

EU securities regulation



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SMPG meeting
15 November 2023

Confidentiality: **Restricted**

Regulatory Affairs at Swift



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I hold a dual role as Senior Legal Counsel and Head of Regulatory Affairs and I am part of the Legal & Compliance leadership team.

As Senior Legal Counsel, I advise on strategic initiatives underpinning SWIFT's securities and payments business, as well as matters related to data and digital services, cloud and outsourcing, operational resilience and cyber security.

I also manage SWIFT's regulatory affairs worldwide; whereby I oversee regulatory tracking activities, impact assessments, compliance actions, and reporting. I act as regulatory centre of expertise, lead internal expert groups and engage with Swift community stakeholders, governments and international institutions. I have extensive experience in public affairs, corporate communications, governance and risk management.

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EU securities regulatory priorities



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1. Securities

- a. CSDR
- b. ESMA consultation on shortened settlement
- c. SRD 3
- d. EMIR 3.0
- e. Listings Act (MiFID/MiFIR)
- f. AIFMD
- g. FASTER
- h. Retail Investment Strategy

2. Digital Finance

- a. DLT Pilot regime
- b. MICA
- c. DORA

3. Payments & Financial Data Access

- a. FIDA

4. ESG

- a. SFDR
- b. CSRD
- c. ESG Ratings Regulation

Securities



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Central Securities Depositories Regulation (CSDR)

Aims to increase the safety and efficiency of securities settlement and settlement infrastructures in the EU

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Status

- Proposal published in May 2022
- Political agreement in June 2023
- EP vote in November, Council by end of year
- Potential mandatory buy-in after 24 months

Summary

- Shorter settlement periods, cash penalties and other deterrents for settlement fails
- 2-step approach to settlement discipline – mandatory buy-ins as last resort after 24 months:
 1. **If and when the penalties regime alone does not improve settlement fails**
 2. **Implementing act to apply mandatory buy-ins to certain financial instruments or categories of transactions (based on the number and volumes of settlement fails)**
- Simplified passport system for CSDs to provide their services across the EU (no host supervisor veto)
- Increased prudential and supervisory requirements for CSDs and other institutions involved in settlement
- Banking-type ancillary services: improved conditions under which CSDs can access banking services by amending the threshold for such services and broadening the range of providers for such services – EBA to develop draft RTS specifying such thresholds



ESMA consultation on shortening the standard settlement cycle

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Status

- Launched on 5 November
- **Closes on 15 December**
- ESMA report on consultation findings in 2024
- ESMA report to EC on possible regulatory actions due to US T+1 move

Summary

- Assess the costs and benefits of a possible reduction of the settlement cycle in the European Union
- Identify whether any regulatory action is needed to smoothen the impact for EU market participants of the planned shortening of the settlement cycle to T+1 in other jurisdictions, such as the US

Study to prepare Shareholder Rights Directive review (SRD 3)

Originally introduced in 2007 to improve shareholder engagement and transparency

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Status

- SRD2 adopted in 2017
- In early 2023 EC engaged expert firms to consult industry prior to review
- Study expected by end of 2023
- Depending on study outcome, EC to publish a legislative review proposal in early 2025

Objective

- Determine whether the SRDs are fit for purpose and to make recommendations for future improvements
- Consider possible barriers to shareholder engagement in the EU as part of the 2020 Capital Markets Union (CMU)
- Ensure that the regulatory framework keeps pace with new technology and contributes to the realisation of CMU in the EU

Focus areas	
Remote/electronic participation at general meetings	New digital technologies
Identification of shareholders	Information transmission
Facilitation of shareholder rights	Costs
Third countries	Proxy advisors

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EMIR 3.0

Mitigate exposures to third-country central counterparties and improve the efficiency of EU clearing markets

Status

- Commission proposal in December 2022
- Conflicting views in Council negotiations (FR/DE over Active Account Requirement (AAR))

Objective

- Incentivise migration of Euro-denominated clearing activity from the UK to the EU
- Better equip the European clearing sector for the increase in activity
- Centralise EU CCP supervision (although recently reviewed)
- AAR:
 - **EU market participants to hold active accounts at EU CCPs for derivative contracts related to those clearing services that have been identified by ESMA as being of substantial systemic importance for the financial stability of the EU or one or more of its Member States. These clearing services are namely those for interest rate derivatives in euro and Polish zloty, STIR derivatives in euro and CDS in euro.**

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Listings Act

Simplify regulation and reduce the cost of compliance for listing in the EU

Status

- 3 EC proposal(s) in Dec 2022

Background

- Simplify the EU rulebook and reduce the costs associated with compliance and regulation for companies looking to list or that are already listed
- More efficient listing process and provide clearer legal guidelines, all while maintaining a balance of investor protection and market stability
- The package includes
 1. **Directive amending provisions in the Markets in Financial Instruments Directive (MiFID II)**
 2. **Regulation amending the (i) Prospectus Regulation (ii) Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation (MiFIR)**
 3. **New Directive on multiple-vote share structures for SME growth markets**
 4. **Repeals the Listing Directive**

Alternative Investment Fund Managers Directive

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Status

- Political agreement in July 2023
- Technical negotiations concluded in October 2023
- Final endorsement expected in February 2024

Summary

- Review of AIFMD and Undertakings for Collective Investment in Transferable Securities Directive (UCITSD)
- Harmonised framework on loan-originating funds (LOFs) and supervisory convergence for delegation
- Qualitative and quantitative LOF definition:
 - **50% Net Asset Value**
 - **175% leverage cap for open-ended funds / 300% for close ended funds**



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FASTER

Faster, safer, and more efficient withholding tax procedures for financial intermediaries, investors, and the tax administration

Status

- EC proposal published in June 2023
- Special legislative procedure due to Council competence

Background

- Smoother cross-border activities and capital markets union
- Address double taxation, levying non-resident investors from double payments and requests for reimbursements
- Content:
 1. **Ensure a harmonised approach: EU-wide digital residency certificate for investors. The certificate would allow investors to submit their withholding tax refund request digitally**
 2. **Two fast-track procedures that complement the existing refund procedure:**
 - a) Relief at source: tax rate applied at dividend payment or interest is directly based on the double taxation treaty provisions
 - b) Quick refund: payment in the member state where dividends or interest is paid, refund for overpaid taxes granted within 50 days

Retail Investment Strategy (RIS)

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Status

- Commission proposal in May 2023
- Late in legislative cycle and member states so far only exchanged views
- EP divided

Summary

- Foster retail investor participation in capital markets
- Review PRIIPs regulation (Packaged Retail and Insurance-based Investment Products): revamp and digitize Key Information Document (KID)
- Directive: tighten rules on inducement to safeguard “best interest of the client” (incl. best interest test, value for money benchmarks and undue cost)



Digital Finance Package

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Pilot Regime for DLT market infrastructures (DLTR)

Status

- Published in the Official Journal in June 2022
- Applications can be submitted to national competent authorities since 23 March 2023
- ESMA published guidelines for applicants and competent authorities on how to operate and authorise the regime
- By March 2026, ESMA will report on the success of the regime and recommend next steps

Summary

- Enables regulated institutions to develop DLT-based infrastructure for the trading, custody and settlement of securities
- Its objectives include:
 1. **Development of secondary markets for 'tokenised' financial instruments**
 2. **Promoting the uptake of DLT in the trading and post-trading area**
 3. **Enabling market participants and EU regulators to gain experience on new opportunities and issues raised by DLT**
- DLT market infrastructures can request exemptions from specific requirements such as direct retail participation and transaction reporting obligations in MiFID II and CSDR

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Markets In Crypto-assets (MICA)

Crypto-assets are digital representations of values or rights, which are transferred and stored electronically. They can serve as an access key to a service, could facilitate payments, or could be designed as financial instruments.

Status

- Applicable as from July 2024 (for the provisions on stablecoins) and January 2025 (provisions related to issuers of other crypto-assets and crypto-asset service providers)
- ESMA annual report on market developments in Q2 2024 & EC report on DeFi, lending and NFTs in Q4 2024

Summary

- MICA proposes a legislative framework on crypto-assets, differentiating between:
 1. **Those crypto-assets already governed by EU legislation, which will remain subject to existing legislation, while the Commission also proposes a pilot regime for DLT market infrastructures that wish to try to trade and settle transactions in financial instruments in crypto-asset form**
 2. **Other crypto-assets previously unregulated (incl. asset-referenced crypto-assets), for which a bespoke regime is proposed**
- Sets strict requirements for crypto-assets issuers and crypto-asset service providers (incl. capital requirements, custody of assets, a mandatory complaint holder procedure, and investor rights)

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Digital Operational Resilience Act (DORA)

Strengthens digital operational resilience in the financial sector

Status

- Published in Official Journal in December 2022
- Technical regulations expected in 2024
- Applicable in January 2025

Summary

- Introduces
 1. **ICT risk management requirements**
 2. **ICT-related incident reporting**
 3. **resilience testing**
 4. **sound monitoring of ICT third-party risk**
- Oversight for critical ICT services providers & contractual requirements

Payments and Financial Data Access package

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Financial Data Access (FIDA)

Gives customers effective control over the use of their data

Enables access to customer data, based on customer permission

Status

- Proposal published in June 2023

Summary

- Data holders to make data available to the customer, and share data with data users upon customer request
- FIDA also covers the balance, conditions and transactions of a mortgage, credit, and savings account; Savings, investments in financial instruments, insurance-based investment products, crypto-assets, real estate and other related financial assets and the economic benefits derived from such assets
- Data sharing methodology to determine data holder compensation for making data available to data users

ESG

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Corporate Sustainability Reporting Directive (CSRD)

Expands Non-Financial Reporting Directive

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Status

- Published in the Official Journal in Dec 2022
- Implementation phased depending on the type of company: for large companies as from 1 Jan 2025 with reporting due in 2026
- Delegated Act on European Sustainability Reporting Standards (ESRS).
 1. **Sector agnostic ESRS (June 2023)**
 2. **Sector specific ESRS (June 2024)**

Summary

- Introduces mandatory sustainability reporting obligations for companies on
 1. **how sustainability affects the business and**
 2. **the impact of the business' activities on people and the environment**
- Extends the EU's sustainability reporting requirements to all large companies and all listed companies, including SMEs

SFDR consultation

Sustainable Finance Disclosure Regulation

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Status

- The consultation open until 15 December 2023

Summary

- European Commission has launched a consultation to get input on the effectiveness of SFDR and its potential evolution



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ESG Ratings Regulation

Enhance the integrity and transparency of ESG ratings and the independence of ESG rating providers

Status

- Proposal published in Jun 2023

Summary

- Covers ESG ratings issued by ESG rating providers in the EU that are disclosed publicly or that are distributed to regulated financial undertakings in the EU
- Other ESG data providers may be brought into scope in negotiations
- Its 3 pillars cover
 1. **transparency requirements**
 2. **governance and conflict of interest management requirements**
 3. **supervisory framework (ESMA), including provisions for third country and smaller rating providers**

Thank you



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