



This brief guide is designed to provide a snapshot of the main developments and trends impacting issuers and managers of debt capital markets ("DCM") products during 2023. Focus remained on sustainable finance generally during 2023 and regulatory reform across many aspects of the DCM, as well as further developments in the DLT and DSS space.

## SUSTAINABLE FINANCE

### EU Green Bond Standard in force

The [EU Green Bond Standard](#) (the "EU GBS") was published in the Official Journal on 30 November 2023 and came into effect from 21 December 2023.

The EU GBS provides for a voluntary standard, with uniform requirements for issuers that wish to use the designation "European Green Bond", or "EuGB". Intended to represent a voluntary "gold standard" for green bond issuers inside and outside of the EU, the EU GBS represents the first attempt at regulating a market which has hitherto been driven by market practice and voluntary standards (with issuers aligning their bonds with the ICMA Green Bond Principles).

The process for issuing labelled Green Bonds under the EU GBS requires compliance with criteria over and above those followed to align with the ICMA Green Bond Principles. The additional criteria imposed by the EU GBS include:

- *Proceeds to be invested in line with the EU Taxonomy Regulation*

The EU GBS requires that the net proceeds of a European Green Bond are invested (either directly or indirectly) in economic activities that are aligned with the EU Taxonomy Regulation, provided the sectors concerned are already covered by the EU Taxonomy's technical screening criteria (subject to a 15 per cent. "flexibility pocket" for circumstances in which no technical screening criteria are available).

Article 3 of the [EU Taxonomy Regulation](#) provides that an investment or economic activity will qualify as environmentally sustainable where it:

- (i) contributes substantially to environmental objectives set out in Article 9 of the EU Taxonomy Regulation;
- (ii) does not significantly harm any of the environmental objectives set out in Article 9 of the EU Taxonomy Regulation;
- (iii) is carried out in compliance with the minimum safeguards laid down in Article 18 of the EU Taxonomy Regulation; and
- (iv) complies with technical screening criteria contained in the EU Taxonomy Regulation.

- *Pre- and Post-Issuing Reporting Requirements*

While issuers of green use-of-proceeds bonds have provided a second party opinion and post-issuance reporting until full allocation of proceeds, the EU GBS imposes additional pre- and post-issuance reporting requirements on issuers. Prior to issuance, issuers wishing to issue a European Green Bond must prepare a European Green Bond factsheet (in the prescribed form), which must then be subject to pre-issuance review by an external reviewer. Following issuance, issuers must prepare a European Green Bond allocation report (in the prescribed form) for every 12-month period until full allocation, which shall also be reviewed by an external reviewer.

- *Supervision of External Reviewers*

The EU GBS requires that external reviewers of European Green Bonds shall be registered with the European Securities Markets Authority and sets out rules associated with such registration and supervision.

## SUSTAINABLE FINANCE (continued)

- *Requirement to publish an EU Prospectus Regulation compliant Prospectus*

The EU GBS requires that only bonds in respect of which the issuer has published a prospectus pursuant to Regulation (EU) 2017/1129 can use the designation "European Green Bond" or "EuGB", unless exempt from such prospectus regulation requirement.

### ICMA publishes paper on market integrity and greenwashing

In October 2023, the International Capital Market Association ("ICMA") published a [paper](#) providing analysis of greenwashing risks and high-level recommendations to policy makers in the context of sustainable finance. While highlighting market feedback that greenwashing is not a significant concern for use-of-proceeds instruments, the paper discusses particular areas of concern applicable to sustainability-linked instruments, including a lack of ambition in respect of targets, strategic inconsistency between an instrument and the wider strategy of an issuer and mismanagement of wider sustainability issues.

### ICMA updates Q&A on Sustainability-Linked Bonds

In September 2023, ICMA published an updated [Q&A](#) in relation to sustainability-linked bonds. The updated Q&A provides additional guidance on (i) the selection of Key Performance Indicators ("KPIs"); (ii) the calibration of Sustainability Performance Targets ("SPTs") or the linkages between the plan and levers to advance those and the real economy; (iii) alternatives to coupon step-ups; (iv) change of KPIs/SPTs; and (v) reporting requirements.

## DLT and UK Digital Securities Sandbox

### ICMA considerations for DLT Risk Factors and Disclosure

In November 2023, ICMA published a [paper](#) offering further insight into legal aspects of distributed ledger technology ("DLT") and blockchain relating to the issuance of debt securities. The paper aims to promote transparency given the increasing frequency of tokenised securities issuances with a view to identifying any potential areas of convergence related to the scope and nature of risk factors and other disclosure.

### UK Government Consultation on Digital Securities Sandbox

In July 2023, the UK Government launched its [consultation](#) on the first financial market infrastructure ("FMI") sandbox, referred to as the "Digital Securities Sandbox" or the "DSS", to enable digital securities to be tested and ultimately adopted across financial markets. In November 2023, the UK Government confirmed its final approach to implementing the DSS and published the [outcome](#) of the consultation. [The Financial Services and Markets Act 2023 \(Digital Securities Sandbox\) Regulations 2023](#), which provide for the testing of the use of developing technology in the carrying on of FMI activities, was laid before Parliament on 18 December 2023 and came into force on 8 January 2024.

**UK Prospectus Regime Update**

The UK government is continuing to move forward with planned reforms to the UK Prospectus Regime, which has, following the withdrawal of the UK from the European Union, continued to be based on the EU Prospectus Regime. The draft [Public Offers and Admissions to Trading Regulations 2023](#) (the "**Regulations**"), which will create the framework for a new UK Prospectus Regime for the offering and admission to trading of securities, have been published and laid before Parliament together with an explanatory memorandum. The FCA is expected to launch a consultation on the proposed changes to the UK Prospectus Regime in the summer of 2024, with the new regime anticipated to be in effect in 2025.

Changes to the UK Prospectus Regime arising from the Regulations will include, inter alia: (i) changes to the "wholesale" threshold for debt securities to £50,000; (ii) further powers for the FCA to prescribe rules for the admission of securities to the regulated market; and (iii) the creation of new "designated activities" for offering relevant securities to the public in the UK and admitting/requesting admission of securities.

**ESMA launches call for evidence on the shortening of the settlement cycle**

In October 2023, the European Securities and Markets Authority ("**ESMA**") launched a [call for evidence](#) to assess the costs and benefits of a possible reduction of the settlement cycle in the EU and identify whether any regulatory action is needed to smoothen the impact for EU market participants of the planned shortening of the settlement cycle to T+1 in other jurisdictions, such as the US (see "*US Securities – New T+1 settlement cycle*" below). ESMA seeks input, including quantitative evidence, from all stakeholders involved in financial markets, and not only those in financial market infrastructures. The final feedback report on the call for evidence is expected to be published in 2024.

**New T+1 settlement cycle**

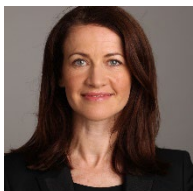
The US Securities and Exchange Commission (the "**SEC**") has amended Rule 15c6-1 of the US Securities Exchange Act of 1934 to shorten the standard settlement cycle from two business days after the trade date (T+2) to one business day (T+1) for most securities transactions. By reducing the number and total value of unsettled trades that exist at any point in time, the SEC aims to reduce market risk and enable investors to access the proceeds of their securities transactions earlier. However, notwithstanding these amendments, the parties to a trade can still agree that the settlement date may be later than T+1, provided their agreement is express and reached at the time of the transaction.

**US LIBOR reform**

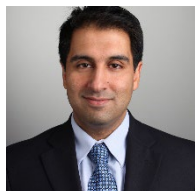
Under the 2022 LIBOR Act, the overnight, 1-month, 3-month, 6-month and 12-month USD LIBOR indices became permanently discontinued or non-representative as of 30 June 2023. The LIBOR Act requires SOFR plus a set spread, depending on the LIBOR term, to be used instead of USD LIBOR. The changes apply to any LIBOR contracts that do not otherwise specify a replacement rate fallback provision or method for selecting a fallback rate. The changes do not cover contracts which (i) are governed by non-US law, (ii) contain USD LIBOR indices other than the overnight, 1-month, 3-month, 6-month or 12-month, or (iii) contain a constant maturity swap rate with a floating rate leg based on USD LIBOR.

**Relief from Rule 15c2-11**

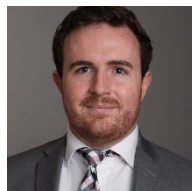
The SEC has reversed course on its "new" interpretation of Rule 15c2-11 of the Exchange Act. In October 2023, the SEC issued an order granting broker-dealers permanent relief from Rule 15c2-11 for bonds issued for resale under Rule 144A. Prior to this order, broker-dealers would have been prohibited from providing quotations on Rule 144A fixed-income securities for secondary market trading in US over-the-counter markets from 4 January 2025, unless certain information about the issuer is current and publicly available. Following the SEC's order, the information requirement set forth in Rule 15c2-11 no longer applies to Rule 144A bonds.

**Your Core HSF London DCM Team**

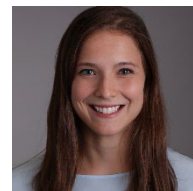
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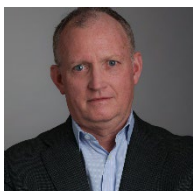
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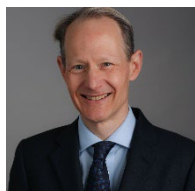
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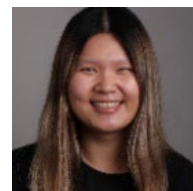
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**If you would like to discuss any of the matters raised in this publication, please speak to your usual HSF contacts or see above for some of the key members of the HSF London DCM team.**

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