

# Regulatory Round-Up for Fund Managers

Q2 2024

## T+1 Related Developments

**Headline:** Move to T+1 settlement.

**Who is impacted?** All firms.

Legislation	Details
<p><b>US T+1 Settlement Cycle</b></p> <p>HIGH IMPACT</p>	<p>On 15 February 2023, the SEC adopted amendments to Rule 15c6-1 under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most broker-dealer securities transactions from two business days following the trade date (T+2) to one business day following the trade date (T+1) and adopted other related amendments affecting how broker-dealers, investment advisers and certain clearing agencies process institutional trades.</p> <p>In conjunction with shortening the settlement-cycle, the SEC adopted amendments to the recordkeeping requirements.</p> <p>The compliance date for the amendments was <b>28 May 2024</b>.</p>
<p><b>EU T+1</b></p> <p>MEDIUM IMPACT</p>	<p>As market participants in Canada and the US actioned the ‘big bang’ migration to a T+1 settlement cycle on 28 May 2024, the discussions in Europe on this topic continue.</p> <p>In a <a href="#">speech</a> delivered on 21 June 2023, ESMA announced its intention to publish a report in 2024 on settlement efficiency in the EU. On 23 March 2024, ESMA published a <a href="#">feedback statement</a> on its 5 October 2023 Call for Evidence and shared a related press release available <a href="#">here</a>.</p> <p>In the report ESMA summarises the feedback from market participants during the consultation, ESMA continues to assess the responses received, including the demands for regulatory/supervisory guidance. ESMA intends to deliver its final assessment to the European Parliament and to the Council before <b>17 January 2025</b>.</p> <p>On 10 July 2024 ESMA organised a hearing on the potential switch to T+1 in the EU. ESMA’s Chair, Verena Ross, delivered some <a href="#">introductory remarks</a>, including highlighting, amongst other things (i) shortening the settlement cycle represents a significant change to the way in which markets operate today and this applies at all levels of the value chain; (ii) some jurisdictions have already moved to T+1 and the EU’s strong interconnections with some of them, in particular the US, means that many EU stakeholders now have to deal with misaligned settlement cycles and (iii) the process to get to T+1 in the EU will be complex and will likely require changes in CSDR, in existing Level 2 regulations and potentially further regulatory guidance.</p>

**Legislation**

**Details**

**EU T+1**

MEDIUM IMPACT

ESMA also noted that North America completed what seems to be a rather smooth transition to faster and more efficient settlement cycles. Ms Ross concluded her remarks noting that “...T+2 was a good objective in 2014, when different Member States had different settlement cycles. However, I do not believe T+2 can be or should be the end of that journey. While we will diligently perform our cost-benefit-analysis, I do believe that now is the right time to look further ahead into the future and set a new objective”.

**UK T+1**

MEDIUM IMPACT

HM Treasury established the Accelerated Settlement Taskforce (**AST**) in December 2022 to explore the case for T+1 in the UK. On 28 March 2024, HM Treasury published the AST’s [report](#) that recommended the UK should commit to moving to a T+1 standard settlement cycle at the latest by the end of 2027. The government published its own [response](#) and has accepted all AST’s recommendations.

In July 2024, the AST’s technical group published a second update, noting that it will be preparing a report for publication in September that will contain a draft of the industry action plan for 2025 (i.e. what the market will need to do in 2025 to prepare for the implementation of T+1) together with a short consultation on the content of the action plan.

**US Related Developments**

**Headline:** Various US Developments of note.

**Who is impacted?** All firms doing business in the US, particularly in relation to private funds

**SEC’s Private Fund Adviser Rule Vacated by the Fifth Circuit**

HIGH IMPACT

On 23 August 2023, the U.S. Securities and Exchange Commission (**SEC**) adopted a set of new rules and rule amendments under the U.S. Investment Advisers Act of 1940 (**Private Fund Adviser Rule**) that was to significantly reform the scope of reporting, disclosure and other obligations imposed on investment advisers to private funds.

The Private Fund Adviser Rule was to apply to “private funds”, which is any fund that would be required to register under the U.S. Investment Company Act of 1940 (**1940 Act**) but for the exceptions under Section 3(c)(1) or 3(c)(7) of the 1940 Act. Most investment funds that are privately placed in the U.S. rely on one of these exceptions.

The Private Fund Adviser Rule was to significantly reform the scope of reporting, disclosure and other obligations imposed on investment advisers to private funds. While the SEC did not adopt some of the most contentious provisions in the proposed rules, this was still a major development for the private funds industry.

On 5 June 2024 the United States Court of Appeals for the Fifth Circuit [vacated](#) the Private Fund Adviser Rule in its entirety. Consistent with the arguments advanced by the petitioners and [amicus curiae](#) briefs, the Fifth Circuit held that the SEC exceeded its statutory authority in relying on Sections 211(h) and 206(4) of the Investment Advisers Act of 1940 to adopt the controversial package of rules and rule amendments.

**Legislation**

**Details**

**Supreme Court Ends Chevron Deference**

Taking its name from the 1984 case of Chevron U.S.A., Inc. v. Natural Resources Defense Council (467 U.S. 837 (1984)) the Chevron deference required federal courts to defer to agencies’ reasonable resolutions of ambiguities in the statutes they administer.

In Loper Bright Enterprises v. Raimondo – available [here](#) - the Supreme Court put an end to Chevron deference.

Loper Bright decision is aligned with other decisions related to administrative agencies. The Court took a broad view of the statute of limitations governing challenges to agency action, and amongst other things, severely constrained the SEC in relying upon administrative adjudications.

When considered together with Loper Bright, these precedents will provide litigants with greater and stronger opportunities to challenge certain agency action.

**Sustainable Finance**

**Revisions to SFDR RTS**

MEDIUM IMPACT

**Headline:** Updates to SFDR RTS.

**Who is impacted?** Financial Market Participants and entities in scope of SFDR.

On 4 December 2023, the ESAs published a [final report](#) on the draft RTS on the review of principal adverse impacts (PAI) and financial product disclosures in Commission Delegated Regulation (EU) 2022/1288, which supplements the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) (SFDR). The ESAs consulted on the draft RTS between April and July 2023.

The report contains feedback to the April 2023 consultation on the draft RTS, with the ESAs commenting that adjustments have been made in some areas.

The related [press release](#) shared on 4 December 2023 explains the EU Commission will scrutinise the draft RTS and endorse them within three months of their publication. At the time of writing the RTS have not been endorsed.

**ESMA “Guidelines on funds’ names using ESG or sustainability-related terms**

HIGH IMPACT

**Headline:** Guidelines on funds’ names with ESG or sustainability-related terms.

**Who is impacted?** Entities in scope of UCITS Directive and AIFMD or market funds in the EU.

On 14 May 2024, ESMA published its [Final Report on Guidelines on funds names](#) (the **Guidelines**) - some eighteen months after publishing their consultation. The Guidelines apply to UCITS management companies, alternative investment fund managers (AIFMs) and competent authorities.

The Guidelines provide recommendations to fund managers on the use of terms in funds’ names – including for funds (a) using transition-, social- and governance-related terms: and (b) using (i) environmental- or impact-related terms or (ii) sustainability-

**Legislation**

**Details**

**ESMA  
“Guidelines on  
funds’ names  
using ESG or  
sustainability-  
related terms**

HIGH  
IMPACT

related terms. The Guidelines provide further recommendations for specific type of funds as well as also providing explanations of the key terms mentioned above.

The Guidelines apply three months after the date of their publication on ESMA’s website in all EU official languages.

Managers of any new funds created after the date of application of the Guidelines, should apply these guidelines immediately in respect of those funds.

Managers of funds existing before the date of application of the Guidelines should apply these guidelines in respect of those funds after six months from the application date of the Guidelines.

**EU Commission’s  
targeted  
consultation  
on the  
implementation  
of SFDR**

LOW  
IMPACT

**Headline:** Proposals to amend SFDR.

**Who is impacted?** Asset managers and other financial market participants in scope of SFDR

The targeted consultation takes the form of a questionnaire and the main topics covered are:

1. Current requirements of the SFDR;
2. Interaction with other sustainable finance legislation;
3. Potential changes to the disclosure requirements for financial market participants; and
4. Potential establishment of a categorisation system for financial products.

The targeted consultation and general consultation are available [here](#). The consultations closed on 15 December 2023.

On 3 May 2024, the EU Commission published a [summary](#) of the responses it received to the SFDR review. The summary stated, among other things that: (1) there is widespread support for the broad objectives of the SFDR but that opinion is divided on whether the SFDR has actually achieved those objectives; and (2) there is strong support for product categories but there is no preference on whether to base product categories on new criteria or the existing Article 8 and Article 9 criteria.

The summary specifically states that it should be “regarded solely as a summary of the contributions made by stakeholders to the open and targeted consultations...[and] cannot in any circumstances be regarded as the official position of the Commission or its services.”

On 18 June 2024 the ESAs published their [Joint Opinion](#) on SFDR following the EU Commission’s September 2023 consultations. In the Opinion the ESAs acknowledge that the framework could be improved and that the disclosures to investors in the SFDR may be complex by nature and difficult to understand, in particular for retail investors. The Opinion details nine suggested recommendations from the ESAs to the EU Commission.

**Legislation**

**Details**

**ESMA Opinion on functioning of the EU sustainable finance framework**

LOW IMPACT

**Headline:** Opinion from ESMA on functioning of the EU sustainable finance framework.  
**Who is impacted?** Companies who are in scope of current EU sustainability related regulation.

On 24 July 2024, ESMA published an [opinion](#) on the functioning of the EU sustainable finance framework, which sets out the holistic vision of securities markets regulators for the long-term. ESMA explains that it has developed the opinion to improve the framework’s usability and coherence. Given the long term nature of the Opinion, it does not go into the technical details of policy proposals and their implementation in EU legislative texts. The Opinion does however put forward a number of policy recommendations. The EU Commission is not obliged to follow ESMA’s opinion.

The opinion is closely aligned with the ESA’s June 2024 opinion referenced above.

**Political agreement reached on proposed Regulation on ESG rating activities**

MEDIUM/LOW IMPACT

**Headline:** Regulation of ESG rating activities.  
**Who is impacted?** ESG rating providers in the EU and outside the EU, and entities using ESG Ratings.

On 5 February 2024, the Council published a [press release](#) announcing that it has reached provisional political agreement with the European Parliament on the proposed Regulation on the transparency and integrity of environmental, social and governance (ESG) rating activities. The European Parliament has also published a [press release](#) on the agreement.

On 25 April 2024, the European Parliament published a [press release](#) announcing it had voted to adopt the proposed ESG Ratings Regulation and also published the [legislative resolution](#) adopted.

The legislative process is not yet complete. The current expectation is that the ESG Rating Regulation will be published in the official journal of the EU (OJ) in Q4 2024, and will enter into force 20 days later. The provisions of the Regulation will start applying 18 months after its entry into force.

**CSDDD**

MEDIUM IMPACT (AIFs and UCITS out of scope)

**Headline:** Directive setting out a legal framework which will require in-scope companies to incorporate mandatory human rights and environmental due diligence into their core business activities.

**Who is impacted?** Companies operating in the EU which meet certain prescribed thresholds or carrying out a certain amount of business in the EU.

On 5 July 2024, the Corporate Sustainability Due Diligence Directive ((EU) 2024/2859) (CSDDD) was published in the OJ. The text of the CSDD is available [here](#).

The CSDDD will enter into force 20 days after its publication in the OJ. Once the CSDDD is in force, member states have until 26 July 2026 to transpose it into national law. Application will then be on a staggered basis, starting from 26 July 2027 for the largest companies.

Legislation	Details
<p><b>SFDR Q&amp;A</b></p> <p>MEDIUM/HIGH IMPACT</p>	<p><b>Headline:</b> Updated Q&amp;A relating to SFDR.  <b>Who is impacted?</b> Companies who are in scope of SFDR..</p> <p>On 25 July 2024, ESMA updated its consolidated Q&amp;A on SFDR, see <a href="#">here</a>. The Q&amp;A now contains new Q&amp;As relating to scope, principal adverse impact disclosures and financial product disclosures.</p>
<p><b>FCA's SDR and investment labelling regime</b></p> <p>HIGH IMPACT</p>	<p><b>Headline:</b> New UK sustainability disclosure requirements, investment labelling regime and anti-greenwashing rule.  <b>Who is impacted?</b> All FCA-authorized firms who make sustainability related claims about their products and services (anti-greenwashing rule only), UK asset (SDR and labelling regime) and firms offering portfolio management services (new consultation paper).</p> <p>On 28 November 2023 the FCA published its policy statement (PS) setting out its sustainability disclosure requirements (SDR) and investment labelling regime. The PS is available <a href="#">here</a> and the associated press release is available <a href="#">here</a>.</p> <p>The rules come into force on a staggered basis – see 2.18 of the PS - but key dates are:</p> <ul style="list-style-type: none"> <li>○ anti-greenwashing rule has applied since <b>31 May 2024</b>. The FCA published <a href="#">finalised guidance</a> which also came into force on 31 May 2024;</li> <li>○ naming and marketing rules for asset managers come into effect from <b>2 December 2024</b>;</li> <li>○ ongoing product-level and entity-level disclosures for firms with AUM greater than £50bn come into effect from <b>2 December 2025</b>; and</li> <li>○ entity-level disclosure rules extended to firms with AUM greater than £5bn come into effect from <b>2 December 2026</b>.</li> </ul> <p>On 1 July 2024, the FCA updated its <a href="#">webpage</a> on its SDR and investment labelling regime. The information is relevant to those funds using or wanting to apply a label under the regime. Labels can be displayed from 31 July 2024, provided that the fund meets the requirements.</p> <p>The webpage includes a new section on how firms can notify the FCA about their use of an investment label for a fund. It also provides information on how to apply to make associated changes to a fund's name, investment objectives or policy.</p> <p>Firms must notify the FCA when using an investment label through the form on its online notification and applications system, Connect. On 23 April 2024, the FCA published <a href="#">a consultation paper</a> on extending the SDR and labelling regime to portfolio managers. The consultation closed on 14 June 2024 and the FCA intends to publish its final rules in the second half of 2024.</p>

## EMIR

### Legislation

### Details

#### EU EMIR reporting – ITS and RTS now published together with Guidelines for reporting under EMIR

HIGH  
IMPACT

**Headline:** Significant changes to the EU EMIR derivatives reporting regime went live on 29 April 2024.  
**Who is impacted?** All firms within scope of EU EMIR.

The six Delegated and Implementing Regulations containing RTS and ITS amending the reporting requirements and procedures for data quality under EMIR published in the OJ on 7 October 2022 are available [here](#).

Since 29 April 2024, reports need to be made in accordance with the new standards .

ESMA published its Final Report on Guidelines for reporting under EMIR (available [here](#)) and the [validation rules](#) and the reporting instructions ([here](#) and [here](#)).

The [EMIR REFIT Guidelines](#) were published on 23 October 2023.

To help in-scope entities transition to the new regime, an additional transition period of 180 calendar days (i.e., until **26 October 2024**) has been granted to upgrade outstanding reports for derivatives contracts submitted to TRs before 29 April 2024. Derivative contracts that mature before 26 October 2024 do not need to be updated. Any modification or termination of a pre-29 April 2024 derivative will prompt an earlier upgrade to the new standard.

#### EU EMIR 3.0

MEDIUM  
IMPACT

**Headline:** Further significant changes to the current EU EMIR are coming.  
**Who is impacted?** All firms within scope of EU EMIR.

On 7 February 2024, the Council published a [press release](#) announcing that it has reached provisional political agreement with the European Parliament on the legislative proposals amending EMIR intended to mitigate excessive exposures to third-country central counterparties (CCPs) and improve the efficiency of EU clearing markets (EMIR 3.0).

On 25 April 2024, the European Parliament published a [press release](#) announcing that it had voted to adopt the legislative proposals amending EMIR intended to mitigate excessive exposures to third-country central counterparties (CCPs) and improve the efficiency of EU clearing markets (EMIR 3.0).

The European Parliament has published the following legislative resolutions containing the adopted texts for the legislation:

- [Legislative resolution](#) on EMIR 3 Regulation; and.
- [Legislative resolution](#) on the Amending Directive.

**Legislation**

**Details**

**EU EMIR 3.0**

MEDIUM IMPACT

Exact timing of when EMIR 3.0 will enter into force remains unknown. The most high profile change from EMIR 3.0, the active account requirement (AAR), come into force 6 months after the entry into force of the EMIR 3.0 regulation. In scope counterparties have 6 months from entry into force to open active accounts.

ESMA is also required to draft RTS relating to the AAR and also to the new clearing thresholds. ESMA has published a table of planned consultation papers – available here - indicating that three EMIR related consultations are planned, including in relation to EMIR 3.0 AAR in Q4 2024, a consultation in Q4 2024 the RTS for clearing thresholds and in Q1/ Q2 2025 in relation to CCP requirements.

**(UK EMIR) Changes to the framework for derivatives reporting under UK EMIR and FCA REFIT Q&A**

HIGH IMPACT

**Headline:** There will be changes to the UK EMIR derivatives reporting regime similar to those being implemented in the EU.  
**Who is impacted?** All firms within scope of UK EMIR.

On 24 February 2023, the FCA published a policy statement - [PS23/2](#) - it made jointly with the Bank of England on changes to reporting requirements, procedures for data quality and registration of trade repositories (TRs) under UK EMIR. It includes the FCA’s final policy and rules that are designed to clarify trade reporting requirements under UK EMIR.

The new rules include:

- Amendments to the table of reportable fields in RTS under UK EMIR, primarily to align them with international guidance issued by CPMI-IOSCO.
- Amendments to the registration process for TRs.
- Requirements for TRs to establish procedures and policies to ensure the effective reconciliation of data between TRs, to verify the completeness and correctness of the data reported and the orderly transfer of data between TRs and to regulatory authorities. The FCA is implementing this by introducing a new sourcebook in the FCA Handbook: the European Market Infrastructure Regulation Rules (EMIRR).

The requirements set out in PS23/2 will come into effect on **30 September 2024**, except for certain amendments to the UK versions of Commission Delegated Regulation (EU) No 150/2013 and Commission Implementing Regulation (EU) No 1248/2012 which relate to the format and details of applications for registration of TRs, and which come into force immediately. There will be a 6-month period for counterparties to update their outstanding derivative reports in line with the new requirements, which will end **31 March 2025**.

On 26 April 2023, the FCA announced it had published final versions of the UK EMIR Validation Rules and XML schemas on its [UK EMIR reporting webpage](#). The rules are applicable from **30 September 2024**.

The FCA noted that it has received requests for further guidance on how to implement the new requirements.



**Legislation**

**Details**

**(UK EMIR)  
Changes to  
the framework  
for derivatives  
reporting under  
UK EMIR and FCA  
REFIT Q&A**

HIGH  
IMPACT

In response, on 1 March 2024 the FCA published a set of questions and answers (Q&As) to support implementation. Following a consultation, the FCA published the final version of the first set of Q&As for UK-EMIR Refit on 2 May 2024. The Q&A apply from 30 September 2024.

Following a consultation on a second set of draft Q&As for UK-EMIR Refit reporting the FCA published the final Q&As on 12 July 2024. The Q&As are available [here](#). The FCA and BoE consulted on [one further Q&A](#) relating to Position level reporting (question 10 of the Q&A) and published a [finalised](#) Q&A (10.9) on 26 July 2024.

The FCA has also updated the UK [EMIR Validation Rules](#) (applicable from 30 September 2024) to address errors or to close gaps which would have affected the ability of reporting counterparties to report accurate details of derivative contracts.

Under Article 9 of UK EMIR, the Bank of England (BoE) and the FCA share responsibilities for the derivatives reporting obligation. Also on 12 July 2024, the BoE published a [webpage](#) setting out the Q&As developed jointly with the FCA. On a related [webpage](#), the BoE outlines the feedback received on the second consultation and notes that some changes have been made to some of the Q&As (including the first set of Q&A).

**CSDR**

**CSDR Refit  
Regulation  
published in OJ  
and related ESMA  
consultation  
on potential  
changes to the  
CSDR penalty  
mechanism**

HIGH  
IMPACT

**Headline:** Changes to the EU CSDR regime.  
**Who is impacted?** All firms within scope of EU CSDR.

On 27 December 2023, the CSDR Refit regulation was published in the Official Journal of the EU, available [here](#). The regulation entered into force on 16 January 2024. Depending on the Articles, it applies from either **1 May 2024 or two years after entering into force**.

The new regulation “contains measures to improve ‘settlement efficiency’ (the rate at which securities transactions settle on the intended date) by amending certain elements of the settlement discipline regime, including the preconditions for applying so-called mandatory buy-ins”.

Related to the CSDR Refit Regulation, on 15 December 2023, ESMA published a [Consultation Paper](#) on Technical Advice to the EU Commission on the CSDR penalty mechanism.

The aim of the consultation is to collect evidence and data from stakeholders on the effectiveness of the current penalty mechanism in discouraging settlement fails and incentivising their rapid resolution. The public consultation closed on 29 February 2024.

**Legislation**

**Details**

**ESMA  
Consultations  
on CSDR Refit**

MEDIUM/HIGH  
IMPACT

On 9 July 2024, ESMA published three [Consultation Papers](#) on aspects of the CSDR Refit. The proposed rules relate to the information to be provided by EU CSDs to their NCAs for the review and evaluation, the information to be notified to ESMA by third-country CSDs, and the scope of settlement discipline. The draft rules cover (i) the review and evaluation process of EU CSDs; (ii) third-country CSDs and (iii) the scope of settlement discipline, covering ESMA's proposals on the underlying cause of settlement fails that are considered as not attributable to the participants in the transaction, and the circumstances in which operations are not considered as trading.

Responses are sought by **9 September 2024**, with the finalised proposals expected to be submitted to the European Commission in Q1 2025. Other consultations about other aspects of the CSDR will follow in the coming months.

**SFTR**

**Review of EU  
SFTR in 2024**

LOW/MEDIUM  
IMPACT

**Headline:** Comprehensive review of the EU SFTR regime.  
**Who is impacted?** All firms within scope of EU SFTR.

On 24 January, the EU Commission published its [review report](#) on the macroprudential framework of the EU. The report looks at macroprudential framework for NBFIs noting NBFIs have grown significantly in recent years.

The report notes that in 2024, the EU Commission will consult on the review of the Securities Financing Transaction Regulation (SFTR).

However, on 30 May 2024, ESMA published a [letter](#) on de-prioritisation of certain 2024 deliverables. The de-prioritised deliverables include certain items relating to SFTR as well as EMIR and the CSDR Review.

**UK SFTR  
- Updated  
Validation  
Rules and XML  
Schemas**

MEDIUM  
IMPACT

**Headline:** Updates to reporting under UK SFTR.  
**Who is impacted?** All firms within scope of UK SFTR.

On 23 October 2023 the FCA announced amendments to the Validation Rules and XML schemas to support the ongoing reporting of securities financing transactions under the UK SFTR. A description of the amendments made can be found in the 'changes' tab of the final UK SFTR Validation Rules. The FCA has now published final versions of the UK SFTR Validation Rules and XML schemas on its UK SFTR reporting webpage and are set out below:

- [UK SFTR Validation rules](#) (applicable from **25 November 2024**).
- XML Schemas under UK SFTR (applicable from **25 November 2024**).
  - [Incoming messages](#)
  - [Outgoing messages](#)

These documents will go-live on **25 November 2024** and not 4 November 2024 as originally proposed.

## Other

Legislation	Details
<p><b>AIFMD 2.0</b></p> <p>HIGH IMPACT</p>	<p><b>Headline:</b> Changes to AIFMD and to some extent UCITS Directive. <b>Who is impacted?</b> Entities in scope of AIFMD and UCITS Directive, and asset managers outside the EU who wish to market in the EU.</p> <p>AIFMD 2.0 entered into force on 15 April 2024. Member States have 24 months to transpose the provisions into national law with AIFMD 2.0 taking effect from <b>16 April 2026</b>.</p> <p>AIFMD 2.0 makes targeted changes to certain provisions of AIFMD, which can be broadly broken down into the following:</p> <ul style="list-style-type: none"> <li>○ Delegation, Authorisation, Disclosure to investors and Reporting.</li> <li>○ A new Loan Origination regime.</li> <li>○ Liquidity Management Tools.</li> <li>○ Depositaries.</li> <li>○ Non-EU AIFM Marketing under a national private placement regime (NPPR).</li> <li>○ Miscellaneous Amendments.</li> </ul> <p>There are certain transitional provisions for existing funds that originate loans.</p> <p>Under AIFMD 2.0 ESMA is mandated to develop a number of regulatory technical standards and guidelines to provide additional detail on certain aspects of AIFMD 2.0.</p>
<p><b>AIFMD 2.0 - ESMA Consultation on LMTs</b></p> <p>HIGH IMPACT</p>	<p><b>Headline:</b> Changes to AIFMD and to some extent UCITS Directive. <b>Who is impacted?</b> Entities in scope of AIFMD and UCITS Directive, and asset managers outside the EU who wish to market in the EU.</p> <p>On 8 July 2024, ESMA published (i) a <a href="#">consultation paper</a> on draft RTS on LMTs applicable to AIFMs managing open-ended AIFs and UCITS; and (ii) a <a href="#">consultation paper</a> on guidelines on LMTs of UCITS and open-ended AIFs. These provide guidance on how managers should select and calibrate LMTs in the light of their investment strategy, their liquidity profile and the redemption policy of the fund.</p> <p>Comments on the consultation can be made up to <b>8 October 2024</b>. Following this, ESMA will deliver the final RTS and guidelines by 16 April 2025.</p>

**Legislation**

**Details**

**EU Digital Operational Resilience Regulation (DORA)**

MEDIUM/HIGH IMPACT

**Headline:** New rules relating to financial entities’ information and communication technology (ICT) risk.

**Who is impacted?** Nearly all firms in the financial sector are in scope.

The EU’s Digital Operational Resilience Regulation (DORA) (Regulation (EU) 2022/2554) imposes new rules relating to financial entities’ information and communication technology (ICT) risk. DORA is accompanied by a Directive that amends certain EU financial services legislation to ensure consistency with DORA (the DORA Directive).

DORA and the DORA Directive aim to further harmonise the regulatory requirements in relation to ICT risks for financial entities operating in the EU.

DORA became law in December 2022 but provides for a grace period until 17 January 2025 for organisations to put in place the necessary measures to comply.

DORA applies to a wide range of financial entities – nearly all firms in the financial sector are in scope. Of particular relevance to asset managers is the fact that MiFID investment firms, AIFMs and UCITS management companies are in scope.

Further information is available [here](#).

The ESAs are in the process of developing and finalising regulatory technical standards to provide greater clarity on key requirements under DORA.

**EU Artificial Intelligence Act published in Official Journal**

MEDIUM IMPACT

**Headline:** Users of AI.

**Who is impacted?** Firms developing and using AI.

On 12 July 2024, the EU Artificial Intelligence Act (Regulation (EU) 2024/1689) laying down harmonised rules on artificial intelligence (AI Act) and amending certain EU legislation was published in the OJ – see [here](#). The AI Act entered force on 1 August 2024 but most provisions will start to apply on 2 August 2026. Some rules will apply earlier.

The AI Act will introduce a new regulatory aspect of AI governance that will sit alongside existing legal frameworks that have a significant impact on AI, such as data privacy laws, intellectual property laws and anti-discrimination laws.

The AI Act sets out a legal framework for development and use of AI. The obligations under the AI Act are focused primarily on providers of AI, but businesses using AI may also need to comply with certain requirements depending on how they are using AI. Organisations will need to assess the extent to which their activity may be affected by the new framework.

The AI Act regulates AI systems that affect individuals within the EU, but it also has extra-territorial application.

**Legislation**

**Details**

**ESMA provides guidance to firms using artificial intelligence in investment services**

MEDIUM  
IMPACT

**Headline:** Use of AI in investment services provided to retail clients.  
**Who is impacted?** Firms providing investment services to retail clients.

On 30 May 2024, ESMA issued a [Statement](#) providing initial guidance to firms using Artificial Intelligence technologies (AI) when they provide investment services to retail clients. When using AI, ESMA expects firms to comply with relevant MiFID II requirements, particularly when it comes to organisational aspects, conduct of business, and their regulatory obligation to act in the best interest of the client. Potential uses of AI by investment firm which would be covered by requirements under MiFID II include customer support, fraud detection, risk management, compliance, and support to firms in the provision of investment advice and portfolio management.

**Overseas Fund Regime (OFR)**

MEDIUM  
IMPACT

**Headline:** UK Overseas Fund Regime to enable UCITS to be marketed in the UK.  
**Who is impacted?** EEA funds that wish to market in the UK.

The OFR is a simplified process for allowing investment funds set up overseas to be marketed in the UK.

On 30 January 2024, the House of Commons published a [written statement](#) by HM Treasury, on the OFR and the UK's equivalence assessment of EEA states. The statement confirms that, following a detailed assessment, the government has found the EEA states (including EU member states) equivalent under the OFR. The equivalence decision will apply to EEA UCITS, except those that are also money market funds. The UK government has confirmed it does not intend to require the funds assessed (i.e. EEA UCITS) to comply with additional UK requirements as part of the equivalence assessment.

On 1 May 2024, the FCA published a [Roadmap to implementing the OFR](#). The Roadmap gives the key stages of the process, so that operators of EEA UCITS that wish to use the OFR as a gateway to the UK market can prepare.

Per the Roadmap, the FCA will open the OFR Gateway (i) for non-TMPR\* funds in September 2024, (ii) for TMPR stand-alone schemes in October 2024 and (iii) umbrella funds currently under the TMPR in November 2024 for a 23-month period.

Application for recognition under the OFR will be made via FCA's on-line system 'Connect'. The FCA will review the application and decide within two months whether to recognise the fund.

On 5 July 2024, the FCA updated its [webpage](#) on the OFR with information on landing slots for fund operators in the TMPR.

On 17 July 2024, the FCA published a [policy statement](#) on implementing and operationalising the OFR, following a consultation in December 2023. The amendments that are being made to the FCA Handbook are included as an appendix to the policy statement. The amendments came into force on **31 July 2024**.

\*As part of the UK's preparations for Brexit, the UK Government established the temporary marketing permissions regime (**TMPR**) allowing certain EEA-based investment funds that were being marketed in the UK via a passport to continue to be marketed in the UK pending recognition under the OFR. The TMPR is scheduled to end at the end of 2025, but the Government has announced it intends to extend the TMPR until the end of 2026 (subject to the passing of the necessary legislation).

**Legislation**

**Details**

**Directive and Regulation to improve MiFID II market data access and transparency published in OJ**

MEDIUM IMPACT

On 8 March 2024, the following legislation was published in the OJ:

- [Directive \(EU\) 2024/790](#) amending the MiFID II Directive (2014/65/EU).
- [Regulation \(EU\) 2024/791](#) amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow.

Updated EU MiFIR requirements entered into force on 28 March 2024 whereas Member States have until 29 September 2025 to transpose the Updated EU MiFID II into national law. Note that several aspects of the new rules must be supplemented by EU delegated acts before becoming operational.

On 2 May 2024, a [Commission Notice](#) on the interpretation and implementation of the transitional provisions included in the MiFIR Amending Regulation was published in the OJ. On 22 July 2024, ESMA published a statement on the transition to the new regime for post-trade transparency of OTC-transactions in the light of MiFIR II. The statement complements ESMA's March 2024 statement on transitional provisions and aims to provide further practical guidance.

On 10 July 2024, ESMA published a new [package](#) of public consultations with the objective of increasing transparency and system resilience in financial markets, reducing reporting burden and promoting convergence in the supervisory approach.

On 16 July 2024, ESMA published a [consultation paper](#) on order execution policies, in line with its mandate under the updated MiFID II. The measures proposed by ESMA will result in amendments needing to be made to sections of existing policies.

**UK Post Brexit Regulatory Developments**

**Headline:** UK Post Brexit Regulatory developments.

**Who is impacted?** Firms doing business in the UK.

**HM Treasury Paper on the Next Phase of Smarter Regulatory Framework**

HM Treasury has published a paper on the next phase of the Smarter Financial Services Regulatory Framework for the UK on 21 March 2024. The paper can be accessed [here](#).

The paper provides a summary of the progress of the Smarter Regulatory Framework (SRF) programme as of February 2024 and sets out the approach and future plans for the next phase (Tranche 3).

The SRF is HM Treasury's project to replace assimilated law (formerly retained EU law) relating to financial services. HM Treasury has allocated this law to over 40 policy files and prioritised its work by allocating the files to a number of tranches.

**UK Wholesale Markets Review**

HM Treasury launched the UK's [Wholesale Markets Review \(WMR\)](#) in 2021 to determine how the UK should adapt its approach to regulating secondary markets post-Brexit and improve certain rules under the on-shored EU MiFID II and MiFIR that have not delivered their intended benefits.

Legislation	Details
<p><b>UK Wholesale Markets Review</b></p>	<p>On 30 May 2024, the FCA updated its <a href="#">webpage</a> on reforming the commodity derivatives regulatory framework announcing that it will delay revoking the UK version of Delegated Regulation (EU) 2017/592 (RTS 20) and will not be taking forward its proposals relating to the ancillary activity exemption set out in its December 2023 consultation paper on reform of the regulatory framework for commodity derivatives.</p> <p>On 26 July 2024, the FCA published a <a href="#">consultation paper</a> on the derivatives trading obligation (DTO) and post-trade risk reduction services. The FCA's proposals aim to improve the UK's regulation of secondary markets, reduce systemic risk in derivatives markets and avoid fragmentation and disruption for firms trading over-the-counter (OTC) derivatives subject to the DTO. Comments can be made until <b>30 September 2024</b>. The FCA plans to publish the direction modifying the DTO in Q4 2024.</p>
<p><b>FCA update on Consumer Duty</b></p>	<p>On 26 June 2024, the FCA updated its Consumer Duty <a href="#">webpage</a>. The update relates to annual board reports with the FCA reiterating that the Duty requires a firm's board, or equivalent governing body, to review and approve a report on the outcomes received by retail customers. The FCA adds that this assessment needs to be done at least once a year, so for firms with new and existing products and services the first report was due by 31 July 2024.</p> <p>The Duty for closed products and services came into force on 31 July 2024. On 16 May 2024, the FCA published a <a href="#">Dear CEO letter: Implementing the Consumer Duty for closed products and services - asset management</a>, the aim of which the FCA said was to aid firms with their final preparations.</p> <p>On 29 July 2024, the FCA published a <a href="#">call for input</a> on a review of its retail conduct requirements. The FCA wants to understand whether, where and how it can simplify its requirements, through greater reliance on high-level rules, while ensuring it continues to support and protect consumers. The FCA particularly wants to address potential areas of complexity, duplication, confusion, or over-prescription, which create regulatory costs with limited or no consumer benefit as well as including appropriate flexibility in our rules to be responsive to future changes and innovation.</p>
<p><b>FCA Consultation on Paying for Investment Research.</b></p>	<p>On 10 April 2024, the FCA announced that it plans to overhaul the UK's research payment rules to allow the 'bundling' of payments for third-party research and trade execution (subject to the FCA's proposed guardrails), that the FCA proposes would exist alongside those already available, such as payment from an asset manager's own resources or from a dedicated account. The FCA also launched a <a href="#">consultation</a> putting forward plans for a new way to pay for investment research. The consultation closed on <b>5 June 2024</b>.</p> <p>On 26 July 2024, the FCA published its <a href="#">policy statement</a> that summarises the feedback received on its consultation and outlines their final policy position and Handbook rules. The final rules are largely in line with what was originally proposed.</p> <p>Provided that firms meet the requirements in relation to the operation of the new rules, they can use them from 1 August 2024.</p>

This Regulatory Round up is intended to be a general guide and does not constitute legal advice. You should seek independent legal, tax and/or accounting advice with respect to the impact these developments may have on your business operations.

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