Evolving Asset Management Regulation report 2024

Building strong foundations

September 2024

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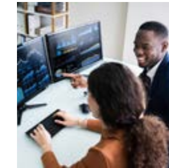

KPMG's global network

Member firm practices offer specialized services to a wide range of industry clients at local, national and global levels. KPMG professionals in Audit, Tax and Advisory are specialist in their fields and have deep experience in the issues and needs of investment management businesses.

Regulatory Insight Center

KPMG's EMA Regulatory Insight Center provides pragmatic and insightful intelligence on regulatory developments. It supports and enables clients to anticipate and manage the impact of regulatory change.

Regulatory Horizon tool

Regulatory Horizon has provided one of the foundations for this year's edition of the report. Powered by KPMG technology and specialists in real-time, it provides broad-ranging information to inform your regulatory change management process. It covers a live feed of over 170 sources globally across over 70 broad themes and specific regulations.

Regulatory Barometer

The KPMG Regulatory Barometer helps clients identify the key areas of pressure across the evolving European regulatory landscape and measures the impact of the likely change.

A wide variety of acronyms are used in this report. To understand the acronyms in full, please refer to 'EAMR abbreviations' at the end of the report.

Foreword

Andrew Weir
Global Head of
Asset management

Asset management regulation is constantly evolving. In each of the last four years, there have been more than 8,000 individual regulatory notifications relevant to financial services firms, across just eight key jurisdictions, globally.[1] Staying on top of the evolving asset management regulatory environment remains critical to maintaining clients' trust and meeting regulators' expectations.

With that in mind, it is my pleasure to introduce the 14th edition of KPMG's annual flagship Evolving Asset Management Regulation report that brings you analysis of the key regulatory developments from almost 30 jurisdictions as well as global regulatory standard setters. As usual, we have gathered specialists from KPMG firms around the world to identify the most impactful themes and developments that should feature on your regulatory agendas and change programs.

This report should be helpful for C-suite executives and first line of defense staff in understanding the regulatory direction of travel and associated risks and opportunities for the business. For regulatory change teams as well as compliance, risk and internal audit staff it should serve as a useful cross-check of incoming initiatives to inform implementation and monitoring activities by providing a broader, global perspective on developments.

Compared with last year's report, in which we discussed a flurry of new regulatory requirements, there has been a small pause for breath as many regulators take stock, and a slight slowdown in the introduction of new regulatory initiatives. This has been partly driven by the many elections that have been taking place around the world, as well as industry pushback. For many, the main emphasis is now on implementation and embedding — backed up by supervisory reviews. This is set in the context of significant macroeconomic uncertainties (that I covered in our latest CEO Outlook) and industry efforts to cut costs in a challenging environment.

In this year's report I am struck by the extraterritorial nature of some regulations that go beyond borders, the increasing role that competitiveness is playing in terms of efforts to attract asset managers and their funds to individual jurisdictions, and how regulators are grappling with the tricky task of effectively regulating new technologies while promoting innovation.

In **Europe**, the focus on embedding and refining is particularly notable, where authorities and regulators are fine-tuning their regimes after years of introducing substantial new packages of requirements. This is a similar theme in the **Asia-Pacific** region, where guidelines and supervisory expectations are being recalibrated. In the **Americas**, although some significant new requirements have been introduced, some proposed new initiatives have not made it across the policy-making finish line.

As we explore at the end of this year's report, it is increasingly important that asset managers have a coherent approach to identifying, capturing, and executing regulatory change. Failure to effectively manage regulatory change risks exposing firms to supervisory and enforcement action and a loss of trust from clients. Therefore, we have shared our experiences of good practice in digitalizing the regulatory change process.

I hope you find this year's report insightful.

[1] Data from KPMG Regulatory Horizon

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Andrew is KPMG's Global Chair of Asset Management and Real Estate. He has over 30 years of experience servicing listed companies, public bodies, investment funds and multinational corporations in Hong Kong (SAR), the Chinese Mainland, Asia and internationally.

Andrew is a Senior Partner of KPMG in Hong Kong (SAR), China and has served in several senior national, global and regional roles within the KPMG network. Andrew also sits on the Global Client Advisory Board and is the Chair of the Audit Management Board.

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David scans the horizon and analyses incoming regulatory developments that could impact the asset management sector. He also works on a variety of advisory projects where he helps asset managers implement regulations and improve their practices to meet regulators' expectations, most recently on investor protection-related issues.

Since 2022, David has led the development of KPMG International's annual *Emerging Asset Management Regulation* report, leveraging KPMG's global network, research and tools to provide clients with deep insights into the changing regulatory landscape facing asset managers around the world.

Prior to joining KPMG in the UK, David worked in asset management supervision at the UK Financial Conduct Authority. During that time, he was also seconded to the Bank of England.

Please refer to the Acknowledgments section for details of the many KPMG teams and specialists that have contributed to this year's report.

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Executive summary

After four years of rapid-fire regulatory development, many regulators are now taking stock and shifting efforts from policymaking to supervision. Embeddedness is being assessed. Compliance is being checked. Guidelines are being published. And rules are being updated and amended to reflect asset managers' feedback and real-life experience. Asset managers should proactively seize this window of opportunity to build strong foundations for regulatory compliance going forward.

While the pace of new regulation may have slowed slightly, this report identifies several key topics and focus areas that are rapidly changing — often in diverging ways depending on the market and the regulator's stance. Here are some highlights of the report.

This year's *Evolving Asset Management Regulation* report finds that regulators remain highly focused on **anti-greenwashing** measures in the asset management sector. A number of jurisdictions are introducing or considering sustainability-related product labels, enhancing the scope of disclosures and creating rules to ensure that fund names and marketing materials are not misleading.

The regulation of **AI and digital technology** is also front and center with regulators around the world taking different approaches and moving at different paces — creating challenges for global asset managers seeking to harness the benefits of new technology. This year's report also notes efforts in some markets to clarify the circumstances under which funds can be tokenized, and whether retail funds should be able to invest in crypto assets.

As assets under management grow globally and the sector becomes increasingly interconnected with the real economy, regulators remain focused on **systemic risk**. With global standards now set for open-ended fund liquidity practices and money market funds, regulators are shifting their focus to risks relating to leverage and increasing transparency through the introduction of new reporting requirements for funds. There is also a new and particularly noteworthy focus on the private assets sector.

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At the same time, requirements relating to **resilience** are being updated and enforced. Implementation deadlines for operational resilience requirements are approaching rapidly. Cyber resilience remains firmly in the regulatory crosshairs. And AML and CFT regulations and requirements are being tightened.

Meanwhile, regulators are strengthening **consumer protection** frameworks, updating disclosure requirements, tightening product governance arrangements and checking the embeddedness of existing rules. They are also taking a close look at the value of investment products and services to ensure investors are getting fair value and receiving the service they are paying for.

While **good governance** is always an important consideration for regulators, there are specific areas capturing their focus more recently. Accountability frameworks are being updated. Fund governance expectations are being tightened. Revised rules on the delegation of portfolio management have been finalized in Europe. And reviews of frameworks that govern asset managers' stewardship of investee companies are underway.

Regulation isn't just about risk; it's also about opportunity. As policymakers move to promote their own asset management and capital market industries, authorities are looking to broaden the range of investments available to investors in their markets. They are also seeking to create **opportunities for fund management companies** to bring new products to market to better meet investor demand.

What is clear is that **regulatory change management** is evolving from a compliance challenge into a strategic data and workflow opportunity. And it is increasingly being driven and evidenced by digitalized, centralized end-to-end obligation capture and mapping. Asset managers are enhancing their approach to compliance to become more efficient and effective.

Key actions for CEOs

ESG and sustainable finance: Assess your global product strategy and ESG governance. Implement a common framework across your firm to define which products qualify as 'sustainable'.

Digital innovation: Ensure the latest regulatory communications and expectations are factored into your business strategy and your product manufacturing and approval processes.

Systemic risk and markets: Consider how private assets can be brought into your wider corporate and product strategy. Review the governance arrangements underpinning fund liquidity risk management.

Building resilience: Build a culture of promoting financial and operational resilience within the board. Assess third party and outsourcing arrangements thoroughly under different scenarios.

Protecting retail investors: Review your firm's strategy, governance structures, culture and purpose to ensure they are aligned with customers' best interests.

Governance and accountability: Assess board composition to ensure sufficient knowledge, expertise and independent challenge. Evaluate current governance frameworks and accountabilities against regulators' expectations as they evolve.

Increasing manager and investor choice: Identify potential opportunities to bring new products to market or grow market share in key geographies.

Digitalizing regulatory change: Adopt regulatory horizon scanning technologies, automate appropriate processes and standardize data collection and assessment.

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01 ESG and sustainable finance

Sustainability-related financial services regulation continues to evolve at different rates and in different ways around the world. Understanding the differences and managing the divergence in local requirements will be key for international asset managers.

Even as the launch of ESG products appears to be slowing in some regions, the prevention and mitigation of greenwashing remains a consistent regulatory priority. In some jurisdictions the focus is on reinforcing compliance. In others, rules and approaches are still being refined.

In an effort to increase transparency and improve the flow of information to investors, many jurisdictions are introducing or considering sustainability-related product labels, and the scope of product- and entity-level sustainability disclosures is being enhanced. Several jurisdictions are also introducing rules to ensure that fund names are more closely aligned with their portfolios and goals, to ensure that investors are not misled.

While regulators are working to introduce sustainability standards to govern financial instruments and ratings in the capital markets, asset managers should also anticipate an ongoing expansion of economy-wide ESG reporting going forward.

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A focus on greenwashing

Preventing firms from making false or misleading claims about the sustainability characteristics of their products and services, whether intentional or not, remains at the top of regulators' agendas. Some regulators are still developing new policy. Others are tweaking and refining expectations already in force to be more effective.

At the end of 2023, the International Organization of Securities Commissioners **(IOSCO)** finalized an overview of supervisory practices to tackle greenwashing.[2] The assessment found that while there is no global definition of greenwashing, most jurisdictions have supervisory tools and regulatory frameworks in place to address it in the context of asset management.

In the **EU**, the European Supervisory Authorities (ESAs) published final reports on greenwashing risks and supervisory practices. In its report, the European Securities and Markets Authority (ESMA) committed to providing more standardized guidance for national competent authorities/ supervisors/regulators, developing further its indicators for monitoring greenwashing and working with regulators to build supervisory capacity.[3] Separately, ESMA is conducting a common supervisory action (CSA) with national regulators to assess levels of compliance with the Sustainable Finance Disclosure Regulation (SFDR), the EU Taxonomy Regulation and sustainability-related provisions in the UCITS[4] Directive and the AIFMD.[5,6]

> **To ensure a healthy global sustainable finance market, there is a need for reliable, consistent, and comparable sustainability related information, while related ESG products should be marketed and managed in a way that does not undermine investors' trust."**
>
> **Rodrigo Buenaventura**
> IOSCO Sustainability Task Force Chair and Chairman of CNMV Spain. IOSCO final report on supervisory practices to address greenwashing, December 2023

[2] *IOSCO publishes a final report presenting supervisory practices across its members to address greenwashing,* IOSCO, 4 December 2023
[3] *Final Report on Greenwashing*, ESMA, 4 June 2024
[4] Undertakings for Collective Investment in Transferable Securities
[5] Alternative Investment Fund Managers Directive
[6] *ESMA and National Competent Authorities to assess disclosures and sustainability risks in the investment fund sector,* ESMA, 6 July 2023

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In the **UK**, the Financial Conduct Authority (FCA) introduced an anti-greenwashing rule and guidance in May 2024 as part of a broader package (see below).[7] This requires sustainability claims made by FCA-authorized firms to be 'fair, clear and not misleading' and consistent with the sustainability characteristics of the product or service.

And the **Australian** Securities and Investments Commission (ASIC) has focused on market integrity and taken action on alleged 'misleading and deceptive conduct' in respect of practices that misrepresent the extent to which a product or investment is environmentally friendly, sustainable or ethical.[8]

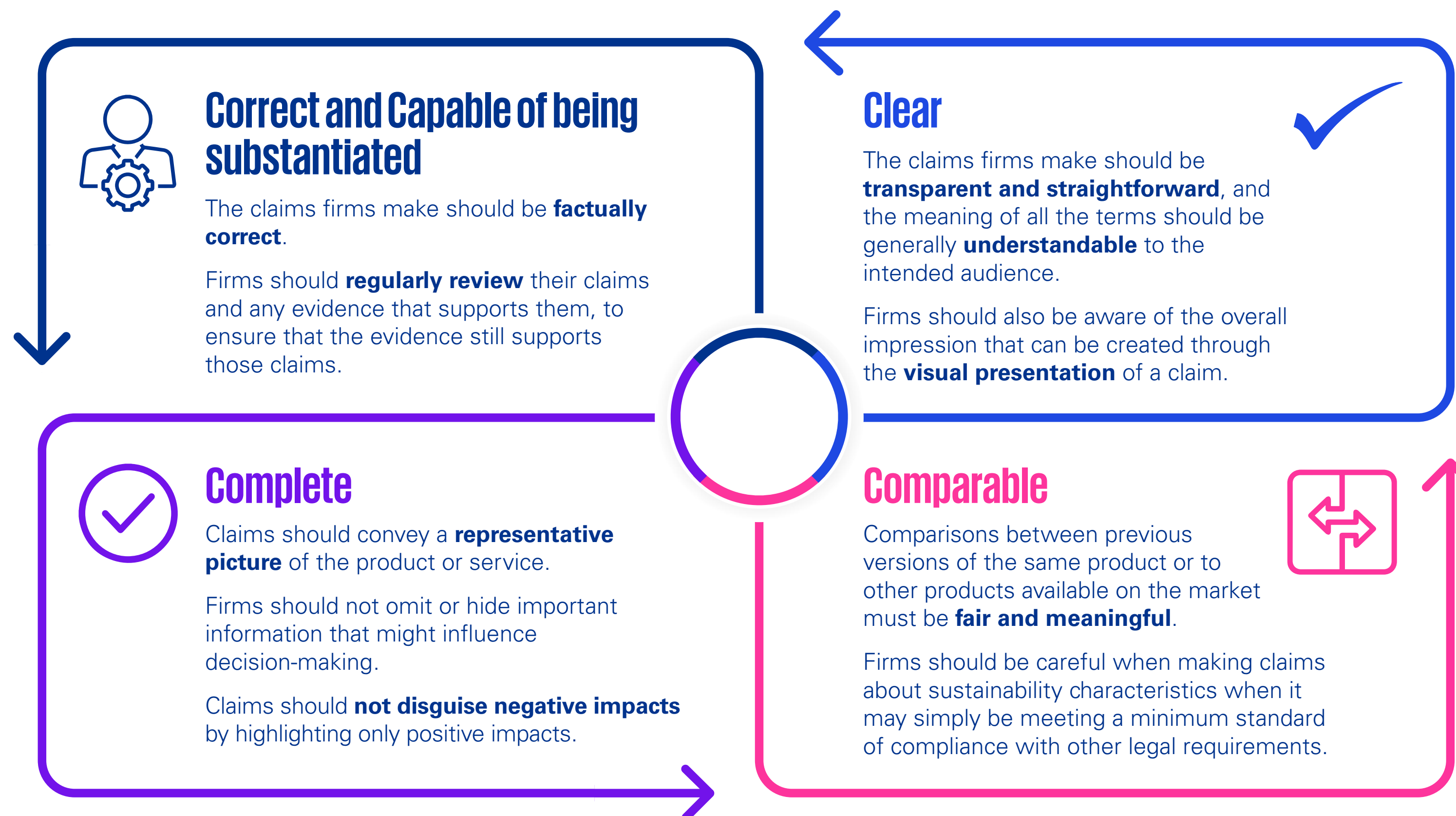
At the opposite end of the spectrum, the Central Bank of **Ireland** has observed instances of 'green bleaching', where asset managers may understate the sustainability features of funds to avoid triggering product-level SFDR disclosure requirements.[9] Supervisory action may follow.

In **Jersey**, a consultation is underway to shape the future direction of policy. Potential options could include introducing specific anti-greenwashing measures, alongside product labels, disclosures and marketing rules.[10]

And in **South Africa**, the securities regulator will continue working closely with other domestic authorities to support the development of a sustainable finance market.[11]

The FCA's Anti-Greenwashing Rule principles

The FCA's anti-greenwashing rule requires firms' sustainability-related claims about their products and services to be fair, clear and not misleading and consistent with the product or services' sustainability characteristics. Its guidance expands on four key principles:



7 *FG24/3: Finalised non-handbook guidance on the anti-greenwashing rule*, FCA, 23 April 2024
8 *Greenwashing: A view from the Regulator, speech by Joe Longo (ASIC Chair) at the RIAA Conference Australia*, ASIC, 2 May 2024
9 *Regulatory & Supervisory Outlook*, CBI, February 2024
10 *Consultation paper on designing a policy and regulatory framework for sustainable finance in Jersey*, Government of Jersey, March 2024
11 *Ten key regulatory challenges of 2024*, KPMG in Southern Africa, 2024

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Product sustainability labels

Sustainability labels for products can better inform consumers and assist their product selection. While countries such as **Luxemburg and Belgium** have had voluntary and partly industry-led product sustainability labels in place for several years (under the auspices of the LuxFLAG and Febelfin respectively), financial services regulators are now exploring and developing their own labels.

The introduction of labels that carry carefully calibrated, hard to achieve criteria introduces strategic questions for fund managers and their product ranges. Many managers are now considering whether they should fundamentally reshape existing products or launch new products to drive sustainability-related inflows, while accepting that significant effort will be needed to achieve compliance and meet regulators' expectations.

In the **UK**, the FCA's finalized package of Sustainability Disclosure Requirements (SDR) and investment labels is emerging as a leading practice for regulators globally. It introduced four sustainability labels for UK-domiciled funds ('Focus', 'Improvers', 'Impact' and 'Mixed Goals') and could be used from 31 July 2024 if the fund manager and the product meet certain general and label-specific criteria and produce the required disclosures.[12] Under the regime, stewardship should play a particularly important role in products attaining their goals.

A consultation on extending the SDR beyond funds to portfolio management services (e.g. wealth management) for UK clients closed in summer 2024[13] and a further consultation to gather views on expanding the regime to include EEA fund managers marketing to UK retail customers is expected imminently.[14] EEA funds would potentially be able to use the labels but would also need to comply with the FCA's naming and marketing rules (see below).

In the **EU**, debate over the usefulness of the SFDR as a disclosure regime has continued since its inception. 'Article 8' and 'Article 9' disclosure categories have become de facto product labels, although this was not intended. As noted in the box below, there have been calls for the regime to be pivoted towards something that more closely resembles the labelling approach under the UK SDR.

[12] *PS23/16: Sustainability Disclosure Requirements (SDR) and investment labels*, FCA, 28 November 2023
[13] *CP24/8: Extending the SDR regime to Portfolio Management*, FCA, 23 April 2024
[14] *A roadmap to implementing the Overseas Funds Regime*, FCA and HMT, 1 May 2024

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Disclosing at the product- and entity-level

As activity around the EU SFDR clearly illustrates, the scope of sustainability-related information which asset managers must disclose at product- and entity-level continues to increase and change.

The **UK** FCA has extended existing requirements for asset managers to produce entity- and product-level disclosures aligned to the Task Force on Climate-Related Financial Disclosures (TCFD) framework via the introduction of the SDR (described above). UK funds marketed to retail investors using a label or sustainability-related term in their name or marketing materials, will need to produce retail-friendly consumer-facing reports, and more detailed pre-contractual and ongoing reports.

These reports will disclose information such as the fund's sustainability objective and progress towards it, its investment policy and strategy, and its approach to stewardship. Entity-level reports will need to disclose asset managers' approaches to sustainability-related governance, strategy, risk management and metrics and targets. The requirements will be phased in between 2024 and 2026.

Prior to the SDR taking effect, the FCA reviewed the implementation of its ESG 'Guiding Principles' for funds.[15] It found that the principles, which were first communicated in 2021, had not yet been fully embedded, and called for action to improve the way in which ESG funds are designed, delivered and make associated disclosures.

> **"We're putting in place a simple, easy to understand regime so investors can judge whether funds meet their investment needs — this is a crucial step for consumer protection as sustainable investment grows in popularity."**
>
> **Sacha Sadan**
> Director of ESG, FCA
> Press release — SDR Policy Statement[16]

Reviewing the EU SFDR

A review of the SFDR is currently underway on two fronts.

As part of a longer-term initiative, the European Commission invited views on potential fundamental changes to the so-called 'level one' SFDR requirements.[17] These included simplifying product disclosures, introducing product labels, and introducing sustainability disclosures for all financial products regardless of their sustainability characteristics. Industry feedback supported more consumer-focused and internationally consistent rules, as well as better integration of the concept of transition finance into the regime.[18]

In response, the European Supervisory Authorities (ESAs) issued an opinion, advocating for the creation of at least two product categories to support sustainable and transition products, as well as a general sustainability indicator to help investors understand the sustainability features of products and services.[19] Similar ideas have been proposed by EU national regulators. For example, an April 2024 report from the **French** Autorité des Marchés Financiers (AMF) supported the development of product classifications.[20]

The ESAs have also proposed amendments to the more detailed SFDR 'level two' requirements.[21] Examples of draft changes include extending the list of adverse impact indicators covering social issues (for example to also cover exposure to non-cooperative tax jurisdictions), amendments to environmental indicators (such as the methodology for calculating greenhouse gas (GHG) emissions) and simplifications to disclosure templates. The European Commission is expected to approve the changes later in 2024.

For deeper insights on the SFDR, download KPMG's report here.

[15] *FCA finds further work required to fully embed 'Guiding Principles' for ESG and sustainable investment funds,* FCA, 16 November 2023
[16] *Sustainability disclosure and labelling regime confirmed by the FCA,* FCA, 28 November 2023
[17] *Targeted consultation on the implementation of the Sustainable Finance Disclosures Regulation (SFDR),* European Commission, 14 September 2023
[18] *Summary Report of the Open and Targeted Consultations on the SFDR assessment, European Commission,* 3 May 2024
[19] *Joint ESAs Opinion On the assessment of the Sustainable Finance Disclosure Regulation (SFDR),* ESMA, 18 June 2024
[20] *L'AMF publie, dans un papier de position, les principes incontournables qui devraient selon elle orienter la révision de SFDR,* AMF, 20 February 2024
[21] *ESAs put forward amendments to sustainability disclosures for the financial sector,* ESMA, 4 December 2023

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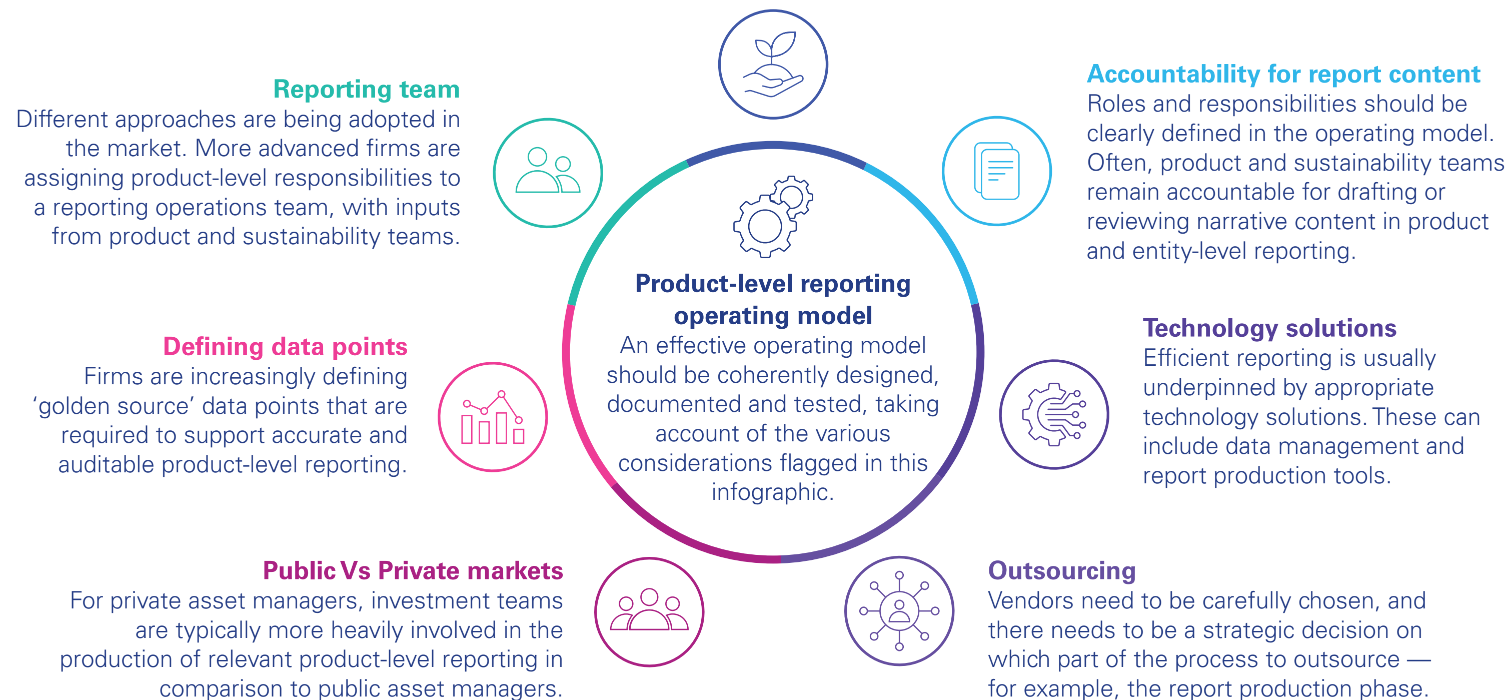
In **Canada**, regulators also completed supervisory reviews, resulting in updates to the Canadian Securities Administrators' (CSA) guidance for investment funds on ESG disclosures.[22] The revised guidance aims to ensure disclosure and sales documents are accurate and addresses various disclosure areas, including investment objectives, fund names, investment strategies, and risk disclosures. However, some industry participants have expressed concern that the nuanced and unintentionally complex guidance could lead to green bleaching as fund managers try to avoid regulatory pitfalls by removing ESG language from sales documents.

EU member states have also continued supervisory activities to understand how well the SFDR has been implemented. In **France**, the AMF noted some positives but found that none of the asset managers it sampled were in full compliance with the disclosure requirements at entity- and product-level.[23]

Other jurisdictions are relying less on mandatory disclosures but expect industry participants to follow direction from the government. For example, in **Saudi Arabia**, the sovereign wealth fund (the Public Investment Fund) is leading with the integration of ESG considerations in its investment strategy, thereby driving the wider asset management sector to begin embedding ESG considerations in their own strategies.[24]

Product-level disclosure considerations

There are several challenges and considerations that fund managers need to work through in order to design and build an effective operating model to underpin product-level disclosures.



22 *Canadian securities regulators publish updated guidance on ESG-related investment fund disclosure,* CSA, 7 March 2024
23 *The Autorité des Marchés Financiers (AMF) publishes the findings of three supervisory initiatives on sustainable finance,* AMF, 11 July 2024
24 *Public Investment Fund Program 2021-2025,* Public Investment Fund of Saudi Arabia, 2021

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Transition planning

As governments and regulators start to focus on encouraging an orderly transition to a low-carbon economy, the importance of transition planning is rising up the regulatory agenda.

In **Singapore**, for example, the Monetary Authority of Singapore (MAS) has concluded a consultation on proposed transition plan disclosure guidelines for asset managers.[25] It aims to facilitate robust climate mitigation and adaptation measures by asset managers and their investee companies.

The framework's components include the integration of transition planning into governance structures and strategic frameworks, outlining how portfolios will align with climate-related goals, active engagement with investee companies and disclosures about firms' planning processes and the climate-related risks facing their portfolios.

In the **UK**, existing transition planning guidance under TCFD will be enhanced in line with the overarching framework and sector-specific guidance for asset managers and asset owners developed by the Transition Plan Taskforce (TPT). The FCA has confirmed plans to integrate the work of the TPT into its requirements.[26]

KPMG Client Story

Enhancing the reporting operating model

A KPMG firm recently helped a leading asset manager design a Target Operating Model blueprint for a new global reporting function that blends financial and sustainability expertise together to meet certain worldwide sustainability and non-sustainability-related reporting requirements.

This included enhancing the client's wider reporting operating model by assessing roles and responsibilities, skills and expertise, processes and controls, technology and data, and overarching governance arrangements that deliver reporting.

The project defined the blueprint for a US-based reporting model that would meet worldwide product- and entity-level disclosure requirements, as well as reporting obligations to regulators and wider stakeholders.

[25] *Consultation Paper on Guidelines on Transition Planning (Asset Managers)*, MAS, October 2023. Reproduced with the permission of the Monetary Authority of Singapore ©2024 The Monetary Authority of Singapore.
[26] *FCA welcomes the launch of the Transition Plan Taskforce Disclosure Framework*, FCA, 9 October 2023

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ESG disclosure and labelling requirements for asset managers in selected jurisdictions

This table illustrates examples of requirements for asset managers that are derived from financial services regulators, rather than corporate reporting requirements that are derived more generally (see more on corporate reporting requirements on the next page).

Country or territory	Anti-greenwashing rule	Product-level labels	Product-level disclosures	Entity-level disclosures	ESG-specific fund naming or marketing rules
Australia	No ESG-specific rule	No formal labelling regime	ASIC has published expectations on the naming, promotion and offering of sustainability-related products	None mandated by ASIC or APRA for asset managers specifically	ASIC's high-level guidance requires a fund's name to reflect the substance of the product
Canada	Broad anti-greenwashing legislation recently introduced in Bill C-59 (not specific to asset managers)	No formal labelling regime	The CSA has published disclosure and sales communication guidance for funds that consider ESG factors are part of the investment process	No specific rules (aside from CSA guidance on disclosure and sales communications)	CSA guidance expects the name and investment objectives of a fund to accurately reflect the extent to which the fund is focused on ESG and the particular aspect(s) of ESG that the fund is focused on
EU	No ESG-specific rule	There have been consultations on converting SFDR to a labelling regime, but the outcome is uncertain	SFDR requires product-level disclosures for 'Article 8' and 'Article 9' funds in specified templates	SFDR requires entity-level website disclosures that describe the firm's sustainability policies and principal adverse impacts	ESMA has published final guidelines for funds that use sustainability, environmental, impact, or ESG terms in their name
Hong Kong (SAR), China	No ESG-specific rule	No formal labelling regime	The SFC has published guidance on disclosures and reporting for funds that incorporate ESG factors and for funds with a climate-related focus	None mandated by the SFC for asset managers specifically	SFC guidance requires references to ESG terms in a fund's name and marketing materials to be accurate and proportionate to its actual features
Japan	No ESG-specific rule	No formal labelling regime	The JFSA requires certain information to be captured in disclosures about the objective of the fund — such as details about how key ESG factors are considered	None mandated by the JFSA for asset managers specifically	The JFSA has published guidelines for investment trusts' names, defining specific checks for supervisors
Singapore	No ESG-specific rule	No formal labelling regime	MAS has published expectations on disclosures in fund prospectuses across a fund's investment objective and strategy, reference benchmark and risks	MAS has consulted on transition planning guidance for asset managers, and its integration across the firm	The MAS requires retail funds using ESG-related or similar terms in their name to reflect an ESG focus in their investment portfolio or strategy "in a substantial manner"
UK	The FCA has introduced an anti-greenwashing rule (AGR) and guidance	SDR introduced four sustainability labels with associated qualifying criteria	Asset managers need to produce TCFD-aligned disclosures at fund level. The SDR has also introduced consumer facing and pre-contractual disclosures, and ongoing reporting	Asset managers need to produce TCFD-aligned entity-level disclosures. The SDR has also introduced entity-level sustainability reporting	SDR restricts the use of certain ESG and sustainability-related terms and requires disclosures where they are used
US	No ESG-specific rule	No formal labelling regime	The SEC has proposed disclosures for funds that market themselves as having an ESG focus ('Integration', 'ESG-focused' and 'Impact')	None mandated by the SEC for asset managers specifically	The SEC has revised its Names Rule to better align ESG funds' portfolios with their names

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Fund naming and marketing

Given the prominence of fund names, their importance in driving investors' decisions and the increasing use of ESG and sustainability terms, regulators are introducing new rules and guidelines to ensure that they are accurately aligned with underlying portfolios and characteristics. Some rules also capture the marketing material associated with a fund.

In the **US**, the Securities and Exchange Commission (SEC) modernized its 'Names Rule' to address fund names which may mislead investors about a fund's investments and risks.[27] The amendments broaden the scope of funds that need to comply with the existing requirement to invest at least 80 percent of assets in accordance with the investment focus that the fund's name suggests — by adding terms that indicate a fund incorporates one or more ESG factors. Other amendments will require enhanced prospectus disclosures to define the terms used in a fund's name and explain the criteria used to select investments. The rules will be phased in from 2025 depending on the size of the fund group.

ESMA has also introduced threshold-based guidelines for the **EU**.[28] Depending on the ESG or sustainability terms used in a fund name, ESMA has effectively created three buckets of funds, each with their own requirements:

1. Funds using sustainability-related terms
2. Funds using environmental- or impact-related terms
3. Funds using transition-, social- and governance-related terms.

The guidelines will apply from November 2024, representing another tricky set of requirements that will need to be met, on top of the existing SFDR regime that is under review.

The **UK's** SDR will introduce new rules for fund names as well as marketing material, effective from December 2024.[29] The rules center around 19 sustainability-related terms identified by the FCA, such as 'climate', 'sustainable' and 'Paris-aligned'. Where funds use a label, they may use the entire list of terms. However, where they do not use a label, they may not use the terms 'sustainable', 'sustainability' or 'impact' in their name. Funds with material sustainability characteristics may use the remaining terms provided these are used accurately and comply with the FCA's anti-greenwashing rule.

Corporate reporting requirements

In addition to the requirements applied by financial services regulators, asset managers will be included in wider reporting requirements intended to enhance transparency around corporate sustainability credentials. Reporting by other companies should also improve the flow of information to asset managers as investment decision-makers.

The International Sustainability Standards Board (ISSB) has finalized International Financial Reporting Standards (IFRS) S1 and S2, setting out general requirements for disclosure of sustainability-related financial information and climate-related disclosures.[30] These require adoption by individual countries and territories. **Brazil, Hong Kong (SAR), China** and the **UK** have already committed to adoption of the standards, and **Australia** is finalizing an implementation timeline. However, adoption is moving at different speeds in different jurisdictions.

In parallel, the **EU** has developed 12 European Sustainability Reporting Standards (ESRS), covering the E, S and G, which are applied under the Corporate Sustainability Reporting Directive (CSRD).[31]

In March 2024, the **US** SEC adopted requirements for public companies to disclose climate-related risks with material financial impacts, as well as GHG emissions figures and narrative descriptions of governance arrangements.[32] However, the requirements were immediately subject to a legal challenge, creating significant uncertainty about the application date.

Looking ahead, the ISSB has committed to exploring biodiversity ecosystems and ecosystem services and considering the recommendations of the Taskforce on Nature-related Financial Disclosures (TNFD) in its workplan.[33] The EU will also develop sector-specific ESRS, as well as ESRS for small- and medium-sized enterprises and non-EU companies.

You can read more about developments around corporate reporting requirements in selected jurisdictions here.

[27] *SEC Adopts Rule Enhancements to Prevent Misleading or Deceptive Investment Fund Names,* SEC, 20 September 2023
[28] *Final Report: Guidelines on funds' names using ESG or sustainability-related terms,* ESMA, 14 May 2024
[29] *PS23/16: Sustainability Disclosure Requirements (SDR) and investment labels,* FCA, 28 November 2023
[30] *ISSB issues inaugural global sustainability disclosure standards,* IFRS, 26 June 2023
[31] *The Commission adopts the European Sustainability Reporting Standards,* European Commission, 31 July 2023
[32] *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors,* SEC, 6 March 2024
[33] *ISSB delivers further harmonisation of the sustainability disclosure landscape as it embarks on new work plan,* IFRS, 24 June 2024

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Taxonomies

Sustainable taxonomies are at different stages of development and have followed different approaches and timelines around the world. They have the potential to be useful reference points for the sustainability profile of products, but there have been challenges in the practical detail and with their completeness.

The **EU** Taxonomy Regulation, first published in 2020, set measurable and science-based definitions of economic activities that can be considered sustainable.[34] Criteria for all six environmental objectives were completed in 2023. Asset managers must disclose the extent to which their SFDR Article 8 or 9 funds' investments meet the criteria of the Taxonomy.

Other jurisdictions, including **China**, the **ASEAN**,[35] **Singapore, Australia** and the **UK** have begun the process of developing taxonomies. In some cases, it has proven difficult to classify all sectors of the economy, and some taxonomies are principle-based rather than prescriptive like the EU Taxonomy. In some jurisdictions, progress has slowed as other regulatory initiatives, such as product categories and sustainability labels, were prioritized.

As such, the future and relevance of taxonomies for asset managers is uncertain, with more relevance in some jurisdictions than in others.

A joint report from **EU** regulators pointed out that the coexistence of the science-based EU Taxonomy and the more qualitative criteria of the SFDR had led to asset managers operating with two parallel definitions of 'sustainable investment' and suggested that the EU Taxonomy should be expanded.[36] However, whether there is sufficient political appetite for this is unclear. In the **UK**, a consultation on the proposed Green Taxonomy is expected later in 2024 — in the meantime the UK SDR has introduced product labels for consumers.

KPMG Client Story

Effectively implementing new corporate reporting requirements

A KPMG firm recently helped a leading asset manager implement aspects of the EU's Corporate Sustainability Reporting Directive (CSRD).

KPMG professionals helped the client to deliver the required 'double materiality' assessment — assessing how the asset manager impacts on people and the environment, as well as how sustainability-related risks and opportunities impact the asset manager.

This involved the creation of a methodology and approach to identify risks and opportunities, mapping critical stakeholders, and key actions to be carried out.

[34] *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088,* EUR-lex, 26 June 2020
[35] Association of Southeast Asian Nations
[36] *Joint ESAs Opinion On the assessment of the Sustainable Finance Disclosure Regulation (SFDR),* ESMA, 18 June 2024

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Sustainability in the capital markets

As market participants and investors in the wider capital markets' ecosystem, asset managers will experience impacts and opportunities relating to other developments.

For example, the **EU** has finally adopted a Green Bond Standard, setting out rules for issuers to use a voluntary product label — the 'European Green Bond' or 'EuGB'.[37] The standard aims to improve the consistency and comparability of financial instruments, allowing issuers to demonstrate that the proceeds of EuGB funded projects are EU Taxonomy-aligned. The label becomes applicable from December 2024 and a similar **EU** framework for securitizations is also being developed.

The **EU** has also agreed a new regulation on ESG ratings activities to provide investors and other stakeholders with access to reliable and comparable information about ESG ratings objectives and methodologies.[38] In the **UK**, following the publication of an industry-led voluntary code of conduct, the government confirmed that it will bring ESG ratings within the regulatory perimeter.[39] **Japan** and **Singapore** are also developing their own approaches, meaning that ratings firms operating internationally will have to navigate multiple regimes unless equivalence is granted.

Industry initiatives are continuing to focus on the integrity of carbon markets, with the Integrity Council for the Voluntary Carbon Market (ICVCM)[40] and the Voluntary Carbon Markets Integrity Initiative (VCMI) introducing voluntary frameworks to support market functioning, usage and disclosures.

Although formal regulation is still at an early stage, the **EU** Carbon Border Adjustment Mechanism (CBAM) and its **UK** equivalent could affect some market pricing once they come into effect.

[37] *European Green Bonds: Council adopts new regulation to promote sustainable finance,* European Council, 24 October 2023
[38] *Environmental, social and governance (ESG) ratings: Council and Parliament reach agreement,* European Council, 5 February 2024
[39] *Spring budget 2024,* UK government, 6 March 2024
[40] *Assessment Framework,* Integrity Council for the Voluntary Carbon Market, January 2024

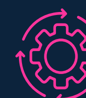
Key focus areas for asset managers

Product strategy

Consider your global product strategy in the context of evolving ESG regulations, including where diverging strategies may be needed to meet local demand and ensure regulatory compliance. Assess the adequacy of the approach to stewardship and whether appropriate technology for monitoring, recording and reporting engagement is in place.

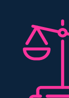
Labelling

Identify entities and products that are captured by incoming product-level labelling and disclosure requirements and perform a product classification exercise to understand potential alignment. Decide whether to strategically uplift and label products that aim to achieve positive sustainability outcomes and conduct a full impact and gap analysis.



Preventing greenwashing

Review anti-greenwashing frameworks and controls, ensuring that the perimeter is clearly established and that a risk-based prioritization exercise has been completed. Implement a common framework across the firm to define which products qualify as 'sustainable', against either a taxonomy, standard, or in the absence of regulation, a best-practice model.



Governance

Review your approach to ESG governance and whether there are appropriate resources, organizational structures and technologies to support the firm's strategic goals. This should ensure checking that second line of defense teams have sufficient skills and expertise to provide oversight and challenge.

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02 Digital Innovation

New technologies have the potential to positively transform asset managers' business models and improve their investors' outcomes. While regulators are keen to promote innovation, they are concerned that poor governance and controls and a lack of transparency could result in harm to investors, disorderly markets and even risks to financial stability.

As use cases are put into practice, emerging approaches to the regulation of artificial intelligence (AI) are markedly different around the world — ranging from establishing entirely new regimes and authorities, to using existing frameworks. Efforts to promote the tokenization of funds and assets continue, including via regulatory sandboxes.

And while the debate continues in some regions over whether retail funds should be permitted to invest in cryptoassets, some regulators are approving products or providing more specific guidance on their expectations.

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Regulating Artificial Intelligence

The regulation of AI, which often is being applied more broadly than financial services and asset management, is progressing in many jurisdictions around the world as the technology advances and use cases are explored and implemented at pace.

Asset managers are looking to AI to help them drive performance improvements (such as by summarizing vast volumes of data and information to drive investment decisions) and are considering where smarter automation of internal processes could drive cost efficiencies. Meanwhile, risk and compliance functions are monitoring developments and considering how best to keep pace.

It's not just technology that's evolving. So too is the regulation with different approaches emerging, ranging from prescriptive, AI-specific rules to technology-agnostic approaches that rely on existing frameworks and rules.

The **EU** was the first major jurisdiction to finalize new rules under its prescriptive AI Act, which has the potential to become a global standard.[41] It established new authorities in the form of an AI Board and AI Office and classifies AI systems by their risk level (Unacceptable, High, Limited, and Minimal). High risk systems need to comply with strict requirements. However, currently only two financial services-related activities are included (creditworthiness assessments by banks, and life and health insurance pricing and risk assessments). The rules also address the use of general-purpose AI (including generative models such as ChatGPT) and allow for large fines for non-compliance.

The AI Act will be supplemented by FS-specific guidance. The European Securities and Markets Authority (ESMA) has already set supervisory expectations[42] for wealth managers with reference to the MiFID II[43] requirements, and the European Commission has consulted[44] on the main use cases, benefits, barriers and risks related to the development of AI applications in the financial sector.

Conversely, the **UK** is currently pursuing a more flexible and principles-based approach. No new authorities are envisaged, and regulatory responsibility has been delegated by the government to existing regulators.[45] They have been asked to adopt five AI principles, for example, around transparency and explainability, and fairness. The Financial Conduct Authority (FCA) has illustrated examples to show how the existing regulatory framework maps to the government's principles — for example, the FCA's Principles for Business, the Consumer Duty, and the Senior Managers and Certification Regime.[46] The new UK government has indicated it will establish legislation to regulate the developers of the most powerful AI models.

Meanwhile in the **US**, there is not yet clarity on a federal approach, but individual agencies and regulators are taking action — including enforcement. The SEC has also proposed a new rule to address situations where an asset manager's use of technology could result in conflicts of interest and harm investors, and to require policies and procedures to evidence compliance.[47] However, the proposed rule is under significant industry opposition and if finalized, is likely to be subject to a legal challenge.

Other jurisdictions are considering their approach and are communicating their expectations through speeches and other means.

> **"Even if clear rules are given, will the most advanced AI applications report objectively on how they are followed? Would we know if they didn't?"**
>
> **Nikhil Rathi**
> FCA Chief Executive
> Speech delivered at the Investment Association Annual Conference (June 2024)[48]

[41] *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024,* EUR-Lex, 12 July 2024
[42] *ESMA provides guidance to firms using artificial intelligence in investment services,* ESMA, 30 May 2024
[43] Markets in Financial Instruments Directive II
[44] *Targeted consultation on artificial intelligence in the financial sector,* European Commission, 18 June 2024
[45] *UK unveils world leading approach to innovation in first artificial intelligence white paper to turbocharge growth,* UK Department for Science, Innovation and Technology, 29 March 2023
[46] *Artificial Intelligence (AI) update — further to the Government's response to the AI White Paper,* FCA, 22 April 2024
[47] *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers,* US SEC, 12 March 2024
[48] *International regulatory developments affecting investment management,* FCA, 5 June 2024

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KPMG's Trusted AI framework

The Trusted AI Framework provides the launchpad for an organization's AI risk and control journey. Demonstrated below are the initial steps to take when looking to design and build an AI model and how the Trusted AI Framework can support this journey. These stages enable a scalable and risk-managed approach to Gen AI implementation:

AI implementation glidepath

01 Define GenAI strategy

Define the vision and strategy upfront, focus on the Trusted AI principles for a well-rounded and responsible AI strategy.

Review and socialize the GenAI Strategy to ensure alignment within overall business and technology strategy.

How are your AI initiatives aligned to enterprise strategy?

02 Governance

Define an appropriate governance structure oversee and manage AI models.

Establish an AI Working Group to review, triage and prioritize use cases.

Who in the organization is responsible for solution delivery?

03 Risk appetite & metrics

Define GenAI risk appetite with materiality, business objectives, operational and reputational risk, and regulatory compliance in mind.

Identify the measures in alignment with your strategy through which to track and assess performance, effectiveness and tolerance of your KRIs.

Do you have a responsible use policy that governs your use of AI?

04 Policy & standards

Review and refresh policies and standards to account for GenAI, ensuring alignment with strategy and risk appetite.

Develop the Risk & Control Framework.

Are policies and standards amended to apply to AI?

05 Proof of concept

Start small, design a proof of concept around an agreed use case to demonstrate the value to the organization.

Embed controls by design into the model to mitigate identified risks.

Does the model ensure fairness and safety for users?

06 Validation & expansion

Scale safely, validate the Proof of Concept, identify lessons learned and adjust as required.

Build out the proof of concept at scale.

Do you have the right controls built in to the model?

Trusted AI Framework

Source: KPMG Trusted AI framework. You can read more here

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The **Jersey** Financial Services Commission (FSC) issued a regulatory technology implementation guide for firms looking to adopt RegTech solutions more generally.[49] In the guide, the FSC emphasized that the implementation of any technology that affects a core business process should be subject to a risk assessment to understand the impact of the technology on service delivery. It outlined six stages of RegTech implementation, detailing key actions and considerations for each phase, and highlighted potential risks.

Accelerating fund tokenization

Efforts to facilitate the tokenization of funds within regulatory guardrails continue. Various fund tokenization use cases have emerged, ranging from the deployment of distributed ledger technology (DLT) to record ownership of fund units (including subscriptions and redemptions), to the use of tokenized Money Market Funds as collateral in derivatives transactions.

Regulators are clearly differentiating between the benefits of DLT and risks posed by cryptoassets. On the former, they are taking concrete steps to clarify how the existing framework applies to the tokenization of funds to remove barriers, to add clarity, and reduce uncertainty. Some examples include:

- In **Hong Kong (SAR), China**, the Securities and Futures Commission (SFC) published its expectations on the tokenization of SFC-authorized funds.[50] It determined that primary dealing of tokenized funds (via subscriptions and redemptions) should be permitted if certain criteria are met. Its document touched on controls over public DLT networks, accountability, record-keeping, disclosures, requirements for distributors, and staff competence. The SFC will continue to engage with industry on the secondary trading of tokenized funds, noting that more caution is needed in that context.
- In the **UK**, an industry-led ‘blueprint’ set out an approach for fund managers to tokenize fund units within the existing regulatory framework.[51] The FCA clarified that there are no obvious or significant barriers to the blueprint’s initial phase. However, it noted that funds need to meet certain criteria for tokenization — for example, to be authorized, hold mainstream assets only, use a private permissioned chain, and settle transactions on the same basis as today (i.e. in fiat currency). As part of the next phase, the industry is exploring fund settlement using digital money, holding mainstream tokenized assets in portfolios, and public permissioned networks.
- The **Guernsey** Financial Services Commission (FSC) has outlined its approach.[52] It clarified that under current regulations, funds in Guernsey can use DLT to maintain registers of unit holders and issue digital tokens representing ownership. However, it noted that funds need to comply with existing investor protection rules, that fund administrators retain their responsibilities, and that tokenized funds would not represent virtual assets captured under a separate regulatory framework.

[49] *Regulatory technology implementation guide,* Jersey Financial Services Commission, 11 April 2024
[50] *Circular on tokenisation of SFC-authorised investment products,* SFC, 2 November 2023
[51] *UK Fund Tokenisation: A blueprint for implementation,* The Investment Association, November 2023
[52] *Policy Statement — Approach to Fund Tokenisation,* Guernsey Financial Services Commission, 14 May 2024

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Regulators in some jurisdictions are keen to collaborate with the industry. For example, the Monetary Authority of **Singapore** (MAS) has expanded the scope of Project Guardian — a collaborative initiative between policymakers and the financial industry to enhance the liquidity and efficiency of financial markets through asset tokenization.[53] Current pilots include the issuance of a tokenized fund on a digital asset network, and the use of tokenization and smart contracts to enable the seamless investment and ongoing management of discretionary portfolios. Its latest workstream for asset managers and custodians will focus specifically on common data models and model risk considerations in the context of fund tokenization.

Other jurisdictions have also launched regulatory pilots or 'sandboxes'. However, in some cases industry uptake has been low, with market participants and asset managers preferring to opt for independent testing instead. Examples include the **EU's** Distributed Ledger Pilot Regime (DLTR)[54] and the **UK's** Digital Securities Sandbox (DSS).[55]

Wider regulatory initiatives are focused on tokenization of assets beyond funds — including deposits, securities, and alternatives. You can read more on these developments in this article.

Fund tokenization considerations

There are several areas that fund managers need to work through when approaching the tokenization of their products:

Regulatory change

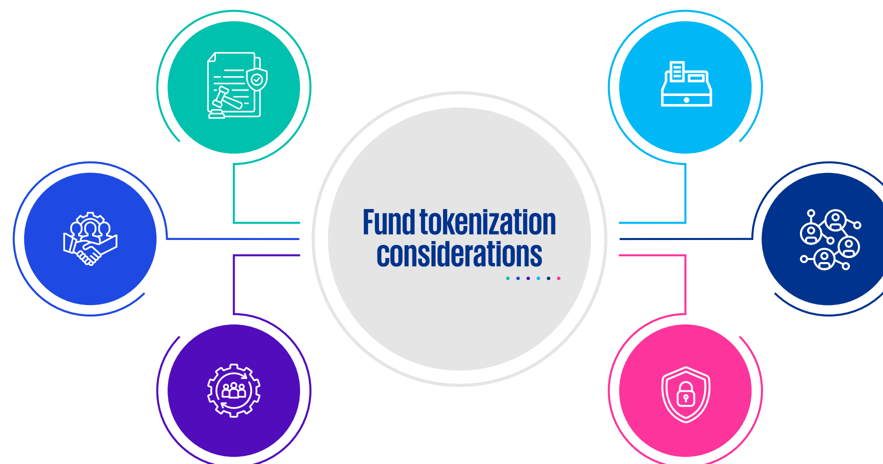
Firms' regulatory change functions must ensure that developments are captured coherently and acted on promptly. This should include incorporating tokenization-specific policy clarifications and Q&As as well as regulators' wider expectations of relevance — for example, around conduct and resilience.

Commercial strategy

Fund managers should consider the broader impact of tokenization on their commercial strategy, and any wider tax, accounting or legal challenges that could arise.

Collaboration

Potential benefits can only be achieved if all relevant participants in the ecosystem work together. Fund managers need to work with other firms in the distribution chain and the administration and depositary ecosystem as well as with regulators, to progress opportunities that go beyond limited pilots.



Interoperability

Cohesion between DLT and non-DLT solutions, and between different types of DLT solutions, must be ensured, so as to avoid fragmentation of the fund settlement process.

Change management

Transitioning from complex and embedded legacy systems onto DLT infrastructure will be a complex process, involving effort, expertise and expense. Fund managers will need to avoid disrupting critical daily processes to ensure that subscriptions and redemptions continue to operate seamlessly.

Cyber security and operational resilience

Resilience and information security-related risks could be heightened from the move to a tokenized ecosystem. Fund managers should ensure they identify all relevant risks and prepare and protect their business and investors accordingly.

[53] *MAS Expands Industry Collaboration to Scale Asset Tokenisation for Financial Services*, Monetary Authority of Singapore, 27 June 2024. Reproduced with the permission of the Monetary Authority of Singapore ©2024 The Monetary Authority of Singapore.

[54] *Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology*, EUR-lex, 2 June 2022

[55] *Digital Securities Sandbox joint Bank of England and FCA consultation paper*, Bank of England, 3 April 2024

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Retail funds investing in cryptoassets

Separate to the use of DLT is the question of whether funds that are open to retail investors should be permitted to invest in cryptoassets.

In this context, regulation remains fragmented globally. Some regulators have already permitted the launch of derivatives- and spot-cryptoasset funds and are now considering further guidance. Others remain cautious. In parallel, as this recent article from KPMG's network of asset management professionals explains, asset managers' stance on cryptoassets as an asset class is evolving.

The **Canadian** Securities Administrators have consulted on new requirements for public investment funds investing in cryptoassets, with the goal of facilitating the development of new products but also better protecting investors.[56] The new rules would provide more clarity on the types of cryptoassets that public funds are permitted to purchase, set restrictions on investing in certain cryptoassets, and introduce requirements around the custody of cryptoassets.

Notably, in 2024 the **US** Securities and Exchange Commission approved the listing and trading of several spot Bitcoin and Ether exchange-traded products (ETPs).[57] Although the SEC approved the products, it noted that their managers would need to make full, fair and truthful disclosures, would be subject to the usual listing rules, and that existing conduct standards (such as acting in the client's best interest) would apply.[58]

> **"The Commission is merit neutral and does not take a view on particular companies, investments, or the assets underlying an ETP. If the issuer of a security and the listing exchange comply with the Securities Act, the Exchange Act, and the Commission's rules, that issuer must be provided the same access to our regulated markets as anyone else."**
>
> **Gary Gensler**
> Chair, US Securities and Exchange Commission
> Website statement (January 2024)[59]

[56] *Canadian securities regulators seek feedback on rules for public investment funds holding crypto assets,* Canadian Securities Administrators, 18 January 2024

[57] As the European Systemic Risk Board (ESRB) has explained, these products are commonly referred to as Exchange-Traded Funds (ETFs) but do not actually qualify as such — this is because they are not required to register under the Investment Company Act.

[58] *Statement on the Approval of Spot Bitcoin Exchange-Traded Products,* US SEC, 10 January 2024

[59] *Statement on the Approval of Spot Bitcoin Exchange-Traded Products,* US SEC, 10 January 2024

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Similarly, the SFC in **Hong Kong (SAR), China,** has approved the listing of cryptoasset ETFs. The SFC and Hong Kong Monetary Authority also published a joint circular to provide an update on their expectations of intermediaries that distribute crypto-related products, including funds.[60] This included clarifying where a cryptoasset knowledge test and suitability assessment is required. The circular also set expectations on firms providing discretionary investment management services to investors where they invest part of the portfolio in cryptoassets.

In the **EU**, ESMA has launched a review of the assets that UCITS may invest in (**see also Chapters 3 and 5** for more on the review).[61] As part of a data gathering exercise, it has asked for views on the merits of direct and indirect exposure to cryptoassets. The Central Bank of **Ireland** had previously stated that it would be "highly unlikely" to approve a UCITS proposing exposure to cryptoassets,[62] and the **Luxembourg** Commission de Surveillance du Secteur Financier (CSSF) stated that UCITS are not allowed to invest directly or indirectly in cryptoassets.[63]

The broader regulation of cryptoassets

Beyond funds, policymakers across the world have continued to roll out regulatory frameworks for the classification, issuance, trading and custody of cryptoassets themselves.

The International Organization of Securities Commissions (IOSCO) has published two sets of policy recommendations that are intended to deliver greater consistency across regulatory frameworks to address market integrity and investor protection risks identified in cryptoasset markets.[64] With the recommendations published, IOSCO is focused on monitoring their implementation.

In the meantime, jurisdictions have continued to progress their own frameworks and initiatives. One of the most notable is the **EU's** Markets in Crypto-Assets Regulation (MiCAR) which entered into force in June 2023 with a staggered implementation timeline running up to December 2024.[65] EU authorities have been busy drafting more detailed technical standards and guidelines to underpin the headline requirements.

As these developments are not asset-management specific, we do not cover them in any further detail in this year's report.

[60] *Joint circular on intermediaries' virtual asset-related activities*, SFC, 22 December 2023
[61] *ESMA asks for input on assets eligible for UCITS*, ESMA, 7 May 2024
[62] *UCITS Questions and Answers 39th Edition*, CBI, 4 April 2023
[63] *FAQ Virtual Assets — Undertakings for collective investment*, CSSF, 22 February 2024
[64] *IOSCO Policy Recommendations for Crypto and Digital Asset Markets (including DeFi)*, IOSCO, 19 December 2023
[65] *Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets,* EUR-lex, 9 June 2023

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Key focus areas for asset managers

Strategy

Consider where and how AI will be used to further your business strategy and complete a holistic assessment of the different considerations needed to successfully bring a tokenized fund to market, bearing in mind the associated regulatory implications and required controls.

Risk and compliance

Perform a gap analysis as AI and cryptoasset regulations are finalized to identify impacted parts of the business and where new frameworks, controls, policies and procedures may be required. Review how the implementation of new technology will interface with your existing architecture and whether there will be any new risks to manage.

Capabilities

Consider whether your risk and compliance function is keeping pace with the technology changes being rolled out by the business, including whether there are appropriate skills, experience and monitoring capabilities.

Products

Ensure regulators' latest communications and expectations are factored into the product manufacturing and approval process for investing in cryptoassets or using AI (depending on the firm's product strategy and risk appetite).

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03 Systemic risk and markets

As assets under management grow, regulators and central banks are taking notice of the increasingly important role asset managers are playing in markets and supporting economies.

Policy to address perceived vulnerabilities in funds has progressed significantly, with global standard setters finalizing recommendations for open-ended funds, and testing the implementation of measures for money market funds. With this work largely complete, the next focus looks set to be on leverage. More broadly, authorities are questioning whether they have adequate macroprudential tools to supervise the industry appropriately.

In the public markets, we have seen significant efforts to shorten the settlement cycle and reinvigorate markets in some jurisdictions after years of decline. At the same time, private assets under management continue to grow, prompting supervisors to consider whether the regulatory framework for this part of the market remains appropriate. A notable policy response has been to focus on increasing transparency by introducing new reporting requirements for funds.

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Fund liquidity risk management

After several years of analysis and consultations, international regulatory bodies have finalized measures to enhance liquidity risk management practices in open-ended funds (OEFs). These should now flow through to national regulators' agendas.

The Financial Stability Board (**FSB**) revised its 2017 financial stability recommendations with changes relating to the liquidity classification of funds (and corresponding impact on their redemption terms), the availability and use of liquidity management tools (LMTs) and disclosures made by fund managers to their clients.[66]

In parallel, the International Organization of Securities Commissions (**IOSCO**) published final guidance relating to the design and activity of liquidity management tools (LMTs).[67] This covered the governance and controls over the use of LMTs and how they are chosen, the calculation of dilution factors and activation thresholds, and clear disclosures to investors on LMTs' objectives and use in practice.

Some wider international measures are yet to be finalized, including the FSB's proposed recommendations to enhance non-banks' preparedness for margin and collateral calls. The proposals cover liquidity risk management practices and governance, stress testing, and ensuring that sufficient collateral is available to meet margin and collateral calls as they fall due.[68]

IOSCO's guidance on liquidity management tools (LMTs)

IOSCO's final guidance on LMTs aims to mitigate dilution effects to investors and any potential first-mover advantage resulting from structural liquidity mismatch in open-ended funds. Fund managers should implement an effective operating model that effectively operationalizes all aspects of the guidance:

[66] *Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds*, FSB, 20 December 2023
[67] *Anti-dilution Liquidity Management Tools — Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes*, IOSCO, December 2023
[68] *Liquidity Preparedness for Margin and Collateral Calls: Consultation report*, FSB, 17 April 2024

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National and regional authorities have continued to enhance their own regulatory frameworks, even ahead of the final FSB and IOSCO publications. For example:

- The Monetary Authority of **Singapore** (MAS) reviewed fund managers' practices and found common weakness across stress testing, inadequate liquidity buffers, and a lack of contingency planning. It published new guidance and supervisory expectations to strengthen fund managers' practices in these areas that Singapore fund management companies need to align with.[69]
- **Switzerland** introduced new rules to require procedures for managing liquidity risk, including stress testing and crisis management protocols.[70] The rules also provide a legal framework for the creation of 'side pockets' to manage illiquid investments during liquidity crises. The use of side pockets would need specific contractual provisions to be in place, approval from the Financial Markets Supervisory Authority (FINMA), and public disclosures.
- In the **EU**, the review of the AIFMD[71] has resulted in new rules effective from 2026. The changes will require UCITS[72] managers and AIFMs[73] to make available at least two LMTs in addition to fund suspension, underpinned by supporting analysis, policies and procedures.[74]

The European Securities and Markets Authority (ESMA) consulted on further details to support the new framework, including rules governing the characteristics of each LMT (including on calculation methodologies and activation mechanisms) and draft guidance on how fund managers should select and calibrate LMTs.[75] Separately ESMA launched a review of the rules that govern the assets a UCITS may invest in.[76] As part of its industry consultation, it asked for feedback on the current presumption of the liquidity of listed assets and whether the eligibility of assets is sufficiently described.

[69] *Guidelines on Liquidity Risk Management Practices for Fund Management Companies,* MAS, 1 August 2024. Reproduced with the permission of the Monetary Authority of Singapore ©2024 The Monetary Authority of Singapore.
[70] *Federal Council puts legal basis for new L QIF fund category into force,* Federal Council, 31 January 2024
[71] Alternative Investment Fund Managers Directive
[72] Undertakings for Collective Investment in Transferable Securities
[73] Alternative Investment Fund Managers
[74] *Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024,* EUR-lex, 26 March 2024
[75] *ESMA consults on Liquidity Management Tools for funds,* ESMA, 8 July 2024
[76] *Call for Evidence on the review of the UCITS Eligible Assets Directive,* ESMA, 7 May 2024

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Money Market Funds

With policy recommendations on money market funds (MMFs) more advanced, international work has now entered the review phase. Following the FSB's 2021 policy recommendations, it completed a thematic review of its members implementation in February 2024.[77] Overall, it found "uneven progress" and called on members to adopt the reforms where they had not already done so. In 2026, the FSB will assess the effectiveness of the reforms in addressing financial stability risks.

Regulators have differing views on whether further enhancements are needed. For example, the **UK** authorities have consulted on reforms to the UK regime and suggested improvements such as significantly increasing the minimum proportion of highly liquid assets that all MMFs need to hold, and to remove thresholds that link liquidity levels with the need to impose liquidity management tools for certain MMFs.[78]

In comparison, the European Commission has determined that a legislative review of the **EU** rules is not required at this time.[79]

Macroprudential oversight frameworks

On the heels of these efforts to enhance the resilience of non-banks, authorities, led by central banks, are considering whether macroprudential oversight frameworks for non-banks (including asset managers) need to be established or enhanced. Such frameworks already exist for banks but are less developed for the wider financial services sector.

The Bank of England (BoE) is running the **UK's** first System-Wide Exploratory Scenario (SWES).[80] It has brought together banks, asset managers and insurers to simulate a stressed scenario and better understand how market participants would react. The first round of the exercise found that market participants started from a more resilient place than in the past, although it noted some potential pressures — such as selling in the sterling corporate bond market. The BoE will publish the full results of the exercise in Q4 2024.

Increased scrutiny on leverage

With significant work on open-ended funds and money market funds already completed, the FSB is sharpening its focus on non-bank leverage.

In September 2023, it published a report that analyzed leverage trends across FSB jurisdictions, identified potential vulnerabilities, and proposed policy measures for consideration. The report also noted that there are several data gaps that make it difficult to identify the full scale of potential vulnerabilities, and proposed how these gaps could be remediated.[81]

In December 2024, the FSB will consult on leverage policy recommendations or policy options. In the meantime, IOSCO has tackled other aspects of leverage in the wider ecosystem — for example, through its final report with good practices on leveraged loans and collateralized loan obligations.[82]

UK and **EU** authorities have also intervened on the use of leverage in Liability-Driven Investment (LDI) funds (see below).

[77] *Thematic Review on Money Market Fund Reforms: Peer review report,* FSB, 27 February 2024
[78] *CP23/28: Updating the regime for Money Market Funds,* FCA, 6 December 2023
[79] *Commission adopts report on the functioning of the Money Market Funds Regulation,* European Commission, 20 July 2023
[80] *Launch of the scenario phase of the system-wide exploratory scenario,* Bank of England, 10 November 2023
[81] *The Financial Stability Implications of Leverage in Non-Bank Financial Intermediation,* FSB, 6 September 2023
[82] *IOSCO publishes Final Report on Leveraged Loans and CLOs Good Practices for Consideration,* IOSCO, 3 June 2024

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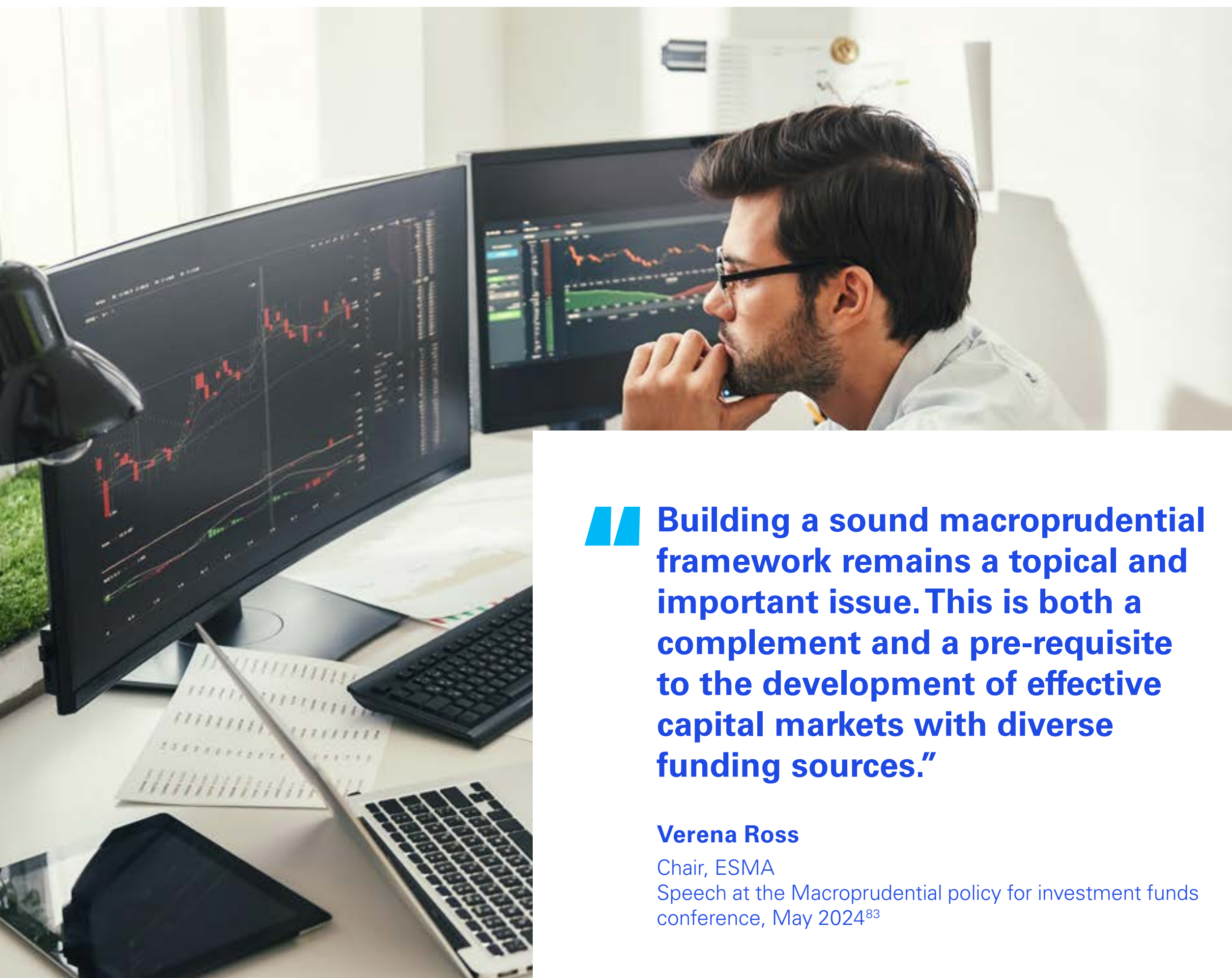

"Building a sound macroprudential framework remains a topical and important issue. This is both a complement and a pre-requisite to the development of effective capital markets with diverse funding sources."

Verena Ross
Chair, ESMA
Speech at the Macroprudential policy for investment funds conference, May 2024[83]

The BoE has also launched a new central banking facility for certain non-banks for the first time, including eligible pension funds, LDI funds, and insurers.[84] The facility would enable the Bank to intervene where it considers that severe liquidity-related dysfunction in the UK government bond market could impact on financial stability. This would involve allowing eligible counterparties to borrow cash against UK government bonds at times of severe market dysfunction.

The **EU** is considering how the existing macroprudential toolkit could be expanded, how risk monitoring can be improved, and whether cross-border cooperation can be strengthened.

The European Commission sought input to gather feedback on current challenges and potential improvements. Its consultation paved the way for the incoming Commission to propose specific policy changes to enhance existing macroprudential measures for the non-bank sector.[85]

There have already been examples of existing macroprudential tools being deployed in the EU. For example, in 2022 the Central Bank of **Ireland** (CBI) introduced leverage restrictions on Irish commercial real estate funds.[86] And subsequently, the CBI and the **Luxembourg** CSSF required sterling-denominated LDI funds to hold minimum liquidity buffers.[87]

The T+1 transition

The most significant development in public markets this year was the **US** and **Canada's** shortening of the securities settlement cycle (known as the move to T+1), which took place in May 2024 (alongside other smaller markets). The change was introduced to increase investor protection, reduce risk and increase efficiency.

The changes had wide-ranging and extraterritorial impacts around the world on asset managers that invest in and trade North American securities. This prompted some European regulators to clarify their expectations in the context of investment compliance — the **Luxembourg** CSSF, for example, published Q&As on the topic.[88]

[83] *Macroprudential policy for investment funds conference, Keynote speech from Verena Ross,* ESMA, 20 May 2024
[84] *Contingent NBFI Repo Facility (CNRF) — Explanatory Note,* Bank of England, 24 July 2024
[85] *Commission launches consultation on macroprudential policies for Non-Bank Financial Intermediation,* European Commission, 22 May 2024
[86] *The Central Bank's macroprudential policy framework for Irish property funds,* CBI, 24 November 2022
[87] *ESMA agrees with investment restrictions on GBP LDI funds in Ireland and Luxembourg,* ESMA, 29 April 2024
[88] *CSSF FAQ on Circular CSSF 02/77,* CSSF, June 2024

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Although other countries have already transitioned to T+1, the North American transition has prompted more jurisdictions to consider whether they should also mandate a transition.

A **UK** industry taskforce has recommended moving to T+1 no later than the end of 2027.[89] In the **EU**, ESMA gathered feedback from the industry and is expected to report its recommendations to the European Commission by January 2025.[90] And although **Swiss** authorities have not yet formally announced their plans, across Europe, the industry is asking for regulatory cooperation and a joined-up transition across jurisdictions.

You can read more on worldwide movements towards T+1 here and practical considerations for the transition here.

Public markets

Competitiveness is an increasingly notable theme around the world as individual jurisdictions seek to attract companies to list and grow domestic public markets. A concern shared by several jurisdictions is that home-grown corporates may choose to list on larger markets with bigger scale and higher valuations, to the detriment to local markets. This is leading to adjustments to streamline domestic listing rules.

To complement these changes, authorities in jurisdictions such as the **EU, UK** and **Japan** are also considering how domestic savers could be encouraged to invest in domestic markets.[91] Other countries are looking to better connect their international markets with others — for example, in **Saudi Arabia** where cooperation agreements between the domestic and international exchanges have been put in place.[92]

The way in which asset managers pay for research is also changing in some jurisdictions.

In the **UK**, the FCA has revised its rules to permit the so-called 'rebundling' of research and execution payments from asset managers to brokers — which were required to be separated under MiFID II.[93] Under the changes, combined payments will be permitted, but only within certain regulatory guardrails — for example, having in place a methodology and formal policy governing the arrangements, and disclosures to clients to explain the firm's approach. The **EU** has also provisionally agreed to allow the re-bunding of payments through amendments made to MiFID II via the 'Listing Act' package.

[89] *Policy paper: Accelerated Settlement Taskforce,* HM Treasury, 28 March 2024
[90] *T+1 feedback report shows mixed impacts of shortening the settlement cycle in the EU,* ESMA, 21 March 2024
[91] *See for example: Policy Plan for Promoting Japan as a Leading Asset Management Center,* JFSA, 11 July 2024
[92] *Saudi Tadawul Group Signs Memorandum of Understanding with Shenzhen Stock Exchange,* Saudi Tadawul Group, 12 December 2023
[93] *PS24:9: Payment Optionality for Investment Research,* FCA, July 2024

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Private markets: opportunities alongside greater scrutiny

Government authorities in some jurisdictions are keen to draw on private capital to help fund investment, promote economic growth, contribute to efforts to modernize infrastructure, and to support the transition to a more sustainable economy.

Examples include a **UK**-convened working group on productive finance, and in **Saudi Arabia**, where government support has encouraged venture capital, private equity, and private credit funds to be brought to market. **Japan** is also seeking to promote investment in high-growth start-up companies by developing principles for venture capital funds and promoting the issuance and circulation of unlisted securities. Japan has also made moves to diversify investment opportunities by allowing the inclusion of unlisted equities in investment trusts.

However, as the private assets industry grows and becomes more interconnected with the real economy, regulators are monitoring potential risks to financial stability and investors' outcomes. There are specific concerns relating to private asset managers' role in the ongoing higher interest rate environment, for example, due to potentially higher default rates in the private credit market. As a result, the **International Monetary Fund (IMF)** has called for a "more intrusive" supervisory and regulatory approach to private credit funds.[94]

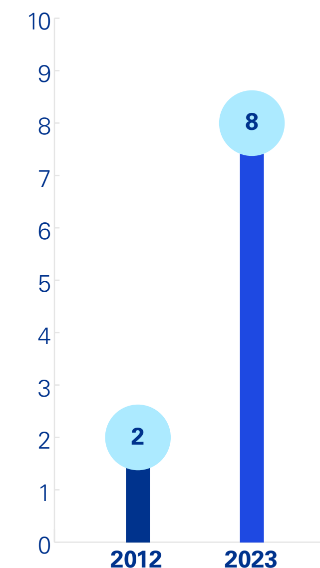
IOSCO is driving progress in this area, initially by carrying out analytical work on potential vulnerabilities arising from the private assets industry and publishing good practices for leveraged loans. In addition, IOSCO confirmed that over the remainder of this year it will review its 2013 principles for the valuation of funds in order to determine whether updates or further guidance is needed. An interim report will go to the IOSCO board in Q1 2025.[95]

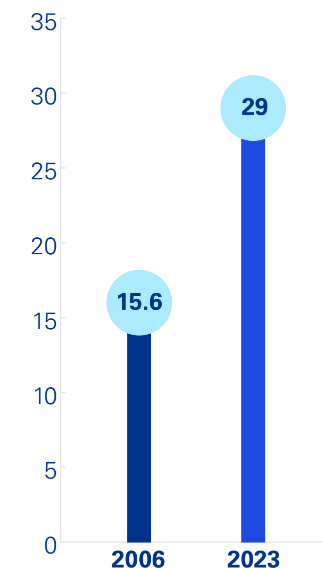
> **"Vulnerabilities in the private equity sector include multiple layers of leverage and strong interconnections with riskier credit markets, where underwriting practices weakened through the low rates era. In addition, valuation and risk management practices vary and are opaque."**

Financial Stability Report — June 2024
Bank of England[96]

The growth of the private assets industry

The success of the private assets industry has captured regulators' attention:





Source: Bank of England — Speech on Private equity financing, given at UK Finance by Rebecca Jackson, Executive Director, 23 April 2024

[94] *The rise and risks of private credit,* IMF, April 2024
[95] *IOSCO publishes an updated Workplan,* IOSCO, 12 April 2024
[96] *Financial Stability Report — June 2024,* Bank of England, 27 June 2024

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Many national regulators are now making policy adjustments to their regulatory frameworks.

Of particular interest to the industry has been the **US** Securities and Exchange Commission's (SEC) plans to enhance the rules that apply to US private asset managers.[97] Under its proposed Private Fund Adviser rules, private fund advisers would have been required to provide investors with quarterly statements, obtain an annual audit for each private fund, and obtain a fairness opinion or valuation opinion for certain secondary transactions, as well as being subject to new investor protection measures. However, in May 2024 a US court 'vacated' the SEC's proposals, meaning that they did not take effect. The legal decision was significant and — without future lawmaking or a reversal in the position of the courts — will impact on the SEC's ability to impose significant new rulemaking on private funds and their advisers. The SEC did not challenge the court's ruling, thus, ending this version of private fund rulemaking.

In **China**, new rules for the private fund industry took effect from September 2023, seeking to mitigate potential risks.[98] The Asset Management Association of China (AMAC) also issued guidelines, effective from August 2024, to regulate the fundraising, investment, and operation of private securities investment funds.

Meanwhile, the **Jersey** Financial Services Commission (FSC) has updated its guide that describes the eligibility criteria for Jersey Private Funds (JPFs).[99] Amongst some more minor clarifications — such as a recognition that 'carry' or co-investment can form part of a fund's incentive arrangements, and on investor eligibility — the FSC clarified that a JPF should have its governing body and management and control in Jersey, and at least one or more Jersey-resident directors should be appointed to a fund's board.

Alongside these measures to tighten the overall rules governing private asset managers, governments and regulators have been looking at ways to increase access for retail investors via new fund structures — you can read more on this trend in **Chapter 7**.

As well as new rules, supervisory work is also underway to probe for potential vulnerabilities and examine the robustness of existing arrangements. For example, the **UK** FCA has launched a review of valuation practices for private assets. It is examining personal accountabilities for valuation practices, the governance arrangements over valuation committees, valuation MI reported to the board, and the board's oversight of valuation practices.[100]

Loan-origination funds

New regulatory regimes are being introduced specifically for loan funds for the first time.

As part of the already-discussed reforms to the **EU** AIFMD, loan-origination funds will be defined for the first time and subject to specific requirements.[101] Their managers will need to have policies and procedures governing their risk management and comply with concentration and leverage limits. It is notable that

[97] *Private Fund Adviser Reforms: Final Rules,* SEC, 23 August 2023
[98] *Regulations on Supervision and Administration of Private Investment Funds,* State Council of the People's Republic of China, 9 July 2023
[99] *Updated Jersey Private Fund Guide published today,* Jersey FSC, 2 July 2024
[100] *Our Asset Management & Alternatives Supervisory Strategy — interim update,* FCA, 1 March 2024
[101] *Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024,* EUR-lex, 26 March 2024

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this is the first time that AIFMD has introduced product-level requirements (historically the rules have touched on management companies only).

In advance of the revised AIFMD taking effect, **France's** Autorité des Marchés Financiers (AMF) amended its existing reporting guidelines for loan originating AIFs[102] that require quarterly reporting of loans originated which are not yet due. The revision to the guidelines extended the reporting requirements to bring additional asset managers into scope.[103]

In the **UAE**, the Dubai Financial Services Authority (FSA) has invited views on amending aspects of its existing credit fund regime that was introduced in 2021.[104] The consultation questions whether the current regulatory framework for these funds is appropriate and explores more specific topics such as whether current thresholds for a fund to be captured by the regime are too high, and if open-ended credit funds should be permitted.

Meanwhile, **Poland** has prohibited AIFs from entering into loan agreements or other agreements of a similar nature with individuals.[105]

You can read more on regulatory developments impacting the private assets industry and how fund managers can respond in KPMG's dedicated series here.

Enhanced reporting to regulators

To address data gaps, improve the monitoring of systemic risk, and address some of the transparency concerns described above, some jurisdictions are taking steps to introduce or enhance the information reported to them by fund managers.

These developments will require fund management companies to implement or enhance their systems and processes to collect and report accurate data and to report to regulators in a timely fashion.

- The **US** SEC and Commodity Futures Trading Commission (CFTC) jointly revised 'Form PF' which requires private funds to report certain information to the SEC.[106] The amendments will require enhanced reporting by private funds on the operations and strategy of their fund — including exposure and liquidity metrics, additional basic information, and changes to the reporting of complex structures.
- The Monetary Authority of **Singapore** has introduced new, detailed fund reporting requirements, effective 30 September 2024.[107] Managers of authorized Collective Investment Schemes (CISs) will need to submit monthly data on a fund's fees and expenses, its investors and fund and share class information. Daily data will need to be provided on valuation (unit price and units outstanding), the fund's holdings, and on investor transactions.
- Although **EU** AIFMs already need to regularly report information on their funds to their domestic regulator, the AIFMD II package will extend the information that needs to be provided.[108] Also, for the first time, UCITS funds will need to report information on their holdings to EU regulators in a standardized manner. ESMA will draft more detailed standards that will introduce reporting from April 2027.

[102] Alternative Investment Funds
[103] *Loans originated by AIFs: the AMF amends its guidelines on reporting requirements,* AMF, 26 October 2023
[104] *Notice of* call *for evidence release: Credit funds,* Dubai FSA, 28 March 2024
[105] *Polish marketing rules and specific regulations applicable to foreign AIFs,* Polish Financial Supervision Authority, updated 20 March 2024
[106] *SEC Adopts Amendments to Enhance Private Fund Reporting,* SEC, 8 February 2024
[107] *Notice SFA 04-N23 on Fund Data Submission Requirements for Managers of Specified Collective Investment Schemes (CIS),* Monetary Authority of Singapore, 6 May 2024
[108] *Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024,* EUR-lex, 26 March 2024

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- Following Brexit, the **UK** is now responsible for the operation of the UK AIFMD regime. The FCA plans to consult on amendments to its reporting requirements in 2025.[109]
- The Central Bank of **Ireland** published updated guidance in September 2023 on regulatory reporting for AIFMs, depositaries, and fund administrators.[110] They need to submit annual audited accounts to the CBI within four months of the end of the relevant reporting period and provide certain other financial information, such as interim financial statements and the minimum capital requirement report.

Beyond the reporting of fund-specific data, the **EU** and the **UK** are reviewing and amending capital markets reporting regimes. For derivatives trade reporting, amendments have been made to EU and UK European Market Infrastructure Regulations, effective from 29 April 2024[111] and 30 September 2024[112] respectively.

Similar changes have been made in **Japan** and are due in **Australia** and **Singapore** as part of a global effort to implement guidance from IOSCO and the Committee on Payments and Market Infrastructures (CPMI) to increase derivatives transparency.[113] The changes will expand the number of fields to report and update data reporting standards but there are nuances to consider for each jurisdiction. Amendments to transaction reporting and the transparency regime under **EU** and **UK** MiFIR[114] are also planned.

[109] *Updating and improving the UK regime for asset management: our priorities,* FCA, 10 October 2023
[110] *Depositaries/AIFMs/Fund Administrators: Regulatory Reporting Requirements,* CBI, September 2023
[111] *EMIR Reporting,* ESMA
[112] *UK EMIR News,* FCA, 26 July 2024
[113] *BCBS-CPMI-IOSCO publish consultative report on transparency and responsiveness of initial margin in centrally cleared markets,* IOSCO, 16 January 2024
[114] Markets in Financial Instruments Regulation

Key focus areas for asset managers

Strategy

Consider how the benefits and opportunities associated with private assets can be brought into the corporate strategy, and the corresponding operating model enhancements that might be required.

Governance

Review the governance arrangements and policies and procedures underpinning fund liquidity risk management and the activation of liquidity management tools. Ensure that policies and procedures are organized and drafted in a manner that facilitates the consistent and fair application of valuation methodologies — supported by the appropriate allocation of roles, responsibilities, and accountability.

Operations

Evaluate and further embed the effectiveness of amendments made for the North American T+1 transition, including across areas such as liquidity management, FX, investment management, securities lending and the fund subscription and redemption lifecycle.

Risk management

Identify and address any potential conflicts of interest arising from private assets throughout the product lifecycle and between different stakeholders. These efforts should be operationalized through an effective framework and supported by an effective remuneration policy.

Operating model

Implement an effective operating model for new regulatory reporting obligations (as needed), by analyzing systems, controls, governance arrangements, roles and responsibilities.

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04 Building resilience

Recent events have once again emphasized that financial and operational resilience are strategic imperatives, not simply compliance issues. Sufficient prioritization of these topics at board level and throughout the organization will be key to demonstrating resilience, not only to earn the trust of clients and regulators but also as a potential source of competitive advantage.

The continuing expansion of rules and supervisory reviews in this area provide ample evidence that these topics are more important than ever to regulators. Financial resilience requirements are being updated and enforced. And implementation deadlines for operational resilience requirements are approaching rapidly — the most comprehensive being those introduced in the EU.

Financial crime also remains firmly in the regulators' spotlight with several jurisdictions updating their rules to further increase transparency and comply with international expectations.

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Financial resilience

In some jurisdictions, regulators are rolling out new rules and frameworks, seeking to ensure asset managers have sufficient financial resources. Conversely, others are now more focused on supervision to reinforce and test the implementation of recently adopted requirements.

In **Australia**, the Australian Prudential Regulation Authority's (APRA) new standard on recovery and exit planning takes effect for superannuation trustees from January 2025 with the aim of improving the resilience of schemes and protecting their members during times of stress.[115] Superannuation trustees will need to establish and maintain plans to ensure ongoing financial resilience, or an orderly solvent exit, if needed. In parallel, APRA has already introduced new rules that enable it to determine and implement a resolution plan for superannuation trustees that qualify as 'significant' financial institutions.

Meanwhile, European regulators are assessing the effectiveness of recently introduced frameworks that moved investment firms away from bank-focused capital frameworks to rules more tailored and proportionate to their activities.

The **UK** Financial Conduct Authority (FCA) has completed significant supervisory work to test how firms have embedded the Investment Firms Prudential Regime (IFPR) that took effect in January 2022. The FCA identified several areas of improvement — including around the group Internal Capital Adequacy and Risk Assessment (ICARA) process, internal intervention points, wind-down planning, liquidity, operational and capital risk assessments, and regulatory data submissions.[116]

You can read more on UK asset managers' practical experiences and priorities under the IFPR in KPMG's 'Navigating Tomorrow' publication.

In the **EU**, revisions to the Investment Firms Regulation and Directive (effective from June 2021) are already being considered. The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) have gathered feedback from the industry to inform a review of the regime.

Their discussion paper touched on areas such as the categorization of firms under the regime, the adequacy of existing K-factors (quantitative measures to help inform potential risks), current liquidity requirements and the interaction of the rules with other EU regulations.[117]

Regulators in individual EU member states have their own priority supervisory areas. The **Netherlands'** central bank, for example, is focused on the quality of investment firms' prudential reporting and their implementation of the supervisory review and evaluation process (SREP) guidelines under the Investment Firms Directive.

Some member states are also making their own policy adjustments. For example, the Central Bank of **Ireland** (CBI) has revised aspects of its prudential regime for fund management companies which also provide MiFID[118] services, in order to align the requirements for these firms more closely with the EU regime under the Investment Firms Directive and Regulation. The CBI's consultation focused on the calculation of K-factors, reporting requirements and the internal capital adequacy assessment.[119] In time, these changes will reduce on-going costs for firms, making regulations more proportionate to firms' operations and assets under management.

The CBI has also published guidance on minimum capital requirement reporting.[120] Since May 2024, firms have been required to submit the minimum capital requirements report with their half-yearly and annual audited accounts. This change aims to standardize and enhance reporting for firms with MiFID permissions.

> **"Digital operational resilience is a fundamental underpinning of a resilient and well-functioning financial system supporting the economy and serving the needs of citizens. Financial services are fundamentally about information and data. So the threat surface is large, the risks are significant and increasing, and the potential impact is great."**
>
> **Gerry Cross**
> Director, Central Bank of Ireland
> Speech delivered at the "6-Months to DORA conference on 28 June 2024[121]

[115] *APRA finalises reforms aimed at strengthening recovery and resolution planning,* APRA, 18 May 2023. This standard came into force for banks and insurers in January 2024.
[116] *FCA publishes final report on IFPR implementation observations,* FCA, 27 November 2023
[117] *The EBA and ESMA invite comments on the review of the investment firms' prudential framework,* ESMA, 3 June 2024
[118] Markets in Financial Instruments Directive II
[119] *Feedback Statement — Consultation Paper 152: Own Funds Requirements for UCITS Management Companies and AIFMs authorised to provide discretionary portfolio management,* CBI, November 2023
[120] *Minimum Capital Requirement Report — Guidance Note for AIFMs and UCITS Management Companies,* CBI, November 2023
[121] *Implementing DORA — Achieving enhanced digital operational resilience in European financial services — Remarks by Director Gerry Cross,* CBI, 1 July 2024

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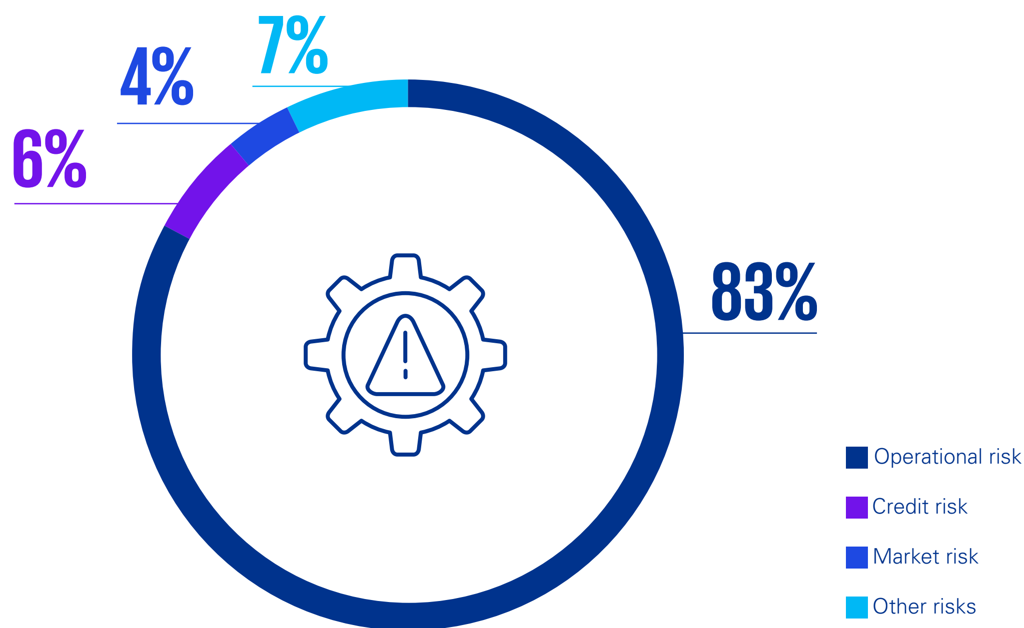
Capital held by asset managers

KPMG in the UK, through its annual survey, found that operational risk continues to be the most significant risk for surveyed UK asset managers. Typically, this forms over 80 percent of a firm's capital requirement.

Percentage of surveyed firms holding capital for harm arising from the following risk types

Median percentage of capital held for each risk type as part of the harm assessment



Source: KPMG — Navigating Tomorrow publication.
You can read more in KPMG's report here.

Operational resilience

Operational resilience continues to gain traction as a global regulatory priority as financial services firms become more technology-dependent and interconnected. Recent incidents have underscored the importance of oversight and due diligence over outsourced arrangements and third parties.

Although regulators around the world are at different stages of their resilience journey, they expect asset managers to ensure that their most important services (such as portfolio management and execution) are resilient to disruption, to minimize harm to customers and the risk of market contagion. Key areas of focus include Information and Communications Technology (ICT) resilience (including cyber) and the resilience of third parties including cloud service providers.

Some of the most substantial and challenging requirements in this year's report are found in the **EU's** Digital Operational Resilience Act (DORA). Its objectives are to harmonize disparate rules across the EU and strengthen oversight, coherence, consistency and awareness of ICT risk.[122]

The 17 January 2025 implementation deadline is fast approaching. Wide-ranging rules will take effect across ICT risk management, third party risk management, digital operational resilience testing, incident reporting, and information sharing. DORA will also extend the regulatory perimeter to capture a wider range of financial entities and to bring critical third parties in scope. All of these topics are covered in more detail by Regulatory Technical Standards, which were finalized in January and July 2024.[123]

[122] *Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector*, EUR-lex, 27 December 2022

[123] *ESAs published second batch of policy products under DORA*, ESMA, 17 July 2024

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Implementing the EU's Digital Operational Resilience Act

There are various challenges that asset managers need to overcome to effectively implement the wide-ranging requirements in DORA.

Some of the most impactful practical challenges and firms' key areas of focus were revealed in KPMG in the UK's January 2024 survey of asset managers:

Most impactful challenges for DORA implementation

Lack of global regulatory alignment

Lack of clarity of Level 2 Regulatory Technical Standards/Implementing Technical Standards

Lack of common service taxonomies and language across the industry

Inconsistency in strategy and approach across the group

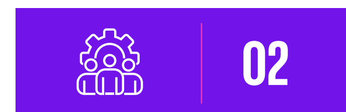
Lack of priority or focus on operational resilience

Highest impact | Moderate impact | Lowest impact

Source: KPMG — Navigating Tomorrow publication.
You can read more in KPMG's report here.

Key areas of focus

Digital Operational Resilience testing



Management of Third Party risk

ICT Risk Management

To help preparations, EU regulators carried out a 'dry run' exercise on a specific aspect of DORA — the creation of registers of their contractual arrangements with ICT third-party service providers.[124] Lessons learned from the exercise will be fed back to firms shortly.

Some member states have introduced their own guidelines or requirements that are closely aligned with DORA.

For example, in **Luxembourg**, the Commission de Surveillance du Secteur Financier (CSSF) has revised its framework for ICT-related incident reporting that is aligned with the DORA requirements. The CSSF's amendments expand the scope of incidents to be reported (by broadening ICT operational and security incidents).[125] They also require firms to classify incidents based on certain criteria, and introduce a new, structured notification form.

As of December 2023, the Central Bank of **Ireland** expects asset managers to be compliant with its cross-industry guidance on operational resilience.[126] The guidance outlines how firms should identify and prepare themselves from a resilience perspective (e.g. through mapping out critical business services), respond and adapt to incidents (e.g. through integrating their business continuity approach into the wider operational resilience framework), and recover and learn from any disruptions.

In line with the FCA's operational resilience requirements, by March 2022, larger **UK** asset managers needed to have identified their important business services, set impact

[124] *DORA 2024 Dry Run exercise on reporting of registers of information*, EBA, 31 May 2024
[125] *Circular CSSF 24/847 ICT-related incident reporting framework*, CSSF, 5 January 2024
[126] *Cross Industry Guidance on Operational Resilience*, CBI, December 2021

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tolerances for maximum tolerable disruption, carried out initial mapping and testing, and identified any vulnerabilities. By 31 March 2025 at the latest, they must demonstrate that they can remain within impact tolerances for each important business service under a 'severe but plausible' scenario, and have made any necessary investments to enable them to consistently operate within these tolerances.[127]

The FCA plans to test asset managers' implementation of the requirements as part of a wider review that will evaluate the governance and resourcing of their change management programs (see more on managing regulatory change in **Chapter 8**).[128]

And in **Australia**, APRA's new prudential standard takes effect from July 2025 with the goal of ensuring that superannuation trustees (as well as banks and insurers) are resilient to operational risks and service disruption.[129] In common with the above requirements, trustees (and banks and insurers) will need to be ready to identify, assess and manage operational risks (including from third parties and fourth parties) and manage critical operations in a way that effectively responds to business disruptions.

The UK and the EU (as part of DORA) are progressing initiatives to regulate and directly supervise some of the critical third parties (CTPs) that asset managers rely on.

In the **UK**, financial regulators consulted on new rules to bring critical third parties within the regulator perimeter.[130] Once designated as critical by the UK government, third parties would need to comply with a set of fundamental rules (e.g., to act with due skill, care and diligence) and meet operational risk and resilience requirements (e.g., around risk management and governance). In the **EU**, DORA will introduce a similar framework.

Cyber resilience and information security

As well as ensuring the continued availability of services, regulators maintain a focus on protecting client and proprietary data and information.

In December 2023, the **UK** regulators completed their latest assessment of the cyber resilience of financial services firms' important business services.[131] They stressed the importance of strong foundational practices to prevent incidents — such as training and awareness, timely maintenance of assets, detection capability, and robust authentication. They also emphasized the need for firms to simulate a range of cyber testing scenarios to remain resilient to threats.

The Bank of England's H1 2024 systemic risk survey confirmed that market participants are cognizant of the potential risks.[132] Cyber-attack (alongside geopolitical risk) was the most commonly cited risk — and the most challenging to manage.

Aspects of the **EU** DORA package (described above) will require firms to enhance their information security controls and report cyber-related incidents to authorities. DORA will operate alongside the Network and Information Security (NIS2) Directive. Member states have begun to conduct reviews and introduce measures aligned to the requirements.

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127 *PS21/3: Building* operational *resilience,* FCA, 31 March 2022
128 *Our Asset Management & Alternatives Supervisory Strategy — interim update,* FCA, 1 March 2024
129 *APRA finalises reforms aimed at strengthening recovery and resolution planning,* APRA, 18 May 2023
130 *CP23/30: Operational resilience: Critical third parties to the UK financial sector,* FCA, 7 December 2023
131 *Cyber resilience good practice for firms,* FCA, 19 December 2023
132 *Systemic Risk Survey Results — 2024 H1,* Bank of England, 27 March 2024

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In **France**, the Autorité des Marchés Financiers (AMF) published the findings of its latest review of asset managers' cybersecurity systems.[133] The review covered a wide range of topics, including human resources and training to support IT systems, governance arrangements, and the mapping of sensitive data, systems and sensitive IT service providers. The AMF identified poor practices that had not been remedied from previous reviews and stated it would initiate legal proceedings against asset managers if justified.

In the **Netherlands**, the Autoriteit Financiële Markten (AFM) has observed that cyber incidents are increasing in number and severity. It published recommendations for firms, encouraging them to establish comprehensive IT risk registers, to include cyber-attacks in business continuity tests, and to establish adequate service level management where firms have intra-group outsourcing arrangements.[134]

In **Switzerland**, the Financial Market Supervisory Authority (FINMA) has published new guidance on cyber-risk, summarizing the key findings from its cyber risk supervisory activities and clarified reporting obligations for cyber-attacks.[135] In addition, a new Federal Act on Data Protection (nFADP) was introduced, effective from September 2023.[136] Revisions to existing data protection law have imposed stricter data processing requirements on companies, including asset managers. Firms now need to keep a register of data processing activities and comply with privacy principles that have corresponding requirements. Notably, the new law is largely interoperable with the EU General Data Protection Regulation (GDPR), and firms that are already compliant with that should only need to make small adjustments.

Preventing money laundering and terrorist financing

Around the world, strong regulatory frameworks and robust financial crime controls are a prerequisite for asset managers to do business. The need for robust governance and accountability, as well as sound processes and technology capabilities, are more important than ever, particularly in an environment of close regulatory scrutiny and rapidly changing sanctions requirements. Various new rules introduced this year aim to increase transparency around beneficial ownership and tighten due diligence rules.

The **EU** has published final rules to strengthen rules on Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) in the bloc, including increased transparency around beneficial ownership, as well as enhanced due diligence and reporting requirements.[137] A new authority will be established to supervise the new rules — the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA).

Within the EU, **Luxembourg** has provided further guidance on the implementation of effective AML/CFT measures, risk-based approaches and complying with international standards.[138]

Jersey's Financial Services Commission (FSC) has made several enhancements to its regulatory framework.[139] These

[133] *Summary of SPOT inspections on asset management companies' cybersecurity measures No. 3 — 2023,* AMF, 21 December 2023
[134] *AFM makes recommendations for IT security of capital markets,* AFM, 18 April 2024
[135] *Cyber risks: FINMA publishes guidance,* FINMA, 7 June 2024
[136] *New Federal Act on Data Protection (nFADP),* Federal Data Protection and Information Commissioner, 1 September 2023
[137] *Anti-money laundering: Council adopts package of rules,* European Council, 30 May 2024
[138] *Circular CSSF 23/839: Update of Circular CSSF 21/789,* CSSF, 26 July 2023
[139] *Amendments to the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016,* Jersey FSC, 23 August 2023

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include amending proceeds of crime legislation to clarify that certain trustee entities need to comply with the requirements, and there have been amendments to laws governing the sanctions framework to align it more closely with the UK's approach. In addition, the FSC has consulted on granting certain firms access to the central register of beneficial ownership.[140] This measure aims to enhance transparency, help firms conduct customer due diligence, and bring the domestic framework into line with international standards.

Switzerland has also strengthened its AML framework. Enhancements include the further development of a federal transparency register (including information on beneficial ownership), the application of AML due diligence rules to certain advisory services, and wider changes relating to sanctions.[141] The revised rules require financial intermediaries to 'verify' rather than just 'ascertain' the identity of beneficial owners and there is now an obligation to update and verify client information periodically regardless of events. In addition, FINMA has published new guidance on conducting an AML risk analysis for intermediaries.[142]

In the **UK**, the short-term focus is on embedding existing requirements. The FCA has set out four key focus areas that firms should be acting on, covering the use of technology, collaboration and information sharing, raising consumer awareness, and effectively using data and metrics.[143] Over the remainder of the year, the FCA will be supporting government proposals to reform the AML supervisory regime. The FCA used its March 2024 supervisory update letter to remind asset managers of the need to have robust systems and controls in place, including to support compliance with the UK sanctions regime.[144]

The status of countries and territories as defined by the Financial Action Task Force's (FATF) classification system continues to be important, particularly where jurisdictions could potentially be subject to increased monitoring — i.e., on the 'grey list'. In October 2023, the **Cayman Islands** was removed from the list,[145] followed by the **United Arab Emirates** in February 2024.[146] FATF concluded that both jurisdictions had made significant progress in improving their AML/CFT regimes.

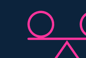
A recent assessment by the Moneyval committee[147] evaluated **Guernsey's** adherence with international AML/CFT standards.[148] The visit was described as positive and productive, with extensive preparations having been made by Guernsey's government, financial institutions, and regulatory bodies. The final results are expected in early 2025.

[140] *Consultation opened on obliged entity central register access,* Jersey FSC, 1 May 2024
[141] *Federal Council adopts dispatch on strengthening anti-money laundering framework,* The Federal Council, 22 May 2024
[142] *FINMA publishes guidance on money laundering risk analysis,* FINMA, 24 August 2023
[143] *Reducing and preventing financial crime,* FCA, 8 February 2024
[144] *Our Asset Management & Alternatives Supervisory Strategy — interim update,* FCA, 1 March 2024
[145] *Jurisdictions under Increased Monitoring,* FATF, 27 October 2023. Copyright © FATF/OECD. All rights reserved.
[146] *Jurisdictions under Increased Monitoring,* FATF, 23 February 2024. Copyright © FATF/OECD. All rights reserved.
[147] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
[148] *Update on the Bailiwick's MoneyVal assessment,* Committee for Home Affairs, 29 April 2024

Key focus areas for asset managers

Resilience

Promote a culture where financial and operational resilience is considered a strategic priority by the board. Identify and map all critical services, set tolerances for disruption, and test whether these tolerances can be maintained under challenging scenarios.



Stability

Assess whether adequate capital and liquidity is held, having reviewed all potential risks to the business under various scenarios. Check that wind-down plans are sufficiently detailed, complete, practical and maintained on a regular basis.

Third parties

Review third-party and outsourcing arrangements, including policies and procedures, formal agreements, and oversight/monitoring arrangements.

Information security

Evaluate arrangements to ensure there are clear policies and procedures in place to address cyber-related risks, as well as recovery and incident response plans.

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05 Protecting retail investors

Regulatory efforts to prevent harm to retail investors have resulted in the further introduction of new initiatives, including efforts to modernize investor protection regimes, as well as supervisory work to check the embeddedness of existing rules.

Amid industry concerns regarding the impact of regulation on competitiveness, there are also calls from the industry to calibrate the measures appropriately and proportionately, and to reduce burdensome requirements where they are perceived to add little value.

As well as the introduction of new investor protection regimes, there have been targeted measures to improve the usefulness of disclosures and tighten up product governance requirements. While some measures are looking to improve the availability of advice for investors, some supervisors are also closely scrutinizing ongoing advice charges. More broadly, the value of investment products and services is increasingly featuring on regulators' agendas.

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Strengthened consumer protection frameworks

While new consumer protection frameworks are being introduced or embedded, asset managers' compliance with existing frameworks continues to be monitored.

Initially unveiled in 2023, the details of the **EU's** proposed retail investment strategy (RIS) have been subject to fierce debate. For asset and wealth managers, the package is likely to introduce new product governance and value for money requirements, simplified and modernized disclosures, inducement principles and training and competence standards.[149] Following extensive negotiations, the European Parliament, Council and Commission will come together later this year to reach an agreement on a final text.

In the **UK**, all aspects of the Financial Conduct Authority's (FCA) Consumer Duty are now in force, placing the onus on asset managers to demonstrate good outcomes for their consumers.[150] As we discuss more in this chapter, more than a year since it was first introduced, the FCA has reviewed firms' implementation and acted swiftly on specific topics of concern. It has also published its expectations on specific issues and highlighted good and poor practice observed through its supervisory activity.

Under the last of the phased-in deadlines, firms needed to complete their first board-level annual assessment of consumer outcomes and to have implemented the regime for 'closed products' by 31 July 2024. Having allowed time for the rules to settle in, the FCA is now gathering industry feedback to understand where potential areas of complexity, duplication, confusion, or over-prescription in the wider rulebook could be addressed.[151]

With strong parallels to the UK's Consumer Duty, the Central Bank of **Ireland** has consulted on revisions to modernize its consumer protection code (CPC).[152] The proposals would require firms to incorporate investors' interests into their overall business model and strategy, enhance the clarity of consumer obligations, and consolidate several existing CBI codes and requirements. The CBI intends to issue a revised CPC in early 2025 with a 12-month implementation period.

> **"Effective consumer protection requires firms to have a strong customer focus as they pursue their fundamental commercial goals. Experience has shown how failing to do so can lead to poor outcomes for both consumers and firms."**
>
> **Derville Rowland**
> Deputy Governor, Central Bank of Ireland
> Opening Remarks, Launch of Consultation Paper on Review of the Consumer Protection Code, March 2024[153]

[149] *Retail investment strategy,* European Commission, 24 May 2023
[150] *PS22/9: A new Consumer Duty,* FCA, 27 July 2022
[151] *Call for Input: Review of FCA requirements following the introduction of the Consumer Duty,* FCA, 29 July 2024
[152] *Consumer Protection Code Review,* Central Bank of Ireland, March 2024
[153] *Deputy Governor Derville Rowland Opening Remarks for Launch of Consultation Paper on Review of the Consumer Protection Code,* CBI, 7 March 2024

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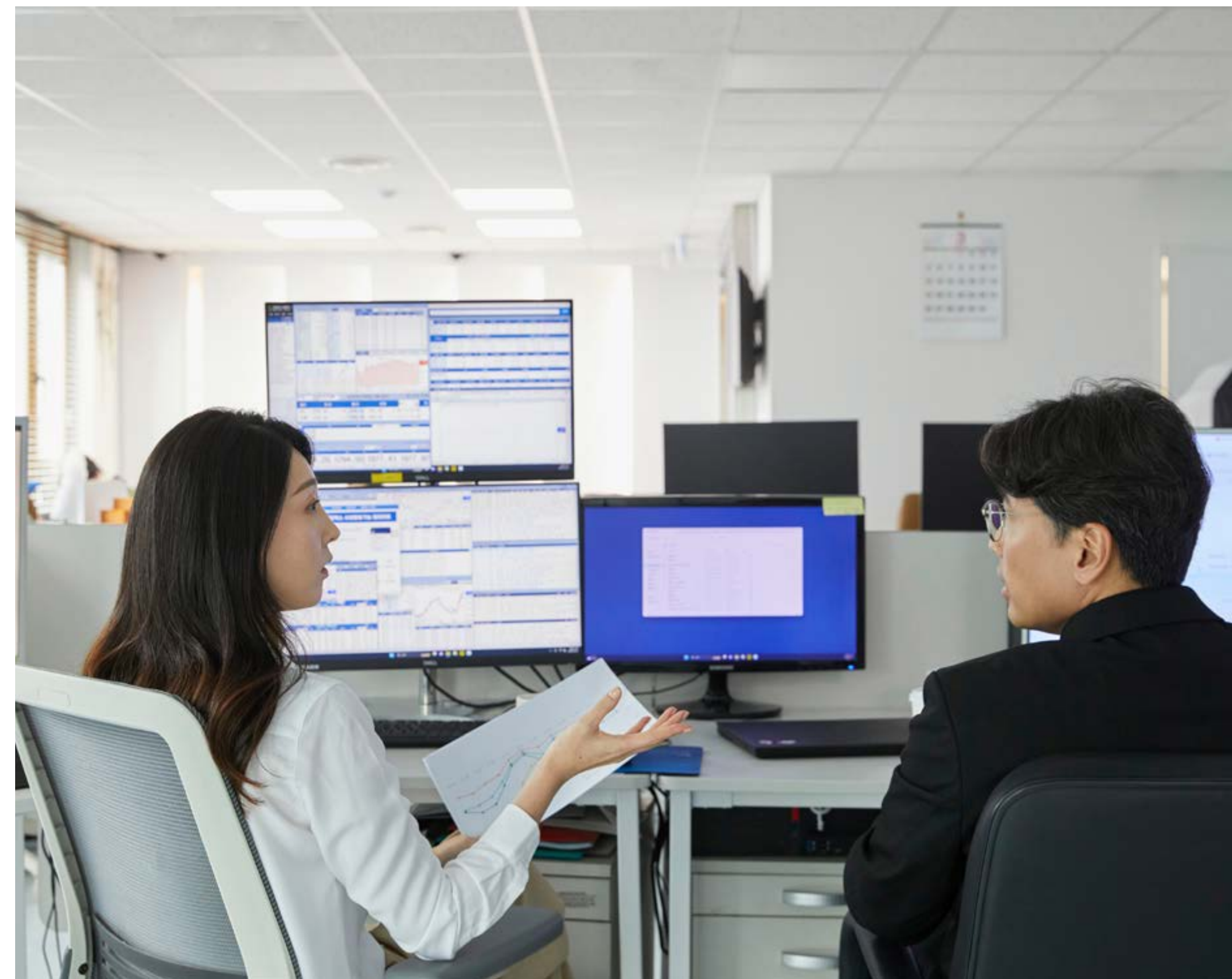
A focus on delivering and evidencing good outcomes for investors is also evident in the recent updates to the Monetary Authority of **Singapore's** (MAS) guidelines on fair dealing for boards and senior managers.[154] Some of the key changes include updates to require asset managers to align the design of a product or service with the needs of the target market, to exercise due care in the design and content of financial promotions, and to provide customers with clear and adequate disclosures and explanations during the sales process. The guidelines include good and poor practices, as well as self-assessment questions that asset managers should use to benchmark themselves.

In **South Africa,** proposals continue to take shape on a revised market conduct legislative framework for all financial services firms — the Conduct of Financial Institutions Bill.[155] More progress is expected over the remainder of 2024 and into 2025.

New measures are also targeting improvements on specific topics. For example:

- **Licensing new activities: Cyprus[156]** and **Hong Kong (SAR), China[157]** are introducing new rules to require fund administrators and trustees and depositaries respectively to be authorized or licensed for the first time.
- **Fund liquidity:** To help ensure that regulation keeps pace with investment trends and continues to protect **EU** investors, the European Securities and Markets Authority (ESMA) is seeking views on whether the existing rules governing UCITS[158] eligible assets are still appropriate.[159] ESMA wants to promote supervisory convergence and understand the risks and benefits of UCITS gaining exposure to various asset classes such as unlisted equities or cryptoassets.



[154] *Guidelines on Fair Dealing - Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers [FSG-G04],* MAS, 30 May 2024. Reproduced with the permission of the Monetary Authority of Singapore ©2024 The Monetary Authority of Singapore.
[155] *FSCA'S Regulation Plan (2023 — 2026),* FSCA, 5 July 2023
[156] *Consultation Paper CP(2021-02) on Regulating the Provision of Investment Fund Administration Services,* CySEC, 16 June 2021
[157] *Circular on licensing and registration of depositaries of SFC-authorised collective investment schemes and related transitional arrangements,* SFC, 27 July 2023
[158] Undertakings for Collective Investment in Transferable Securities
[159] *Call for Evidence on the review of the UCITS Eligible Assets Directive,* ESMA, 7 May 2024

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- **Managing pension schemes:** In another measure to improve customer outcomes, the Future Pensions Act ('Wet toekomst pensioenen') was introduced in the **Netherlands**, marking a fundamental shift in moving the pension system from defined benefit to defined contribution pensions.[160] This change increased the obligations for asset managers towards their investors.

Supervision is also focused on improving practices on specific issues:

- **Complaints handling:** In **France**, the Autorité des Marchés Financiers (AMF) completed a thematic review of asset managers' complaints handling and identified several shortcomings.[161] These included issues around complaints identification resulting in over- or under-reporting as well as customer communication weaknesses. The AMF called on firms to strengthen their procedures. And in Australia, via supervision, the **Australian** Securities and Investments Commission (ASIC) is focused on the quality of complaints handling and claims processing undertaken by superannuation schemes and insurers.[162]
- **Valuations and fund-related issues:** The **Luxembourg** Commission de Surveillance du Secteur Financier (CSSF) published new guidelines for handling and addressing errors in calculating a fund's net asset value (NAV), non-compliance with investment rules, and other operational errors, aiming to protect investors and maintain confidence in the asset management industry.[163]

Revised regimes for fund managers

As well as improving consumer protection, regulators are looking at the requirements that apply to fund managers and revising frameworks to streamline and modernize them where possible.

The Monetary Authority of **Singapore** (MAS) repealed the regulatory regime that applies to registered fund management companies (RFMCs) in order to simplify and harmonize the fund regime.[164] RFMCs are asset managers that are restricted to managing a small amount of assets for a small number of clients. Originally introduced as a transition regime, the MAS now considers that it has served its purpose and the timing is right for it to be repealed. It has put in place transitional arrangements for impacted firms.

In **Brazil**, the introduction of new rules to modernize the regime for fund managers (under Resolution 175 — as described in last year's report) were postponed in order to allow the industry more time to prepare.[165] The Comissão de Valores Mobiliários (CVM) set out three new deadlines:

- **1 October 2024** — the implementation of the rules for share classes and quotas
- **1 November 2024** — rules requiring a breakdown of the fees paid to service providers
- **29 November 2024** — rules relating to credit rights funds.

In the **UK**, the FCA is considering whether a clearer distinction is needed between the requirements applied to managers of authorized retail funds, and managers of alternative investment funds.[166]

[160] *Wet toekomst pensioenen in werking,* KPMG in the Netherlands
[161] *AMF encourages investment services providers to strengthen their procedures for handling client complaints,* AMF, 6 February 2024
[162] See for example: *Improving superannuation member services — Dealing with death benefit claims,* ASIC, 1 May 2024
[163] *Circular CSSF 24/856 Protection of investors in case of an NAV calculation error, an instance of non-compliance with the investment rules and other errors at UCI level,* CSSF, 29 March 2024
[164] *Consultation Paper on Repeal of Regulatory Regime for Registered Fund Management Companies,* MAS, 25 April 2024. Reproduced with the permission of the Monetary Authority of Singapore ©2024 The Monetary Authority of Singapore.
[165] *Resolução CVM 175,* CVM, 23 December 2022
[166] *Updating and improving the UK regime for asset management: our priorities,* FCA, 12 October 2023

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Revising consumer disclosure requirements

Regulators continue to look for ways to ensure the information provided to investors is clear, balanced, and not unduly burdensome. While continuing to monitor compliance with existing disclosure rules, policymakers are actively making changes to simplify disclosures, improve transparency, modernize delivery methods, and enable better comparisons between products.

In **Canada**, changes are being made to modernize fund disclosures. The 'Access Model' will make it permissible for prospectuses to be made available electronically. Canadian regulators believe this will reduce costs and administrative burdens.[167] In parallel, efforts continue to amend prospectus filing requirements so that prospectuses would only need to be renewed once every two years (rather than the current annual requirement). The deadline for wealth managers to meet rules introduced in 2023 on total cost disclosure is also drawing closer — firms need to be compliant by 31 December 2025 at the latest.

The **EU's** proposed retail investment strategy (which continues to be negotiated) includes proposals for the simplification of disclosures, delivery in electronic format by default, the introduction of an annual statement for clients and a standardized presentation of costs and charges.

With similar goals, the **UK** government consulted on legislation to establish a new framework for UK retail disclosures to replace the current UCITS and PRIIPs[168] disclosure regimes.[169] The new framework will be designed to be proportionate and tailored to the UK market and will balance support for the industry while ensuring that retail investors receive disclosures that enable them to make well informed investment decisions. The FCA is expected to consult on detailed rules to underpin the legislation by the end of 2024.

With a focus on fee transparency, in **France**, the AMF has published guidance on cost disclosures to support investor understanding. In parallel, the AMF added a new section on fees to the retail investor part of its website to support retail investors in better understanding the costs they may be charged.[170]

And in **Switzerland**, concerns about compliance with the Financial Services Act's (FiNSA) standards on customer disclosure has prompted the Financial Market Supervisory Authority (FINMA) to consult on new guidance outlining how clients should be provided with information in order to make informed investment decisions.[171] The guidance touches on increasing transparency and providing greater clarity on the type of financial service being provided, potential risks, and remuneration from third parties.

In addition to the publication of these consultations and guidance, supervisory work continues to identify the need to better embed existing rules.

ESMA's recent review of the application of the **EU** MiFID II marketing requirements identified several areas for improvement, including the need for firms to ensure marketing communications are identifiable as such, and the need for a balanced presentation of risks.[172]

Meanwhile in **Spain**, a key focus for the Comisión Nacional del Mercado de Valores (CNMV) this year is the clarity of risk warnings in customer correspondence, such as the risks associated with fixed income products and the impact of inflation on actual returns.[173]

[167] *CSA announces final amendments and changes to implement an access model for prospectuses of non-investment fund reporting issuers*, CSA, 11 January 2024
[168] Packaged retail investment and insurance products
[169] *UK Retail Disclosure Framework — Draft SI and Policy Note*, HM Treasury, 22 November 2023
[170] *The AMF ensures that retail investors are properly informed on fees of financial products*, AMF, 19 October 2023
[171] *Rules of conduct under FinSA: FINMA launches consultation on new circular*, FINMA, 15 May 2024
[172] *ESMA reports on the application of MiFID II marketing requirements*, ESMA, 27 May 2024
[173] *CNMV Strategic Areas 2023-2024*, CNMV, 2023

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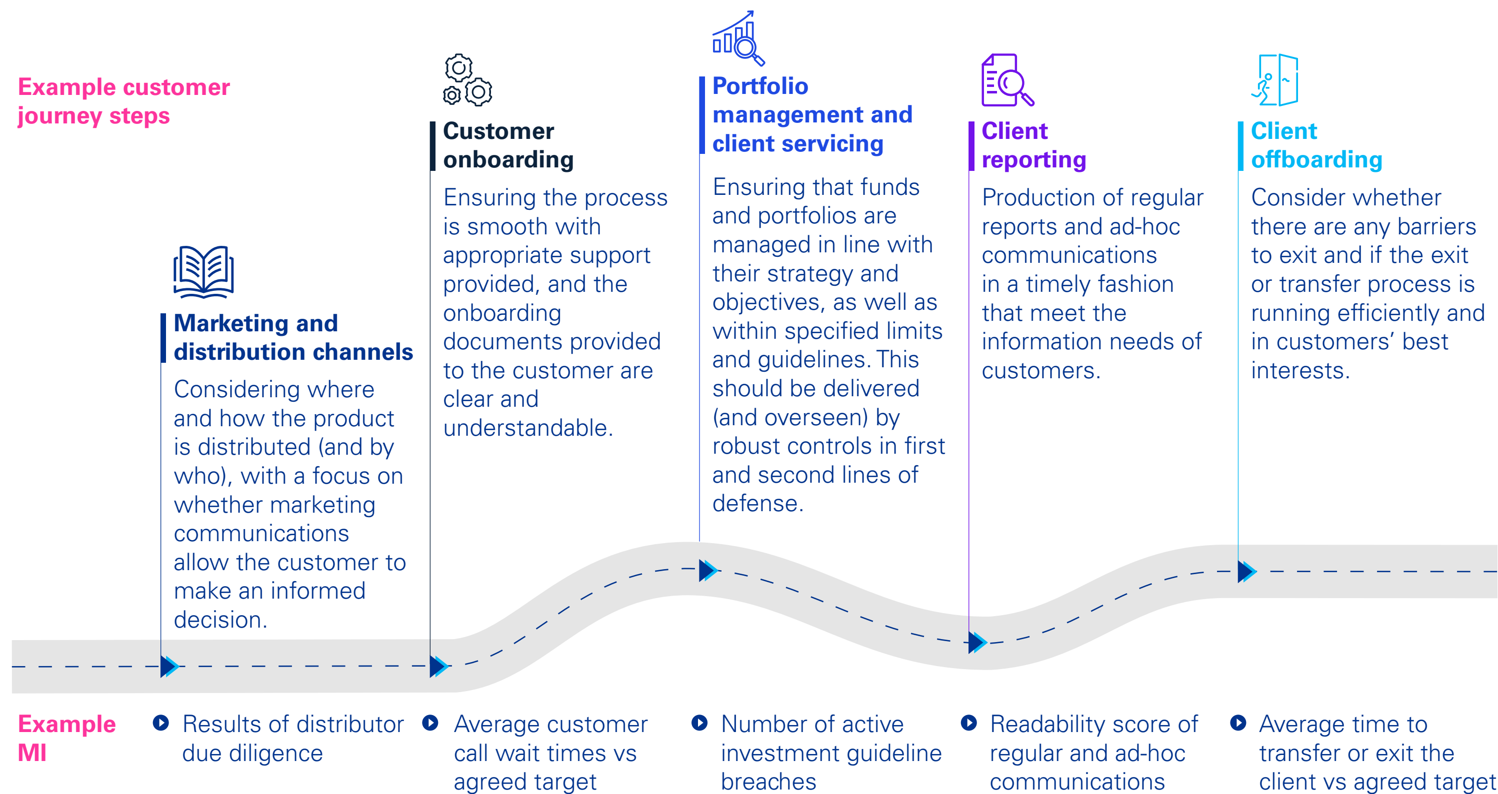
Mapping the customer journey

Mapping out the end-to-end customer journey for each asset and wealth management product or service can help ensure the process is designed with the customer in mind and meets regulatory expectations. It should also assist with the identification of MI and metrics that can be used to monitor outcomes delivered to customers.



Product governance

Effective product governance is a key component of investor protection and helps ensure that clients can access products that meet their needs. Revisions or enhancements to product governance frameworks are being made in some jurisdictions to ensure they remain fit for purpose.

As part of wider government reforms of the asset management sector in **Japan**, there are plans to introduce product governance principles for asset management companies.[174] These would focus on clarifying target markets and assessing the balance between costs, risks and expected returns.

In the **EU**, ESMA's revised product governance guidelines took effect in October 2023.[175] Updates related to the specification of a product's sustainability-related objectives, the approach to target market identification, the determination of distribution strategy, and the criteria used for the periodic review of products.

And in **Australia**, ASIC continues to monitor the sector and take action where it has concerns about firms' compliance with its design and distribution obligations (DDO). It has made use of its product intervention powers to prevent asset managers from distributing funds where it determined that they were not being distributed in line with their target market.[176]

Investment advice

There are two themes relating to the provision of investment advice that are noteworthy in this year's report.

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174 *Policy Plan for Promoting Japan as a Leading Asset Management Center*, JFSA, 11 July 2024
175 *ESMA updates its guidance on product governance*, ESMA, 27 March 2023
176 *ASIC calls on investment product issuers to 'lift their game' on design and distribution obligations*, ASIC, 3 May 2023

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On the one hand, authorities are keen to close the 'advice gap' — the difference between those who would like advice and those who can afford it. Some jurisdictions are considering how good quality, suitable advice can be delivered cost effectively.

In **Australia**, further progress has been made in delivering the recommendations of the Quality of Advice review (QAR) with the release of a draft bill enshrining many of the reviews' recommendations into law.[177] These aim to reduce the administrative burden that adds to the cost of advice, with further legislation planned to address the outstanding recommendations later this year.

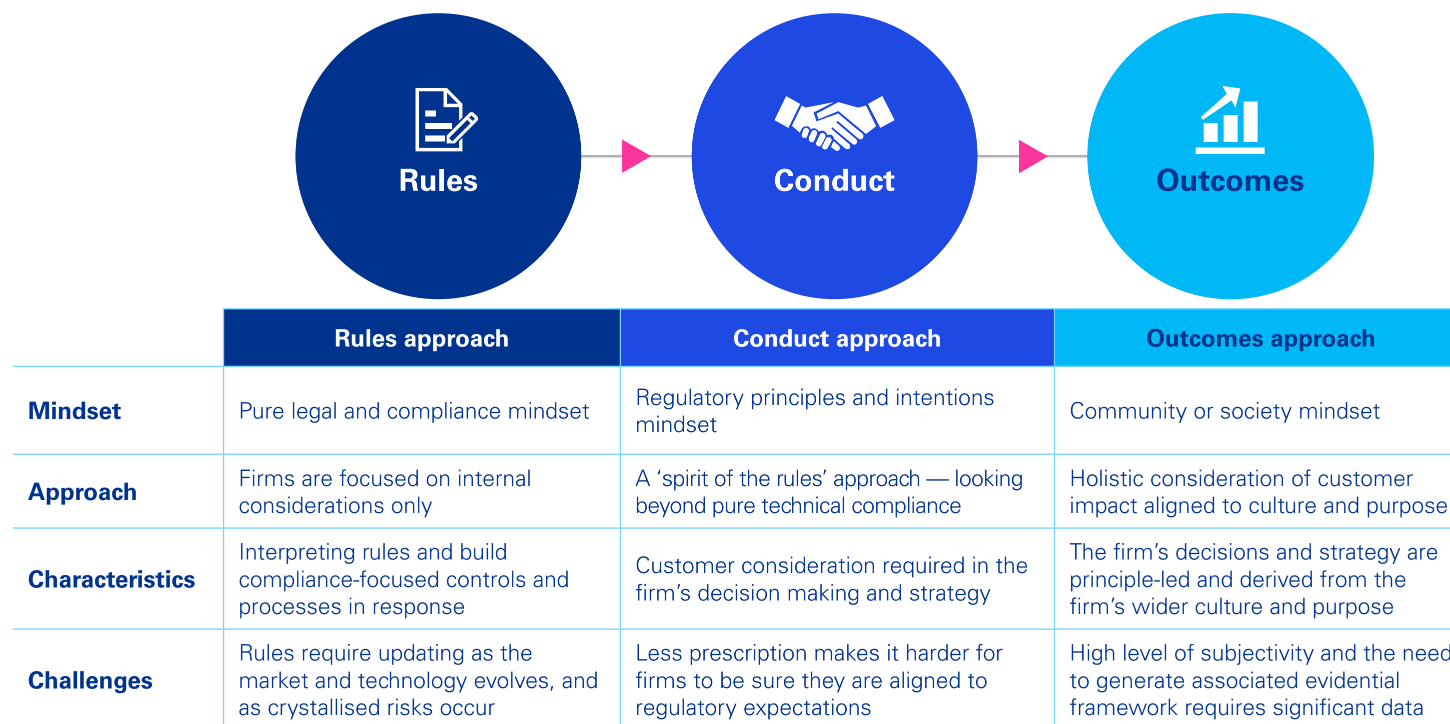
Similarly, the **UK** authorities are reviewing the boundary between advice and guidance with the FCA considering three proposals: clarifying the boundary (to allow firms to operate closer to the advice regime that triggers new obligations), a new targeted support regime (where firms could use limited information to suggest products or courses of actions to clients) and a new advice regime for the provision of 'simplified' investment advice.[178] The proposals are still in their developmental stage and will need further refinement.

At the same time, jurisdictions are undertaking supervisory action or introducing new rules to uphold investor protection.

The **UK** FCA is investigating the provision of ongoing investment advice due to concerns that clients may be paying for advice that is not being provided.[179] Following the introduction of the Consumer Duty, more than 20 firms were asked to provide data to illustrate the number of clients that were

Evolving approaches to the regulation of retail conduct and investor protection

Some regulators around the world are seeking to improve retail customer outcomes by evolving their approach to policymaking. This involves moving from a strictly rules-based approach to more principles-based regulation that allows for flexibility and proportionality but focuses on the evidence of good or poor outcomes delivered for consumers. This journey is illustrated below:



	Rules approach	Conduct approach	Outcomes approach
Mindset	Pure legal and compliance mindset	Regulatory principles and intentions mindset	Community or society mindset
Approach	Firms are focused on internal considerations only	A 'spirit of the rules' approach — looking beyond pure technical compliance	Holistic consideration of customer impact aligned to culture and purpose
Characteristics	Interpreting rules and build compliance-focused controls and processes in response	Customer consideration required in the firm's decision making and strategy	The firm's decisions and strategy are principle-led and derived from the firm's wider culture and purpose
Challenges	Rules require updating as the market and technology evolves, and as crystallised risks occur	Less prescription makes it harder for firms to be sure they are aligned to regulatory expectations	High level of subjectivity and the need to generate associated evidential framework requires significant data

[177] *Delivering Better Financial Outcomes Tranche 1 — Draft Regulations,* The Treasury (Australia), 11 June 2024
[178] *DP23/5: Advice Guidance Boundary Review proposals for closing the advice gap,* HM Treasury, December 2023
[179] *FCA requests information from firms about delivery of their ongoing advice services and the Consumer Duty,* FCA, 15 February 2024

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due a suitability review, how many had received the review, and how many had paid for ongoing advice but the fee was refunded as the review did not happen. Separately, deficiencies in the provision of ongoing advice were also identified in the FCA's thematic review of retirement income advice.[180]

The UK's focus on ongoing advice is, in some ways, similar to previous work conducted in **Australia** by ASIC. Its 2023 final update on financial advice-related misconduct concluded its work to review the extent of failure by firms to deliver ongoing advice where customers were paying fees to receive those services.[181] Separately, ASIC has issued expectations for superannuation trustees to address deficiencies in their monitoring of fee deductions for the provision of financial advice.[182] It urged trustees to enhance their oversight processes, review how financial advice documents are sampled, consider fee deduction caps, enhance adviser onboarding, and improve ongoing monitoring.

In **Sweden**, the Finansinspektionen considers that stronger protections are needed for consumers when receiving financial advice. It has called for a government inquiry and new measures to counteract conflicts of interest in the savings market.[183]

Separately, the **US** Securities and Exchange Commission (SEC) modernized the rules for investment advisers operating exclusively through the internet.[184] It required them to have — at all times — an operational interactive website to provide digital advisory services. The changes are intended to increase investor protection and support the efficient and effective oversight of registered investment advisers.

Value for money

A focus on ensuring value for investors continues to be a growing feature of investor protection rules and regulations. There are close links to developments in this area with proposed improvements to disclosure requirements and supervisory focus on the provision of advice.

> **"[The] ASIC compensation for financial advice related misconduct project has shone a light on the advice fees that customers are paying and the services they should be receiving in return... The subsequent programs have resulted in very significant remediation payments to affected consumers"**
>
> **Danielle Press**
> ASIC Commissioner
> Press release Final ASIC update: Compensation for financial advice related misconduct (March 2023)[185]

[180] *Thematic review of Retirement Income Advice,* FCA, 20 March 2023
[181] *Final ASIC update: Compensation for financial advice related misconduct as at 31 December 2022,* ASIC, 10 March 2023
[182] *ASIC calls* on *super trustees to improve gatekeeping of member savings,* ASIC, 9 May 2024
[183] *Consumer Protection Report 2024*, Finansinspektionen, 8 May 2024
[184] *SEC Adopts Reforms Relating to Investment Advisers Operating Exclusively Through the Internet,* US Securities and Exchange Commission, 27 March 2024
[185] *Final ASIC update: Compensation for financial advice related misconduct as at 31 December 2022,* ASIC, 10 March 2023

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In the **UK**, the FCA has made use of the value for money (VFM) requirements of the Consumer Duty. Through supervision, it has been clear on the issues that it expects firms to address, including weaknesses in areas such as charging for services not delivered, and unclear fees and charging structure disclosures.[186] The FCA also wrote to investment platforms and certain pension operators, requiring them to cease charging platform fees while also retaining interest on customers' cash balances.[187]

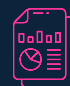
Measures focused on VFM are a core component of the **EU's** proposed retail investment strategy (RIS), but the final requirements are yet to be agreed. The measures originally proposed would have introduced a ban on inducements for execution-only sales. They would have also required asset managers to implement structured pricing processes and to compare their prices to ESMA cost and performance benchmarks. While VFM measures are expected to remain in the final rules, divergent views between the EU authorities may result in the use of benchmarks being integrated into the supervision process rather than included as binding rules for firms.

Meanwhile in **Canada**, work to implement the total cost disclosure requirements described above continues, with a committee now in place to support firms to implement the changes in line with the 2025 deadline.

[186] *Consumer Duty implementation: good practice and areas for improvement*, FCA, 20 February 2024

[187] *FCA writes to firms about the treatment of retained interest on customers' cash balances*, FCA, 12 December 2023

Key focus areas for asset managers



Culture

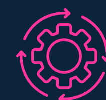
Review your firm's strategy, culture and purpose to ensure it is aligned with acting in customers' best interests.

Governance

Evaluate the governance structures and management information used to monitor customer outcomes. Consider whether customer outcomes are clearly defined and monitored using appropriate metrics and if poor outcomes are investigated and acted on.

Products

Check whether a target market for products has been defined with sufficient granularity, and use feedback from distributors to analyze whether products are being distributed to that market.



Compliance

Ensure services are being delivered where clients have paid for them — for example, by examining the policies and procedures that underpin the annual suitability of advice review and its oversight.

Value for money

Perform an assessment of the benefits and costs of your firm's products and services in order to determine whether they provide value for money. Check if disclosures on costs and charges are understandable and consistent with new regulatory requirements and guidance.

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06

Governance and accountability

The effectiveness of asset managers' governance arrangements remains critical to the performance of the firm and investors' outcomes, especially during times of uncertainty and change.

Although good governance plays an important part in the effective implementation and ongoing oversight of all the regulatory topics described in this year's report, there are also specific areas where regulators are focusing on the topic more specifically.

For example, there are new or revised measures for senior managers and staff under accountability frameworks. New rules and guidance have been published to ensure that investors' money and assets are appropriately protected. Delegation of portfolio management continues to come under scrutiny in Europe, with new rules now finalized. There are also reviews underway of frameworks that govern asset managers' stewardship of investee companies. See **Chapter 5** for developments relating to product governance.

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New and revised accountability regimes

Appropriately assigning roles, responsibilities and accountability remains the cornerstone of an effectively functioning asset management business. Having observed shortcomings in the past, regulators continue to roll out and update accountability regimes.

Having introduced one of the first accountability regimes following the global financial crisis, the **UK** is now reviewing its Senior Managers and Certification Regime (SM&CR) to consider where it could be improved and better aligned with comparable, international regimes from a competitiveness perspective.[188] Having gathered initial feedback, the UK authorities are expected to launch a consultation on more detailed changes by the end of 2024.

Australia is now replacing and extending its existing Banking Executive Accountability Regime (BEAR) that was introduced in 2018 to govern the banking sector, with the Financial Accountability Regime (FAR).[189] Coming into effect in March 2025, FAR will not only apply to banks, but also to superannuation funds and insurers. It aims to enhance investor protection by improving the risk and governance culture of covered entities (including superannuation fund trustees) and strengthening the responsibility and accountability of directors and senior executives.

FAR will impose four core sets of requirements — including accountability obligations for firms and accountable persons, obligations for key personnel, requirements to notify regulators of certain events, and deferred remuneration obligations (including to defer payment of at least 40 percent of an accountable person's variable remuneration for a minimum of four years). Additional information was published in July 2024 to help firms prepare.[190]

Ireland has also been rolling out the components of a new accountability regime. The Individual Accountability Framework (IAF) took effect from April 2023, followed by conduct standards for all individuals from December 2023, Certification Regulations for senior staff from January 2024, and the Senior Executive Accountability Regime (SEAR) from July 2024. This latest component requires in-scope asset managers to clearly and fully describe where responsibility and decision-making sits within senior management.[191]

The Central Bank of Ireland (CBI) has issued several communications to assist firms with the implementation of the IAF, including a guide to fitness and probity interviews conducted by the CBI.[192] Similar to the UK, reviews will also assess the effectiveness of the regime, starting with an independent review of the fitness and proprietary approval process.

In **Guernsey**, a new director registration regime has been established.[193] It is primarily aimed at individuals who rely on an exemption that allows them to act as directors for up to six companies without needing a personal fiduciary license. The new regime mandates registration with the Guernsey Financial Services Commission (FSC) and includes Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) obligations under the Proceeds of Crime Law.

> **"This piece of regulation is first and foremost about enhancing governance, performance and accountability in financial services… At its core, financial regulation is about supporting positive outcomes, protecting consumers and investors, and, ultimately, contributing to the economic well-being of the community as a whole. These regulations support this objective."**
>
> **Derville Rowland**
> Deputy Governor, Central Bank of Ireland
> Press release to launch the IAF — November 2023[194]

[188] *DP23/3: Review of the Senior Managers and Certification Regime*, FCA, 30 March 2023
[189] *Financial Accountability Regime,* ASIC, July 2024
[190] *ASIC and APRA issue final rules and information for the Financial Accountability Regime,* ASIC, 11 July 2024
[191] *Individual Accountability Framework webpage,* CBI
[192] *Fitness and Probity Interview Guide,* CBI, 9 August 2023
[193] *Director Registration Regime,* Guernsey FSC, 27 June 2023
[194] *Central Bank publishes Individual Accountability Framework Standards and Guidance,* CBI, 16 November 2023

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Revised expectations on fund governance

In addition to the introduction of new accountability regimes, some jurisdictions have introduced new rules and guidance on wider topics.

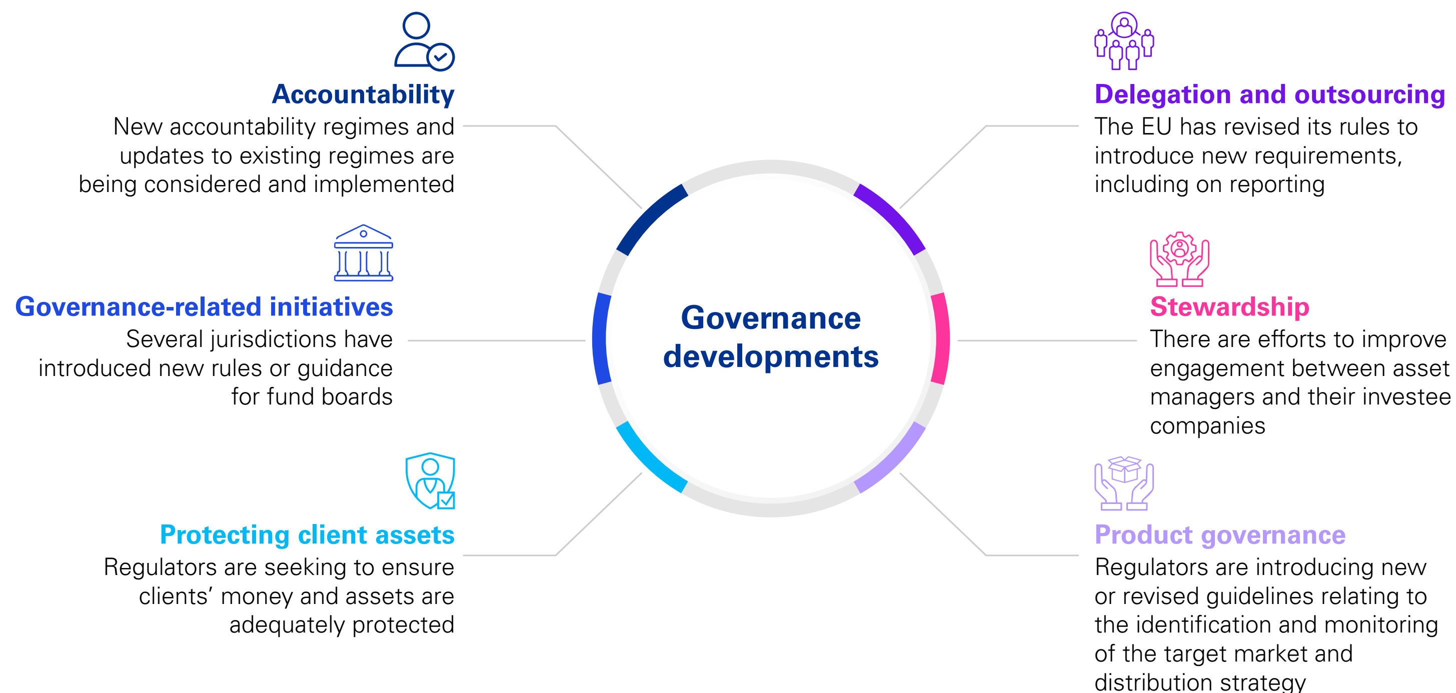
In **Malta**, the Malta Financial Services Authority (MFSA) issued a revamped corporate governance manual for fund board directors with the goal of promoting strong and effective governance.[195] The changes introduced fund-specific principles and best practices covering various topics — ranging from the role and function of the board, to the internal control environment and identifying and preventing conflicts of interest as expected by the regulator. The MFSA expects firms to use the guidance to develop corporate governance practices to fit their specific context.

In the **Cayman Islands**, the Cayman Islands Monetary Authority (CIMA) introduced new rules, effective from October 2023, to implement basic governance standards.[196] The rules set out requirements for firms and their governing bodies — such as on the composition of the board and the duties of individual directors. In parallel, updated guidance was published to set out minimum expectations and key corporate governance principles specifically for mutual and private equity funds.[197] The guidance noted that governance structures need to be appropriate and suitable to enable the effective oversight of funds.

Following consultation, the **Bermuda** Monetary Authority (BMA) published revised rules and guidelines for investment funds.[198] The updates made several changes, including

Governance-related themes

Governance is a cross-cutting theme that is relevant to practically all supervisory interactions. However, in this year's report there are also specific governance-related topics that are on regulators' policymaking agendas:



[195] *MFSA Revamps Corporate Governance Manual for Directors of Collective Investment Schemes,* MFSA, 30 October 2023
[196] *Rule: Corporate Governance for Regulated Entities,* Cayman Islands Monetary Authority, April 2023
[197] *Statement of Guidance Corporate Governance — Mutual Funds and Private Funds,* Cayman Islands Monetary Authority, April 2023
[198] *Investment Funds Amendment Act 2023 and Updates to the Related Rules,* Bermuda Monetary Authority, 5 December 2023

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clarifying the obligations of fund operators, strengthening the regulator's supervisory powers, and adding requirements for fund auditors to notify certain matters to the BMA.

Protecting client assets

Effective controls and governance arrangements to protect client money and assets are essential to building trust with investors and regulators.

In **Ireland**, requirements on the safekeeping of client money and assets have been in place for several years. However, an update to the existing regulations applied to investment firms from July 2023, increasing the scope of the regulation. To assist firms with implementation, the Central Bank published guidance covering changes around several topics, such as disclosures to clients, the reconciliation process, segregation of assets, and the risk management process.[199]

The **Guernsey** Financial Services Commission has consulted on the handling of unclaimed money.[200] This followed a thematic review revealing inconsistencies in how unclaimed money is managed within funds. It proposed that fund boards adopt a clear policy for unclaimed money, designate a responsible entity for implementation, and provide appropriate disclosure to investors. The paper also suggested removing outdated provisions from the rulebook.

Delegation and outsourcing

Fund management companies often choose to delegate or outsource portfolio management or risk management to another entity — either to one in the same group of companies, or to a third party. In the **EU**, this practice and corresponding oversight arrangements have been subject to close scrutiny in recent years, particularly following the UK's decision to leave the union.

After a review of the AIFMD[201] and rules under the UCITS[202] Directive — during which various proposals were put forward — final rules have been agreed.[203] From April 2026, fund management companies will need to be able to demonstrate that delegates are selected with due care, are appropriately qualified, and are being effectively monitored.

They will also need to provide wide-ranging information to regulators on delegation arrangements. This will range from basic information (such as the name and domicile of delegates) to how many staff are employed for monitoring activities and on how due diligence reviews are conducted. Additionally, they will need to report on the amount and percentage of each fund's assets which are subject to delegation arrangements. In the future, the European Securities and Markets Authority (ESMA) will undertake an analysis of delegation practices to understand whether any further changes are necessary.

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[199] *Guidance on Client Asset Requirements,* Central Bank of Ireland, 4 July 2023
[200] *Consultation Paper on Unclaimed Money under the Protection of Investors (Bailiwick of Guernsey) Law, 2020,* Guernsey FSC, 28 March 2024
[201] Alternative Investment Fund Managers Directive
[202] Undertakings for Collective Investments in Transferable Securities
[203] *Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024,* EUR-lex, 26 March 2024

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In **France**, the Autorité des Marchés Financiers (AMF) has completed a review of asset managers' delegation arrangements, touching on organizational arrangements, due diligence processes, monitoring and controls, and the management of conflicts of interest.[204] While noting some good practices, the AMF also found there are areas where improvements are needed. These included an absence of documentary evidence to show that checks had been undertaken on delegates, monitoring criteria being restricted to examine only the performance of portfolios, and failures to consider operational risks arising from delegated arrangements.

Stewardship

In addition to highlighting the need for strong internal governance, regulators continue to emphasize the need for asset managers to act as effective stewards of the companies that they invest in.

The **UK** Financial Reporting Council (FRC) is reviewing its voluntary principles-based Stewardship Code.[205] The review will examine to what extent the Code supports long term value creation, creates unnecessary reporting burdens on investee companies or asset managers, and whether it has had any unintended consequences — such as short-termism. Asset managers are required by the FCA to disclose whether they comply with the Code, and if they do not, to disclose their alternative investment strategy. Following consultation, it is expected that a revised Code will be published in early 2025.

In **Japan**, the government's latest policy plan to promote Japan as an asset management center includes a priority on the effective implementation of stewardship activities.[206] To achieve this, the government will work with the Tokyo Stock Exchange on measures for listed companies. It will also promote more effective engagement between asset managers and companies — this will be facilitated by a review of the existing large shareholding reporting rule.

Stewardship also remains of critical importance in the context of sustainable finance, particularly in the context of transition products — for example, under the **UK's** new Sustainability Disclosure Requirements (see **Chapter 1** for more on this).

[204] *The AMF has published a summary of its SPOT inspections of financial management delegation arrangements at asset management companies*, AMF, 25 June 2024

[205] *Statement: FRC policy update — launch of the UK Stewardship Code 2020 review*, FRC, 27 February 2024

[206] *Policy Plan for Promoting Japan as a Leading Asset Management Center*, JFSA, 11 July 2024

Key focus areas for asset managers

Roles and responsibilities

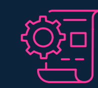
Check the mapping of senior managers' and staff roles and responsibilities against regulators' expectations under new or revised accountability regimes.

Capacity and capability

Review the composition of the board to check whether individuals can dedicate sufficient time to their role, and whether there is sufficient knowledge, expertise and independent challenge. There should also be sufficient resources and expertise to effectively oversee delegated arrangements.

Governance

Evaluate the framework governing the protection of clients' assets to ensure it is operating effectively and that accountability is appropriately assigned. Prepare for new reporting requirements relating to delegated activities.



Stewardship

Revisit arrangements to ensure clear responsibility for setting the strategy and monitoring progress (including an escalation strategy, if needed). Consider how technology can be better used to improve the tracking and facilitation of engagement activities.

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07 Increasing manager and investor choice

Although many of the chapters in this year's Evolving Asset Management Regulation report describe compliance obligations, authorities around the world are also seeking to unlock opportunities. These include opportunities for investors, by broadening the range of investments they can access, including private assets. But there are also opportunities for fund management companies to bring new products to market to better meet investor demand in the right structure.

Policymakers are also seeking to balance an appropriate degree of cross-border market access with an increasing desire to promote their own asset management and capital markets industries, alongside investor protection considerations.

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New and revised fund frameworks

As mentioned in **Chapter 3**, European authorities are seeking to promote long term investment and increase retail access to private assets through new or revised fund structures. Some of these also seek to better 'democratize' private assets, making them more readily accessible to retail investors.

In the **EU**, the revised European Long-Term Investment Fund (ELTIF) Regulation took effect from January 2024.[207] After relatively slow uptake of the product, the changes were introduced to make ELTIFs more attractive to set up and invest in, and to increase investment in businesses and long-term investment projects by making the existing framework more flexible (e.g., through an expanded scope of eligible assets and relaxation of diversification and concentration rules). More detailed underlying rules to operationalize the regime were discussed at length between the European Securities and Markets Authority (ESMA) and the European Commission — which called for some of the proposed requirements to be made more proportionate. These were eventually finalized in July 2024.[208]

With the **UK** Financial Conduct Authority (FCA) having introduced a similar product in 2022 — the Long-Term Asset Fund (LTAF) — in 2023 it then finalized amendments to the rules to broaden the range of investors that can invest in private, illiquid assets within certain guardrails.[209] Given the complex nature of the product, the FCA subsequently consulted on whether to remove LTAFs from coverage under the UK compensation scheme for retail investors. However, following industry concerns, the FCA decided not to take forward its proposals.[210]

Several fund regimes have also been introduced for qualified or professional investors that do not require local authorization and are not subject to supervision.

A new fund product for qualified investors has been introduced in Switzerland — the Limited Qualified Investor Fund (L-QIF).[211] Fund managers wishing to launch L-QIFs must have appropriate regulatory permissions and necessary risk management arrangements, expertise, and experience. Given that the fund is restricted to qualified investors only, it may invest in various asset classes, including alternatives and cryptoassets. You can read more on the L-QIF here.

> **"It is necessary to take a more proportionate approach to the drafting of the [ELTIF] Regulatory Technical Standards, in particular with regard to the calibration of the requirements relating to redemptions and liquidity management tools."**
>
> ESMA opinion, recapping the European Commission's letter to ESMA dated 8 March 20242[212]

[207] *Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023,* EUR-lex, 20 March 2023
[208] *Commission Delegated Regulation supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards,* European Commission, 19 July 2024
[209] *PS23/7: Broadening retail access to the long-term asset fund,* FCA, 29 June 2023
[210] *FS23/7: Long-Term Asset Funds (LTAFs) - Financial Services Compensation Scheme Coverage Feedback Statement,* FCA, 29 June 2023
[211] *Federal Council puts legal basis for new L QIF fund category into force,* Federal Council, 31 January 2024
[212] *Opinion on ELTIF regulatory technical standards under the revised ELTIF Regulation,* ESMA, 22 April 2024

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The **UK** has introduced a 'Reserved Investor Fund' (RIF) for professional and institutional investors to meet industry demand for a UK-domiciled unauthorized contractual fund, with lower costs and more flexibility than the existing authorized contractual fund regime.[213] The government expects that product will be particularly attractive for investing in commercial real estate.

In **Malta**, a similar framework for Notified Professional Investor Funds ('Notified PIFs') has been introduced, expanding the range of products available in the country.[214] NPIFs are open only to qualifying investors and will be permitted to adopt a broad range of investment strategies and invest in a wide range of asset classes. At the time of writing, the Malta Financial Services Authority (MFSA) had also invited views on extending the NPIF framework to permit NPIFs to be self-managed.[215] In addition, a separate consultation is underway to create a new fund product by permitting funds to be structured as limited partnerships without a separate legal personality, filling an identified gap in the local regulatory framework.[216]

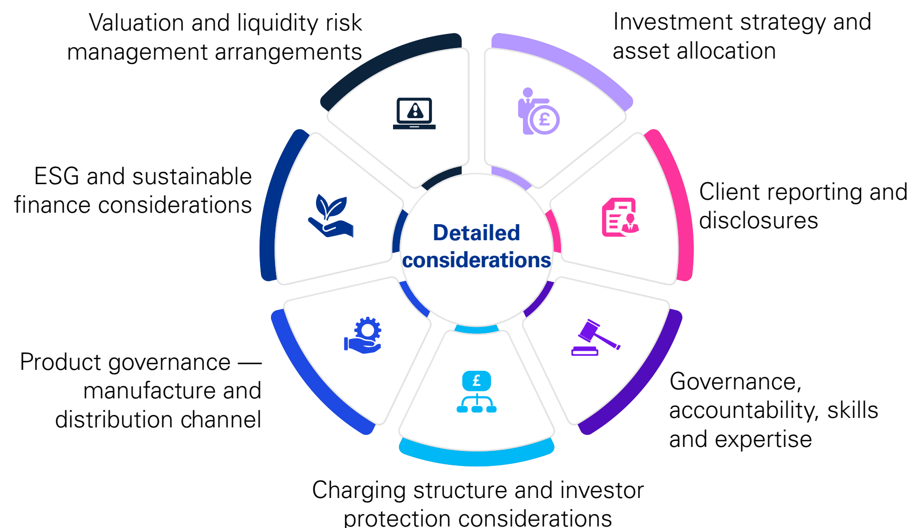
Expanding market access

Allowing the provision of international services and products to retail clients has the potential to increase consumer choice — but needs to be balanced with investor protection considerations and efforts to grow domestic markets.

Launching new fund vehicles

Managers face several decisions when it comes to launching a new fund. The below graphic illustrates the key considerations to be worked through:

Fundamental decisions



[213] *Policy paper: Reserved Investor Fund*, HM Treasury, 6 March 2024
[214] *MFSA Launches New Framework for Notified Professional Investor Funds*, MFSA, 18 December 2023
[215] *Consultation Document on Extending the NPIF Framework to include Self-Managed NPIFs*, MFSA, 12 June 2024
[216] *Consultation Document on the proposed establishment of a Framework for Collective Investment Schemes structured as Limited Partnerships without Legal Personality*, MSFA, 21 March 2024

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In **China**, revisions have been made to the Wealth Management Connect scheme, part of a wider set of initiatives to facilitate the flow of investment products between mainland China and **Hong Kong, SAR (China)**.[217] The changes, among others, expanded the range of firms that may participate in the scheme, broadened the scope of eligible investment products and provided clarifications on sales and promotion arrangements. In addition, the China Securities Regulatory Commission (CSRC) announced measures to improve cooperation between capital markets in Mainland China and Hong Kong (SAR).[218] The CSRC is planning to relax its existing 50 percent sales restriction on Hong Kong (SAR) mutual recognition funds and intra-group delegated management. These measures will support asset managers to distribute Hong Kong (SAR) funds in mainland China.

Following Brexit, the passporting of funds between the **UK** and the **EU** ended. However, the FCA implemented a temporary regime so that EU funds that were passported at the point of Brexit could continue to market. A permanent regime — the Overseas Funds Regime (OFR) — has now been finalized.

Now that the UK parliament has designated European Economic Area (EEA) UCITS[219] to be equivalent under the UK regime, they will be able to use a streamlined mechanism to market to UK retail customers, ending uncertainty on how EEA funds would access the UK post-Brexit.[220] The FCA has also finalized rules on the information that managers will need to provide as part of the recognition process and on the operation of the regime, enabling managers to submit applications in a phased approach from September 2024.[221]

More broadly, in December 2023, **Switzerland** and the **UK** agreed on a mutual recognition agreement (MRA) to enhance regulatory cooperation and facilitate cross-border financial services.[222] Rather than taking a technical approach to rules-based equivalence, it was based on the broad recognition of outcomes and deference. The MRA has three functions: granting new market access, establishing recognition-based commitments and formalizing aspects of the status quo.

For asset managers, it provides greater legal certainty for in-scope investment services (such as portfolio management and investment advice). But notably, it will also allow wealth managers and private banks to access certain sophisticated retail clients on a cross-border basis without barriers.

The agreement still needs to be ratified by the UK and Swiss parliaments before it can take effect. In addition, certain changes to domestic legislation will be required which may not be completed until 2025. You can read more on the MRA here.

Key focus areas for asset managers

Products

Review existing fund ranges and consider whether adjustments need to be made in light of the introduction of new fund frameworks and possibilities. Understand investor demand to better inform the product development strategy.

Structure

Assess whether the firm is optimally established to distribute funds and services on a cross-border basis to target investors.

Compliance

Check that required investor protection measures have been incorporated into the product's design and distribution when marketing internationally.

[217] *Cross-boundary Wealth Management Connect Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area,* HKMA, 2024
[218] *SFC welcomes CSRC's announcement of five measures on capital market cooperation with Hong Kong,* SFC, 19 April 2024
[219] Undertakings for Collective Investment in Transferable Securities
[220] *Overseas Funds Regime: EEA Equivalence Assessment,* UK Parliament, 30 January 2024
[221] *PS24/7: Implementing the Overseas Funds Regime (OFR),* FCA, 17 July 2024
[222] *The Berne Financial Services Agreement,* HM Treasury, 21 December 2023

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08 Digitalizing regulatory change

As illustrated in the preceding chapters, some of the most pressing challenges faced by asset managers are the changes required to effectively respond to the complexity, pace and divergence of incoming regulation.

The scale of change is underscored by data from our proprietary tool (KPMG Regulatory Horizon), which shows that over each of the last four years, there have been between 8,000 and 12,000 individual regulatory notifications that are relevant to financial services firms, across eight key jurisdictions,[223] globally.

This sheer volume of regulatory content means that regulatory change management is evolving from a compliance challenge into a strategic data and workflow opportunity. Such large volumes of data can only be captured and managed effectively with a coherent operating model that is supported by processes and leading technology tools. This is particularly important where regulations can have extraterritorial impacts that require careful management (such as the move to T+1, or marketing funds in the EU under the SFDR).

This chapter illustrates examples of good and poor practice for asset managers in the context of regulatory change, and how regulatory compliance can be driven and evidenced by digitalized, centralized end-to-end obligation capture and mapping.

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[223] The UK, US, EU, France, Germany, Hong Kong (SAR), China, Singapore and international bodies.

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Back to basics: common challenges

In essence, regulatory change management comprises three key steps: identifying changes, assessing their impact, and implementing them.

Although seemingly straightforward, organizations encounter challenges across their operating models.

- **Process:** Regulatory change management processes are often run in silos by jurisdiction, business lines and lines of defense. This is particularly the case with global asset managers that have many entities and functions.
- **Technology:** Where processes are run in silos, they are often supported by different technology solutions in individual businesses and jurisdictions. Legacy systems are sometimes renewed instead of being retired, meaning that consolidation and streamlining is stifled. More concerning is where manual processes persist — for example, the use of spreadsheets and emails — when more appropriate technology solutions are available.
- **People:** Data scientists and technology staff are sometimes only peripherally involved in the design and implementation of regulatory change management operating models, often due to artificial boundaries between the first and second lines of defense and support functions. Early involvement from professionals with advanced data and technology literacy drives more strategic and sustainable solutions.
- **Data:** Data models and taxonomies (the way in which specific fields, topics, and entities are tagged and connected across systems) are not always designed in a coherent manner. This is often due to disparate and disconnected processes and systems. Similarly, a lack of data integrity can also be an issue leading to inconsistent information across different systems. And firms often don’t have accurate and coherent regulatory mapping inventories to illustrate traceability from rules through to implementing measures — (see the graphic on regulatory mapping on the next page for more in this context).

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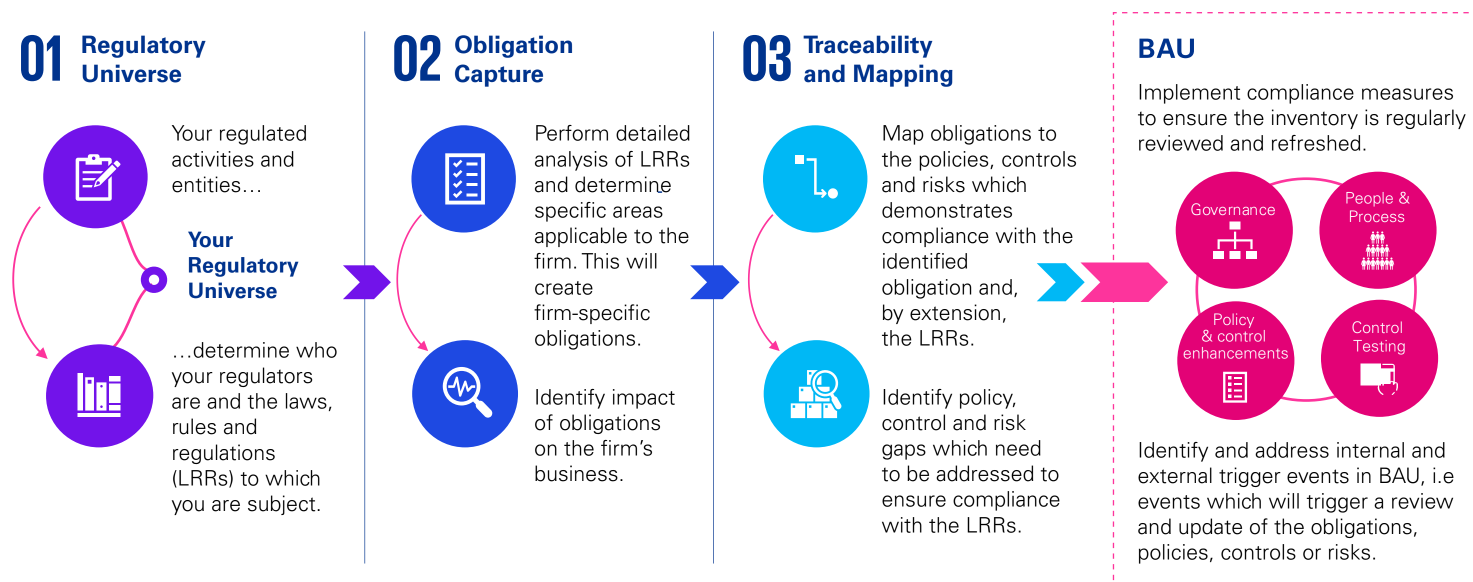
Demonstrating compliance through regulatory mapping

Asset managers benefit from a coherent approach to regulatory change. This includes all activities from defining in-scope entities and activities, capturing new requirements and obligations, and tracing those through to required policy and control enhancements:

A regulatory mapping solution comprises the key components and steps identified below:



Supervisors are now raising concerns about the ability of asset managers to keep pace with regulatory change.

For example, the **UK** Financial Conduct Authority (FCA) wrote to asset managers to communicate its latest supervisory priorities and flagged that it would be assessing their governance, resourcing, and preparedness for regulatory change.

> **"We recognise that a considerable amount of current and planned regulatory change impacts this sector, presenting challenges for firms…There is a risk that firms may not be adequately resourced to handle this change at the same time as transformation programmes and any strategic developments, such as mergers/acquisitions. Therefore, this year we will work to establish firms' preparedness by assessing how firms' governance and resourcing of change programmes has considered and mitigated this risk."**

Portfolio letter: Asset Management & Alternatives Supervisory Strategy
Financial Conduct Authority
March 2024[224]

[224] *Our Asset Management & Alternatives Supervisory Strategy — interim update*, FCA, 1 March 2024

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This example underscores the need for effective change management processes and technologies to be in place.

Enhancing the current approach

In principle, regulatory change management and the specific steps to identify and assess regulatory change are jurisdiction- and subject matter-agnostic.

Where change management previously focused on who does what, a re-focus is required to also sharpen the *how* and *why*.

Devolving horizon scanning and assessment activities by jurisdiction or regulation has the potential to inhibit efficiency. The cost of implementing different technology or approaches in a single business line or individual jurisdiction often exceeds the cost to do the same work manually.

Instead, asset managers should establish a central regulatory change management team that offers horizon scanning, triage and initial assessments as a service, and this service should have technology and digitalization at its core.

Good practice includes:

- **Leading horizon scanning technology** with broad coverage and sophisticated data curation capabilities that can be licensed centrally. Legacy systems should be retired.
- **Processes should be automated and digitalized** to improve operational efficiency, oversight and traceability. Process management tools provide valuable operational data which can be used to drive continual enhancements to change management processes.
- **Data collation and assessment should be standardized** to generate firm-wide reporting and connect regulatory changes to updated policies, procedures and controls. This, in-turn, optimizes the implementation of incremental regulatory change and allows firms to streamline risk and control frameworks globally.

Although it is possible to digitalize decentralized functions, our experience tells us that devolution does not foster this and can result in inefficiencies.

What do we mean by the "digitalization" of regulatory change?

Digitalization/digital transformation is the process by which data, processes and assets throughout an organization are managed and harnessed using advanced technologies to drive fundamental changes in the way a business is run.

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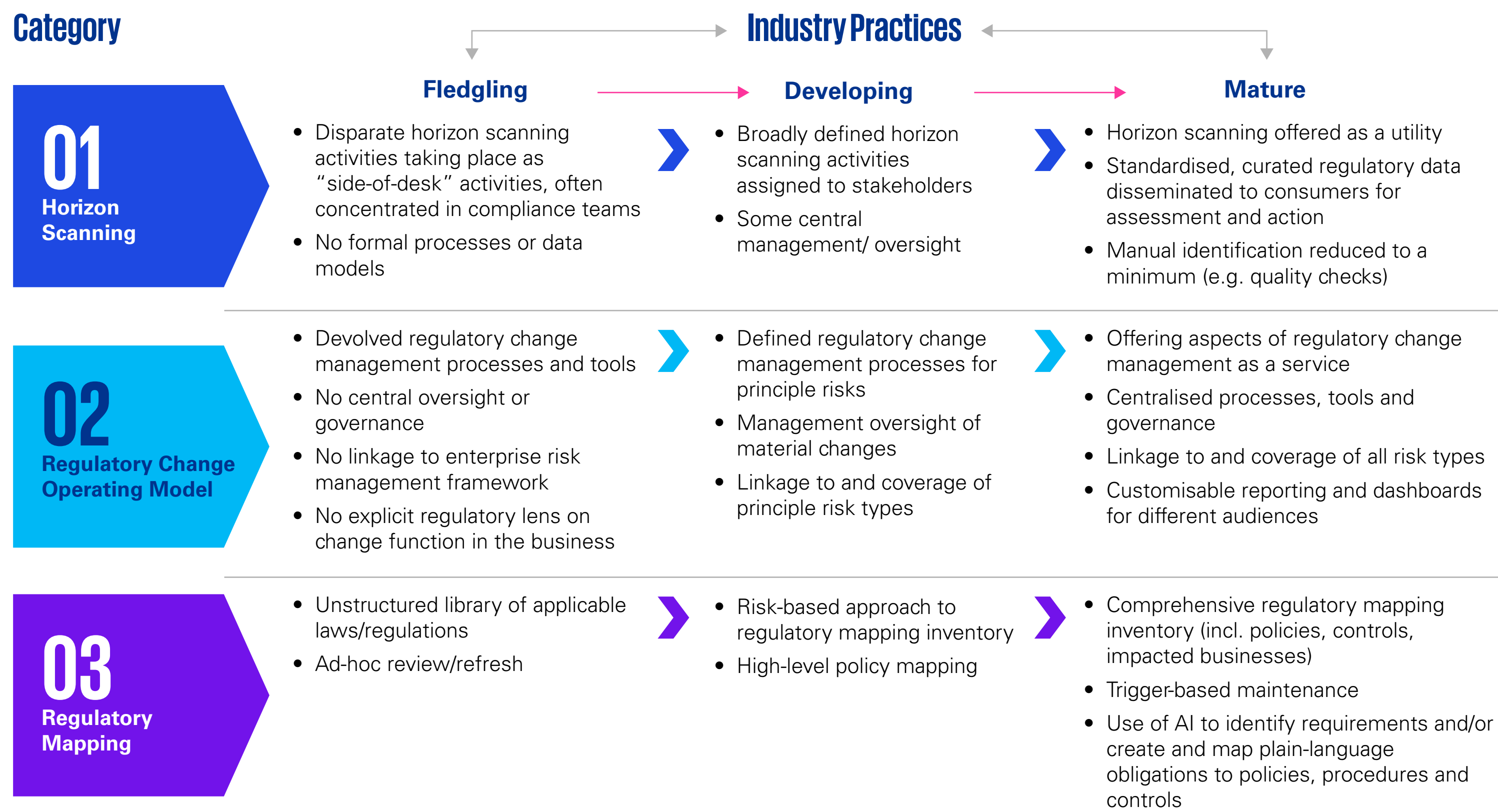
Regulatory Change Management — Industry Practices

Regulatory change management is a journey and asset managers are at different stages of maturity.



The evolving profile of regulatory change management

To suggest centralized digitalization of the change management process is the panacea to a highly complex problem would be an oversimplification. However, the benefits of effectively deployed AI and technology are imperative. This means that the profile and responsibilities of compliance professionals and change management practitioners must evolve accordingly.

When regulatory change management is a second line of defense responsibility, it can often be viewed as a ‘side-of-desk’ activity and may be pushed aside for higher priority compliance and risk management duties.

A central horizon scanning function allows risk managers and compliance officers to focus their efforts on managing and overseeing risk. Identifying, assessing and implementing regulatory change can be the preserve of a dedicated function — one that comprises data specialists, business analysts with regulatory literacy, and change and transformation professionals.

Wherever firms may be on their journey to centralization, consolidation and digitalization, forward momentum is crucial. Operating models should be reviewed critically and periodically to ensure regulatory change management functions provide utility to their consumers in the most effective way. While all optimization problems require some concession, and digitalization requires investment, the default position should not always be to reduce cost, especially when value can be enhanced.

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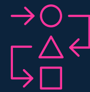
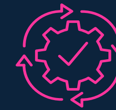
Key focus areas for asset managers



Processes

Map the end-to-end regulatory change management processes. Assess the effectiveness of these processes and identify opportunities to automate/digitalize the process. Can a workflow tool allow you to manage and track tasks more effectively than emails and spreadsheets?



Roles and responsibilities

Formulate a matrix to identify how roles and responsibilities for change management are attributed across the organization. Assess whether there is scope to consolidate roles into specialized functions.

Technology and tools

Create an inventory of the technology and tools the organization uses to support its regulatory change management operating model, globally. Interrogate this inventory to identify duplication — this should drive efforts to consolidate and retire systems.

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How KPMG can help

KPMG's global network of Asset Management practices offers a wide range of services to clients at national, regional and global levels. KPMG professionals in Audit, Tax and Advisory are specialist in their fields and have deep experience in the issues and needs of investment management businesses. Member firms' clients include investment managers, wealth managers, fund administrators and service providers which focus on mutual funds, hedge funds, private equity funds, infrastructure funds and real estate funds, and institutional investors such as pension funds and sovereign wealth funds.

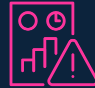
We have a range of services that can help you manage risk and regulatory change and use it to accelerate business transformation. Examples of our services include:

Conduct risk and remediation

KPMG specialists can support you with building the right frameworks to deliver good outcomes to customers, restoring trust and confidence from regulators and consumers.

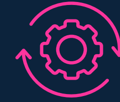
Risk transformation

KPMG specialists can help you take a holistic look at your business activities, processes, risks, and controls to enable you to leverage risk management as a competitive advantage in making strategic decisions.



Risk assurance and internal audit

KPMG specialists can provide the assurance your organization needs to proactively manage risk across all three lines of defense, helping you identify new opportunities.



Controls transformation

KPMG specialists can help you deliver a robust and sustainable control environment, blending governance, controls, automation, and culture to help establish a sustainable foundation for success.

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Report scope and methodology

The 14th edition of KPMG's annual flagship Evolving Asset Management Regulation report brings together a broad-ranging picture of regulatory priorities, developments and proposals impacting the asset management industry around the world since last year's report.

Drawing on the KPMG Regulatory Horizon tool and the insights of KPMG specialists, we considered regulators' publications from global and regional standard setters and almost 30 countries and territories around the world, capturing and prioritizing over 200 individual regulatory developments or publications that form the basis of this report.

These developments were collated into seven regulatory themes, representing challenges that impact all types and aspects of asset management businesses as well as market opportunities. In addition, by drawing on the insights and knowledge of KPMG specialists we have explored how asset managers can best approach the topic of regulatory change to keep pace with regulators' evolving expectations.

At the end of each chapter, we have outlined proactive actions that asset managers can take to respond to the identified regulatory developments, based on KPMG specialists' insights and preferred practice.

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EAMR Abbreviations

AFM	Autoriteit Financiële Markten (Netherlands)
AI	Artificial intelligence
AIF	Alternative Investment Fund (EU & UK)
AIFMD	Alternative Investment Fund Managers Directive (EU & UK)
AMAC	Asset Management Association of China
AMF	Autorité des Marchés Financiers (France)
AML	Anti-money laundering
APRA	Australian Prudential Regulatory Authority
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
AUM	Assets under management
BEAR	Banking Executive Accountability Regime (Australia)
BMA	Bermuda Monetary Authority
CBAM	Carbon Border Adjustment Mechanism
CBI	Central Bank of Ireland
CFTC	Commodity Futures Trading Commission
CIMA	Cayman Islands Monetary Authority
CMA	Capital Market Authority (Saudi Arabia)
CNMV	Comisión Nacional del Mercado de Valores (Spain)
COFI	Conduct of Financial Institutions (South Africa)
CONSOB	Commissione Nazionale per le Società e la Borsa (Italy)
CPMI	Committee on Payments and Market Infrastructures
CTP	Critical third party (EU/UK)
CSA	Common supervisory action (ESMA)
CSA	Canadian Securities Administrators
CSRC	China Securities Regulatory Commission
CSRD	Corporate Sustainability Reporting Directive (EU)
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
CTF	Countering terrorist financing
CVM	Comissão de Valores Mobiliários (Brazil)
CySEC	Cyprus Securities and Exchange Commission
DFSA	Dubai Financial Services Authority (UAE)
DDO	Design and distribution obligations (Australia)
DLT	Distributed ledger technology
DLTR	Distributed Ledger Pilot Regime (EU)
DORA	Digital Operational Resilience Act (EU)
DSS	Digital Securities Sandbox
EAMR	Evolving Asset Management Regulation (KPMG)
EBA	European Banking Authority
ELTIF	European Long-Term Investment Fund (EU)
ESAs	European Supervisory Authorities
ESG	Environmental, Social, Governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ESRS	European Sustainability Reporting Standards
ETF	Exchange-traded fund
ETP	Exchange-traded product
EuGB	European Green Bond
FAR	Financial Accountability Regime (Australia)
FATF	Financial Action Task Force
FCA	Financial Conduct Authority (UK)
FINMA	Financial Markets Supervisory Authority
FiNSA	Financial Services Act (Switzerland)
FRC	Financial Reporting Council (UK)
FSA	Financial Services Authority (Dubai)
FSB	Financial Stability Board
FSC	Financial Services Commission (Guernsey and Jersey)

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GHG	Greenhouse Gas
HKMA	Hong Kong Monetary Authority
IAF	Individual Accountability Framework (Ireland)
ICARA	Internal Capital Adequacy and Risk Assessment (UK)
ICT	Information communication technology
ICVCM	Integrity Council for the Voluntary Carbon Market
IFPR	Investment Firms Prudential Regime (UK)
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IFD	Investment Firms Directive (EU)
IFR	Investment Firms Regulation (EU)
IOSCO	International Organization of Securities Commissions
ISSB	International Sustainability Standards Board
JFSA	Japanese Financial Services Agency
L-QIF	Limited Qualified Investment Fund (Switzerland)
LDI	Liability-Driven Investment
LMT	Liquidity management tool
LTAF	Long-term asset fund (UK)
MAS	Monetary Authority of Singapore
MFSA	Malta Financial Services Authority
MiCAR	Markets in Crypto-Assets Regulation
MiFID II	Markets in Financial Instruments Directive (EU)
MiFIR	Markets in Financial Instruments Regulation (EU)
MMF	Money market fund
NAV	Net asset value
OEF	Open-ended fund
OFR	Overseas Funds Regime (UK)
NPIF	Notified Professional Investor Fund (Malta)
QAR	Quality of Advice review (Australia)
RFMC	Registered fund management companies (Singapore)
RIF	Reserved Investor Fund (UK)
RIS	Retail Investment Strategy (EU)
SEAR	Senior Executive Accountability Regime (Ireland)
SEC	Securities and Exchange Commission (US)
SFC	Securities and Futures Commission (Hong Kong, (SAR), China)
SDR	Sustainability Disclosure Requirements (UK)
SFDR	Sustainable Finance Disclosure Regulation (EU)
SMCR	Senior Managers and Certification Regime
SREP	Supervisory review and evaluation process
SWES	System-Wide Exploratory Scenario (Bank of England)
TCFD	Task Force on Climate-Related Financial Disclosures
TNFD	Taskforce on Nature-related Financial Disclosures
TPT	Transition Planning Taskforce (TPT)
UCITS	Undertaking for collective investment in transferable securities (EU & UK)
VCMI	Voluntary Carbon Markets Integrity Initiative

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Acknowledgements

KPMG's global network of asset management professionals

This report was created by drawing on the knowledge, insights and support of KPMG's global network of asset management regulatory specialists, working together to curate this global regulatory outlook for the wealth and asset management industry. This collaborative approach is replicated daily as KPMG firms support local and global asset managers across borders. Over 60 KPMG professionals around the world have contributed to this year's report.

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