



Investment Firms

Quarterly Legal and Regulatory Update

Period covered: 1 April 2022 – 30 June 2022

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1. MIFID II

1.1 ESMA postpones review of MiFIR RTS 2 on trade transparency

On 1 April 2022, the European Securities and Markets Authority (**ESMA**) published a press release announcing that it has postponed the annual review of Commission Delegated Regulation (EU) 2017/583 (**RTS 2**) on non-equity transparency.

The decision to postpone was taken because the European Commission's ongoing review of trade transparency provisions in the Markets in Financial Instruments Regulation (600/2014) (**MiFIR**) is likely to have a significant impact on the instruments subject to review.

RTS 2 requires ESMA to perform an annual review by 30 July. One element of this review is assessing the trade percentiles determining the pre-trade sizes specific to the financial instrument (**SSTI**) threshold for bonds and derivatives. The MiFIR review proposes to remove the SSTI threshold, making this part of the annual review redundant.

ESMA will resume the submission of the annual RTS 2 report in 2023.

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

1.2 ESMA updates MiFIR data reporting Q&As

On 1 April 2022, ESMA published an updated version of its Q&As on data reporting under MiFIR.

ESMA has amended the following Q&As:

- Q&A 2 on the legal entity identifier (**LEI**) of the issuer;
- Q&A 4 on instrument identification codes and the underlying instrument; and
- Q&A 21 on the reporting of nominal value per unit and minimum traded value.

ESMA last updated the Q&As in July 2021.

A copy of the updated MiFIR data reporting Q&As can be accessed [here](#).

1.3 Guidelines - On certain aspects of the MiFID II appropriateness and execution-only requirements

On 12 April 2022, ESMA published 13 guidelines on certain aspects of the appropriateness and execution-only requirements under Directive 2014/65/EU (**MiFID II**). The guidelines intend to provide clarity in this area, to ensure common and consistent application of certain MiFID II articles, and to promote greater convergence in the application of, and supervisory approaches, to MiFID II.

The Guidelines are separated into four categories:

- Information to Clients About the Purpose of the Appropriateness Assessment and About Execution-Only;
- Know Your Client and Know Your Product;
- Matching Clients with Appropriate Products;
- Other Related Requirements.

ESMA anticipates a strengthening of investor protection, by helping to ensure that firms comply with regulatory standards through these guidelines.

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

1.4 Commission Delegated Regulation (EU) 2022/629 of 12 January 2022 amending MiFID II/MiFIR RTS 2 is published in the Official Journal of the EU

On 13 April 2022, Commission Delegated Regulation (EU) 2022/629 of 12 January 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/583 (**RTS 2**) was published in the Official Journal of the EU (**OJ**).

The Delegated Regulation makes amendments to Article 17 of RTS 2 relating to the adjustment of liquidity thresholds and trade percentiles used to determine the SSTI applicable to certain non-equity instruments, under MiFIR.

The Delegated Regulation came into force on 3 May 2022, 20 days following its publication in the OJ.

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

1.5 ESMA technical advice on retail investor protection topics

On 29 April 2022, ESMA advised the European Commission on certain aspects relating to retail investor protection. The final report contains the technical advice in relation to certain investor protection topics under MiFID II and puts forward proposals that will make it easier for investors to get the key information they need to make well-informed investment decisions, whilst also protecting them from aggressive marketing techniques and detrimental practices.

The proposals aim to maintain a high level of investor protection, while ensuring that retail investors can benefit from digitalisation opportunities. Focusing on (i) disclosures; (ii) digital disclosures; and (iii) digital tools and channels, the recommendations include:

- requiring machine readability of disclosure documents to facilitate the development of searchable databases available to the public;
- addressing information overload by proposing to define what is vital information and by using digital techniques such as layering of information;
- development of a standard EU format of information on costs and charges and aligning the disclosures under MiFID and the PRIIPs Key Information Document (**KID**);
- the possibility for national competent authorities and ESMA to impose on firms the use of risk warnings for specific financial instruments;
- addressing aggressive marketing communications; and
- addressing issues related to misleading marketing campaigns on social media and the use of online engagement practices, such as the use of gamification techniques by firms or third parties.

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

1.6 ESMA publishes review of the MiFID II framework on best execution reports by investment firms

On 16 May 2022, ESMA published its final report on its review of the MiFID II framework on best execution reports by investment firms (**Report**). The Report follows publication by ESMA of a consultation paper, on 24 September 2021, seeking input from stakeholders on proposals for improvements to the MiFID II framework on best execution reports.

The MiFID II framework requires execution venues and investment firms to publish periodic data on the quality of execution.

ESMA has adopted regulatory technical standards (**RTS**) in this area applicable to execution venues (Commission Delegated Regulation (EU) 2017/575 (**RTS 27**)) and investment firms (Commission Delegated Regulation (EU) 2017/576 (**RTS 28**)). ESMA has put on hold ongoing work relating to RTS 27, following the publication of the European Commission's proposals for the review of the MiFID II/MiFIR framework. Therefore, the Report addresses only the best execution requirements for investment firms.

Section 2 of the Report sets out the proposals through which best execution reports by investment firms could be improved. In particular, the suggestions aim at:

- enhancing the RTS 28 reports' quality of information; and
- facilitating the use of RTS 28 reports.

ESMA will share the Report with the European Commission in order to contribute to the Commission's analysis on the adequacy of the MiFID II best execution reporting obligations and to any subsequent determinations on the retention of the regime and how it could possibly change.

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

1.7 Delegated Regulation on fees for supervising DRSPs under MiFIR published in OJ

On 17 June 2022 a Commission Delegated Regulation was published in the OJ, which supplements MiFIR. The Delegated Regulation specifies fees related to ESMA's supervision of data reporting service providers (**DRSPs**).

Under MiFIR, ESMA must charge fees to DRSPs covering necessary expenditure relating to authorisation and supervision. The fees must be proportionate to the DRSP's turnover. The fees should also cover the reimbursement of any costs that competent authorities may incur as a result of delegation by ESMA under Article 38 of MiFIR. The Delegated Regulation sets out details of:

- Application and authorisation fees;
- Annual supervisory fees; and
- Calculating applicable turnover.

The Delegated Regulation entered into force and started to apply from 20 June 2022. A transitional period applies in both 2022 (when a fixed fee will be charged) and 2023. The Commission adopted the Delegated Regulation in March 2022.

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

2. EMIR & SFTR

2.1 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](#).

2.2 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' (**TBA**s).

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](#).

2.3 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](#).

3. PRIIPS

3.1 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 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](#).

3.2 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](#).

4. CENTRAL BANK OF IRELAND

4.1 Central Bank Dear CEO letter on MiFID Structured Retail Product Review

On 22 April 2022 the Central Bank issued a ‘Dear CEO’ letter to MiFID investment firms, outlining its findings from a series of targeted reviews of Structured Retail Products (**SRPs**). The reviews identified a number of areas where governance and oversight of SRPs must keep pace with an increasingly complex retail investment market.

The poor practices and weaknesses in firms’ processes found in the reviews included the failure to consider potential difficulties investors may have in understanding complex features; the failure to present past performance information in a fair and balanced manner; and not including prominent capital at risk warnings in marketing materials.

Improvements in processes urged in the letter include:

- The target market assessment should proportionately consider the nature and complexity of the product;
- When proposing complex features, firms must consider whether they are appropriate and understandable for the retail market;
- Past performance information must be presented in a fair and balanced way with clear context;
- Capital at Risk warnings must be in a prominent location in all marketing;
- An overly optimistic picture of likely investor outcomes must not be presented in marketing complex products;
- Risk of product restructuring must be disclosed prior to sale; and
- Firms must adhere to high standards of investor protection, acting in investors’ best interests at all times

A copy of the ‘Dear CEO’ letter can be accessed [here](#).

A copy of the corresponding Press Release can be accessed [here](#).

4.2 Central Bank reminds MiFID investment firms with branches outside the EU / EEA of relevant requirements

On 16 May 2022, the Central Bank updated its website with advice for MiFID investment firms authorised in Ireland with branches outside the EU / EEA. These firms must consider, and ensure compliance with, the following:

- ESMA’s MiFID II supervisory briefing on the supervision of non-EU branches of EU firms providing investment services and activities;
- ESMA’s Opinion to support supervisory convergence in the area of investment firms in the context of the United Kingdom withdrawing from the European Union; and

- The amendment in April 2022 to the list of pre-approval controlled functions issued by the Central Bank to include branch managers in non-EEA countries (PCF-16).

The updated guidance can be accessed [here](#), under the 'Third country branches' heading.

4.3 Update to Client Asset Requirements: Central Bank issues draft Regulations and Guidance Note

On 23 June 2022, the Central Bank issued proposed revisions to the Central Bank's Client Asset Requirements (**CAR**). Such revisions are set out in the draft third edition of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations [2022] published on this date (**Revised Regulations**). The Central Bank has also published a Guidance Note intended to be read in conjunction with the revised Regulations.

The Revised Regulations are in final form and are expected to be published in the Irish Statute Book shortly. The Revised Regulations will revoke and replace the Central Bank (Supervision and Enforcement) Act 2013 Section 48(1)) (Investment Firms) Regulations 2017 (as amended) with effect from 1 July 2023.

A transitional period has been provided whereby; (i) investment firms have until 1 July 2023 to comply; and (ii) credit institutions have until 1 January 2024 to comply.

The current client assets rules apply to investment firms (including UCITS management companies/AIFMs with MiFID 'top-up' permissions in respect of those 'top-up' activities) which hold client assets or which enter into title transfer collateral arrangements. Under the new revisions it is proposed to extend the scope to also encompass credit institutions carrying out MiFID activities.

In the Guidance Note, the Central Bank reminds firms of their obligation to comply with the MiFID II safeguarding of client asset rules in addition to the CAR.

The revised CAR also imposes additional requirements on firms relating to the client asset management plan (**CAMP**) which must include a "client asset applicability matrix". This is defined in the draft Regulations as meaning *"the information contained in an investment firm's client asset management plan which identifies the investment firm's investment services and business lines, and in each case indicates whether or not the requirements in this Part and the MiFID II safeguarding of client asset rules apply"*. The Guidance also contains extensive detail on the expected content of the CAMP.

For firms which comprise prime brokers, the revisions to the CAR include disclosure requirements to clients in relation to client assets and requirements to provide a Client Asset Annex to clients which must set out a summary of the key provisions within the prime brokerage agreement permitting the use of client financial instruments by the firm.

For credit institutions, the revised CAR include certain specific client disclosure obligations requirements which must be met as well as reporting obligations to the Central Bank.

In addition, the requirements around calculation and reconciliation of third party client asset accounts, client assets and client financial instruments, have now been clarified/ slightly modified for all firms. The revised CAR now also provide that a firm may reconcile physical client financial instruments on a bi-annual basis (as opposed to on a monthly basis) where they are held on behalf of eligible counterparty clients.

In respect of reporting requirements, the changes introduced by the CAR include a requirement for a Firm to notify the Central Bank, through the Online Reporting System (**ONR**) of its intention to effect a material transfer of client assets to or from another entity, as part of a transfer of business. Such notification shall be provided as soon as possible but no later than 3 months in advance of the transfer taking place.

Investment Firms are expected to begin preparations to ensure they will be able to fully comply with CAR 2022 at the end of the transitional period on 1 July 2023, or 1 January 2024 for credit institutions.

A copy of the Guidelines can be found [here](#).

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

4.4 Template Outsourcing Registers 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 ONR. It is understood that firms will have two months to complete the return from the date that templates are made available.

5. CONFLICT IN UKRAINE

5.1 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](#).

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

6.1 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](#).

6.2 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](#).

7. DATA PROTECTION

7.1 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](#).

7.2 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 SCC Q&A further confirmed that the new SCCs cannot be used for data transfers to controllers or processors whose processing operations are directly subject to the GDPR by virtue of the extraterritorial application of Article 3 of the GDPR. 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](#).

8. SUSTAINABILITY

8.1 European Commission publishes finalised regulatory technical standards under the SFDR

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

These rules will require financial market participants to provide detailed information on the sustainability-related practices of financial products which fall within the scope of Article 8 or Article 9 in pre-contractual, website and annual report disclosures. It also sets down additional disclosure obligations for those financial market participants and/or financial advisers who are required or choose to consider the principal adverse impacts of their investment decisions, their investment advice or insurance advice (as applicable) on sustainability factors.

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](#).

8.2 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](#).

8.3 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](#).

8.4 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.

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](#).

8.5 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](#).

8.6 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](#).

9. MISCELLANEOUS

9.1 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](#).

9.2 EU Legislative Proposal for Distance Financial Services Contracts

On 11 May 2022, the European Commission published a new proposal to amend the rules concerning financial services contracts concluded at a distance. The aim of the proposal is to simplify and modernise the legislative framework.

The Commission proposes to repeal Directive 2002/65/EC (**Distance Marketing Directive**) and to amend Directive 2011/83/EU (**Consumer Credit Directive**). The Commission has noted that a series of legislative evaluations have concluded that the Distance Marketing Directive has seen its relevance and added value decrease. This follows the introduction into force of subsequent product-specific legislative acts and horizontal legislation relating to consumer's rights with regard to financial services. These subsequent legislative acts include the Consumer Rights Directive (2011/83/EU), the Mortgage Credit Directive (2014/17/EU) and the GDPR.

Certain aspects of the Distance Marketing Directive remain relevant, such as the right to pre-contractual information for financial products currently falling outside of scope of detailed legislation. It is therefore proposed to include such relevant provisions within scope of the Consumer Credit Directive.

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

9.3 ESMA's planned consultations for the remainder of 2022

On 27 June 2022 ESMA released an overview of the planned consultation papers for 2022. The following planned consultation papers are relevant to investment firms:

- Guidelines to MIFID II product governance requirements (sustainability) planned for July 2022;
- RTS on publication of derivatives data planned for Q3/4 2022 and relating to EMIR; and
- Review of Principal Adverse Impact (**PAI**) Indicators planned for Q3 2022 and relating to SFDR.

The ESMA Paper can be found [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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