

ALLEN & OVERY

Ahead of the Curve:
The UK-Switzerland
mutual recognition
agreement: high
hopes or hype?

Bob Penn, Kirsty Taylor and Nicholas
Chapman

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Ahead of the Curve: The UK-Switzerland mutual recognition agreement

Today's Ahead of the Curve topics

01 But first, the news...

02 Legislative and political background

03 Basis – 'Outcomes-based recognition'

04 Sectoral coverage, cross-border access rights and requirements – what changes?

05 Scope - Additional features

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08 Estimated timeline for next steps

SRF: Statutory Instruments made

01

Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023

02

Retained EU Law (Revocation and Reform) Act 2023 (Commencement No.1) Regulations 2023

03

Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023

04

Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023

05

Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations 2023

Markets regulation updates

Consolidated tape for bonds

- FCA policy statement on framework for CT for bonds
- FCA consultation on payments to data reporting service providers

Listing regime

- FCA consultation on detailed proposals for reforms
- New UK Listing Rules sourcebook (UKLR)
- Tranche 1 (commercial companies category and sponsor requirements)



Transparency regime

- FCA consultation on changes to the bond and derivative transparency regime and definition of an SI

Margin requirements

- PRA/FCA policy statement on margin requirements for non-centrally cleared derivatives

More markets updates

Short Selling Regulation

FCA update on increased notification threshold (from 0.1% to 0.2%) from 5 February 2024

Ancillary Activities Exemption

Firms able to continue using the ancillary activities exemption for 2024-2025 where they were able to rely on the exemption for 2022-2023 based on trading relating to the last published information

UK ETS

Consultations on future markets policy and on free allocation review

Transition Finance Market Review

Part of 2023 Green Finance Strategy

Insurance, capital and payments updates



Insurers

- FCA policy statement on Insurance Distribution Directive Smarter Regulatory Framework
- PRA policy on proposed minor amendments as part of Solvency II regime review



Payments

- PSR policy statement on parameters of mandatory reimbursement requirement
- JROC update on progress to enable the next phase of open banking
- PSR consultation on extending variable recurring payments

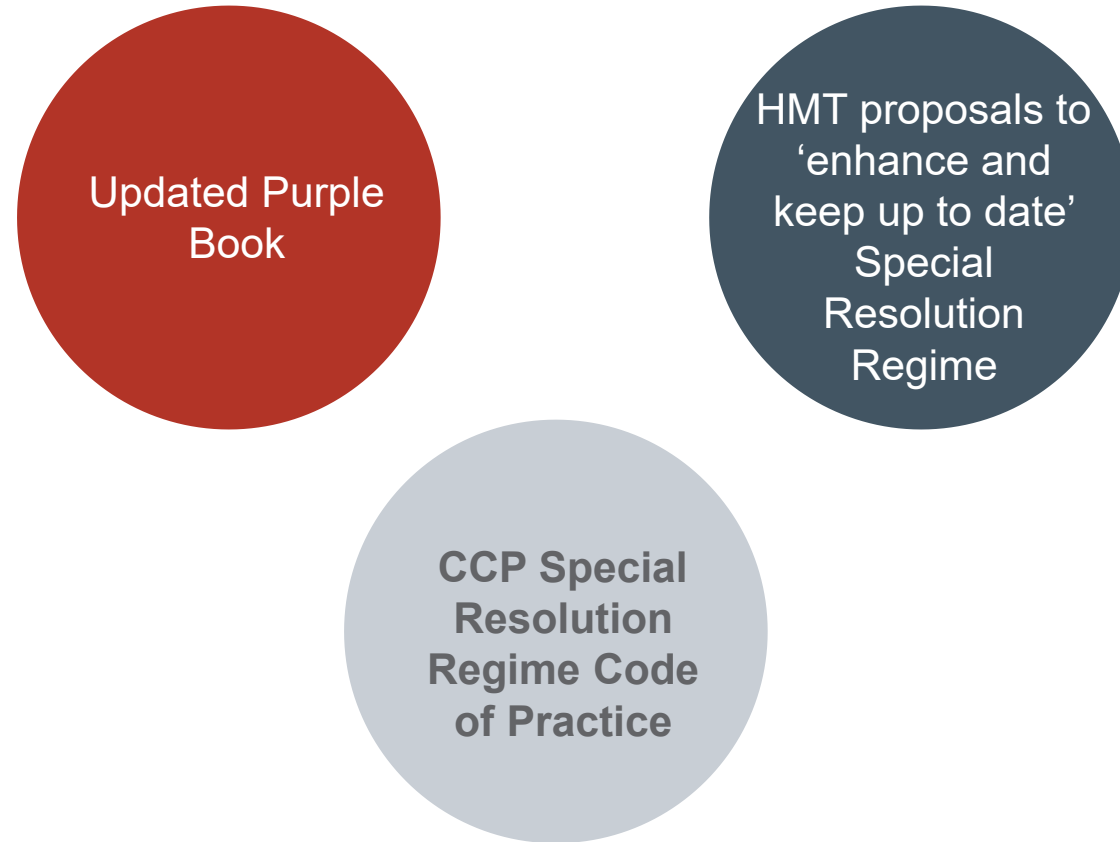


Capital

- PRA consultation on excluding reserves held on omnibus accounts from leverage ratio



Resolution regimes



FMI supervision and supervisory processes

BoE supervision of Financial Market Infrastructure

- Consultation on approach to statutory notice decisions
- Annual report on supervision of FMIs

FCA Rule Review Framework

- How the FCA measures and monitors the outcome of its rules
- How the FCA will conduct a rule review, if required



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Legislative and political background

What is the MRA?

- “The Berne Financial Services Agreement”, signed by the UK and Switzerland on 21 December 2023
- Overwhelming support from industry bodies
- To establish a means to provide for mutual recognition of the UK and Swiss regulatory and supervisory frameworks applicable to certain wholesale financial services sectors

Why was it needed?

- Brexit
 - In Europe but outside the EU, the UK and Switzerland share a common interest for reciprocity
- Consensus that existing bilateral agreements between the countries did not go far enough
- Negotiations began after a Joint Statement on 30 June 2020 by both countries’ finance ministers



Legislative and political background

What did it seek to achieve?

- Joint Statement stated objective: “to improve the cross-border market for financial services between Switzerland and the UK...intended focus on...wholesale and sophisticated clients...”.
- To this end, the agreement would seek to:
 - establish outcomes-based mutual recognition, providing wide-ranging rights and reducing regulatory frictions for cross-border activity
 - establish structures and appropriate safeguards to underpin those rights
 - create a clear, transparent and managed process in the event recognition is withdrawn in the future or re-established after a withdrawal
- But also, to send a signal and “set a precedent for international cooperation in financial services and a basis for future cooperation”.



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Basis – ‘Outcomes-based recognition’

- A flexible and pragmatic approach to international financial regulation
- Allows both countries to mutually benefit from the sophistication of one another’s regulatory regimes, while minimising the need for firms to navigate complex and different regulatory requirements
- In practice:
 - Country A defers to the relevant standards in Country B where Country A decides that financial services suppliers from Country B that are regulated and supervised in Country B, can provide services on a cross-border basis into Country A without needing to comply with the regulatory and supervisory rules that apply to other financial services suppliers.
- The MRA establishes a framework for increasing the deference-based supply of financial services between the UK and Switzerland over time and already includes several commitments where deference has been put in place.

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Sectoral coverage, cross-border access rights and requirements – what changes?

Covered Sector	UK market participants	Swiss market participants
Insurance services	<ul style="list-style-type: none"> • Greater access for UK insurers and intermediaries providing wholesale services into the Swiss domestic insurance market. • This comes with various safeguards, including notification, reporting, solvency requirements and supervisory cooperation. • Independent UK insurance intermediaries relieved from localization requirement under revised Insurance Oversight Act. 	<ul style="list-style-type: none"> • Locks in existing access for Swiss wholesale insurers to the UK market.
Investment services	<ul style="list-style-type: none"> • No change to access rights to provide investment services. • UK client advisers will no longer need to be registered by Swiss registration bodies. Instead, FCA notification and client disclosure requirements will apply. 	<ul style="list-style-type: none"> • Swiss financial institutions with no UK branch will be able to provide financial services to high net worth and professional UK clients subject to certain safeguards (disclosure, client consent, reporting). Host intervention powers retained by FCA.
Banking services	<ul style="list-style-type: none"> • No change to access rights to provide banking services • The Bank of England and FINMA commit to deepening bilateral cooperation on bank resolution. 	<ul style="list-style-type: none"> • See left
Asset management	<ul style="list-style-type: none"> • No changes to access rights as regards the marketing of funds and the delegation of portfolio and risk management. 	<ul style="list-style-type: none"> • See left.
Financial market infrastructures	<ul style="list-style-type: none"> • No change to access rights for UK exchanges/MTFs. • UK Recognised Clearing Houses will no longer be subject to Swiss prudential measures (unless systemically important). • UK risk mitigation requirements for uncleared OTC derivatives will be recognised as equivalent for purposes of FinMIA. 	<ul style="list-style-type: none"> • No change to access rights for Swiss exchanges/MTFs. • Swiss Recognised Overseas Clearing Houses will no longer be subject to UK prudential measures (unless systemically important). • Swiss risk mitigation requirements for uncleared OTC derivatives (other than margin on physically settled forex swaps and forwards) will be recognised as equivalent for purposes of UK EMIR.

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Scope - Additional features

 Financial stability, integrity and investor protection are ensured via safeguards, dispute settlement provisions, and a joint committee to manage the agreement

 Mechanisms to allow for independence of future regulatory development, and any amendments to the agreement

 New principles for regulatory and supervisory cooperation.

 Sustainable finance

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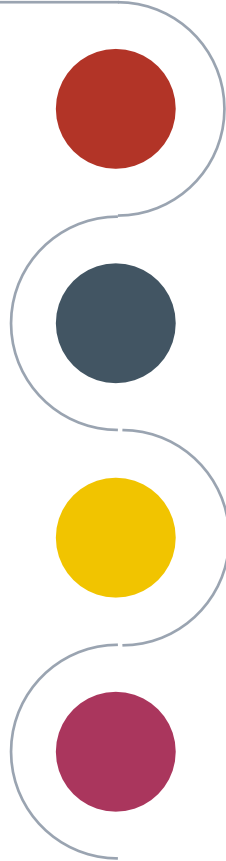
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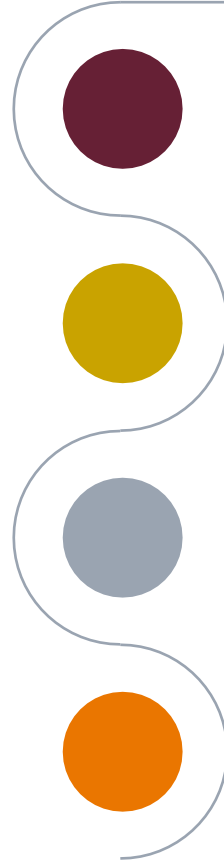
High hopes?

- An example of post-Brexit freedoms, strengthening ties between two leading European financial hubs
- Moves beyond equivalence towards mutual recognition of British and Swiss regulators
- Greater access for financial services firms across a range of different disciplines
- A 'living' agreement with flexibility to expand on initial sectoral coverage
- Will reduce compliance costs and create a higher degree of legal certainty
- Potential to attract new investors over the medium to long term (i.e. supporting new jobs and boosting economic growth)



Hype?

- Limited further liberalisation: not a substitute for a passport.
- Complexity
- Difficulties with replication elsewhere
- Remaining uncertainty as to the practical implementation of the MRA



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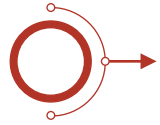
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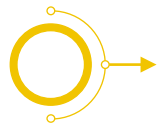
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What do firms need to do now?



Firms should take the opportunity to understand the commitments in the MRA and how they can be utilised



Firms should take steps to understand the relevant eligibility, notification and reporting conditions that apply

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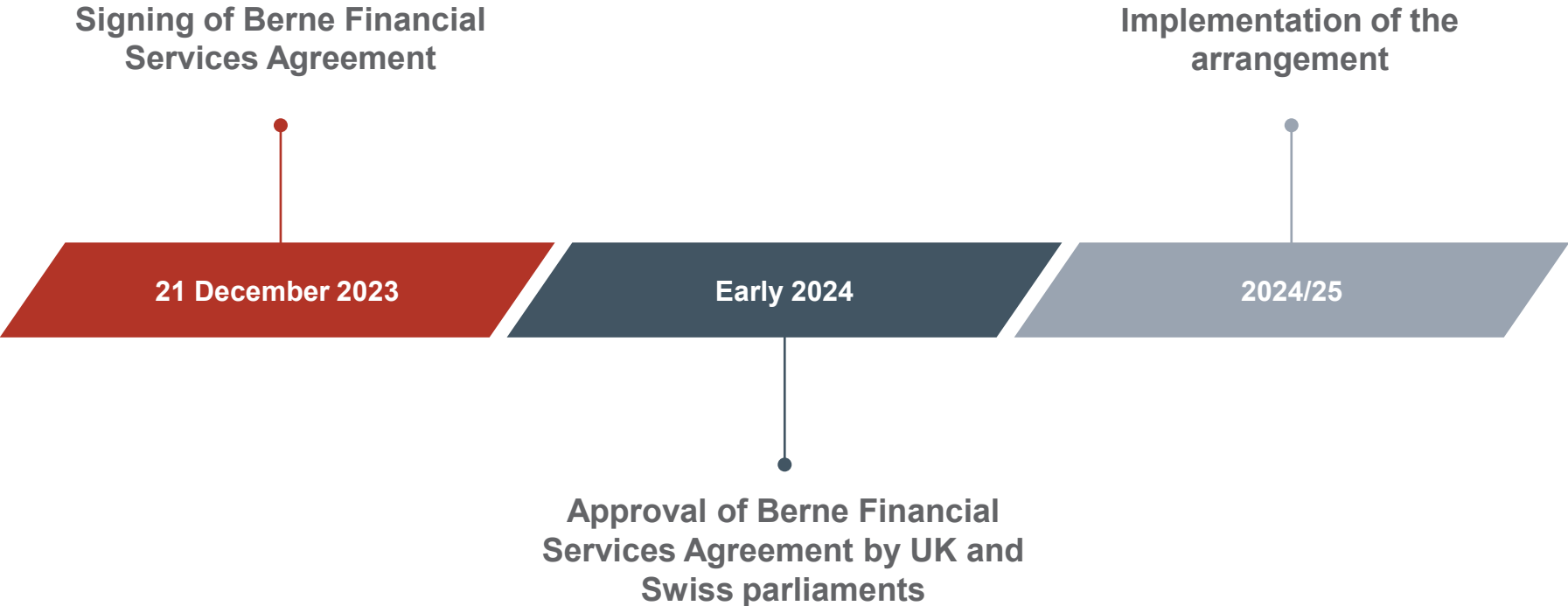
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Estimated timeline for next steps



Questions?

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Contacts



Bob Penn

Partner, London
Financial Services Regulatory

Contact

Tel +44 20 3088 2582
Mob +447818 521 254
bob.penn@allenoverly.com



Kirsty Taylor

Knowledge Counsel, London
Financial Services Regulatory

Contact

Tel +44 20 3088 3246
Mob +447747 772 428
kirsty.taylor@allenoverly.com



Nicholas Chapman

Senior Associate, London
Financial Services Regulatory

Contact

Tel +44 20 3088 3814
Mob +447990 566 800
nick.chapman@allenoverly.com