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Horizon Scan for Private Investment Funds: Key Recent and Expected Funds, Regulatory and Tax Developments to Look Out For

Welcome to our January 2023 Horizon Scan, where we focus on some of the principal recent and expected developments and changes that we expect to be of interest to those in the non-listed funds sector. We have grouped the topics under the following headings: UK funds; sustainable finance (UK, EU, and US); regulatory issues (UK and EU); tax topics (UK and EU); and US specific developments (for non-US fund managers marketing in the US and other than ESG). At the end we have set out additional topics and anticipated developments to look out for this year, also likely to impact the private funds industry but which, in the interests of trying to be as succinct and focussed as possible, we have not covered in any detail.

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We will refresh and update this Horizon Scan as we move through the year. In the meantime, please speak to your usual Goodwin contact, or one of the co-authors of this briefing, for any further detail, or if you want to discuss how any of these initiatives may impact on your fund structures and investments.

ISSUE	RECENT AND EXPECTED DEVELOPMENTS	COMMENT
UK FUNDS DEVELOPMENTS		

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Reform of UK limited partnership (UKLP) law Draft legislative limited partnership reforms form part of the Economic Crime and Transparency Bill (ECT Bill). If enacted, the changes will represent a significant reform to UKLP law, in parallel with reforms to the powers of Companies House and law enforcement for economic crime. See our October 2022 client alert for background.	Once the ECT Bill is enacted, we expect a short (6 month) transitional period for existing UKLPs to comply. This will include gathering the required information to be submitted to the registrar for each partner (including specifics on each individual limited partner), ensuring a UKLP has access to a Scottish or English registered office where its principal place of business is not also in the UK and arranging appointments of individual registered officers of GPs. The ECT Bill is expected to receive Royal Assent in early 2023.	We await details (including any amendments to the draft proposals) following conclusion of the legislative process. Implementation is likely to be Spring 2023 although secondary legislation will need to be in place before the provisions take effect. A key issue that industry groups have been engaged with Government in order to refine and resolve, is the potentially critical impact of the registrar's ability to 'de-register' UKLPs in certain circumstances, arguably resulting in the loss of limited partners' limited liability post dissolution and during the UKLP's winding up period. Another area of concern is the introduction of potential criminal liability for limited partners for failing to file a notice of dissolution in certain circumstances.
The Long Term Asset Fund (LTAF) and theme of retailisation/democratisation Available since November 2021, the LTAF is a new open-ended authorised fund structure that can invest in a full range of illiquid asset classes. The development of the LTAF is significant to the retailisation agenda, as an investment platform to access retail wealth outside the listed market. The Productive Finance Working Group's November 2022 publication 'Investing in Less Liquid Assets – Key Considerations' includes a Legal Guide to the LTAF. It has also published a model instrument of incorporation for the LTAF. A manager seeking to target the retail market would need to accept increased compliance,	To help ensure the success of the LTAF, in August 2022 the FCA consulted on its broader retail distribution. This would potentially extend the LTAF's investor base to restricted retail investors (up to 10% of their investable assets and subject to certain conditions being met) in addition to professional investors, certified sophisticated retail and high net worth investors, and Defined Contribution (DC) pension schemes as either professional investors or using a unit-linked insurance wrapper. The proposals are aligned with the changes to the financial promotion rules	Following its consultation, an FCA policy statement on extending retail access is expected in early 2023. Broadening pension scheme and retail access may help increase the appeal of the LTAF as either an alternative to the Qualified Investor Scheme (QIS) or for those looking to the authorised funds market for the first time. The FCA authorisation timescale for LTAFs remains 6 months, which compares negatively with other regulated forms (the FCA aims to process applications to complete QIS within one month and Non-UCITS Retail Schemes (NURS) within 2 months). There is growing interest in the evolution of different investment routes for retail wealth (including DC pension schemes) in less liquid assets.

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detailed authorisation requirements and regulatory risk.	for 'high risk investments'. On 24 November 2022 the FCA published guidance on valuation and unit pricing for LTAFs, broadly a high-level summary of the rules and expected policies and procedures. The authorised fund manager (AFM) of the LTAF need not appoint an external valuer if the depositary has determined that the AFM has the resources and procedures for carrying out asset valuation. Also for an LTAF that invests in other collective investment schemes (CIS) or alternative investment funds (AIFs) subject to external independent valuations, the AFM can rely on those. LTAFs must publish monthly valuations, regardless of their dealing policy.	Alongside closed-ended options (listed investment companies, evergreen funds with fixed liquidity windows to align with the investment cycle of less liquid assets and ELTIFs in Europe – see below), and non-fund options such as bespoke investment management arrangements, the LTAF open-ended authorised vehicle provides an important route to consider. The EU legislation on the ELTIF is to be repealed in the UK (as part of the Edinburgh Reforms package of provisions to address retained EU law), given the lack of take-up in the UK and the recently-introduced option of the UK-specific LTAF.
UK Stewardship Code (the Code) The Code aims to encourage the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities. It applies to asset owners, asset managers and service providers. Asset owners include institutional investors, pension funds, insurance companies, local government pension pools, sovereign wealth funds, investment trusts and other collective investment vehicles. Reports are to be made across an organisation's business i.e. as a	As set out in the Financial Reporting Council (FRC)'s November 2022 Review of Stewardship Reporting, asset managers and service providers can apply to be a signatory until 30 April 2023 (31 October 2023 for renewal applications for existing signatories). The FRC expect improved disclosures of how rights and responsibilities are exercised on asset classes such as	Except for certain FCA-regulated investment firms (who have to disclose the nature of their commitment to the Code or where they do not, their alternative investment strategy), the Code and reporting on its application are voluntary. However, there is an expectation that asset managers and asset owners are seen to be taking active steps, including embracing ESG considerations, in their stewardship role, regardless of whether or not they are a signatory to the Code. We expect evidence of active

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single global organisation (if not possible it can be done as a UK entity).	private equity, real estate and infrastructure. A consultation on a review of the Code (most recently revised in 2020) is expected in late 2023.	stewardship as part of the sustainable growth agenda to become an area of regulatory focus. Sector-specific guidance would be helpful so that organisations can take steps to align expectations with their own business models.
Reform of UK funds regime: more to come Other outputs are expected following HM Treasury's January 2021 call for input on a review of the UK funds regime, covering tax and relevant areas of regulation.	The Government is seeking a new unregulated fund structure with relatively few constraints. The proposal under development is that of an unregulated contractual structure available to professional/semi-professional investors that is closed ended and unlisted, but with tradable units. See below (under UK Tax) for developments on the tax side, in particular on the VAT treatment of fund management services and further amendments to the REIT rules, which formed part of the original UK funds review.	Recent amendments to the Financial Services and Markets Bill to facilitate a new 'unauthorised co-ownership' AIF (based on the CoACS) marks an important development to pave the way for prospective regulations on a 'professional investor fund.'
SUSTAINABLE FINANCE (UK)		
FCA proposals on Sustainability Disclosure Requirements (SDR) and investment labels The proposals set out the FCA's October 2022 consultation CP22/20, aim to increase transparency on the sustainability profile of products and firms and reduce the risk of harm from greenwashing. In addition, to protect consumers, providing better	The consultation closes on 25 January 2023 and a policy statement is expected by June 2023 (with a subsequent consultation due to follow on bringing overseas funds within scope). Apart from the 'anti greenwashing rule' (that will	Firms should start thinking about the following key questions: (i) the extent that a firm and its products are in scope; (ii) how (and if) the labels may apply to their existing products; (iii) whether or not a firm wants to use a label for its future products, and if so, any changes it may have to make (for instance to strategic, governance or resources matters) to achieve this; (iv) information

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comparables among products and ultimately increasing capital flows into sustainable activities. As part of this package, the FCA proposes three sustainable labels that in-scope firms can use where they meet the relevant criteria. Although not in scope to start, non-UK managers and overseas funds being marketed in the UK are expected to be brought into the new regime in due course. See our October 2022 client alerts on SDR and on TCFD rules for background.	apply to all FCA-authorised firms immediately) the rules are expected to apply on a phased basis from June/December 2024, June 2025 and June 2026. Various other outputs are expected in this field: • Development of a UK Green Taxonomy • The expansion of the proposed rules to overseas products, pensions and other investment products • Rules on publication of TCFD-aligned transition plans • An updated Green Finance Strategy (expected early 2023), with a focus on the regulation of green finance • A consultation (Q1 2023) on bringing ESG ratings providers within the regulatory perimeter	to be disclosed and what information needs to be gathered to be able to comply, for instance to identify any challenges with data availability and how these can be best managed; and (v) how (and when) to have conversations with investors on what these rules mean for investment portfolios. Industry responses are likely to encourage the FCA to ensure that all funds are treated the same to ensure the labels do not inadvertently create an uneven playing field. The Government wants to ensure that the financial system plays a major role in the delivery of the UK's Net Zero target, and is acting to secure the UK as "the best place in the world for responsible and sustainable investment".
SUSTAINABLE FINANCE (EU)		
Sustainable Finance Disclosure Regulation (SFDR) Although the principal obligations under SFDR have applied since 10 March 2021, the Level 2 RTS (SFDR Delegated Regulation) applied from 1 January 2023 and contain supplemental details on the disclosures, together with annexes setting out reporting templates.	From 1 January 2023 the following is relevant: • Templates for the pre-contractual product disclosures will apply – Annex II (for Article 8) and Annex III (Article 9) • Templates for the fund's periodic reports – Annex IV (for Article 8) and Annex V (Article 9)	The following updates are also anticipated: • RTS amendments relating to PAI indicators and product disclosures. The European Supervisory Authorities (ESAs) have delayed anticipated output from April to November 2023. • European Commission or ESMA guidanceon Article 8 thresholds. It is hoped that this will provide some

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	These are to be appended to the Article 23 investor disclosures and Article 22 AIFMD annual report respectively, including an explanatory statement, with a prominent statement in the main document to refer to the sustainability information that is appended. • Details of the 'sustainability-related' website disclosures which complement the above (and for which there is no mandatory template but the RTS sets out the detail of). Article 10 SFDR • By 30 June 2023 for managers that take principal adverse impacts (PAI) of investment decisions on sustainability factors into account – a statement on their website (covering the period 1 Jan-31 Dec 2022 and using the RTS template in Annex I). Article 4 SFDR	much-needed clarity on which disclosures apply to which products. • SFDR RTS amendments relating to information to be provided in pre-contractual documents, on websites and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities (with updated proposed Annexures II-V). Further guidance in the form of Q&A continues to be published (the most recent in an ESA November 2022 publication).
ESAs call for evidence on greenwashing This paper requests views across the financial sector on how to understand greenwashing (for sustainability-related claims relating to all aspects of ESG) and its main drivers.	Open for comment until 10 January 2023, a progress report by the ESAs is expected by end May 2023 and a final report by end May 2024.	Tracking progress on this will provide insights in terms of evidence on potential greenwashing practices within and outside the scope of current EU sustainable finance legislation, and how the European authorities intend to address this, in terms of policy and regulatory risk and enforcement actions. Clarity and sectoral focus in this area will no doubt help to significantly reduce the potential harm or impact of any otherwise misleading or unsupported claims.

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ESMA consultation on guidelines on fund names using ESG or sustainability-related terms The purpose is to tackle greenwashing risk in funds, by using quantitative thresholds for the use of ESG and sustainability-related terminology in fund names, to ensure that marketing communications are fair, clear and not misleading and that fund managers are acting honestly.	Open for comment until 20 February 2023, and expected to be finalised by Q2 or Q3 2023. If a fund has any ESG or impact-related words in its name, a minimum proportion of at least 80% of its investments should be used to meet the E or S characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy to be disclosed in the Article 8 and 9 pre-contractual SFDR disclosures. If a fund has the word 'sustainable' or any derivation of it in its name, 50% within the 80% general threshold (as set out above) should be a minimum proportion of sustainable investments (as defined in Article 2(17) SFDR).	This initiative is reflective of current developments elsewhere. For instance, in the UK, the FCA consultation CP22/20 on SDR and product labels (set out above) proposes restrictions to ensure that those marketing products to retail investors where those products do not use a sustainable label cannot promote them as sustainable through names or in marketing materials (although firms may use such terms in their disclosures). Similar initiatives have been proposed in France, Germany and the US.
SUSTAINABLE FINANCE (US)		
SEC proposed ESG Disclosure Rules On 25 May 2022, the US SEC proposed ESG disclosure rules to address and enhance investor disclosure practices, and related policies and procedures regarding ESG investment considerations and objectives, as well as proposed changes to the existing "Names Rule" applicable to registered funds. The proposed ESG disclosure rules would require registered investment companies and registered investment advisers that employ ESG strategies in their investment processes to make ESG disclosures either in the fund	Finalization of the proposed rules and amendments is expected sometime in 2023. The SEC, however, is already actively engaged in enforcement activity based on inaccurate or misleading ESG-related disclosures. The proposed ESG disclosure rules would apply to investment advisers to registered investment companies and private funds	The proposed rules, meant to address greenwashing, are the US version of the EU's SFDR that has applied since March 2021 and the UK's SDR proposals (both of which are covered above). The focus, however, is solely on disclosures, and the SEC does not promote the adoption of a particular ESG strategy or any ESG strategy at all. As proposed, the additional disclosure requirements applicable to "ESG-Focused" funds would be very easy to trigger. For example, the use of

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prospectus for a registered investment company or in the Brochure (Form ADV Part 2A) for a registered investment adviser. Disclosure requirements would vary based on the extent of ESG factor integration into investment strategies, characterized as "ESG Integration Strategies," "ESG-Focused Strategies", and "Impact Strategies." See our June 2022 client alert for background and more details.	and other clients and are intended to provide investors with clear and comparable information about how advisers consider ESG factors. The proposed changes to the Names Rule would, among other things, significantly expand the scope of the terms used in the names of registered funds that would subject the fund to the requirements of the Names Rule, including terms indicating that the fund's investment decisions incorporate one or more ESG factors.	a single negative screen seemingly would cause a fund to fall within this category.
The US Department of Labor (DOL) released final amendments to its regulation on investment duties This relates to those amendments under Section 404(a) of the Employee Retirement Income Security Act of 1974 (ERISA) regarding the consideration of ESG factors by retirement plan fiduciaries. The amendments go into effect on 30 January 2023. See our January 2023 client alert for background and more details.	Under President Biden, the DOL previously announced that it would not enforce the changes made to the "investment duties" rule under President Trump that effectively restricted retirement plan fiduciaries' ability to consider ESG factors. This final rule is a codification of that reversal.	The DOL's final amendments expressly reference ESG factors, but take a neutral stance on whether investment fiduciaries should consider them and, to the extent they are considered, the weight to be afforded to them, providing investment fiduciaries leeway to determine whether and to what extent ESG factors are relevant in any given case.
Several US states or groups of states have engaged in "anti-ESG" or "pro-ESG" activity This is taking place via new legislation, investment policies, Attorney General opinions, letters, reports, statements, and unilateral State Treasurer action, such as	States that have engaged in anti-ESG activity (pending or finalized) include Arizona, Arkansas, Florida, Idaho, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri,	The anti-ESG efforts, though widely acknowledged to promote a "red state" political agenda, are having a practical, if not a legal, impact. For example, a leading global investment company recently withdrew from the Net Zero Asset Manager initiative and was shortly

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South Carolina's divestment from BlackRock. Some states have also "blacklisted" certain companies that they have determined to act contrary to the principles and obligations that are the subject of the anti-ESG action.	Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia and Wyoming. By contrast, Connecticut, Illinois, Maine, Maryland, Nevada, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Virginia have recently proposed or adopted policies or legislation to advance one or more ESG-related causes. In response to the anti-ESG activity of certain states, representatives from California, Colorado, Delaware, Illinois, Maine, Massachusetts, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington and Wisconsin released an open letter urging support for ESG-themed investment strategies.	thereafter excused from a hearing on ESG investment factors convened by the Texas Senate Committee on State Affairs.
REGULATORY DEVELOPMENTS (UK)		
Appointed Representatives regime The changes to the FCA's Appointed Representative (AR) regime came into force on **8 December 2022**. The changes impose additional requirements on FCA-authorised principals and on their ARs.	A principal is now required to provide additional and ongoing data to the FCA about the activities of its AR. There are also new additional obligations on a principal before taking on an AR and during the AR's appointment. The FCA has indicated it will work with HM Treasury to make further amendments to the regime.	The additional obligations are likely to result in an increase in the fees charged by third party principals and the imposition of further obligations on ARs to ease a principal's oversight of the AR. This may, in turn result in the further scrutiny by a principal of its ARs. The FCA's receipt of further data will put the FCA in a position to undertake further surveillance and exercise deeper scrutiny of the activities of ARs. The specific impact on private fund advisers (noting that a manager cannot be an

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		AR) is difficult to determine because the changes were prompted by the FCA's concerns about financial advisers and retail investors. If a private fund adviser finds itself with significant additional burdens imposed by its third party principal, this may prompt the question of whether the increased cost of compliance as an AR justifies an application to the FCA to become authorised instead.
The Consumer Duty The FCA Consumer Duty is captured in a new FCA Principle for Businesses 12 which states: "A firm must act to deliver good outcomes for retail customers." Three "cross-cutting rules" underpin the duty. These require firms to: (1) act in good faith towards retail customers; (2) avoid causing foreseeable harm to retail customers; and (3) enable and support retail customers to pursue their financial objectives. The FCA also sets out four sets of "outcomes rules", intended to help "define what is required by Principle 12". These relate to: (1) products and services; (2) price and fair value; (3) consumer understanding; and (4) consumer support. We addressed the likely impact of the Consumer Duty on private fund managers in our October 2022 client alert.	The FCA rules and guidance governing the duty, which the plan will need to address, come into force for: new and existing investments open for sale on **31 July 2023**; and closed investments on **31 July 2024**. There is also a deadline on 30 April 2023, for manufacturers, which includes in-scope managers, to have conducted cross-cutting rule reviews and shared information with distributors. In its December 2022 Quarterly Consultation the FCA proposes making an amendment to the scope of the rules, so that firms in a distribution chain selling investment funds to retail customers where the minimum investment is £50,000 are no longer excluded. This is to clarify the policy intention that this "non-retail financial instrument" exclusion does not cover investment funds that are distributed to retail	The duty applies to managers who provide services for a **retail customer** defined, in the context of an alternative investment fund, as an investor in the fund or the beneficial owner of interests in the fund, that is not a professional client. The duty will not, therefore apply to professional investors in respect of whom the AIFMD by default, limits the marketing of private funds. A point of direct contact for the managers of private managers will be *per se* retail clients, who a manager cannot "opt-up" and treat as an elective professional client. This, in turn, highlights the role of the client categorisation processes, noted in our previous alert, and the FCA's existing focus on these processes. Likely retail client candidates include family offices, high-net worth individuals and manager employees to whom the manager may be offering carried interest or other employee incentives.

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	customers. If this change is introduced (with a consequent widening of scope of the Consumer Duty), it will impose further cost and disruption on affected firms, who have been working on the basis of the rules and definitions published in the FCA's July 2022 policy statement (PS22/9).	
Financial Services and Markets Bill (the FSM Bill) The FSM Bill is currently making its way through Parliament. The FSM Bill is the centrepiece for delivering the UK's future regulatory framework (FRF). Amongst its provisions are those which amend the Financial Services and Markets Act 2000 and implement proposals from the FRF review.	The main features of the FSM Bill include: • Delegating more rule-making powers to the FCA and PRA and giving them a secondary objective for growth and international competitiveness • Setting the process for revoking onshored EU financial services regulation, including a regime for designating activities as regulated activities • The tightening of the process for the approval of financial promotion (see below) • Empowering the FCA and PRA to oversee the resilience of third parties providing critical services to the financial sector • Increasing the regulation of crypto-assets	Much has been made of the secondary objective for growth and international competitiveness, which is near-identical to what was contained in the version of the Financial Services and Markets Act 2000 made over twenty years ago. This same provision was repealed in the wake of the financial crisis. The full impact of the secondary objective on the FCA and PRA rule-making and policy making powers is uncertain but the broader policy impact can be seen in the so-called Edinburgh Reforms (discussed below). See our comments below on the Edinburgh Reforms and FRF.
Proposed changes to the financial promotion approval regime	The proposed new regulatory gateway will impose a	These proposals do not affect the way authorised firms communicate their own

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The FCA's CP22/27 , published in December 2022 and open for feedback until 7 February 2023, contains proposals to operationalize the proposed legislative changes (which form part of the FSM Bill) to create a new regulatory framework for authorised firms approving financial promotions of unauthorised firms. The FCA states that the changes it has set out will address gaps in the financial promotions approvals regime and help it intervene faster in response to harmful financial promotions communicated by unauthorised firms in areas such as high-risk investments and 'Buy Now Pay Later' products.	universal requirement on all authorised firms, prohibiting them from approving financial promotions of unauthorised firms. Any authorised firm wishing to undertake such activity will need to apply to have the requirement cancelled or varied. A transitional period is expected for the change to be implemented and there are various exemptions. The proposals currently being consulted on include provisions on how the FCA will assess applicants, the basis on which the FCA may grant or refuse permission, reporting (including half yearly aggregate reporting) and notification requirements for eligible firms. On redress, the FCA does not intend to extend the Financial Ombudsman Service's compulsory jurisdiction to approval of financial promotions. Neither is the Financial Services Compensation Scheme relevant.	financial promotions, approve their own promotions for communication by unauthorised persons, or approve promotions for their Appointed Representatives or unauthorised persons within the same corporate group. The key impact is that authorised firms will only be able to approve financial promotions for unauthorised persons where they have had the requirement to not approve financial promotions varied or cancelled. The FCA's December 2022 Quarterly Consultation (referred to above) also contains proposed amendments to clarify when the Consumer Duty applies to firms approving or communicating a financial promotion when there is no underlying regulated activity.
Financial promotion rules for non-mainstream pooled investments The changes to the FCA rules dealing with financial promotion address investment in "high-risk" assets and are addressed primarily at investment by retail investors. The new rules are part of overall changes to the financial promotion regime, including changes proposed in the FSM Bill (covered	Under the new rules, there are two product categories: Restricted Mass Market Investments (RMMI) and Non-Mass Market Investments (NMMI). While the mass marketing of RMMI to retail clients is prohibited, any marketing of NMMI to retail clients is subject to further	Firms that offer NMPI to retail investors, such as family offices, high-net-worth individuals, and employees, will need to consider the changes to the rules. For instance, where a manager offers carried interest or other employee incentives. If the offers do not extend to retail investors but are limited to professional investors, the new rules will not be

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above). We addressed the changes to the financial promotion rules and the likely impact of the consumer duty on private fund managers in two recent client alerts (on new risk warnings and new financial promotion rules).	requirements. Non-mainstream pooled investments (NMPI) are a subset of NMMI and the additional rules. The rules on risk warnings came into force on **1 December 2022** and the remaining rules come into force on **1 February 2023**. The rules (some of which are the same as those that currently apply) will impose requirements on FCA firms with respect to: the preliminary assessment of suitability; pre-promotion personalised risk warnings and "cooling off periods"; risk warnings in the promotions, themselves; and restrictions on monetary and non-monetary benefits.	relevant.
The Edinburgh Reforms and the Future Regulatory Framework (FRF) On 9 December 2022, the Chancellor of the Exchequer, Jeremy Hunt, outlined a series of measures designed to drive growth and competitiveness in the UK financial services sector, now known as the Edinburgh Reforms. The reforms are divided into four categories: a competitive marketplace promoting effective use of capital; sustainable finance; technology and innovation; and consumers and business. On the same day, HM Treasury published a Policy Statement which explained the Government's approach to repealing and replacing retained EU Law on financial services. The FCA also published the FRF Review setting out its approach to the FRF.	We would highlight the below main items of interest for private fund managers. • The publication of draft Statutory Instruments to demonstrate how Government can use the powers within the FSM Bill to reform the prospectus and securitisation regimes. Overhauling the prospectus regime to widen participation in the ownership of public companies and simplify the capital raising process for companies on UK markets. • Plans to repeal the Regulation on European	As a political statement, the Edinburgh Reforms have a strong signalling effect. The actual impact on the extent and burden of regulation on managers in particular, is, however, difficult to predict. The FCA's statement is interesting, noting its work to encourage innovation and comments on how best to report and measure how it can contribute to the new secondary objective for growth and international competitiveness. It states that it will expect to distinguish between the FCA's inputs and outputs, and the outcomes for the UK economy. It emphasises the importance of focussing on drivers it can measure and those it can influence directly and how this builds on the work it has already done on metrics and increased

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The Edinburgh Reforms and the Policy Statement, together with the FSM Bill, are designed to give effect to the FRF.	Long-Term Investment Funds (ELTIF) without replacement on the basis that the recently-established Long Term Asset Fund (LTAF) regime provides a fund structure better suited to the needs of the UK market (covered in more detail above). • Publishing a PRIIPs and UK Retail Disclosure consultation (discussed below).	accountability.
The UK PRIIPS Regulation This legislation is to be repealed by the FSM Bill as a "matter of priority" and replaced with an alternative framework for retail disclosure as part of the FRF review.	A consultation (that closes on 3 March 2023) was published as part of the Edinburgh Reforms. The intention of this limb of the proposals is to remove prescriptive requirements and increase flexibility, remove PRIIPs-type comparability from the future framework, create an FCA-led regime, and facilitate the FCA to integrate UCITS and PRIIPs disclosure by 2026. As part of this process the Government welcomes views on other areas for retail disclosure to be considered for future reform.	This is welcome news – the PRIIPs KID has been widely criticised as "not fit for purpose", requiring misleading information to be provided to retail investors and placing an unnecessary burden on firms. The UK regulation also diverges from that of the EU. This is therefore a welcome opportunity to create a new retail disclosure regime that is proportionate and aligns with FCA's high level requirements - being clear, fair and not misleading and in a client's best interests.
Overseas persons At the end of 2020, the Government called for evidence on the overseas regulatory framework, including the overseas persons exemption (OPE), and published its response in July 2021. The OPE, addressed in parts of the Regulated Activities Order, allows UK	The FCA had concerns that the OPE was not being used correctly and was working with HM Treasury to clarify the extent of the OPE and also to address the "characteristic performance" test (CPT). This	The OPE and CPT are vital pillars in the current cross-border regime and ensure that non-UK businesses, such as US investment advisers, can provide services to UK managers. If the OPE and CPT were to be restricted, this would likely increase the burden on

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fund managers and certain types of investors to receive services from advisers and managers based outside the UK without those non-UK advisers or managers having to be FCA-authorised.	holds, in essence, that where an activity, such as investment management, is performed outside the UK on behalf of or for the benefit of a UK client, that activity will not be deemed to occur in the UK and, therefore, not be a regulated activity. Further action is awaited.	non-UK businesses and potentially restrict investor choice. In light of the growth and international competitiveness objective set for the FCA under the FSM Bill (see above), it is difficult to see how a restriction could be justified.
REGULATORY DEVELOPMENTS (EU)		
AIFMD marketing / pre-marketing In December 2022 ESMA published its final report on implementing technical standards and regulatory technical standards to specify the information to be provided and the content and format of notification letters to be submitted by AIFMs (and UCITS ManCos) to national competent authorities (NCAs) to undertake cross-border marketing or cross-border management activities in host member states. These complement the EU legislative package on cross-border distribution of funds (that has applied since August 2021).	This ESMA work aims to foster convergence and standardization of information and templates for cross-border management and marketing activities, so that NCAs can gather meaningful data that serves a supervisory purpose. ESMA has confirmed that the standards do not apply retrospectively. However, the new templates will result in increased costs (filing fees along with IT development and associated compliance burden), even though ESMA states this has been taken on board in developing the final report. The European Commission has 3 months (extendable to 4) to adopt these standards.	The cross-border legislation includes provisions on pre-marketing, reverse solicitation, ceasing marketing and minimum requirements for retail investors. In addition, new rules on marketing communications, that are supplemented (since February 2022) by ESMA's final guidelines. There remain various grey areas in the practical application and interpretation of some of these rules, for instance: questions on the definition of 'marketing communications'; the 36 month blackout period following a marketing de-notification; that any subscription within 18 months of the start of pre-marketing is considered to be marketing under AIFMD and how the rules impact non-EU AIFMs/AIFs marketing under the national private placement regime (NPPR). The publication of these standards do not shed any light on these areas of uncertainty.
Review of AIFMD Since the European Commission's October	The key areas of review relate to: loan-originating AIFs, third	Loan-originating/private debt funds are an important and growing source of

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2020 consultation on a proposed Amending Directive, the Council of the EU and the European Parliament have been proposing further amendments. Once finalized, the Amending Directive will enter into force 20 days following its publication in the Official Journal of the EU; EU member states will then have 24 months to implement. The passage of a Directive through the legislative process is typically 18 months (this would mean implementation in 2025) but it can be quicker. See our December 2021 client alert for background on the original AIFMD II proposals.	party delegation, minimum stable substance within the AIFM, cross-border access to depositary services and the use of liquidity management tools. In addition, new transparency requirements on providing information on AIF loan portfolios are to be fed into investor disclosures and reporting to NCAs. The final shape of these rules is yet to be determined, pending the outcome of the trialogue negotiations. Further output is expected imminently. UK AIFMs will not be directly impacted by the proposed amendments, unless the UK applies equivalent changes through the FCA Handbook and UK AIFM Regulations.	financing; also expected to help facilitate the transition to investing in a sustainable green economy. Even if the UK does not take an aligned approach, the changes could still be relevant – for example, when marketing cross-border using the NPPRs, or acting as a delegate of an EU27 AIFM (or, if a UK AIFM chooses to voluntarily comply, on a grouped basis or in response to investor demand).
Review of ELTIF Regulation Available since December 2015, a European Long-Term Investment Fund (ELTIF) is a collective investment framework for both professional and retail investors looking to invest in long-term assets. A review of the ELTIF Regulation was finalised in October 2022 and the amending regulation will come into force 20 days following its publication in the Official Journal of the EU – and apply 9 months later. Further output is expected in early February 2023 following the European Parliament's consideration. See above in respect of the UK's expected repeal of the ELTIF Regulation.	The amendments include: • Broadening eligible assets, including a revised definition of 'real assets' meaning 'any assets that have intrinsic value due to their substance and properties', lowering the investment threshold from €10m to €1m minimum investment value and reducing the threshold for eligible investment assets from 70% to 60% • Permitting ELTIFs to utilise master-feeder structures by investing in master ELTIFs (provided sufficient investor	The aim of the amendments is to make ELTIFs more appealing to investors, in particular retail investors; minimise the restrictions and reduce the barriers; provide more flexibility and accessibility to the regime and more favourable redemption options. The review was in response to findings that, as at October 2021, only 57 ELTIFs had been authorised since 2015 with a relatively small amount of AuM (estimated at €2.4bn) and domiciled in only 4 member states (Luxembourg, France, Italy and Spain). Although AIF structures are likely to continue to dominate the institutional end of the non-listed fund market, the ELTIF may be an appealing alternative

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	protection is ensured) • Reducing barriers for retail investors (i.e. removing the €10,000 initial investment requirement and 10% exposure threshold for retail investors with portfolios below €500,000) and aligning the suitability test with that of MiFID • More favourable rules on conflicts of interest to allow co-investment	for those managers targeting retail investors as well as professional investors. The benefit of an EU wide marketing passport may also appeal to sub-threshold managers who do not have AIFMD passport rights. An ability to opt in to the revised rules, once finalised, would assist those keen to take advantage of the amended regime before the 9 month legislative lead-in period has passed.
TAX TOPICS (UK)		
UK-Luxembourg double tax treaty (DTT) The changes in the DTT are now expected to be effective in 2024.	While it was expected that changes in the DTT would take effect in 2023, the changes are now not expected to be effective until 2024 at the earliest. Under the revised DTT, the changes agreed in July 2022 between the UK and Luxembourg will take effect (in respect of UK income tax, capital gains and corporation tax) in April of the calendar year following the year in which the DTT enters into force. Although the UK ratified the Treaty in October 2022, Luxembourg did not ratify the changes before 31 December 2022, and so (provided Luxembourg ratify during the course of 2023), the earliest date on which the changes	The revised DTT will allow the UK to tax Luxembourg investors on any capital gain made on the disposal of a UK real estate-rich entity (including gains accrued prior to the amendments taking effect). Affected investors will welcome a further year of being able to rely on the existing exemption from UK tax. However, certain helpful changes to the DTT will also be postponed. For instance, the revised DTT provides most UK parent company recipients with an exemption from withholding tax on dividends paid by Luxembourg holding companies (whereas the existing DTT only reduces the withholding tax rate), in circumstances where Brexit had meant that UK dividend recipients were not, under Luxembourg law, automatically benefitting from a full exemption available to EU recipients. Investors will now also have a longer wait for the anticipated DTT changes extending the treaty's benefits to certain Luxembourg

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	relating to capital gains are expected to take effect is April 2024.	corporate collective investment vehicles (CIVs), where the relevant qualifying conditions are met.
Qualifying Asset Holding Companies (QAHCs) Market uptake of the UK's new QAHC regime, which took effect in April 2022, has steadily increased.	The UK QAHC regime was implemented to provide for a tax-efficient UK-resident corporate holding vehicle which enables qualifying investors (including funds) to invest using a UK asset holding structure, with minimal additional UK tax leakage.	The Government has made a number of targeted changes to the initial rules since implementation to deal with points that were raising practical issues, and is continuing to discuss further helpful changes with the industry. Through our participation in industry working groups, we are closely involved in working with HMRC to continue to refine and improve the operation of this regime. Please contact us if you would like to receive a more in-depth summary of the QAHC regime, including the potential advantages, conditions of eligibility and practical points to note.
Expected relaxation to the UK's REIT rules The Government announced a relaxation of the UK REIT rules on 9 December 2022, to take effect from April 2023, with the aim of increasing the attractiveness of the regime.	The proposed amendments include: • Removing the requirement for a REIT to own at least three properties, where it holds a single commercial property worth at least £20 million • Amending a rule that subjects gains on properties disposed of within three years of development by the REIT where the cost of development exceeded 30% of the fair value of the property when acquired or on entry into the REIT regime (the "development rule") The Government has not	These amendments will be welcomed amid the growing trend for large and mid-size pan-European real estate funds to structure UK investments using a REIT rather than (for example) a master holding company taking the form of a Luxembourg S.à r.l (see also the comments above on the changes to the UK-Luxembourg double tax treaty). The REIT regime and its exemption from UK corporation tax on qualifying income and gains from the REIT's UK property rental business (which, in practice, make up the majority of the income and gains from the UK REIT's investments) is proving to be a popular alternative structuring option. In addition, the impact of "rebasing" for assets held within "PropCos" that are bought and sold by REITS has become increasingly important in the pricing of

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	specified how the development rule will be amended, although responses to its recent call for input include providing exceptions, recognising inflation in property values and excluding disposals required to meet statutory requirements.	UK deals.
VAT treatment of fund management services The Government published its consultation on the VAT treatment of fund management services on 9 December 2022. The consultation is due to close on 2 February 2023.	The Government proposes codifying the UK's existing policy (based on UK law, retained EU law, general principles, case law and guidance) to provide certainty on the VAT treatment of fund management. VAT is chargeable on supplies of fund management services to most private funds in the UK (e.g. AIFs), other than certain, limited exempt supplies (including supplies to special investment funds (SIFs)). It is not proposed that this VAT treatment will significantly change following the review. The Government proposes establishing criteria to identify SIFs as follows: • The fund must be a collective investment operating on the principle of risk-spreading • The investment return must depend on the performance of the investments with holders bearing the risk connected with the fund • The fund must be subject to	Greater certainty over whether a fund is a SIF is welcome and may improve the UK's attractiveness to funds. However, ruling zero-rating for fund management services out of the consultation's scope (as announced in the Government's response to its call for input on the review of the UK funds regime) will disappoint some, as this would have addressed irrecoverable VAT for UK private fund managers.

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	the same conditions of competition, and appeal to the same investors, as a UCITS (retail investors) However, a fund will not need to be subject to 'State Supervision' to qualify as a SIF. A definition of "Collective Investment", broadly mirroring that in FSMA 2000, will also be introduced. Views on the proposals are being sought, as well as whether any further VAT related modifications would improve the fund management regime for taxpayers.	
Domestic implementation of the OECD Pillar 2 reforms The UK continues to set the pace on this, following the publication of the first draft of the UK legislation in July 2022.	As expected, the UK draft legislation closely follows the OECD's Model GloBE Rules published in December 2021, and contains similar exceptions and carve-outs in relation to funds. The legislation confirms that the provisions relating to the Pillar 2 income inclusion rule (IIR) will apply to accounting periods beginning on or after 31 December 2023, having originally been intended to take effect from 1 April 2023, with the Government acknowledging concerns (expressed in response to its 2022 consultation paper) that the UK's position at the front of the pack could place it at a competitive disadvantage when compared with countries	While, on paper, the draft legislation will principally impact the UK tax system, it is expected to be of wider significance for the global Pillar 2 project given the consultative role undertaken by the Government at OECD level. For instance, in its Summary of Responses (20 July 2022), the Government has reiterated its intention to work with international partners to resolve various outstanding technical issues including, for example, the consistent implementation of the €750m consolidated revenue threshold and Effective Tax Rate (ETR) calculation.

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	that are slower in uptake.	
TAX TOPICS (EU)		
Proposed ATAD 3 Directive The European Parliament's Committee on Economic and Monetary Affairs (ECON) published its report on the proposed ATAD 3 Directive (tackling the use of "shell companies") on 9 December 2022, including recommended amendments to the draft legislation.	The ECON report includes several notable amendments, and in particular a softening of the minimum substance indicators required to be reported by in-scope undertakings under Article 7(1) of the draft Directive: • The "premises" indicator can now be satisfied if reporting entities share premises with entities of the same group in the relevant Member State (rather than having to have their own premises or premises for their own exclusive use) • The requirement that directors must be "qualified" to take income-generating decisions (in addition to being "authorised" to do so) has been removed from the relevant indicator • The requirements that directors actively and independently use such authorisation, and are not employed by an associated enterprise (and do not perform directorial functions of other enterprises) have also been removed The report also recommends an amendment to the effect that the European	The original European Commission proposal had included an exemption for "regulated financial undertakings" (broadly, vehicles established as an AIF managed by an AIFM), and during committee debates there had been some support for a proposal to remove this exemption. The retention of the exemption in the latest report will be welcomed, although some will be disappointed that it has not been extended (as had been proposed) to cover entities owned by such funds. There will also certainly be interest in any potential requirement to report on this exemption's continued operation or existence in future. The proposed amendments to the minimum substance indicators will also be welcomed, as they move closer to aligning the requirements set out in the rules with the way in which many large groups operate in practice.

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	Commission must prepare a report regarding the Directive's operation and implementation, five years from the date of transposition. The report would, amongst other things, assess whether it is appropriate to extend the Article 7(1) obligation to "regulated financial undertakings", and if necessary, review the exemption that such undertakings would (on current drafting) benefit from under Article 6(2b).	
US SPECIFIC DEVELOPMENTS (FOR NON-US MANAGERS MARKETING TO US INVESTORS)		
SEC Marketing Rule The Marketing Rule came into effect on 4 November 2022.	The new Marketing Rule overhauls the regulatory requirements for SEC-registered investment advisers (RIAs) with respect to placement agents for their private funds. It captures a wide range of communications by placements agents as "advertisements" of the RIA and imposes oversight requirements on the RIA with respect to placement agents.	For non-US fund managers, the Marketing Rule will not apply to "exempt reporting advisers" (ERAs), nor will it apply to non-US RIAs in relation to non-US funds (even if US investors commit to these non-US funds). If a non-US RIA is marketing a fund based in the US, then the Marketing Rule will apply. Non-US RIAs marketing non-US funds should take care to minimise references in marketing documents to the fact that the manager is SEC registered, and include appropriate disclaimers/qualifications where they do make such references.
SEC Proposed Rules On 9 February 2022, the SEC proposed a package of new rules which, if adopted, will have a significant impact on fund managers.	Following the publication of the proposed rules, there was a period of consultation with the funds industry during 2022. The SEC have yet to	The proposed rules include (among other issues): • A prohibition of certain activities such as charging investors accelerated

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	issue amended proposals following the consultation but that is expected as some point in the next few months.	monitoring fees or regulatory expenses for SEC examinations etc • Clawback of carried interest would need to be gross of any tax paid • A prohibition on preferential treatment • Mandatory quarterly statements to investors on fund performance, fees and expenses

Sweeper

OTHER TOPICS (UK)	OTHER TOPICS (EU)
Consultations on Local Government Pension Scheme (LGPS) asset pooling	Additional requirements for cross-border tied agency passporting
A review and potential reform of the Senior Managers and Certification Regime (SM&CR)	The Corporate Sustainability Reporting Directive (came into force on 5 January 2023) that mandates large issuing companies to make ESG-related disclosures (first reports to be published in 2025)
Bringing crypto assets and activities into the regulatory regime	Proposed Corporate Sustainability Due Diligence Directive to mandate large companies to ensure their due diligence and activities comply with human rights and environmentally sustainable criteria
A review of UK MiFID (including the unbundling of research rules)	Amendments to MiFID II rules and guidance for NCA on supervision of investment firms' cross-border activities
Amending the charge cap for investments by DC pension schemes	The European Commission opened its call for evidence on the Business in Europe: Framework for Income Taxation (BEFIT)
FCA report on diversity and inclusivity in financial services	EU Faster and Safer Tax Excess Refund (FASTER) proposals

OTHER TOPICS (UK)	OTHER TOPICS (EU)
Ongoing work on how to address structural liquidity mismatches in open-ended funds	EU Foreign Subsidies Regulation
A review of Solvency II/Solvency UK is ongoing in both the UK and EU – the policy intention is to allow insurers to more fully contribute to long term investment in the real economy, although there are no proposals in either case to tailor the real estate Solvency Capital Requirements (SCR) of 25% (something the real estate sector has been arguing for some time, based on the argument that the volatility of non-listed real estate investments is lower than that represented in the short-term standard model applied in the legislation).	
Global Task Force on Nature-Related Financial Disclosures and implementation of a Global Biodiversity Framework, as part of the COP15 goals	
Adoption of International Sustainability Standards Board (ISSB) standards for sustainability-related financial disclosures	