

UK Financial Services Update: The Financial Services and Markets Bill 2023

January 19, 2023 Martin Pugsley, Michael Byrne

PRACTICES International, Finance, Capital Markets and Securities, Financial Institutions and Insurance Finance, Financial Regulatory

The Financial Services and Markets Bill 2023 (the “Bill”) is making its way through the UK Parliament and is expected to receive Royal Assent in Spring 2023. Assuming that the Bill becomes law in its current form, the Bill (once passed in to law) will start the process of the wide-ranging repeal of EU retained law as it relates to the UK financial services sector. The Bill repeals a substantial amount of legislation that previously aligned with EU law and hands the UK Government an opportunity to set out how it will overhaul the regulatory framework and rules governing the UK financial services sector.

Roles of the Regulators: amongst other things the Bill facilitates a greater role for the UK’s Financial Conduct Authority and the Prudential Regulation Authority in setting the agenda for management of the UK financial services sector by handing them an increased role in protecting consumers whilst at the same time giving them a secondary objective to advance long-term UK economic growth and to increase the competitiveness of the UK financial services sector in the global marketplace. We can expect to see the FCA and PRA trying to balance these potentially conflicting objectives when setting renewed rules under powers envisaged to be given to them by the Bill and its subordinate legislation. Additionally, the Bill introduces a new regulatory principle requiring the FCA and PRA to have regard to the need to contribute towards achieving compliance with the Climate Change Act 2008 when discharging their general functions.

Debt capital markets: the key changes for operators in the debt capital markets space include the repealing and replacement of the Prospectus Regulation and the Securitisation Regulation. The UK Government has been clear that the repealing and replacing of EU retained law will be prioritised on amendments which are expected to deliver the greatest opportunities for growth and, on that basis, the Prospectus Regulation and the Securitisation Regulation are among the first to be repealed and replaced. The UK Government has wasted no time in providing some detail on these new pieces of legislation and has already published draft statutory instruments setting out its proposed replacement legislation for both. The draft [Financial Services and Markets Act 2000 \(Public Offers and Admissions to Trading\) Regulations 2023](#) (the “Public Offer Regulations”) and the draft [Securitisation Regulations 2023](#) were published alongside the Bill, although they are not currently being debated or consulted upon, and may be amended before being put in front of the UK Parliament.

Changes to the prospectus regime: the draft Public Offer Regulations, in their current form, do not make material amendments to the current regulatory framework governing when an approved prospectus is required and when an offer is exempt from such requirement. This means that, broadly speaking, if a prospectus has been required to date in respect of a public offer or an admission to trading on a regulated market or MTF, it will continue to be required after the passing into law of the Bill and the draft Public Offer Regulations (in their current form). The draft Public Offer Regulations do, however, create the circumstances where a departure from the current framework might be possible, being primarily if the FCA deem it appropriate when exercising their

new powers, but any detail on the exercise of such powers will only become apparent when the FCA publish renewed rules on this requirement.

Changes to the securitisation regime: the draft Securitisation Regulations 2023 do not make material amendments to the current regulatory framework applicable to securitisations other than in respect of the regulation of securitisations by an occupational pension scheme but, as with the draft Public Offer Regulations, they do create the circumstances where a departure from the current framework might be possible if the FCA deem it appropriate. The Bill also establishes a framework under which HM Treasury can designate non-UK jurisdictions which have a simple, transparent and standardised (STS) securitisation framework equivalent to that of the UK so that UK investors can invest in STS equivalent non-UK securitisations which are recognised in the UK, increasing the choice for UK investors in the market for STS securitisations.

Although the Bill provides some indication of the direction of travel in respect of regulation of the UK financial services sector, this is just the first step in resetting that landscape and much of the detail will follow in the months and years ahead as replacement legislation is adopted. It may therefore be some time before we see any material changes to the regulatory landscape of the UK financial services sector.

The Debt Capital Markets team at Haynes Boone represents UK and foreign debt issuers, underwriters, trustees and other service providers in a full range of public and private debt capital markets transactions, from EMTN programmes to private placements and corporate bonds, including green bonds and social bonds. Our advice typically includes structuring offering terms, preparing prospectuses and managing their approval with the applicable regulator, drafting other offering documentation, overseeing the listing or admission to trading process and liaising third parties in respect of ESG (environmental, social and governance) accreditations.