect to AI systems. Asset managers should also bring their AI systems within their operational resilience frameworks and some AI service providers may be designated as "critical".

The journey towards operational resilience

Big bad DORA

EU AIFMs, UCITS ManCos and MiFID portfolio managers are among the financial entities subject to the Digital Operational Resilience Act. The priorities in early 2025 include updating their contractual arrangements with ICT third party service providers and uploading information about these contracts into their DORA registers. Given that rules relating to subcontracting and threat-led penetration testing are still TBC, firms will likely need to continue with third party providers to ensure DORA compliance.

Asset managers should be ready to share their DORA registers with their regulators by the start of April. The European Supervisory Authorities will use the data in these registers to assess which ICT third party service providers should be designated as "critical" to the EU financial system. The first designations are expected in the second half of 2025.

Little-read UK regimes

Asset managers who are in scope of the UK's operational resilience regime are revisiting their approach. Firms are reassessing their list of important business services, impact tolerance levels and the sophistication of their mapping and testing. In-scope firms must be ready to remain within impact tolerances from the end of March, which is when the regime will start to have "teeth".

The FCA is also consulting on operational incident and third party reporting. The rules will be finalised later in 2025 and apply in 2026. They impose DORA-style obligations on UK firms, including a requirement to maintain a register of third party arrangements.

The UK's critical third party regime applies as of 1 January 2025. The designation process will take around six months. Asset managers are among the firms considering what impact the regime, including the shared responsibility model, will have on their contractual arrangements with designated CTPs.

The next chapter

After DORA implementation, EU firms will switch their attention to assess the impact of the Cyber Resilience Act and the ECB Guide to cloud outsourcing. Quantum computing is also moving up the agenda as people question whether future developments could put current encryption methods at risk.

Learn more

- EU – The AI Act reaches the finish line: 10 key points
- The Brussels effect? Impact of the EU's AI Act – in the EU and beyond
- AI in financial services survey results shine light on third party risks and AI governance
- AI in financial services: How you can future-proof AI compliance
- Explore Operational Resilience at Linklaters
- DORA webinar: What lawyers need to know about the DORA register
- DORA webinar: Getting your contracts DORA-ready
- EU explores new territory with operational resilience rules
- EU shares key guidance on DORA

07 Wholesale markets reform: MiFID II / MiFIR

Investment research

UK payment option: Since 1 August 2024, UK buyside firms have had the option of making joint payments for investment research and execution services. The option is subject to numerous, relatively prescriptive guardrails, including fair allocation of research costs across clients and a structure to allocate research payments to different providers; periodic (at least annual) assessment of the value, quality and use of research; and *ex ante* and *ex post* research cost disclosures.

EU payment option: In the EU, the Listing Act reform package will put in place a similar joint payment option for EU buyside firms. The changes need to be implemented in Member States by, and will apply from, 5 June 2026. As in the UK, the new EU payment option is subject to conditions, although these are less prescriptive than the UK guardrails. For example, the EU rules do not expressly require a structure to allocate research payments, and the cost disclosure rules are less onerous, as research costs only need to be disclosed on request and to the extent they are known.

ESMA's recent CP on required Level 2 changes includes some enhancements (such as requiring comparison with alternative research providers in the annual quality assessment). Overall, the EU rules remain less prescriptive than the UK ones, but firms will need to watch out for additional detail in future guidance or local implementation.

Firms may wish to put in place arrangements with brokers (similar to CSAs used prior to MiFID II) to help facilitate use of the new UK & EU payment options across global business models.

Other developments: In the UK, it is not clear whether and how other recommendations from the 2023 UK Investment Research Review (such as the creation of a research platform, a bespoke regime for investment research and proposals to increase retail access to investment research) will be taken forward following the change in UK Government. 2025 should bring clarity on the direction of travel. In the EU, new rules to support the creation of issuer-sponsored research have been introduced by the Listing Act reform package. In December 2024, ESMA consulted on the code of conduct setting out requirements such research needs to meet, which will apply from June 2026.

Cross-cutting topics (for all asset classes)

Transaction reporting: By 29 March 2025, the Commission (in cooperation with ESMA) will assess whether to extend transaction reporting requirements to AIFMs / UCITS managers with MiFID top up permissions. In the UK, the FCA's transaction reporting discussion paper (closing 14 February 2025) also considers such an extension (though the FCA suggests that the benefits of such a move may be outweighed by the costs for impacted firms). Separately, the EU and UK are reviewing transaction reporting (and related reference data) requirements, with changes due to be finalised in 2025. Some changes are welcome (such as the removal of the short sale indicator); others less so (such as proposals on how to identify and link transactions).

Post-trade reporting waterfalls: In the EU, post-trade reporting waterfalls will be decoupled from counterparties' SI status from 3 February 2025 when the designated publishing entity regime starts to apply (while a similar change has been in force in the UK since April 2024).

Market data: ESMA has submitted final draft RTS that seek to enhance the EU "reasonable commercial basis" requirements. These will apply 9 months after publication in the Official Journal, though their impact on the cost of market data is unclear. No similar enhancements are proposed in the UK.

Order execution policies: ESMA's proposed new RTS on order execution policies was due to be finalised in December 2024 but has been delayed until April 2025. If finalised as proposed, this would require firms to review their order execution policies on an asset class basis against granular criteria and processes (including pre-selection of execution venues).

UK MiFID landscape: The FCA is re-writing the UK MiFID Org Reg into the FCA Handbook. This includes a discussion paper on potential wider reforms, such as rationalising UK conflicts of interest and disclosure requirements, and potentially recalibrating UK client categorisation requirements.

Learn more

- UK & EU Wholesale Markets Timeline (updated to 20 January 2025 which links to detailed summaries of key developments in addition to those below)
- New UK payment option for investment research
- EU Listing Act changes to investment research rules
- ESMA's consultation on EU investment research changes
- ESMA's consultation on RTS in respect of issuer-sponsored research
- Summary of EU RTS 2 amendments, "reasonable commercial basis" RTS and RTS on clock synchronisation
- AFME & Linklaters EU & UK MiFIR / MiFID II implementation guide (published in October 2024; will be updated periodically)

07 Wholesale markets reform: MiFID II / MiFIR

Bonds, derivatives and commodities topics

Systematic internalisers: EU and UK quantitative tests within the "systematic internaliser" definition have been changed to a qualitative assessment. In the UK, these changes will apply from 1 December 2025. Before then, the FCA is undertaking a review of SI obligations which may (amongst other changes) see a removal of specific requirements for SIs in non-equity instruments. SI non-equity pre-trade transparency obligations are deleted (from March 2024 in the EU and from March 2025 in the UK).

Bond transparency: The new EU and UK deferrals for post-trade transparency in bonds have been a major concern for liquidity providers. In the UK, the FCA's final non-equity transparency rules, which will apply from 1 December 2025, have reflected market feedback by providing for more nuanced categorisation of bonds and longer (though not indefinite) deferrals for the largest trades. In the EU, final ESMA draft RTS published in December 2024 also include significant changes in response to feedback. They are likely to apply before the EU bond CTP commences operation (which is expected to be in late 2025/early 2026).

Derivatives transparency: In both the EU and UK, there have been significant (and divergent) changes to the instrument scope of derivatives transparency obligations (which have applied since March 2024 in the EU and will apply from 1 December 2025 in the UK). The FCA has finalised the new UK derivatives transparency regime (including post-trade deferrals), which will apply from 1 December 2025. In the EU, ESMA is due to provide draft proposals for relevant RTS 2 amendments in April, with final draft RTS due in October 2025. Liquidity providers will be particularly focused on the calibration of post-trade deferrals, including divergences between the EU and UK regimes.

Commodity derivatives regime: We expect an FCA policy statement on the UK commodity derivatives regime in Q1 2025. The FCA's December 2023 proposals would see a reduced scope of the regime. If implemented as proposed, position limits, position limit exemption decisions, position management controls and related reporting requirements would be set by UK venues. EU changes to position reporting apply from 29 September 2025, with related RTS amendments submitted to the Commission in December 2024.

Consolidated tape providers: A package of RTS to support the creation of EU CTPs was submitted to the Commission in December 2024. The first EU and UK bond CTP providers will be selected to start operation around the end of 2025 / early 2026. Firms wishing to use CTP data feeds will need to make arrangements to connect.

Equities topics

Pre-trade transparency

Final draft RTS related to changes to the quoting obligations for EU systematic internalisers in equity instruments have been submitted to the Commission in December 2024 and are set to apply 20 days after publication in the Official Journal. Firms will then only be able to give a better price than their quoted price above 2 x SMS (as opposed to above 1 x SMS currently). Changes to UK SI quoting obligations are not planned, although the FCA will consider feedback on this point as part of the current review of the UK SI regime. For trading venues, the change from the EU double volume cap (which restricts the availability of certain pre-trade transparency waivers) to a single volume cap is set to apply from 29 September 2025.

Post-trade transparency

Changes to equity post-trade reporting fields and flags in RTS 1 have been submitted to the Commission in December 2024 and are set to apply from 1 June 2026. In addition, venues will need to use prescribed names for post-trade reporting fields in RTS 1 from the same date. Other RTS 1 changes are phased in, with some applicable from 20 days after publication in the Official Journal.

Consolidated tape providers

A package of RTS to support the creation of EU CTPs was submitted to the Commission in December 2024. The tender process for the EU equities CTP is to commence in June 2025. Before Christmas, the FCA provided an update on the UK equities CTP, indicating that further work and industry engagement is required before deciding whether and (if so) how to include pre-trade data in the UK equity CTP. An FCA CP will follow later in 2025.

Learn more

- UK & EU Wholesale Markets Timeline (updated to 20 January 2025 which links to detailed summaries of key developments in addition to those below)
- Summary of EU RTS 2 amendments, "reasonable commercial basis" RTS and RTS on clock synchronisation
- The new UK non-equity transparency regime and the review of the UK SI regime
- EU RTS related to the creation of CTPs
- FCA proposals for a new UK commodity derivatives regime
- Summary of EU RTS 1 amendments
- FCA update on the UK equities CTP
- AFME & Linklaters EU & UK MiFIR / MiFID II implementation guide (published in October 2024; will be updated periodically)

07 Wholesale markets reform: EMIR

EMIR 3

There was considerable focus during 2024 on the legislative progress of EMIR 3 in the EU. Political agreement on the text was reached ahead of the Parliamentary elections; the final text was approved in Q4 and published in the Official Journal on 4 December. It entered into force on 24 December 2024. The EMIR 3 package also includes a Directive making consequential changes to legislation other than EMIR, which is to be transposed into national law by 25 June 2026.

The Commission has indicated that, except for those few provisions with explicit transitional arrangements, market participants are expected to comply with EMIR 3 from the date of entry into force, in the absence in many cases of mandated Level 2 technical standards setting out detailed requirements. This remains a source of considerable concern in the industry.

Key changes

Introduction of an "active account requirement". To promote clearing by EU CCPs, EMIR 3 introduced a requirement for certain in scope EU entities to maintain an active clearing account with at least one EU CCP. The account, meeting certain operational criteria, must be opened within six months of entry into force, i.e. 25 June 2025, and notification made to ESMA and the relevant NCA. In scope EU entities, whose clearing activity in systemically important products is €6bn or above will also need to demonstrate that a "representative" amount of their cleared trades in those products are cleared through an EU CCP. The requirement also includes significant new reporting obligations, including reporting volumes of clearing activity on EU CCPs and Tier 2 third country CCPs. It is expected that the temporary recognition of UK Tier 2 CCPs, due to expire on 30 June 2025, will be extended by three years to 30 June 2028.

While the Level 2 technical standards will not necessarily be in force by the end of the six month phase-in period, ESMA has published a consultation paper on certain aspects of these requirements. It is understood that market participants are expected to have regard to ESMA's proposals in their preparations for compliance with certain of these requirements.

Changes to clearing thresholds and calculation methodology. The calculation methodology for the purposes of the clearing thresholds will be amended both for NFCs and FCs. By 25 December 2025 ESMA will draft new technical standards specifying the clearing threshold for different classes of derivatives (taking account of the new calculation methodology) and the criteria for the scope of the hedging exemption for NFCs. Changes to the calculation methodology for NFCs will not apply until the new clearing thresholds are in force.

EMIR 3 introduced new requirements in relation to clearing services, further initial margin model validation rules, and changes to the intragroup exemption from clearing and margining removing the requirement for an equivalence decision. The EBA published a no-action letter providing some comfort on some aspects of the margin model requirements pending the relevant technical standards and guidelines. Whilst there has been no formal comfort, it appears that counterparties relying on the existing temporary intragroup exemption should use the time ahead of its expiry in June 2025 to complete any formalities necessary to transition to the full exemption.

EMIR 3 also provided for new exemptions from clearing for transactions with third country pension schemes exempted from clearing in that country, and for post-trade risk-reduction exercises. A permanent exemption from margining for single stock equity options and equity index options, subject to regular review by ESMA, is also welcome, as is the new phase-in period for NFCs that become subject to the margin obligations for the first time.

UK EMIR

In 2025, we expect to see the first steps in the "lift and shift" of UK EMIR, as part of Tranche 3 of the Government's Smarter Regulatory Framework, with the Bank of England planning to consult on those aspects of UK EMIR relevant to CCPs.

Early in January, HM Treasury confirmed its intention to maintain the temporary exemption from clearing for pension schemes for the longer term. The government is expected to bring forward secondary legislation to ensure that the temporary exemption does not expire on 18 June 2025, and remove any further time limit on the exemption.

The future of the temporary exemption from uncleared margin requirements for certain equity options and equity index options, due to expire in January 2026, remains under consideration by UK regulators.

The approach to intragroup exemptions from clearing and margining under UK EMIR is expected to be considered as part of the Smarter Regulatory Framework. The existing temporary exemptions apply until end-2026.

HM Treasury and UK regulators may also have regard to relevant aspects of EMIR 3 in addressing some of these issues and shaping UK EMIR going forward. For example, a consultation on an exemption from clearing for post-trade risk reduction exercises is expected.

Learn more

- EMIR 3 published and in force from 24 December 2024
- Redline version of EMIR

07 Wholesale markets reform: EU REMIT

Reforms to address recent changes to the energy market

In light of past experience, market developments and volatility in energy markets following the Russian invasion of Ukraine, EU authorities decided on further action to strengthen the regulation of wholesale energy markets. A number of the reforms are significant and will impact all participants in the EU wholesale energy markets.

REMIT II , which amends the original text of the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT), was published in the Official Journal of the EU on 17 April 2024 and entered into force on 7 May 2024.

However, the EU authorities have decided to adopt a phased implementation. Certain provisions entered into force last year (such as the requirement on third country market participants to designate an EU representative), whilst others (that are dependent on new delegated and implementing acts being adopted by the Commission) will come into force in 2025. See our implementation timeline for details.

In the dark: revised guidance provided but awaiting RTS

The Agency for the Cooperation of Energy Regulators (ACER) revised its existing guidance on the application of REMIT and published an updated Transaction Reporting User Manual in December 2024.

ACER has a new mandate (under Article 16a REMIT II) to publish further guidelines and recommendations to market participants and/or national regulatory authorities (NRAs) on many of the REMIT requirements.

To advance this, ACER launched a consultation in June (which closed in September 2024) on revising the Annex of the REMIT Implementing Regulation (including implementing new data requirements).

On 29 November 2024, ACER published the key findings from the consultation setting out the next steps:

- the outcomes of ACER consultation and roundtable meetings will contribute to the ongoing discussion with the European Commission on the revision of the REMIT Implementing Regulation;
- the Commission will then amend the Implementing Regulation to define the new data reporting requirements by 8 May 2025.

Therefore, until the new delegated and implementing acts are adopted, market participants are left somewhat in the dark in terms of practical compliance expectations.

Alignment of market abuse regimes under MAR and REMIT

One of the key policy objectives of REMIT II is to harmonise the market abuse frameworks under REMIT and MAR. This has led to the same conduct being capable of being subject to investigation and sanction by different regulators under separate regimes.

The following revisions have been introduced:

- **Insider trading:** the definition will now include the use of inside information in cancelling or amending an order or any other trading action concerning a wholesale energy product to which the inside information relates.
- **Inside information:** the definition will now include information conveyed to a service provider trading on a market participant's behalf and relating to pending orders of a market participant. Also, where inside information concerns a process which occurs in stages, each intermediate stage of the process as well as the overall process could amount to inside information.
- **Market manipulation:** the definition will now include entering into any transaction, or issuing, modifying or withdrawing any order to trade, as well as any other behaviour relating to wholesale energy products which (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or more wholesale energy products at an artificial level; or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.
- **Interaction between REMIT and MAR:** the provision in REMIT that excluded wholesale energy contracts that are financial instruments from articles 3 and 5 of REMIT (insider trading and market manipulation) is repealed, leading to the potential for the same conduct to be investigated and sanctioned, by different competent authorities, under either or both sets of legislation.

Learn more

- REMIT II: A sea change in EU wholesale energy markets regulation (including implementation timeline)
- Webinar: REMIT II to reform regulation of energy markets

07 Wholesale markets reform: pre-hedging

Increased focus on pre-hedging practices

In recent years, there have been discussions about the benefits and potential concerns around pre-hedging practices. Regulators (including ESMA in the EU, and ASIC in Australia) have issued publications or guidance on the topic. Case law has considered the line between pre-hedging and front-running and the adequacy of firms' processes for managing conflicts of interest. Several industry codes and standards address pre-hedging practices (such as the FX Global Code, the Global Precious Metals Code and the Financial Markets Standards Board (FMSB) Standard for the execution of Large Trades in FICC markets, as well as the FMSB's recently published Spotlight Review on pre-hedging).

In a related development on the enforcement side, we are still waiting for the Upper Tribunal's decision in the case of three Mizuho traders accused of spoofing, in particular its analysis of the distinction between "intending" to trade (which is acceptable) and merely "being prepared" to trade.

FMSB spotlight

The FMSB paper highlights the benefits of pre-hedging while acknowledging the risks. As well as offering a definition of pre-hedging, it uses several case studies to explore different considerations for market participants operating in FICC markets.

For each case study the FMSB discusses the rationale and impact of pre-hedging. The FMSB draws out the key factual nuances of each scenario (such as the liquidity of the instrument, the size of the transaction, and whether or not an RFQ is competitive) before suggesting the key considerations for liquidity providers and clients. As the FMSB notes, the distinction between pre-hedging and front-running may turn on the intention or purpose of the liquidity provider at the point of trade.

The case studies demonstrate that there is no one-size-fits-all approach in this area.

IOSCO consultation report

IOSCO's consultation report sets out a definition of pre-hedging, proposes recommendations on when pre-hedging practices may be acceptable, and how related conduct risks could be managed. Importantly, the recommendations are intended to guide pre-hedging practices across all asset classes and trading protocols.

The proposed recommendations are high-level. However, they are supplemented with further "analysis" which touches on some of the nuances at play. Many of IOSCO's consultation questions seek feedback on these nuances (such as whether there should be upper limits for pre-hedging amounts, or whether certain client disclosures should be prescribed).

In responding to the consultation, firms should draw out any concerns or potential adverse impacts prescriptive requirements could have on liquidity provision or pricing, either generally or in respect of particular types of transaction, asset classes or circumstances.

The consultation closes on 21 February 2025, with a final report expected later in 2025.

Learn more

- ESMA's feedback on the call for evidence on pre-hedging
- FMSB's spotlight on pre-hedging
- IOSCO's consultation report on pre-hedging

07 Wholesale markets reform: reforms to primary and secondary trading

PISCES

HM Treasury has confirmed that the Private Intermittent Securities and Capital Exchange System (PISCES) will be trialled in a 5-year sandbox to be set up by May 2025.

A secondary market for unlisted share trading

PISCES will be a secondary market for trading existing shares in unlisted (UK and overseas) companies. Trading will take place on an intermittent basis during "trading windows". Professional investors and certain retail investors (such as employees of the participant company and certain employees in its corporate group) will be able to buy and sell shares on PISCES.

PISCES operators will need to have permissions for arranging deals in investments, or for operating an OTF / MTF, or must be a RIE.

FCA rules for PISCES Sandbox

In a December 2024 CP, the FCA has proposed rules for PISCES operators. Under the proposals, MAR would not apply to PISCES. Instead, there would be certain mandatory disclosures of "core information" (including a business and management overview of the PISCES company, financial information and key risk factors, along with financial forecasts). In addition, PISCES operators would prescribe additional information that should be disclosed. Disclosures will need to be made to participants in particular trading events (rather than to the general public). PISCES operators will need to enforce rule breaches. The rules also allow PISCES companies to restrict participation in trading events (e.g. to stop competitors from participating) and to set other parameters (such as floor and ceiling prices). The CP closes on 17 February 2025 and final FCA rules are due by May 2025, when the PISCES Sandbox is due to commence.

Public Offer Platforms

In 2023, HM Treasury introduced a new "public offer regime" under which companies seeking to raise capital in the public markets without seeking admission to trading on a regulated market or primary MTF would need to use a "public offer platform" (POP) if the total offer consideration in a 12-month period is more than £5m (unless an exemption applies).

POPs will be a new type of trading venue, operators of which will require specific FCA permission to operate a POP. The FCA has consulted on the requirements that would apply to POPs, including due diligence and disclosure requirements and related liability and redress, with final rules due at the end of H1 2025.

These reforms form part of a wider overhaul of the UK prospectus regime through the Public Offers and Admission to Trading Regulations.

Learn more

- New markets for private company shares: the PISCES Sandbox
- Proposed FCA rules for PISCES operators
- Replacing the UK Prospectus Regulation: FCA consults on new prospectus rules

FIDA

The EU wants to create a harmonised framework for access to financial data. The draft regulation on financial data access, known as FIDA, requires EU financial institutions to join data sharing schemes. These schemes will then develop common standards for sharing access to different types of customer data between regulated firms.

Trilogue talks to begin

The Commission drafted FIDA in 2023. By the end of 2024, the Parliament and Council had agreed their respective positions on the proposal. This opens the door to trilogue negotiations to begin in 2025.

Under the regulation, financial institutions, as holders of customer data, will need to provide their customers with an online permissions dashboard. This dashboard should allow the customer to grant and withdraw the rights of access they give to third parties.

In-scope financial institutions include EU AIFMs, UCITS ManCos and MiFID investment firms. In-scope customer data includes investments in financial instruments, cryptoassets, and certain non-life insurance products and pension rights. Other data which may be in scope include non-sensitive data used to meet know-your-customer requirements and data collected for the purposes of carrying out suitability and appropriateness assessments under MiFID.

The Commission suggested that firms would need to have joined data sharing schemes within 18 months of the regulation coming into force. Both the Parliament and Council have suggested giving the industry more time to prepare. The Council has also suggested phasing in FIDA at different times for different types of customer data.

Learn more

- Design of EU open finance rules set to move to next stage
- FIDA: EU sets out ambitious plans for open finance

09 Conduct and culture: SMCR, diversity and inclusion

A steady stream of decisions

The FCA continued to enforce against a small number of individuals for breaches of the individual and senior manager conduct rules. It fined Kristo Käärmann £350000 for failing to notify it of his failure to declare a capital gains tax liability to HMRC, in breach of Senior Manager Conduct Rule 4. As a senior manager, the FCA considered that Käärmann should have self-reported any matter that may be significant to his fitness and propriety, including those that may have an adverse impact on his reputation and/or that of his firm.

A degree more clarity on what 'reasonable steps' means for senior managers came from the PRA's decisions to fine Iain Hunter £119,000 in relation to breaches of his firm Wyelands Bank's Large Exposures regime and record-keeping issues. The PRA accepted a voluntary undertaking from Hunter, equivalent to a prohibition, given his ex-UK residency and his settlement with the PRA. Key messages for other senior managers include:

- Senior managers should ensure that their firm's controls are proportionate to the regulatory risks presented by their firm's business model.
- Allocate clear responsibilities for regulatory compliance, with routine roles for all three lines of defence.
- Exercise caution when taking on multiple SMF roles. Hunter was both SMF1 and SMF4 which may have affected the Risk function's capacity to independently monitor and manage the firm's regulatory risk.
- Ensure that any external verification of regulatory returns is based on accurate information that is validated (ideally by the firm).
- Verify and qualify statements to the regulators - especially when there is room for interpretation or limited information.
- Document reasonable steps taken, including where you proactively challenge functions and address concerns raised internally/by the regulator.

Continued focus on non-financial misconduct

2024 began with the Treasury Committee – as part of its "Sexism in the City" inquiry – expressing concern that the industry was falling short on non-financial misconduct by not acting against known offenders. FCA Executive Director for Markets and International Sarah Pritchard subsequently confirmed that the FCA had started a supervisory work program into how firms deal with NFM cases. The results of that survey, published in October consisted largely of statistics and contained no formal recommendations. The FCA maintained that the data was being published to allow executive management and boards of relevant firms to benchmark their firm's performance against their peers and is looking to trade associations to coordinate industry action here. We increasingly see the FCA reminding stakeholders that, as per the Tribunal decision in Frensham, it can only act in this context in furtherance of one of its statutory objectives. This was confirmed towards the end of the year when the FCA issued a warning notice statement setting out its intention to act against Crispin Odey for integrity breaches following the obstruction of an internal fact-finding investigations into allegations of his 'inappropriate behaviour'.

…whilst D&I proposals remain in stasis

The Treasury Committee's Sexism in the City inquiry recommended in March that the regulators drop their proposals for data reporting and target setting. The FCA later confirmed in May that it will be hitting pause on these proposals but pressing ahead with other aspects of the same consultation aimed at clarifying the treatment of non-financial misconduct under the SMCR. The FCA intends to publish a Policy Statement on 'Tackling Non-Financial Misconduct in the Financial Sector' around year-end 2024, followed by FCA and PRA Policy Statements on the remaining D&I proposals at some point in 2025.

Reform ahead?

We are still waiting for the outcome of HMT's Call for Evidence on the SMCR (published in conjunction with a joint discussion paper by the FCA and PRA in March 2023). Despite comments by incoming Chancellor Rachel Reeves that the government is considering removing the Certification Regime, any proposed changes are expected to be minimal.

Learn more

- Feeling the pressure: the FCA is asking firms about non-financial misconduct and NDAs
- New SMCR fine: right-sizing controls to your business risk
- FCA hits pause on D&I

09 Conduct and culture: corporate governance

2024 UK Corporate Governance Code

The new version of the UK Corporate Governance Code requires directors to give an annual declaration on the effectiveness of their company's material controls. While aiming to increase transparency, the new declaration also increases risks for directors of financial services firms.

Declaring effectiveness of material controls

The 2024 Code expands Provision 29 to say that the annual report should contain the following statements:

- A description of how the board has monitored and reviewed the effectiveness of the company's risk management and internal control framework.
- A declaration of the effectiveness of the material controls at the balance sheet date.
- A description of any material controls which have not operated effectively as at the balance sheet date, the action taken, or proposed, to improve them and any action taken to address previously reported issues.

The first bullet point above is broadly the same as the existing Provision 29, with additional description required of the board's monitoring activities. The second and third bullet points above are new.

Timing

Unlike other updates in the 2024 Code which apply in respect of financial years starting on or after 1 January 2025, firms do not have to meet the new Provision 29 until accounting periods beginning on or after 1 January 2026. Given the timetable, many companies are planning to do a "dummy run" in 2025-26 to prepare processes for making their first declarations under Provision 29 the following year.

Application

The Code must be applied by UK listed companies. It is also adopted as a benchmark for good corporate governance practices by many non-listed companies and other organisations.

Impact on banks and other financial services firms

The good news…

Asset managers are already subject to extensive FCA requirements on effective risk management which are more prescriptive than 2024 Code. The new requirements aim to increase the accountability of the board, both for its processes for monitoring and reviewing controls and when issues needing remediation are reported to or found by the board. Firms will already have well-established governance processes for this monitoring exercise.

…and the bad

Asset managers' extensive risk management frameworks mean that they have more material controls and, at any given point in time, some of these may be subject to ongoing remediation. In contrast to other sectors, financial services firms are more likely to have disclosable items at the balance sheet date.

Interaction with the SMCR

Directors should take care in making these disclosures. Under the FCA's Senior Managers and Certification Regime and Conduct Rules, they have duties to take reasonable steps and act with due skill, care and diligence. They will not want to open themselves to personal liability for making a misleading statement, for example one which is overly optimistic about the effectiveness of the firm's controls. Directors are likely to need additional comfort that they can make a statement about material controls operating effectively.

Using 2025 to prepare

In its guidance to accompany the Code, the Financial Reporting Council does not set out how companies should design, implement and operate their risk management and internal control frameworks or assurance. The FRC explains that risk and control frameworks should be tailored to the company.

Boards should use 2025 to agree their approach to ensuring compliance with the Code. A good place to start is the existing risk management framework the firm's escalation processes. Careful consideration of the scope of the declaration should cover key concepts such as "material" and "effectiveness" as well as potential exemptions, e.g. for confidential information.

Learn more

- At a glance: UK Governance and Risk
- UK corporate reporting 2024/25 - Recent developments and guidance for listed companies

10 Prudential developments

EU Investment Firms Regulation / Investment Firms Directive review

In June 2024, the EBA and ESMA issued a discussion paper seeking feedback on key aspects of the EU prudential regime for investment firms in the Investment Firms Regulation and Directive (IFR / IFD).

The discussion paper covers a broad range of topics, including:

- How investment firms are categorised under the IFR / IFD regime.
- The appropriateness of the fixed overheads requirement (FOR).
- Whether existing K-Factor calculations should be amended or new K-Factors added.
- The risk sensitivity of the IFR liquidity requirements.
- The scope of prudential consolidation.
- Whether recent amendments to the prudential regime for banks should be reflected in the IFR / IFD regime.
- Interactions between the IFR/ IFD regime and other relevant regimes (including cryptoassets related regulatory requirements).
- Whether remuneration and governance requirements under IFD should be adjusted when compared against those in other prudential regimes.

Overall, the EU regulators conclude that the current regime is working well, so it is not clear which (if any) of the potential issues discussed may ultimately be taken further. Feedback to the DP will inform the EBA / ESMA advice to the European Commission as part of the IFR / IFD review process.

What next?

The EBA / ESMA advice to the Commission was due in December 2024 but has been delayed, likely until Q1/Q2 2025 (given the late publication of the DP). It will likely be some time before the Commission produces specific proposals for Level 1 changes to IFR / IFD (if any).

UK Investment Firms Prudential Regime

The FCA is reviewing whether the IFPR regime is delivering its desired outcomes. A consultation on this is planned in the near term. This will include clarifications of the liquidity risk provisions in MIFIDPRU, reflecting that different investment firms have very different liquidity profiles, depending on their business models. It is not clear to what extent the FCA will extend its review into other areas in the longer term, although it seems likely that the FCA will keep an eye on EU developments in this space.

Meanwhile, the FCA continues to focus on firms' ICARA processes with a particular emphasis on:

- Wind-down planning, including the need to consider key costs, events and milestones on a legal entity basis (alongside any group wind-down plan).
- Group ICARA processes, with the FCA indicating that firms require a VREQ if they wish to undertake a consolidated (rather than group) ICARA.
- Overall coherence of ICARA processes, including that stress testing should reflect firms' risk appetite and risk frameworks, stressed scenarios should be reflected in firms' recovery triggers and plans, which in turn should feed into wind-down triggers and plans.

The FCA is also likely to continue its focus on IFPR data quality as the regulator builds up data over several IFPR reporting cycles. The FCA will also expect IFPR data to be coherent with other data (such as annual reports).

The FCA will review its SREP processes with a view to narrowing the focus of review to specific topics (i.e. thematic SREPs). Over the coming year, the FCA SREP programme will expand to include medium sized firms (in addition to larger firms).

Learn more

- EBA and ESMA seek market feedback on prudential regime for investment firms

11 AML and sanctions

UK policy and rules

Under the new UK Government, our base case is some consolidation of AML supervisory bodies; MLRs requirements not materially weakened; renewed focus on digital identity verification; and the comprehensive regulation of cryptoassets by mid-2026.

Meanwhile firms will adjust to the AML changes within ECCTA including new POCA exemptions and strengthened corporate transparency obligations.

The FCA has amended its Financial Crime Guide to give lessons learned from recent sanctions; guidance on innovative transaction monitoring; and recognition that AML controls need also to be Consumer Duty compliant.

On domestic PEPs, the FCA will give guidance focusing on clear customer communications and customer support staff training.

UK supervision and enforcement

Regulators expect firms to manage financial crime risks holistically, with the FCA recently emphasising UX design of internal controls, integrating AML data firmwide, and inter-firm collaboration.

Growing firms should level-up controls to match their growth.

Unsecured lenders should equip staff to recognise and support customers suffering financial domestic abuse.

Prudent firms will manage supervisory interactions carefully to disrupt the regulatory "escalation" path commonly seen in recent enforcement actions, including VREQs pending remediation of weaknesses in AML systems and controls.

Actions in 2024 included an unregistered crypto ATMs conviction; the first action under the EMRs; a challenger bank fine for AML/sanctions controls issues; a challenger bank fine for automated transaction monitoring issues; and continuing cum-ex actions.

EU regulatory changes

The new pan-EU AML supervisory body (AMLA) at the end of 2025 will assume most of the EBA's AML/CTF competencies and start issuing draft RTS/guidance.

EU AML/CTF regulatory changes are occurring on a rolling basis until AMLA is fully operational in 2028.

Meanwhile, the new cryptoasset travel rule will apply from 30 December 2024; and from July 2025 much of the AMLA Regulation will apply, and Member States will have implemented the MLD6 beneficial ownership registers measures.

Virtual IBANs risks may also see some attention in 2025.

The rules changes are largely incremental; what's new is the shift from Directive to directly-applicable Regulation, an EU-wide regulator helping national regulators to improve their AML supervision, and strengthened data sharing arrangements. This should foster regulatory convergence, easing transnational compliance efforts.

Ongoing sanctions risks

Into 2025, expect further sanction compliance resourcing demand alongside ongoing regulatory scrutiny (and at times enforcement action), including an emphasis on sanctions systems testing.

A growing focus on trade sanctions may exacerbate related financial sanctions enforcement risk e.g. in trade financing, with the UK Government in 2024 introducing new relevant powers and fully establishing a new Office for Trade Sanctions Implementation (OTSI), complementing OFSI's pre-existing financial sanctions purview.

Learn more

- The FCA on financial crime areas of focus
- Virtual IBANs in the spotlight
- Our latest Russia/Ukraine Sanctions Update
- The New EU AML package

12 Financial crime and market abuse

Top priority

Financial crime efforts are a UK Government and FCA strategic priority.

Applying a risk-based regulatory approach, the FCA will ramp up its data collection and analysis resource to improve its ability to detect manipulation and other criminal activity in the financial markets.

Into 2025 firms will need to address the FCA's four priority areas for reducing and preventing financial crime: innovation; collaboration (including data sharing); consumer awareness; and MI on financial crime controls.

A possible regulatory black swan for 2025: cross-regulator co-operation on anti-tax avoidance efforts – a priority for the new UK Government.

Consumer protection and fraud

The FCA will spot and address more financial promotions issues, including investment tips on social media (ESMA has warned against these too).

It asks firms to prioritise risk assessment, prevention, customer education and victim support here.

The PSR will facilitate data sharing across payment networks, and bed in its new APP scam reimbursement scheme (with firms making monthly reports from January 2025). Firms will also have new powers to delay APPs on suspicion of fraud (watch for FCA guidance on this imminently).

Meanwhile the ECCTA failure to prevent fraud offence (with its "reasonable procedures" defence) commences in September 2025. Following published guidance, prudent firms will read-across their AML risk-based approach into this new context in a proportionate way.

Market conduct

In 2025, new disclosure issues like greenwashing and AI-washing will draw increasingly assertive responses from regulators. Meanwhile, the FCA is asking firms to take extra care trading with "obfuscated overseas aggregated accounts", that is, accounts where the identities of the ultimate beneficial owners (who determine their own investments) are unknown.

The FCA will also want to see firms implement proportionate surveillance, guard against organised crime using spread-betting and CFDs and mitigate flying and printing risks. The latter occur where a firm either communicates that it has bids or offers where this is not supported, or that trades have been executed at a specific prices and/or size, when this has not in fact taken place.

Also topical: the risk of capital markets abuse (as a money laundering predicate offence and as placement).

Cryptoassets

Addressing financial crime (a top priority) and market conduct issues, the EU's MiCAR is now in force with most supporting guidelines to be issued by mid-2025. In the UK cryptoassets will be fully FCA regulated by mid-2026; 2025 will see various consultations on the rules including re market abuse, and ongoing work on digital wallets fraud risks. The journey has begun with an FCA discussion paper on admission to trading and market abuse, contemplating a regime mirroring that for traditional markets.

Enforcement

The FCA is becoming more prosecutorial (subject to its resource constraints), with 2023-2024 seeing a record 21 financial crime prosecutions including against an unregistered crypto businesses, an insider dealing conviction, and nine "finfluencers" charged with a range of offences in connection with the promotion of an unauthorised forex trading scheme - with 20 more individuals still to be interviewed under caution.

On market conduct controls, the FCA/PRA used the Citi "fat finger" fines and Macquarie fines for messaging on controls coverage and UI design amongst other matters. It also fined a senior individual for PDMR trading and trade disclosure issues.

On market disclosure, 2024's FCA Barclays fine was settled effectively without admission; whilst acknowledging that, key messages include the need to fully brief lawyers advising on market disclosure issues, and to address heightened risk that the conduct of individuals involved in a firm's market disclosures may be attributed to the firm.

Meanwhile the FCA's first fine against an auditor reinforces its expectation that auditors of regulated firms report fraud suspicions to the FCA.

Learn more

- The FCA co-head of enforcement on collaborating to combat financial crime
- Anti-fraud AI
- UI design of internal controls

13 UK supervisory interventions

Rising volume

The FCA and PRA continue to prefer interventions to enforcement, as a more efficient way to further their objectives. The FCA's co-heads of enforcement have confirmed their intention to resolve more cases through supervisory dialogue and - where necessary – formal supervisory interventions, reducing the need to refer cases to its enforcement division. We continue to see significantly more interventions, with the FCA in particular imposing wide-ranging requirements where it considers that firms have failed to meet its regulatory standards. Supporting this, its supervisory teams are growing rapidly.

External forces

The FCA is facing strong political pressures which will shape its supervisory approach. The Chancellor used a speech in November to announce wide-ranging financial regulatory reform initiatives and exhorted the UK financial regulators to support the Government's competitiveness and growth ambitions. In contrast, the All-Party Parliamentary Group, in a report excoriating the FCA, seeks conflicting radical reforms including that the FCA focus solely on consumer protection.

Meanwhile, "outcomes-based" regulation is firmly in fashion, ushered in by the Consumer Duty and likely to develop further following the FCA's Call for Input to streamline retail conduct rules. When compared to a "rules-based" approach, this creates more latitude for supervisors and regulatory ambiguity for firms. It may result in firms gold-plating regulatory implementation to mitigate supervisory interventions risks.

Supportive courts

The Appeal Court has confirmed substantial latitude for the regulators exercising their interventions powers and redoubled importance of the Upper Tribunal as a venue for any challenge:

- In BlueCrest the Court of Appeal confirmed that the FCA can require redress under FSMA s.55L, without meeting requirements in other FSMA redress provisions (e.g. proof of loss, actionable breach or causation). This cements the breadth of the OIREQ power and the low statutory threshold for its exercise. The relevant check was held to be the Upper Tribunal's "JR-plus" jurisdiction.
- In Seiler the Court of Appeal confirmed courts' deference to the particular expertise of the Upper Tribunal on references.
- In MCML the Court of Appeal clarified the regulators' approach to conducting dawn raids pursuant to requests for mutual legal assistance from overseas regulators.

Sweeping requirements

2024's published REQs illustrated the breadth of this FCA power. They included business restrictions pending financial crime controls remediation; shutting down entire UK businesses on concerns about sales pressure tactics, restraining excessive charges and non-compliant promotions targeting the vulnerable, preventing a payments firm from charging a monthly fee that had the effect of reducing client funds; and promotions restrictions in response to efforts to circumvent Google's advertising policy.

Redress

The Court of Appeal's decision on commission disclosure in the motor finance sector presents significant contagion risk. The defendants are appealing to the Supreme Court, with the FCA pressing for expedition and extending the motor finance complaint deadline to give the legal process time to complete. This decision comes against a backdrop of the Consumer Duty emphasising firms' obligations to pay redress; the FCA's focus on redress even over financial penalties; and the FCA and FOS calling for input on modernising the consumer redress system. The redress proposals include extending time for firms to process complaints and reconsidering the "fair and reasonable" test the FOS uses to determine complaints.

We saw considerable redress offered in parallel with enforcement action in 2024. This included substantial redress in lending mis-selling cases and from a portfolio manager, and various offers of redress (and contributions to the FSCS) from pensions transfer advisers.

Suggested strategies for 2025

- Where an issue arises, offer redress proactively and generously. Engage early and often with supervisors, making full disclosures.
- Ensure that you can demonstrate that you are remediating issues proactively, especially in areas of FCA thematic focus.

Learn more

- The Court of Appeal's commission disclosure decision and its implications
- Re-dressing redress: the FCA and FOS joint Call for Input
- The Court of Appeal's BlueCrest decision and its implications
- The latest FCA interventions data

14 UK enforcement

A new approach

The FCA has reset its enforcement approach. Now focusing on achieving "impactful deterrence", it is triaging potential cases before it opens an investigation, and may look to "make an example" of a particular firm rather than sanction numerous firms that have committed the same breaches. It also aspires to prosecute more often (despite existing resourcing challenges here). As noted earlier it is prioritising redress over fines – which is cold comfort for firms, as the former can dwarf the latter. In response to criticism from the Upper Tribunal, it is also adjusting its approach to document disclosure to the subjects of enforcement cases.

Rationalisation and speed. Closing numerous older cases, the FCA now aims to conclude cases substantially faster (recently as quickly as 14 months). The PRA, too, has rapidly shrunk its caseload but is pursuing the most important cases to high-value conclusions. Both the BoE and PRA are preparing to exercise new enforcement powers over novel firm types e.g. critical third parties.

What's old is new. We see early signs of the FCA reviving an old strategy – "outsourcing" its investigation work by being more willing to rely on firms' internal fact-finding and Skilled Person reports (see e.g. in TSB; and note that Skilled Person reports continue to increase year-on-year). We are likely to see more cases (as in 2024) of enforcement following concerns raised during thematic work, remedial steps, or an internal or Skilled Person report. Together with VREQs addressing relevant risks pending remediation. It remains important to manage all these steps carefully to "de-escalate" issues as far as possible.

Transparency. The FCA's second consultation on controversial proposals to publicise information about ongoing investigations will close in February 2025. Its Board will decide whether to proceed with them at the end of March. To address industry concerns, the FCA has played down the number of disclosures it would make and made important changes, including to take the impact on firms of announcements into account and increase from 1 to 10 days the period to make representations on proposed publication. It still proposes relying upon a wide-ranging public interest test, arrogating significant discretion to the FCA. Many firms remain uncomfortable with the proposals even as amended. They still go well beyond a proportionate adjustment to the current 'exceptional circumstances' policy. Arguably, a small adjustment to permit disclosures to confirm that the FCA is investigating where a matter is already public, or when questioned by Parliament, would largely address the FCA's policy concerns.

Other key themes of the FCA's enforcement work

- Liquidity management dominated enforcement cases involving asset managers. Delays in identifying and resolving fund liquidity issues resulted in a censure and agreement to fund redress and cancel UK regulatory permissions. A fine was avoided in a further case after a redress scheme of arrangement was approved following failings by an ACD of its liquidity management of a fund.
- On trading controls, internal UI design, as well as end-to-end assessment of data "journeys" and the need for robust 2/3LOD oversight and remediation tracking.
- Financial crime and sanctions, with enforcement for controls deficiencies and automated transaction monitoring issues and a growing emphasis on inter-firm and private-public collaboration and information sharing.
- Individual accountability, including notifying the FCA of relevant potential personal misconduct, bans for serious non-financial misconduct convictions, the nature of "reasonable steps" for a senior manager, and integrity breaches following the obstruction of internal fact-finding investigations (Odey, subject to RDC/Upper Tribunal process). The FCA decided to fine and ban three individuals involved in running a discretionary fund manager held to have operated a business model that created systematic conflicts of interests and inappropriately prioritised firm income over the interests of customers. Two of these decisions have been referred to the Upper Tribunal.

Priorities for the coming year

- Identify FCA thematic focus areas (from its published statements) and prioritise them for enforcement risk mitigation. One example: the FCA's view that some wealth management firms have insufficiently considered customer vulnerability in the Consumer Duty context.
- Detect the potential for regulatory "escalation" early and proactively defuse it. Where possible, try to maintain Supervisors' trust and confidence by pro-actively managing fact-finding and remediation efforts from the outset.

Learn more

- FCA enforcement co-head Therese Chambers on the FCA's new enforcement approach
- FCA enforcement co-head Steve Smart on combatting financial crime
- Big moves in the FCA's annual interventions and enforcement data
- The FCA's second consultation on its investigations transparency proposals

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