HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

The Lord Livermore and The Lord Sharkey
House of Lords
London
SW1A 0PW

16 January 2024

Dear Spencer and John,

DATA REPORTING SERVICES REGULATIONS AND SECURITISATION REGULATIONS

Thank you for your contributions during the debate on the Data Reporting Services Regulations 2023 and the Securitisation Regulations 2023 on 10 January. I committed to write to you both to provide further detail on a number of questions raised.

Lord Sharkey asked about Parliamentary scrutiny of the regulator rules made as a result of these statutory instruments (SIs), and whether regulator rules would be available before debates on SIs made as part of the Smarter Regulatory Framework programme. Lord Sharkey also asked about enforcement powers related to the Data Reporting Serices Regulations, the scope of the Securitisation Regulations, and further information about reforms to due diligence requirements in the Securitisation Regulations.

Lord Livermore asked about commencement of both SIs, the practical impact of a UK consolidated tape, the timescale for its delivery and further information on the government's plans should a bidder for the consolidated tape not materialise. Lord Livermore also asked for information on the review of the framework for the regulation of securitisations.

Parliamentary scrutiny of regulator rules enabled by these SIs

As you know, assimilated law is being replaced in line with the UK's domestic model of regulation as the government delivers the Smarter Regulatory Framework. In practice, this means the UK's independent financial services regulators will generally set the detailed provisions that apply to firms in their rulebooks instead of firms being required to follow EU law. This is the model that already exists outside of assimilated law for regulation of a domestic origin.

This model ensures that the regulators' real-world, day-to-day experience of supervising financial services firms is central to the regulatory policymaking process. This approach was subject to two consultations and received broad support across the sector.

Parliament debated this approach to replacing assimilated law in financial services during the passage of the Financial Services and Markets Act 2023 (FSMA 2023), and it secured Parliamentary support. The government is now delivering that approach through a programme of secondary legislation, including these SIs.

The government recognises the importance of effective Parliamentary scrutiny of the financial services regulators, including their approach to rule-making. That is why FSMA 2023 introduced additional mechanisms to strengthen Parliament's existing ability to scrutinise the regulators' work. This includes requirements for the regulators to notify relevant Parliamentary committees of their consultations, and to explain how representations by Parliamentary committees have been considered when they come to publish final rules.

The government is also committed to replacing assimilated law in a way that is thoughtfully planned and sequenced to minimise unnecessary disruption while taking the opportunity to maximise impact. Therefore, where possible, draft regulator rules or regulator consultation outcomes have been made available by the regulators in advance of relevant Parliamentary debates.

For example, the final rules which will replace assimilated EU law in relation to Data Reporting Service Providers were published by the Financial Conduct Authority (FCA) in December 2023. These will take effect on 5 April 2024. Draft rules which are intended to replace the EU Securitisation regime were published by the Prudential Regulation Authority (PRA) and FCA in July and August 2023 respectively as part of their consultation process. The PRA and FCA continue to work on their final rules, which they will publish in the coming months.

Commencement of both statutory instruments

Where assimilated law is replaced, the government will only commence the repeal of assimilated law as and when any replacement legislation and necessary regulator rules are in place.

The commencement of the repeal of the assimilated law concerning Data Reporting Service Providers will take place on 5 April 2024, at which point relevant FCA rules will come into force.

The commencement of the repeal of the EU Securitisation regime will take place once regulator rules are finalised, which the government expects to be around the middle of 2024.

These SIs will take effect on the same date on which the repeal of the relevant assimilated law takes effect.

Data Reporting Services Regulations

Enforcement powers

Section 300H of the Financial Services and Markets Act (FSMA) 2000, which was inserted by FSMA 2023, gives the FCA a general rule-making power over Data Reporting Service Providers. This enables the FCA to also make rules governing the price of data provided by these entities, should the FCA believe that doing so is in line with its statutory objectives. The FCA already has the necessary powers to enforce the rules they make using this rule-

making power. These powers are also in FSMA 2000, and include the powers of public censure and to issue fines.

Where existing powers are not sufficient, the government is bolstering them through the Data Reporting Services Regulations: for example, regulation 19(3)-(4) empowers the FCA to take enforcement action (public censure and financial penalties) against the management body or another member of senior management responsible for a contravention.

The FCA's final rules in relation to a consolidated tape for bonds do not contain rules in respect to pricing. This is because the FCA intends to run a tender process, using the power to do so introduced by the Data Reporting Services Regulations, to select one consolidated tape provider per asset class.

Under this approach, a bidder to run a consolidated tape will commit through the tender process to a price to be charged for that tape. The appointed consolidated tape provider will then be contractually obliged to maintain this pricing model as per the terms of its contract, which will be enforceable under the ordinary principles of contract law.

Consolidated Tape impact

Access to widely available information on trades and prices is fundamental in helping market participants identify investment opportunities and evaluate positions, and is essential for price formation and best execution. Currently, there are no consolidated tape providers in the UK. This means market participants must purchase market data from multiple trading venues and data vendors to get a cross market view, which is burdensome and costly. A consolidated tape will collate market data into one live, electronic stream which market participants can use to access all trade and price information. This will improve market transparency and make it easier and cheaper for market participants to make informed investment decisions and ensure they have obtained the best price for their trade.

Consolidated Tape bids

The government engaged extensively with industry during the Wholesale Markets Review on legislative changes to facilitate the emergence of a consolidated tape in the UK. There was broad support for the government's proposals, which are delivered by the Data Reporting Services Regulations. The government is therefore confident that the previous legislative barriers which made the running of a consolidated tape in the UK commercially unviable have been removed, for example, the requirement to make data free after 15 minutes and the requirement to charge on a per user basis.

The Regulations also give the FCA the power to run a tender process to select one or more consolidated tape providers per asset class. This reflects feedback received through the Wholesale Markets Review that a tender process would help facilitate the emergence of a UK consolidated tape by ensuring that the costs for firms connecting to a tape and accessing data from a tape remain low. This will make running a consolidated tape in the UK commercially viable. The tender process will also enable the FCA to ensure that the correct arrangements for the governance of the tape are in place, and help mitigate conflicts of interest.

The government is therefore confident that the FCA now has all the necessary tools to ensure the emergence of a consolidated tape, and to ensure the correct governance of that tape. The FCA has indicated that it expects a consolidated tape for bonds to be operational in the UK during 2025, following a tender process.

Securitisation Regulations

Scope of regulation

In its 2021 Review of the EU Securitisation regime, HM Treasury concluded that continuing to include non-UK Alternative Investment Fund Managers (AIFMs) within the scope of the definition of institutional investor might disincentivise these firms from investing in UK securitisations. The review

also concluded that the UK's financial services regulators might not be the appropriate regulatory bodies to supervise due diligence requirements for overseas firms' investments, as this supervision could pose extraterritorial challenges.

As a result, HM Treasury considers it appropriate to facilitate overseas AIFMs investing in UK securitisations by removing them from the scope of requirements, such as due diligence, through this instrument. This enhances the openness and competitiveness of the UK securitisation market making it easier for overseas AIFMs to invest in UK securitisations, where these are manufactured by UK firms who are compliant with robust post-crisis due diligence, risk retention, transparency, capital, and liquidity standards.

Regarding the question about occupational pension schemes, the FCA currently supervises compliance with requirements for providing securitisations by all unauthorised persons. Therefore, its supervisory remit for securitisation manufacturers already goes beyond FCA-authorised persons. Consequently, the FCA's regulatory expertise on securitisation manufacturers makes it more appropriate for them to take on supervision of the few (if any) operational pension schemes which might provide securitisations.

Due diligence requirements

Occupational pension schemes are supervised by the Pensions Regulator (TPR). The TPR does not have rulemaking powers equivalent to those of the FCA and the PRA, so HM Treasury is restating due diligence requirements for occupational pension schemes in legislation to ensure that these continue to apply after the revocation of the EU Securitisation Regulation and allow the TPR to supervise against them.

The government intends to align due diligence requirements for occupational pension schemes who invest in securitisations with the final requirements implemented by the FCA and PRA for all other institutional investors, to the extent that it is appropriate. As set out above, the

government expects that the FCA and PRA will publish their final securitisation rules in 2024.

The government is working with the financial services regulators, and TPR, to determine how reforms in the regulators' rules might be incorporated, appropriately, into HM Treasury's legislative framework for the securitisation regime for occupational pension schemes.

The government will lay further legislation to implement these changes, alongside other technical provisions like consequential amendments, in 2024.

Review

Beyond the reforms identified, the 2021 review concluded that the UK's securitisation regime was largely fit for purpose in bolstering securitisation standards and developing safe securitisation markets. As the FCA and PRA will enact most reforms to the UK's securitisation framework identified in the review, the legislation is not expected to have a significant impact on firms. The government has therefore not included a clause mandating the review of the legislation in line with statutory guidance under the Small Business, Enterprise and Employment Act 2015.

FSMA 2023 introduced a general duty for the financial services regulators to keep their rules under review, including the rules which will be made in relation to securitisation, and HM Treasury is able to direct the regulators to review rules where that is in the public interest.

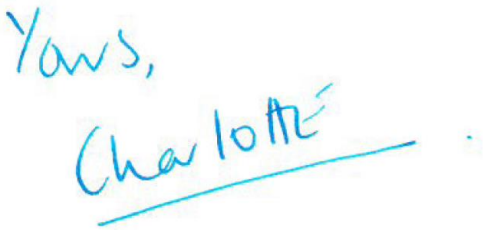
Disapplication and modification of rules

Sections 71N(3) and 71N(4) of FSMA 2000 provide a technical tool which enables the FCA to reflect different business models and practices by modifying or disapplying certain rules in relation to specific firms. This power was approved by Parliament and inserted into FSMA 2000 through FSMA 2023.

This power will also enable some existing waiver regimes in assimilated law to be maintained. As explained in paragraph 49 of the FSMA 2023 explanatory notes, EU law contains a number of modification and disapplication regimes, including the Securitisation Regulation, which this instrument replaces.

Through the Securitisation Regulations 2023, the FCA will be able to suspend, modify or disapply rules only in relation to the designated activities in Regulation 4. Before suspending any designated activities rules made under the regulations, the FCA must consult the PRA. The FCA must also publish a notice suspending rules or a decision to dispense or modify requirements, in the way appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it.

Thank you again for your contributions during the debate. A copy of this letter will be deposited in the Library of the House.



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