

## Cabinet News and Views

Informed analysis for the financial services industry



### A Closer Look at the UK Chancellor's 'Collection of Announcements'



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On the 9th of December, the UK's Chancellor, Jeremy Hunt, set out a "collection of announcements" aimed at reforming the UK's financial services ecosystem to maximise its position outside the EU while aligning still with those European regulatory requirements and processes that make sense given the UK's status as a third country that needs to do business in the EU. At the heart of the exercise is the repeal of EU law that was retained on the statute books post-Brexit and its replacement and modification with purely domestic law and regulation. While the Government and Parliament will set the framework and parameters, for financial services the idea is to leverage the so-called "FSMA Model" to empower the Financial Conduct Authority ("FCA") and Prudential Regulatory Authority ("PRA") to set direct regulatory requirements in their rulebooks (rather than embedding them in less flexible primary and secondary legislation), many of which will be a transposition of existing EU law and regulation but some of which will reflect targeted policy change. The architecture for these changes is already in motion under the Financial Services and Markets Bill ("FSM Bill"), which significantly introduces a secondary objective for each of the FCA and PRA to facilitate the international competitiveness of the UK economy and its growth in the medium to long term, subject to aligning with international standards. Going forward, the hope is that the changes should introduce significantly more flexibility for proportionate and timely changes to UK regulatory rules.

This is a significant project both in terms of resources and time, and the proposed approach is a phased one, dealing with work in three tranches. Tranche one

involves work already underway to review, repeal, reform and replace based on the outcomes of the Wholesale Markets Review (MiFID), the Listing Review (Prospectus Regulation), the Securitisation Review (Securitisation Regulation) and the Solvency II Directive. Phase two will be run on a twin track, and includes work on the Taxonomy Regulation, the Long-Term Investment Funds Regulation, the PRIIPS Regulation, the Short Selling Regulation, the Capital Requirements Regulation and Directive and the Short Selling Regulation, among others. The Government expects “significant progress” on Tranches 1 and 2 by the end of 2023. Other legislation is still being assessed in terms of whether (where considered necessary and if at all) to bring it forwards into phase 2 or prioritise for phase 3.

Alongside the announcements, the Treasury has published three “illustrative” Statutory Instruments to show how legislation under the FSMA Model could look. While these are so speculative at this stage that it would not be prudent to characterise them as drafts, the following are noteworthy.

### **Securitisation Regulation**

While this illustrative version is largely a restatement of existing regulations, because of the FSMA model’s focus on requiring regulators to directly regulate firm-facing issues there are a number of restatements that bring in elements that are not in the current version of the Securitisation Regulation, including a definition of STS securitisation which, while not new, is helpful clarity (which, of course, might change). It is interesting to note in passing that current proposals preserve the temporary recognition of EU STS securitisations issued before 31 December 2024, while the Financial Services and Markets Bill (see below) introduces an equivalence regime for recognising non-UK securitisations as STS securitisations in the UK. In addition, the policy note accompanying the illustrative Statutory Instrument provides that HM Treasury is committed to working with the FCA and the PRA to bring forward the proposed reforms to the securitisation framework identified in HM Treasury’s December 2021 review, including in respect of risk retention in securitisations of non-performing exposures, the definitions of public and private securitisation and due diligence requirements for institutional investors when investing in non-UK securitisations.

### **Prospectus Regulation**

The proposed new Statutory Instrument will replace the existing text of the adopted Prospectus Regulation with what is intended to be a more simple, agile and effective regime: a new “Public Offers and Admissions to Trading” regime. Importantly, the draft regulations create a number of new “designated activities” for the purposes of the FSM Bill, in relation to which the FCA is empowered to make “designated activity rules.” These designated activities include:

- offering relevant securities to the public in the United Kingdom;
- requesting or obtaining the admission of transferable securities to trading on a regulated market or market-trading facility (“MTF”);
- admitting transferable securities to trading on a regulated market or MTF;
- communicating an advertisement relating to an offer of relevant securities to the public or admission to trading in the United Kingdom; and

- disclosing, otherwise than in an advertisement, information relating to such an offer or admission to trading or proposed admission to trading.

The Statutory Instrument sets out the exemptions to the prohibition on making public offers of securities in the UK, which largely align with the existing regime.

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