

C L I F F O R D
C H A N C E

DCM Round Up: October 2023

Welcome to our periodic round up of key developments for DCM. Further details on some of these topics can also be found on the [Financial Markets Toolkit](#).

For a more detailed service please contact one of our experts, who can discuss in detail how these developments will affect your business and transactions.

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[EU AND UK PROSPECTUS REGIME REFORM](#)

EU: current status

The EU Listing Act proposal published in December 2022 is continuing to progress through the EU legislative process. In June the European Council's [compromise proposal](#) and the European Parliament ECON Committee [Rapporteur Report](#) were published. These suggest that the focus areas for the co-legislator trilogue negotiations will include the ranking of risk factors, mandatory incorporation by reference, thresholds for exemptions (including for fungibles), page limits and supplements for future financials. The European Parliament still needs to adopt its formal negotiating position before trilogue discussions can begin.

UK: current status

On 11 July, HMT published its final draft of [The Public Offers and Admissions to Trading Regulations 2023](#) (the Regulations) and [Policy Note](#). Helpful changes from the illustrative regulations published in December 2022 include (i) a simplification to the "relevant securities" definition, (ii) a change to the necessary information test for debt securities to allow for "prospects" of the issuer to be read as "creditworthiness", (iii) an extension of the protected forward looking statement regime to entities other than the issuer and (iv) a limit on the FCA's power so that it can only require the production of a prospectus in relation to MTFs with retail participation. On 21 August, ICMA submitted a [response](#) to HMT (to which CC contributed) welcoming these changes but also suggesting a few minor improvements and clarifications. There is no definitive date set for publication of the final Regulations although the [HM Treasury's Plan for Delivery](#) (July 2023) states this as being "before the end of 2023".

The FCA has now published six Engagement Papers on its new rules. We have been involved in numerous industry group meetings, including some with the FCA, discussing the key issues and concerns arising out of the Engagement Papers. ICMA submitted a [formal written response](#) on the Engagement Papers to the FCA on 29 September and there will continue to be stakeholder discussions with the FCA over the autumn. The FCA is expected to publish its draft rules for consultation in H1 2024.

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LIBOR / RFRs

Final US dollar LIBOR notices

On 3 July, the FCA [confirmed](#) that the US dollar LIBOR panel ended on 30 June 2023. It confirmed that the overnight and 12-month LIBOR settings permanently ceased and that the 1-, 3- and 6- month US dollar LIBOR settings will only continue be published on a synthetic basis. Consequently, as of 1 July 2023, USD LIBOR is "no longer representative" and this will have implications for contractual LIBOR fallback drafting.

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EU REGULATORY

EU Benchmark Regulation

On 14 July, the EU Commission adopted a [Delegated Regulation](#) extending the transitional period for third country benchmarks until 31 December 2025. The Delegated Regulation will enter into force on the third day following that of its publication in the Official Journal

ESG / SUSTAINABILITY

ESMA Statement on sustainability disclosures in prospectuses

On 11 July, ESMA published its [Statement on sustainability disclosures in prospectuses](#) and you will have already received our summary of this (see attached for a reminder). We are tracking how the national competent authorities are implementing the ESMA Statement but have had limited feedback to date. However, we have experience of clearing CSSF comments on the ESMA Statement based on existing ICMA "4 pillars" style disclosure.

ICMA Sustainability-Linked Bond (SLB) Q&A

On 26 September, ICMA published a [revised Sustainability-Linked Bond Principles related questions](#). The updates include additional guidance on sovereign SLBs and changes to KPIs and SPTs, particularly in relation to inclusion of recalculation policies and consent solicitations (under paragraph 4.4B). There will be further discussions on consent solicitation guidance and we are members of the working group reviewing this.

Blue bond guidance

On 6 September, ICMA (together with the International Finance Corporation, United, the UN Global Compact, the UN Environmental Programme Finance Initiative and the Asian Development Bank) published a practitioners guide [Bonds to Finance the Sustainable Blue Economy](#). The guide builds on the existing ICMA Principles and is intended to be used in conjunction with them. It aims to provide additional thematic guidance for use of proceeds bonds and can be used for SLBs that incorporate blue key performance indicators.

A UK green bond standard?

The UK Government will be consulting on the development of a UK Green Taxonomy in the coming months to build out the basic EU Taxonomy Regulation that was on-shored post Brexit. As part of its development the UK Government has sought advice from the independent Green Taxonomy Advisory Group (**GTAG**) and the Green Finance Institute (**GFI**).

In August, GTAG and GFI published a paper, [Applying the UK Green Taxonomy to wider policies: the value case and options](#). In this they suggest that the UK Government should consider the development of a voluntary UK green bond standard (Policy Area 15 in the Paper). In particular, the UK standard would become the guiding framework for green gilt issuance (Policy Area 3 in the Paper). This is not an imminent development.

USEFUL RESOURCES

We have attached an updated ECB Eligibility table.

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CLIENT BRIEFINGS

The below list of client briefings and presentations may be of interest.

- **Restructuring Sovereign Domestic Debt and the International Financial Architecture** (September 2023)
- **The EU financial services legislative pipeline** (September 2023)
- **UK Financial Services and Markets Act 2023: Building a 'smarter regulatory framework'** (July 2023)
- **Sell Side Horizon Scanner** (July 2023)
- **UK Edinburgh Reforms Six Months On** (June 2023)

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