



Funds

Quarterly Legal and Regulatory Update

Period covered: 1 April 2022 – 30 June 2022

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1. APPROACHING DEADLINES

Approaching deadlines		
Q3 & Q4 2022	8 July 2022	Deadline for managers of Irish domiciled UCITS to ensure internal investment processes are updated to address the specific criteria set down in the Covered Bonds Directive which must be met by a bond in order to be classified as a “covered bond” under the UCITS framework.
	31 July 2022	For funds already authorised/approved as of 30 April 2022, the Fund Profile Return must be submitted to the Central Bank by 31 July 2022. The Return should include information on the Fund’s exposures as of 30 April 2022. (See Section 6.1)
	1 August 2022	UCITS management companies and AIFMs are required to comply with additional sustainability-related obligations set down in Commission Delegated Directive (EU) 2021/1270 and Commission Delegated Regulation (EU) 2021/1255 respectively.
	1 September 2022	Final stage of the phase-in for regulatory initial margin under EMIR takes effect. Counterparties falling within scope ¹ , including AIFs and UCITS, will be required to comply with the EMIR IM requirements.
	9 September 2022	Closing date of ESMA consultation on the information and templates to be provided and used by management companies when informing regulators of their cross-border marketing and management activities under the UCITS Directive and the AIFMD. (See Section 4.1 below)
	Date in Q3 TBC ²	Each regulated firm having a PRISM Impact Rating of Medium Low (ML) or above (or its equivalent) must submit their Outsourcing Register to the Central Bank via the Online Reporting System (ONRS) using a new template to be made available by the Central Bank. (See Section 6.2).
	27 December 2022	Deadline for putting in place new Standard Contractual Clauses (SCCs) to govern transfer of personal data outside of the EEA. (See Section 9.2)
	30 December 2022	Deadline for funds which consider principal adverse impacts of investment decisions on sustainability factors to update prospectuses to include disclosures required under Article 7 of the SFDR.
	31 December 2022	UCITS/RIAIF Multi-Manager Funds established prior to 20 December 2021 must update their performance fee calculation methodology to align with ESMA’s Q&A of July 2021 on Performance Fees in Multi-Manager UCITS/RIAIFs.
Q1 2023	31 December 2022	Fund management companies should ensure that any existing Cloud Outsourcing Agreement is updated to comply with ESMA’s Guidelines on Outsourcing to Cloud Service Providers.
	1 January 2023	Funds falling within the scope of Article 8 or Article 9 of the SFDR must incorporate and publish an “ESG” annex into their prospectus/fund supplements which satisfy the relevant regulatory technical standards published under the SFDR.
	1 January 2023	The annual reports of any funds falling within the scope of Article 8 or Article 9 of the SFDR published on or after 1 January 2023 must incorporate an “ESG” annex into their annual report which satisfies the relevant regulatory technical standards published under the SFDR.
	1 January 2023	Where applicable, disclosure obligations in respect of the four remaining environmental objectives listed in Article 9 of the Taxonomy Regulation begin to apply.
Q1 2023	1 January 2023	All UCITS funds which are made available to EEA retail clients must prepare and publish a PRIIPS Key Information Document from this date.

¹ Counterparties in scope are those funds with an aggregate average notional amount (AANA) of €8bn or greater.

² We expect the Central Bank will soon publish the final template Outsourcing Register on its website. The preliminary timeline for the completion and submission of each regulated firm’s Outsourcing Register is likely to be up to 8 weeks following the publication of the Outsourcing Register template.

28 February 2023	Annual Fund Profile Returns should be filed with the Central Bank by 28/29 February in each year going forward. This Return will require Funds to report information as of 31 December of the previous year. The first such Return will be due 28 February 2023. (See Section 6.1)
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2. UCITS & AIFMD

2.1 ESMA updates Q&As on application of AIFMD and UCITS Directive: May 2022

On 22 May 2022, ESMA published an updated version of its Q&As on Directive 2011/61/EU (**Alternative Investment Fund Managers Directive** or **AIFMD**) and the application of Directive 2009/65/EC (as amended) (**UCITS Directive**) which updated one Q&A and added another Q&A relating to ESMA's guidelines on performance fees in UCITS and certain types of AIFs. The updated Q&A further clarifies how the performance reference period for a benchmark model performance fee should be re-set while the newly added Q&A confirms that the performance reference period for a hurdle rate model should not be shorter than 5 years.

The Q&As have no relevance for Irish UCITS and Irish retail investor alternative investment funds (**RIAIFs**) which must apply, under Irish rules, a performance reference period of the whole life of the fund.

The ESMA Q&A on the application of the UCITS Directive can be accessed [here](#).

The ESMA Q&A on the application of the AIFMD can be accessed [here](#).

2.2 ESMA reports on regulatory supervision of costs and fees in UCITS

On 31 May 2022 European Securities and Markets Authority (**ESMA**) published its final report outlining its findings on the common supervisory action on costs and fees in undertakings for collective investment in transferable securities (**UCITS**) which was conducted by it and national competent authorities (**NCA**s) in the course of 2021 (**CSA Report**). This followed the publication of its supervisory briefing on undue costs in June 2020 (**Supervisory Briefing**).

The CSA Report presents the main findings arising from the common supervisory action which include the following:

- All UCITS management companies should have in place policies and procedures allowing a transparent identification and quantification of all costs charged to the relevant fund.
- An independent analysis of the fee structure should be carried out once it has been established and should avoid an over-reliance on the assessment made by any delegate portfolio manager.
- Each cost category should be separately assessed and determined in the investor's best interests, using comparison with peer funds.
- The notion of "undue cost" should primarily be assessed against what should be considered the best interest of the fund and its investors.
- Adequate policies and procedures should be in place to mitigate conflicts arising from intra-group/related-party transactions.
- UCITS management companies engaging in EPM techniques must have in place policies and procedures on their use.
- Pre-contractual disclosures of any UCITS engaging in EPM techniques should be clear and should provide information on the specific arrangements and risks arising therefrom rather than incorporating incomplete or boilerplate disclosures.
- Instances of UCITS management companies using fee splits without due consideration of either EPM revenues generated, or the amount of revenue deducted by the securities lending agent, to ensure they are in line with fair market rates were uncovered during the common supervisory action. Accordingly, ESMA is of the view that fee-split arrangements merit further investigation and analysis.
- Investors must be adequately compensated in all cases where they were charged with undue costs or fees, and in cases where calculation errors result in financial detriment for investors.

For further information on the CSA Report, please refer to our [briefing](#) on the topic.

A copy of the CSA Report can be accessed [here](#).

A copy of the Supervisory Briefing can be accessed [here](#).

Key Action Points

UCITS management companies should review their pricing policies and procedures and use of EPM techniques in light of the findings outlined by ESMA in the CSA Report and take appropriate action to ensure alignment with relevant supervisory expectations outlined in the report

2.3 Developments in the proposed Directive amending the AIFMD (and UCITS Directive) frameworks

Following the publication of the European Commission's proposal for a directive amending AIFMD and the UCITS Directive (**Proposal**) in November 2021, the Economic and Monetary Affairs Committee (**ECON**) of the European Parliament published its draft report on the Proposal on 18 May 2022 and the Council of the EU published its position paper on the Proposal on 21 June 2022.

ECON has proposed that enhanced reporting on delegation arrangements to NCAs (regardless of whether the delegation is within the EU or to a third country) should replace the Commission's proposal to require management companies to notify ESMA of any third country delegation. It has also proposed a clarification to the Commission's Proposal that the ability of NCAs to activate or deactivate liquidity management tools could only be invoked in exceptional circumstances in consultation with the management company. On loan origination, ECON has suggested a prohibition on originate to distribute to replace the risk retention rule included in the Commission's Proposal, clarifying the definition of "shareholder loan" and exempting alternative investment funds (**AIFs**) with shareholder loans of up to an aggregate of 150% of the net asset value of the AIF from the obligation to introduce credit granting policies, procedures and processes.

Like ECON, the Council also propose deleting the obligation to notify ESMA of third country delegations and instead sets down the specific data that would need to be reported by management companies as part of their overall reporting obligations. Other proposed amendments to the Commission's proposal put forward by the Council include clarifying that management companies are not legally responsible for distributors which are not acting on their behalf and making some targeted changes to the liquidity management tool provisions, including proposing that the ability of an NCA to require (de)activation of liquidity management tools would remain as per the existing text of AIFMD (under which they can request suspension of subscription and redemptions). Changes to the loan origination funds framework proposed by the Council include clarifying that loan origination only relates to cases where the AIF is the original lender and imposing a cap on leverage of 150% of net asset value (calculated under the commitment approach) with exemptions being afforded to AIFs that solely originate shareholder loans which (i) do not exceed in aggregate 100% of the AIF's net asset value or (ii) are granted to portfolio undertakings acquiring real estate or participation in real estate companies.

Once political agreement has been reached on the European Parliament's draft report, the European legislative bodies will enter into trilogue negotiations.

The European Parliament's draft report on the Proposal can be accessed [here](#).

The Council's position paper can be accessed [here](#).

3. SUSTAINABLE FINANCE

3.1 European Commission publishes finalised regulatory technical standards under the SFDR

On 6 April 2022, the European Commission adopted regulatory technical standards (**RTS**) to be used by financial market participants when disclosing sustainability-related information under Regulation (EU) 2019/2088 (**SFDR**).

These rules will require funds which fall within the scope of Article 8 or Article 9 to provide detailed information on their sustainability-related practices in their pre-contractual, website and annual report disclosures. It also sets down additional disclosure obligations for those management companies who are required or choose to consider principal adverse impacts of investment decisions on sustainability factors at entity level under Article 4 of the SFDR.

The disclosure obligations imposed under the RTS will generally apply from 1 January 2023, with the annual report disclosure obligations set down in the RTS applying to any annual report published on or after 1 January 2023 regardless of the reference period covered.

The RTS can be accessed [here](#). For more information, please see our briefing on this topic available [here](#).

Key Action Points

Fund management companies (i) with funds which fall within the scope of Article 8 or 9 of the SFDR or (ii) which are required or choose to consider principal adverse impacts of investment decisions on sustainability factors at entity level under Article 4 of the SFDR should implement appropriate project plans to ensure that all required disclosures can be made by applicable deadlines.

3.2 European Commission requests ESAs to propose amendments to SFDR Delegated Regulation RTS on product exposures to gas and nuclear activities

On 6 May 2022, ESMA published a letter from the European Commission to the ESAs requesting that they propose amendments to the RTS published under the SFDR which were adopted by the European Commission on 6 April 2022.

In its letter, the European Commission outlined that amendments to the RTS are necessary to provide investors with information on the exposure of financial products to investments in fossil gas and nuclear energy activities in order to reflect the proposed Complementary Climate Delegated Regulation (namely Commission Delegated Regulation amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities). The proposed Complementary Climate Delegated Regulation will, if enacted, extend the EU Taxonomy framework to include certain economic activities relating to natural gas and related technologies.

The ESA's deadline for submitting amendments to the RTS to the Commission is 30 September 2022.

The letter can be accessed [here](#).

3.3 European Commission requests ESAs to propose amendments to SFDR Delegated Regulation RTS on principal adverse impacts indicators

On 6 May 2022, ESMA published a letter from the European Commission to the ESAs requesting them to propose amendments to the RTS published under the SFDR which were adopted by the European Commission on 6 April 2022.

The European Commission requested that the review should aim to broaden the disclosure framework and address the main technical issues regarding sustainability indicators relating to adverse impacts referred to in Article 4(6) and (7) of the SFDR which have emerged since the SFDR was originally agreed. In particular, the ESAs have been asked to consider extending the lists of universal indicators for principal adverse impacts, as well as other indicators and refining the content of all the indicators for adverse impacts and their respective

definitions, applicable methodologies, metrics and presentation. They have also been asked to consider proposed amendments to existing pre-contractual, website and periodic report disclosure obligations to provide information on decarbonisation targets and actions pursued as well as considering whether or not the existing Taxonomy-related disclosures contained in the RTS are sufficient.

The ESA's deadline for submitting amendments to the RTS to the Commission is April 2023.

The letter can be accessed [here](#).

3.4 ESMA study on the drivers of the costs and performance of ESG funds

On 23 May 2022, ESMA published a study examining the potential reasons behind the lower ongoing costs and better performance of environmental, social and governance (**ESG**) funds in 2019 and 2020 compared to equivalent non-ESG funds.

The ESMA study can be accessed [here](#).

3.5 European Commission, ESAs and ESMA provide clarifications on key areas of the SFDR, the RTS and the UCITS and AIFMD Delegated Acts

On 25 May 2022, ESMA published answers received from the European Commission on questions posed to it by the ESAs on the application of the SFDR and Regulation (EU) 2020/852 (**Taxonomy Regulation**) in December 2021 (**European Commission Q&A**).

The European Commission Q&A provides guidance on a range of matters, including the following:

- consideration of principal adverse impacts of investment decisions on sustainability factors at product level;
- the scope of the obligation to consider good governance of investee companies under Article 8 and Article 9 of the SFDR;
- the scope and content of Taxonomy-related disclosures imposed under Article 5 and Article 6 of the Taxonomy Regulation; and
- the application of the disclosure obligations imposed under the SFDR and the Taxonomy Regulation to funds which are no longer available for investment.

On 31 May 2022 ESMA published a Supervisory Briefing to ensure convergence across the EU in the supervision of investment funds with sustainability features, and in combating greenwashing by investment funds.

The Supervisory Briefing covers the following areas:

- guidance for the supervision of fund documentation and marketing material, as well as guiding principles on the use of sustainability-related terms in funds' names; and
- guidance for convergent supervision of the integration of sustainability risks by AIFMs and UCITS managers, including outlining circumstances in which supervisory action should be initiated by the relevant national competent authority.

On 2 June 2022 the ESAs published a statement providing clarifications on the draft RTS issued under the SFDR (**ESA Clarification Statement**).

The Statement provides clarification on key areas of the SFDR disclosures, including:

- the "do not significantly harm" (DNSH) disclosures;
- use of sustainability indicators;
- principal adverse impact (PAI) disclosures;
- taxonomy-related financial product disclosures; and
- financial product disclosures.

The statement is part of the ESAs' on-going efforts to promote a better understanding of the disclosures required under the technical standards of the SFDR ahead of the planned application of the rules on 1 January 2023.

For further information on the implications of the European Commission Q&A, the ESMA Supervisory Briefing and the ESA Clarification Statement on fund management companies, our [briefing](#) can be accessed here.

A copy of the European Commission Q&A can be accessed [here](#)

A copy of the Supervisory Briefing can be accessed [here](#).

A copy of the ESA Clarification Statement can be accessed [here](#).

Key Action Points

Fund management companies should assess their frameworks for integration of sustainability risks and existing fund disclosures in light of the guidance provided by the European Commission and the ESAs in the European Commission Q&A, Supervisory Briefing and ESA Clarification Statement.

3.6 CSRD: provisional political agreement between the Council and the European Parliament

On 21 June 2022, the Council and European Parliament reached a provisional political agreement on the proposed Corporate Sustainability Reporting Directive (**CSRD**). The proposal aims to address shortcomings in the existing rules on disclosure of non-financial information which hinder the sustainable economy transition.

The CSRD amends Directive 2014/95/EU (**Non-Financial Reporting Directive**). It introduces more detailed reporting requirements on sustainability related matters, aligning with reporting obligations set down under the SFDR and the Taxonomy Regulation. It also introduces a certification requirement for sustainability reporting as well as improved accessibility of information, by requiring its publication in a dedicated section of company management reports.

The CSRD significantly extends the scope of the Non-Financial Reporting Directive, requiring all large EU companies and all companies listed on regulated markets to report on sustainability matters. Certain SMEs are also captured by these rules, though an opt-out is available during a transition period until 2028. The CSRD will also impose certain disclosure obligations on non-EU companies which generate a net turnover of €150 million in the EU and which have at least one subsidiary or branch in the EU.

The application of the regulation will take place in three stages:

- 1 January 2024 for companies already subject to the Non-Financial Reporting Directive;
- 1 January 2025 for companies that are not presently subject to the Non-Financial Reporting Directive;
- 1 January 2026 for listed SMEs, small and non-complex credit institutions and captive insurance undertakings.

A copy of the proposed CSRD can be accessed [here](#).

3.7 ESG Ratings

On 27 June 2022, ESMA published a letter to the Commission providing its findings from the Call for Evidence gathering information on the market structure for ESG rating providers in the EU (**Letter**).

On 4 April 2022, the European Commission opened a targeted consultation on the functioning of ESG ratings in the European Union and on the Consideration of ESG factors in credit ratings (**Targeted Consultation**). The Targeted Consultation is an integral part of the renewed sustainable finance strategy adopted in July 2021.

The Targeted Consultation aims to help the European Commission gain a better insight into the functioning of the market for ESG ratings, as well as better understand how credit rating agencies incorporate ESG risks in their creditworthiness assessment.

The Consultation Period closed on 6 June 2022 and responses will feed into an impact assessment that will assess the need for a policy initiative on ESG Ratings and on sustainability factors in credit ratings. Subject to the result of the impact assessment, this may lead to the Commission proposing an initiative by early 2023 to foster reliability, trust and comparability of ESG ratings.

A copy of the Letter can be accessed [here](#).

The Targeted Consultation can be accessed [here](#).

4. CROSS-BORDER DISTRIBUTION FRAMEWORK

4.1 ESMA consults on notifications for cross-border marketing and management of funds

On 17 May 2022, ESMA launched a consultation on the information and templates to be provided and used by UCITS, management companies and alternative investment fund managers (**AIFMs**) (as applicable) when informing regulators of their cross-border marketing and management activities under the UCITS Directive and the AIFMD.

The consultation is the first stage in developing draft implementing technical standards (**ITS**) and RTS on the information to be submitted to NCAs when undertaking cross-border marketing or management activities in host Member States. The aim is to harmonise the information to be notified and develop common templates to be used by management companies, UCITS and AIFMs.

The consultation period is open until 9 September 2022. Following this, ESMA expects to publish its final report by the beginning of 2023 and draft ITS and RTS will be finalised and submitted to the European Commission for its consideration thereafter.

A copy of the Consultation Paper can be accessed [here](#).

5. PRIIPs

5.1 ESAs recommend changes to make the PRIIPs key information document more consumer-friendly

On 2 May 2022 the European Supervisory Authorities (**ESAs**) published technical advice to the European Commission on the review of the PRIIPs Regulation in which they recommend that significant changes be made to the regulation and suggest that a “broad review” of the PRIIPs framework is undertaken before formulating any proposals for changes.

The overall aim of the changes is to improve the presentation of information provided to consumers and make it easier to compare different products. More specifically, the ESAs recommend:

- Re-considering the sequencing, title of the different sections and details of the content of the Key Information Document (**KID**);
- Allowing information to be digitally “layered”, and other opportunities presented by digital disclosure;
- Further specifying the existing scope of the framework;
- Allowing different approaches for different types of products, where doing so would promote retail investors’ understanding;
- Allowing more flexibility on the type of information to be provided in the performance section of the KID, including, in the case of certain funds, a past performance indication;

- Changing the rules for multi-option insurance products to better facilitate comparison between different instruments; and
- Introducing additional disclosures on whether the relevant product promotes environmental or social characteristics or has sustainable investment as its objective.

A copy of the technical advice can be accessed [here](#).

5.2 Joint ESA Supervisory Statement on expectations regarding the ‘What is this product?’ section of the key information document for packaged retail and insurance-based investment products

On 9 May 2022 the ESAs published a joint supervisory statement on expectations regarding the ‘What is this product?’ section of the KID (**Statement**). The Statement is intended to achieve a high, effective and consistent level of regulation and national supervision, promoting a level playing field and the protection of retail investors.

While much of the Statement contains specific guidance for certain types of structured products or derivative products, more generally the ESAs emphasise the need to use clear and understandable language in the KID and to avoid using technical jargon and terminology which is not clear to retail investors. The Statement sets out examples of when the expected standards are not adhered to by PRIIPS manufacturers.

A copy of the Statement can be accessed [here](#).

5.3 European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2022

The European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2022 (**Regulations**) were published on 31 May 2022 and take effect on 1 January 2023. The Regulations confirm that a KID prepared in accordance with Regulation (EU) 1286/2014 (**PRIIPS Regulation**) will discharge the obligation to prepare a UCITS key investor information document (**KIID**) under the European Union (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (as amended).

A copy of the Regulations is available [here](#)

5.4 Delegated Regulation postponing application date of certain PRIIPs-related disclosures published in OJ

On 24 June 2022 the Commission published Commission Delegated Regulation 2022/975 in the Official Journal of the EU (**OJ**), which had been adopted by the European Commission on 17 March 2022. This amends Commission Delegated Regulation 2021/2268 to clarify that the latter (which houses the revised PRIIPS level 2 measures) will apply from 1 January 2023.

It also amends Article 18(2) of Commission Delegated Regulation 2017/653 to align the transitional arrangements to allow PRIIPS manufacturers to continue to use UCITS KIID for each underlying investment option until 1 January 2023.

A copy of the Delegated Regulation can be accessed [here](#).

6. CENTRAL BANK

6.1 Fund Profile - Reporting requirements of Irish Authorised Investment Funds - Vol 2.0

On 3 May 2022, the Central Bank of Ireland (**Central Bank**) released an updated Fund Profile Return (**Return**), along with an updated Guidance document to assist users in completing the Return. The Return now incorporates additional information on exposure to specific assets in the preceding year which will allow the Central Bank to monitor exposure to these classes more closely, reflecting concerns around associated risks.

Under the Return funds must now disclose whether they fall within the scope of Article 6, Article 8 or Article 9 under the SFDR.

For more information please see our [briefing](#) on this topic.

A copy of the Guidance document can be accessed [here](#).

Key Action Points

Any new Fund authorised by the Central Bank after 30 April 2022 must complete and submit the Return within 10 working days of the Fund's authorisation date. For Funds already authorised/approved as of 30 April 2022, the Return should report information on the Fund's exposures as of 30 April 2022. This Return must be submitted by 31 July 2022. Going forward, the Return will require Funds to report information as of 31 December of the previous year and will be due to be filed with the Central Bank by 28/29 February in each year.

6.2 Template Outsourcing Register for submission to the Central Bank

As set out in the Cross-Industry Guidance on Outsourcing issued on 17 December 2021, regulated firms whose PRISM Impact Rating is Medium Low or above (or its equivalent) are required to submit their Outsourcing Registers to the Central Bank on an annual basis via a new online return. The Central Bank is currently testing the template Outsourcing Register which will be made available through the Online Reporting System (**ONR**). It is understood that firms will have two months to complete the return from the date that templates are made available.

Key Action Points

Each regulated firm having a PRISM Impact Rating of Medium Low (ML) or above (or its equivalent) should take the appropriate steps to be ready to input the relevant data into the template Outsourcing Register once available.

6.3 AIFM Regulatory Reporting Requirements - June 2022

On 7 June 2022 the Central Bank published its AIFM Regulatory Reporting Requirements (**Requirements**). This document sets out the various returns that AIFMs are required to file with the Central Bank during each year, with comments provided for each return, links to more detailed guidance and noting the required frequency.

The Requirements are separated into four categories, as follows:

- Financial Reporting, including FIREP filings and annual audited accounts
- Capital Reporting, including Bank Statements and Minimum Capital Requirement Reports
- Other Scheduled ONR Returns, including Annual PCF Confirmations and Monthly Metrics Reports
- Ad-Hoc Returns, including Acquiring Transaction Notification Forms, AIFM Returns and Capital Contribution Agreements

A copy of the Requirements can be accessed [here](#).

7. CONFLICT IN UKRAINE

7.1 Central Bank publishes guidance on use of side-pocketing arrangements by UCITS facing valuation difficulties due to the Russian invasion of Ukraine

On 16 May 2022, ESMA released a public statement (**ESMA Statement**) outlining actions which could be taken by funds with material exposure to Russian, Belarusian and Ukrainian assets (**Impacted Funds**) experiencing valuation issues arising from the Russian invasion of Ukraine (**Russia-Ukraine War**).

The ESMA Statement aims to promote convergence in the actions taken by fund management companies, to provide clarity and to remind fund management companies of their obligations to manage investment funds in the best interest of investors, as well as to have adequate liquidity management systems in place and ensure fair valuation of assets.

The ESMA Statement notes that, although the UCITS framework does not currently contemplate the use of side pockets, for the purpose of managing the impact of the Russia-Ukraine War on an Impacted Fund, arrangements to create a side pocket in UCITS could be permitted provided that certain conditions have been satisfied.

In response to the ESMA Statement, the Central Bank subsequently published guidance which, for the first time, permits the use of side pocket arrangements for UCITS Impacted Funds (**Central Bank Guidance**).

The original UCITS may establish a side-pocket by way of a newly established clone UCITS to transfer liquid assets provided that:

- The proposal must be in the best interests of shareholders of the original UCITS;
- Investors in the original UCITS must have approved the transfer into the new UCITS;
- The original UCITS has obtained the prior written approval of the Central Bank for the proposal;
- The UCITS must clearly disclose to shareholders in the UCITS the costs and fees associated with establishing the side pocket as well as providing this information in the prospectus;
- The original UCITS is placed in “wind-down mode” at the same time as the creation of the new UCITS;
- The original UCITS has established written policies outlining how the affected securities will be managed, including policies relating to the costs and fees associated with the maintenance of the original UCITS; and
- The original UCITS reports to the Central Bank on an annual basis in the manner detailed in the Central Bank Guidance.

For more information, please see our briefing on this topic available [here](#).

The ESMA Statement can be accessed [here](#).

The Central Bank Guidance can be accessed [here](#).

7.2 EU Sanctions against Russia

In reaction to Russia's military aggression against Ukraine, the European Union has adopted additional suites of economic sanctions against Russia and Belarus which have been introduced through packages adopted by the Council of the EU on 8 April 2022 and 3 June 2022 respectively (**Sanctions**).

The latest measures introduced under the Sanctions include (i) an extension of the prohibitions on the export of banknotes and on the sale of transferable securities (or collective investment schemes providing exposure to such transferable securities) denominated in any official currency of the EU to Russian or Belarusian nationals or entities (ii) further freezing of assets of Russian and Belarusian individuals and entities, (iii) an extension on the prohibition of SWIFT services to certain Russian and Belarusian banks and subsidiaries, (iv) a full transaction bank and asset freeze on additional Russian banks and (v) measures which strengthen provisions on national penalties for any breach of the Sanctions.

The package of sanctions announced on 8 April 2022 can be accessed [here](#).

The package of sanctions announced on 3 June 2022 can be accessed [here](#).

8. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

8.1 Joint ESAs Report on the withdrawal of authorisation for serious breaches of AML/CFT rules

On 1 June 2022, the ESAs published a joint report on the withdrawal of authorisation from financial entities for serious breaches of AML/CFT rules. The report identifies 26 instances on which such a withdrawal occurred in the past 10 years.

The report emphasises that withdrawal of authorisation for a breach of AML/CFT rules should be a last resort measure, with respect shown to proportionality requirements. Nonetheless the report makes some recommendations and supports some amendments to the current regime:

- Specifically empowering competent authorities in the sectoral acts to withdraw authorisation on this basis would promote legal certainty.
- Sets out uniform criteria for the notion of serious breach of AML/CFT requirements.
- Competent authorities expressly considering the applicant's exposure to ML/TF risk would enable sound and effective risk management and compliance with AML/CFT requirements.
- Consideration should be taken of the context of a breach, and assessments should be made on a case-by-case basis.
- The report emphasises the importance of cooperation and exchange of information between the competent prudential supervisor and the resolution authority.

The report concludes with an overview of how the assessment of ML/TF risks is embedded in prudential regulation and supervision within the CRD/CRR framework, which has been recently updated and revised to embed AML/CFT requirements.

A copy of the report is accessible [here](#).

8.2 Central Bank updates the Beneficial Ownership Register FAQ

In June 2022, the Central Bank updated its Beneficial Ownership FAQs on its website regarding of the 2022 levy payment which Certain Financial Vehicles (**CFVs**) are required to pay in respect of the 2021 costs from the implementation and operation of the Beneficial Ownership Register. CFVs include Irish Collective Asset-Management Vehicles (**ICAVs**), Unit Trusts, Investment Limited Partnerships, Common Contractual Funds and Credit Unions.

The following FAQs have been updated:

- What is the levy and how is this applicable?
- Who is eligible to pay the CFV Dedicated Levy for the period 2021?
- How do I pay the CFV Dedicated Levy on receipt of invoice?

The FAQs can be accessed on the Central Bank's website [here](#).

8.3 EBA publishes final guidelines on role of AML/CFT compliance officers

On 14 June 2022, the European Banking Authority (**EBA**) published its final guidelines (**Guidelines**) on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI of Directive (EU) 2015/849 (the **Fourth Money Laundering Directive** or **MLD4**).

The key areas addressed in the Guidelines are:

- Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT;

- Role and responsibilities of the AML/CFT compliance officer; and
- Organisation of the AML/CFT compliance function at group level.

The Guidelines will apply from 1 December 2022.

The Guidelines can be accessed [here](#). For more information, please see our Dillon Eustace article on this topic [here](#).

9. DATA PROTECTION

9.1 EDPB adopts statement on the new Trans-Atlantic Data Privacy Framework

On 6 April 2022 the European Data Protection Board (**EDPB**) adopted a statement on the political agreement in principle between the European Commission and the United States on a new Trans-Atlantic Data Privacy Framework.

The EDPB welcomed as a positive first step the U.S. highest authorities' commitment to establish measures protecting the privacy and personal data of individuals in the European Economic Area (**EEA**) when those data are transferred to the U.S.

There is not yet a legal framework on which data exporters can base their data transfers to the U.S. Data exporters must still ensure compliance with the CJEU's case law, in particular the Schrems II decision of 2020.

Under Regulation (EU) 2016/679 (**GDPR**), the European Commission must request an opinion of the EDPB before adopting an adequacy decision recognising the U.S. data protection laws as equivalent and satisfactory. On receipt of all supporting documents from the European Commission, the EDPB will prepare its opinion. The EDPB stated that it will in particular analyse whether the collection of personal data for national security purposes is limited to what is strictly necessary and proportionate, in the context of the new framework.

A copy of the EDPB's statement can be accessed [here](#).

9.2 European Commission publishes Questions and Answers on the new Standard Contractual Clauses

On 25 May 2022, the European Commission published Questions and Answers on the new Standard Contractual Clauses (**SCCs**) (the **SCC Q&As**) following its adoption of the new SCCs in June 2021. The SCC Q&As aim to provide practical guidance on the use of the SCCs to assist stakeholders in their compliance with their obligations under the GDPR.

The new SCCs for data transfers to third countries replace the previous SCCs adopted by the Commission under Directive 95/46/EC (**Data Protection Directive**). The new SCCs have a modular structure covering data transfers between the following parties: Controller to Controller (Module 1), Controller to Processor (Module 2), Processor to Processor (Module 3), and Processor to Controller (Module 4). The new SCCs also include a docking clause which allows new parties to join the SCCs throughout the life cycle of the contract.

The SCC Q&As clarify that the new SCCs cover the Article 28 requirements for controller to processor contracts, so companies do not need to enter a separate contract to comply with Article 28 of the GDPR.

The SCC Q&As confirm the scope of the SCCs, that they apply to controllers or processors that are subject to the GDPR and the transfer of personal data to controllers or processors outside the EEA whose activities are not subject to the GDPR. The SCCs cannot be used by companies whose operations are subject to the GDPR (pursuant to Article 3). The European Commission has confirmed that it is developing an additional set of SCCs for this scenario.

There are 44 Q&As in total which also include general Q&As on how the SCCs should be executed, whether the text of the SCCs can be changed, whether they can be incorporated into a broader contract and whether additional provisions can be added.

Companies using the old SCCs have until 27 December 2022 to incorporate the new SCCs into their relevant contractual agreements. The SCC Q&As can be accessed [here](#).

10. EMIR & SFTR

10.1 ESMA updates Q&As on data reporting under SFTR

On 1 April 2022, ESMA published updated Questions & Answers on reporting requirements under Regulation (EU) 2015/2365 (**Securities Financing Transactions Regulation** or **SFTR**).

ESMA has amended Q&A 12 on the currency of the overview and margin reports. It last updated the Q&As in January 2022.

A copy of the SFTR Data Reporting Q&As can be accessed [here](#).

10.2 European Commission adopts additional equivalence decisions for US exchanges

On 4 April 2022, the European Commission adopted a decision (Implementing Decision (EU) 2022/552) under Regulation (EU) No 648/2012 (**European Market Infrastructure Regulation** or **EMIR**) declaring that a number of United States exchanges supervised by the US Securities Exchange Commission (**SEC**) are equivalent to EU regulated markets. Derivatives traded on these US exchanges will now be treated as exchange-traded derivatives under EU law. The list of the approved exchanges is set out in the Annex to the Implementing Decision.

Implementing Decision (EU) 2022/552 will enter into force twenty days following its publication in the OJ. It was published in the OJ on 6 April 2022 and will come into force on 26 April 2022.

Additionally, the Commission also adopted another decision (Implementing Decision (EU) 2022/551) amending its 2021 equivalence decision (Implementing Decision (EU) 2021/85) regarding US central counterparties (**CCPs**) to cover mortgage-backed securities issued or guaranteed by certain government sponsored agencies traded on a 'To-Be-Announced basis' (**TBAs**).

Implementing Decision (EU) 2022/551 entered into force on the day following that of its publication in the OJ, on 7 April 2022.

A number of US CCPs supervised by the US SEC which have applied to ESMA will, on completion of the recognition process, be able to provide central clearing services in the EU, to EU clearing members and trading venues.

A copy of Implementing Decision (EU) 2022/552 can be accessed [here](#).

A copy of Implementing Decision (EU) 2022/551 can be accessed [here](#).

10.3 Amendments to the RTS on the EMIR Clearing Obligation for interest rate over-the-counter (OTC) derivatives classes

On 17 May 2022, the Commission published Delegated Regulation (EU) 2022/750 in the OJ. The Regulation amends Delegated Regulation (EU) 2015/2205 which set out RTS on the clearing obligation set out under EMIR for interest rate over-the-counter (**OTC**) derivatives classes. The new Delegated Regulation amends the scope of the clearing obligations for OTC interest rate derivatives denominated in EUR, GBP, JPY and USD, as part of the transition to alternative benchmarks.

Delegated Regulation (EU) 2022/750 can be accessed [here](#).

11. MONEY MARKET FUNDS

11.1 Targeted consultation on the functioning of the Money Market Fund Regulation

The European Commission is required to conduct a review of the functioning of the Regulation (EU) 2017/1131 (**Money Market Funds Regulation** or **MMFR**) by 21 July 2022.

On 12 April 2022, it launched a consultation on the functioning of the MMFR, the results of which will inform its review of the MMFR. The Consultation Paper is intended to complement the information which the European Commission has received on the functioning of the MMFR from other initiatives such as the work conducted by ESMA which culminated in the publication of its opinion on the reform of the MMFR in February 2022 and the work conducted by the European Systemic Risk Board (**ESRB**) which resulted in the publication of its recommendations on the MMFR reform in January 2022.

The consultation is in the form of an online questionnaire and the consultation period ran from 12 April 2022 to 13 May 2022.

The consultation paper can be accessed [here](#).

A copy of the opinion published by ESMA on the MMFR is available [here](#).

A copy of the ESRB recommendation on the MMF reform is available [here](#).

11.2 ESMA Guidelines on Stress Testing Scenarios for MMF under the MMFR and related Central Bank Notice of Intention

On 4 May 2022, ESMA published its revised guidelines on liquidity stress testing for MMF under the MMFR which set down common reference parameters of the stress test scenarios to be included in the stress tests that managers of MMF are required to carry out under Article 37 of the MMFR (**Guidelines**). The final report contains the “2021” stress testing parameters and the changes to the previous 2020 parameters are highlighted in red text in the annex to the final report which should be used for the first period to be reported following the start of the application of the updated guidelines.

In a Notice of Intention published on 4 July 2022, the Central Bank confirmed that the Guidelines must be complied with in full by UCITS management companies and AIFMs from 4 July 2022.

A copy of the Guidelines is available [here](#).

A copy of the Notice of Intention is available [here](#).

12. EXCHANGE TRADED FUNDS

12.1 IOSCO Consultation Report on ETF Good Practices

On 6 April 2022, the International Organisation of Securities Commissions (**IOSCO**) published a Consultation Report on Exchange Traded Funds (**ETFs**) Good Practices (**Consultation Report**).

The Report proposes a set of good practices regarding the operation of ETFs and trading of ETF shares for IOSCO members, as well as good practices for responsible entities and/or trading venues. The Report builds on the IOSCO’s 2013 Report on the Principles for the Regulation of ETFs (2013 ETF Principles) and suggests a number of additional good practices for ETFs.

The Report proposes eleven new good practice measures with reference to different regulatory approaches towards ETFs and how ETFs operate in these jurisdictions. These new measures centre on the distinctive features of ETFs, which are the trading of ETF shares in the

secondary market and the associated arbitrage mechanism. The new measures are discussed with reference to the major themes affecting the operation and trading of ETFs including (i) disclosure-related issues; (ii) effective product structuring; (iii) volatility control mechanisms (iv); liquidity provisions; and (v) financial stability.

The Report builds on much of the research undertaken by the Central Bank and echoes in many areas the findings of their 2018 'Feedback Statement on Discussion Paper 6 - Exchange Traded Funds' (**Discussion Paper**)

The Consultation Report can be accessed [here](#) and a Dillon Eustace article on this topic can be accessed [here](#).

The Discussion Paper can be accessed [here](#).

13. MISCELLANEOUS

13.1 ESMA publishes its Final Report on review of the Short Selling Regulation

On 4 April 2022, ESMA published its final report on the review of Regulation (EU) No 236/2012 (**Short Selling Regulation** or **SSR**) (**Final Report**). Proposals in the Final Report include targeted amendments to improve the operation of the SSR, including clarification of procedures for short and long-term bans, intervention powers for ESMA, naked short selling prohibition and the calculation of net short positions (**NSPs**).

The Final Report reflects on emergency measures adopted due to COVID-19 and proposes amendments to the SSR to ensure procedures are clear and flexible enough for relevant competent authorities to respond effectively to emergency situations in the future. The Final Report proposes introducing record keeping requirements and harmonising sanctions to enhance existing rules on uncovered short sales. In response to high market volatility due to 'meme stocks' ESMA proposes introducing a centralised system for publication of NSPs, and an EU-wide obligation for RCAs to periodically publish aggregated NSPs per issuer.

The Final Report has been submitted to the European Commission for its consideration.

A copy of the Final Report can be accessed [here](#).

13.2 ELTIF: Council and Parliament adopt positions on proposed amendments to the ELTIF Regulation

On 24 May 2022, the Council adopted its position on the legislative proposal to revise Regulation (EU) 2015/760 (**ELTIF Regulation**), published by the European Commission in November 2021, which is intended to make ELTIF funds more attractive to asset managers and investors.

In adopting its position, the Council identifies three priorities, namely the channelling of more financing to SMEs and long-term projects (by removing existing constraints on the portfolio composition of ELTIFs, particularly those distributed solely to professional investors), lifting barriers to entry for retail investors and maintaining high investor protection standards and providing retail investors with all relevant information necessary to make an informed decision.

On 20 June 2022, the European Parliament's Economic and Monetary Affairs Committee (**ECON**) published a press release announcing that it has adopted its report on the legislative proposal to revise the ELTIF Regulation. Amendments proposed by ECON on the proposal, published by the European Commission in November 2021, include proposing a sub-category of ELTIFs marketed as environmentally sustainable which must invest exclusively in taxonomy-aligned investments and disclose what share of their assets complies with these requirements to avoid green washing. ECON also proposes that EU green bonds and sustainable investments are explicitly included in the list of investment assets eligible for ELTIFs and suggest that ESMA maintains a central public register of authorised ELTIFs with updated links to their annual reports and, where available, the key information document in order to allow investors to analyse and compare existing ELTIFs.

The Council and the European Parliament will now enter negotiations to agree on a final version of the text.

A copy of the Council's position can be accessed [here](#).

A copy of the European Parliament's position can be accessed [here](#)

A copy of the European Commission's legislative proposal published in November 2021 can be accessed [here](#).

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

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