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# Cabinet News and Views

Informed analysis for the financial services industry

## What's Next for the UK and the EU?


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As we make the transition from 2022 to 2023, this is a good time to look ahead to developments in the UK and the EU that will likely impact the financial services industry. Here are some observations.

**What Is Next in the UK in 2023?**

***Financial Services and Markets Bill***

Chancellor Hunt's proposed reforms, discussed separately here, derive from the FSM Bill, introduced to Parliament on 20 July 2022 and currently in its second reading in the House of Lords. The Bill is cast as a revised blueprint for regulation that takes the existing Financial Services and Markets Act 2000 and sets up new regulatory architecture. We covered the Bill here.

***SDR***

A key regulatory focus for 2023 will be the progression of the UK's Sustainability Disclosure Requirements ("SDR") and investment labels regime, which is designed to tackle greenwashing and retain trust in sustainable products. The regime proposes to introduce 3 product labels (Sustainable Focus, Sustainable Improver and Sustainable Impact), which will be compulsory for retail products advertising sustainable features and optional for other products. The labels come with detailed disclosure obligations. The regime will also introduce product-naming conventions and a general "anti-greenwashing" rule. The Government is consulting on, and has yet to clarify, how the regime is expected to impact non-UK firms and products.

***Professional Investor Fund***

The latest reading of the FSM Bill has introduced a new clause to allow the UK to legislate for a new type of "professional investor fund," which would take the form of an unauthorised co-ownership alternative investment fund ("AIF"). The new clause inserts a new section into the Financial Services and Markets Act 2000 ("FSMA") giving HM Treasury the power to make regulations concerning the rights and liabilities of participants in unauthorised co-ownership AIFs. The intention is to create a UK fund product which would not require FCA authorisation but which would qualify for similar "regulated" and tax-exempted status as the Luxembourg RAIF.

***Alternative Asset Managers***

On 9 August 2022 the Financing Conduct Authority ("FCA") published an open letter to CEOs on alternatives supervisory strategy, which outlines the FCA's supervisory strategy and priorities for alternative asset managers and which will become an increasing focus in 2023. Focus areas include:

- investor risk: Ensuring any investments offered are appropriate where offered to retail clients, with emphasis on robust governance, due diligence and investor categorisation;
- conflict of interests: Having appropriate policies in place and ensuring these are adhered to;
- market integrity: Expectation for firms to ensure that their risk management systems are fit for purpose;
- market abuse: Expectation for firms to have effective systems and controls tailored to potential risks in their business model;
- culture: Expectation for firms to have a healthy culture, particularly with regard to renumeration as well as D&I, noting that this will be looked at during the forthcoming supervisory cycle; and
- ESG: This remains a priority for the FCA, particularly with respect to marketing and disclosure.

***Retail Clients***

The FCA has 3 key focuses as regards authorised firms as it moves into 2023 – in particular, those providing services and products to retail clients. These are: reducing and preventing serious harm; setting and testing higher standards; and promoting competition and positive change.

The key components to achieving the first focus will include dealing with problem firms, including removing authorisation from sub-standard firms, improving the redress framework for consumers, increasing the focus on the standards and conduct of regulatory "hosting" providers, and being more assertive and decisive on market abuse.

The FCA's new Consumer Duty will form the core of the second focus, making strides to ensure firms are embedding this at the heart of their firm culture, which requires firms to set a higher standard of care for consumers and provide more protection across financial services. Requirements will include fairer charges and fees, easier switching, better support, clearer and more timely information and better tailored products. The FCA will also continue their scrutiny of firms' financial promotions and target action to make sure promotions are clear, fair and not misleading. Finally, the FCA will look to ensure firms seeking authorisation have appropriate ESG policies, systems and controls embedded into their operations.

In terms of the third focus, the intention will be to work in conjunction with the new Financial Services and Markets Bill proposals to tailor rules to better suit UK markets in a global context and to strengthen the UK's position in global wholesale markets, with the intention that the UK is one of the leading markets of choice for issuers, intermediaries and investors alike. This will include shaping digital markets to achieve good outcomes.

**What Is Next in the EU in 2023?**

EU regulatory authorities have three themes at the top of the agenda for next year.

- Sustainable finance. The reporting regime under the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) ("SFDR") is fully in force from 1 January 2023. Notwithstanding there is still much uncertainty as to the specifics and amendments expected to the secondary legislation in the Commission Delegated Regulation (C(2022) 1931)(the "SFDR Delegated Regulation") as well as further Q&As from the various European Supervisory Authorities ("ESAs") (being the EBA, EIOPA and ESMA). In particular, these amendments will be to the Regulatory Technical Standards ("RTS") laid down in the SFDR Delegated Regulation relating to sustainability indicators in relation to adverse impacts (whether streamlining, extending, refining and considering improvements definitions, applicable methodologies, metrics and presentation). The ESAs may also put forward amendments relating to information provided in relation to financial products in pre-contractual documents, on websites, and in periodic reports on decarbonisation targets, including intermediary targets and milestones, where relevant, and actions pursued. The revised RTS are expected to be delivered by 28 April 2023. In addition, the ESAs will monitor the application of the SFDR to determine (i) whether optional implementing technical standards ("ITS") on marketing communications are needed; and (ii) whether to issue additional Q&As or other level 3 tools to promote supervisory convergence on the practical application of the SFDR. The ESAs, together with the ECB, also intend to conduct a coordinated EU-level climate change stress test across the financial sector during 2023 to assess the resilience of the financial sector in line with the Fit-for-55 package.

- Digital assets. The final texts of the proposed Regulation on markets in cryptoassets ("MiCA") (2020/0265(COD)) and the proposed Regulation on information accompanying transfers of funds and certain cryptoassets (recast revised WTR) (2021/0241(COD)) are expected to be published in the EU Official Journal in early 2023. 2023 will then see advancement of secondary legislation and guidance on both regimes. In particular, the ESAs have already announced that they intend to develop technical standards on information and communications technology ("ICT") risk management frameworks and guidelines on the methodology for calculating costs, as well as quantifying losses for response and recovery, as mandated under the proposed Regulation on digital operational resilience for the financial sector

(DORA) (2020/0266(COD)). They also intend to produce standards and reports on reporting of ICT-related incidents.

- Securitisation. The ESAs intend to develop further Q&As and other level 3 tools to promote a common understanding and supervisory convergence for a consistent approach to the Securitisation Regulation, including giving national regulators and stakeholders' further guidance on the implementation of cross-sectoral areas of the Securitisation Regulation.