

Asset management and investment funds

Legal and regulatory developments

Covering the period
1 January to 31 March 2023



KEY DATES	
2023	
1 January 2023	SFDR Level II financial report disclosure template became effective and should be incorporated in annual reports published after this date for funds subject to SFDR Article eight or Article nine (in accordance with financial report rules in Chapter V of the SFDR Level II).
23 April 2023	Commencement of requirement for the submission of PPS numbers of directors to the Companies Registration Office in connection with certain prescribed filings.
24 April 2023	Effective date for changes to the Central Bank's Fitness & Probity application process to be submitted via the portal. Access to the Fitness and Probity section of the ONR will be disabled in advance on 20 April 2023 at 5pm.
30 June 2023	Financial market participants that comply with the entity-level principal adverse impacts rules to address the disclosure requirements set out in SFDR Level II by this date.
1 July 2023	End of transitional period for in-scope investment firms to ensure compliance with the Central Bank's new client asset regulations.
30 September 2023	Deadline for fund management companies to put a plan in place to address any gaps in their arrangements as against the Central Bank's expectations on fund fees and costs.
Q4 2023 (TBC)	Outsourcing Register filing via the ONR (reference date 31 December 2022) for in-scope fund management companies (exact timing remains to be confirmed by the Central Bank).
1 December 2023	Operational resilience action plans taking account of the Central Bank's operational resilience guidance to be in place.
2024	
24 May 2024	In-scope funds investing over 50% of their portfolio in directly or indirectly held Irish property assets ("Property Funds") to take action to ensure their liquidity timeframes comply with the Central Bank's guidance on redemption terms for Property Funds.

This is a condensed version of our Asset Management and Investment Funds Legal and Regulatory Report setting out key developments during the quarter.

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1. UCITS DEVELOPMENTS

1.1 ESMA Q&A on UCITS Update

On 3 February 2023, ESMA published an updated version of its [Q&A](#) on the UCITS Directive containing an additional Q&A (5e) concerning the interpretation of the issue concentration rule in Article 52(1)(b) of the UCITS Directive.

Answer 5(e) confirms that the term “body” as referred to in Article 52(1)(b) means “credit institution” (as mentioned in Article 50(1)(f) of the UCITS Directive). The Q&A also states that the guidance provided by this Q&A is only applicable in the context of Article 52(1)(b) and should not affect the meaning of the term “body” in other instances of the UCITS Directive.

1.2 Central Bank UCITS Guidance and Q&A Updates – March 2023

- Updated guidance in relation to PRIIPs KIDs for UCITS

On 24 March 2023, the Central Bank of Ireland (the “**Central Bank**”) updated its [guidance](#) on the filing and submission requirements for PRIIPs KIDs for UCITS. The amended guidance clarifies the process for filing PRIIPs KIDs for UCITS seeking authorisation from 1 January 2023.

The submission for new UCITS umbrellas should be made by email on authorisation day with the other authorisation documents to: fundsauthorisation@centralbank.ie.

UCITS authorised prior to 1 January 2023 that are now required to produce a PRIIPs KID are not required to file the PRIIPs KID with the Central Bank at this time. The Central Bank intends to issue further guidance confirming the filing requirements for these UCITS in due course.

The submission for new sub-funds should be made through [ORION](#) on authorisation day with the other authorisation documents.

The guidance additionally outlines the procedures for submission of an amended PRIIPs KID:

- (a) For existing UCITS authorised prior to 1 January 2023 that have not filed a PRIIPs KID with the Central Bank as part of their authorisation cannot file a new PRIIPs KID through the Portal at this time. The Central Bank intends to issue further guidance confirming the filing requirements for these UCITS in due course.
- (b) Where a UCITS authorised from 1 January 2023 or later has submitted a PRIIPs KID as part of its authorisation application and is seeking to submit an update of that PRIIPs KID, the submission can currently be made through portal using the “UCITS KIID Update Request Changes” as a temporary measure. The Central Bank intends to issue further guidance for the filing of amendments to PRIIPs KIDs in due course.

- 38th Edition of the Central Bank’s UCITS Q&A

On 24 March 2023, the Central Bank published the [38th edition](#) of the UCITS Q&A features amendments to three Q&As concerning PRIIPs KID filing requirements in order to conform to the updated website guidance.

Additionally, this edition of the Q&A also features two new Q&As (IDs 1110 and 1111) in relation to the filing requirements for PRIIPs KIDs of UCITS which intend to market to different types of investor.

ID 1110 confirms that if a UCITS markets share classes within a fund or sub-fund to only professional investors, the UCITS may submit a UCITS KIID to the Central Bank for those share classes.

ID 1111 confirms that the PRIIPs KID should be submitted as part of the passporting notification of a foreign domiciled UCITS registered to market in Ireland that intends to market to retail investors in Ireland for onward submission to the Central Bank.

2. AIFMD DEVELOPMENTS

2.1 ESMA Q&A on AIFMD Update

On 10 March 2023, ESMA published an updated version of its [Q&A](#) on the application of the AIFMD.

The latest Q&A contains a new question at new Section XVI concerning the proper interpretation of the notion of “substantive direct or indirect holding” in Article 3(2) of the AIFMD, which addresses the partial exemption from provisions of AIFMD for registered AIFMs.

The answer provided by the European Commission states that the notion of “substantive direct or indirect holding” refers to situations where the AIFM manages the portfolios of AIFs through its direct or indirect holding in a company. This covers, for instance, situations whereby the AIFM de facto has the power to impose decisions on the AIF portfolio composition, its asset allocation or its risk management.

The Q&A notes that Article 3(2)(a) of AIFMD does not set a quantitative threshold (which the criterion of substantive direct or indirect holding could be considered as met) and the notion of “substantive direct or indirect holding” shall be assessed on a case-by-case basis by AIFMs supervisors.

3. CENTRAL BANK UPDATES

3.1 Industry Letter on Costs and Fees

On 24 March 2023, the Central Bank published an [industry letter](#) which sets out the findings from the Central Bank’s review of the costs and fees charged to UCITS as part of ESMA’s [Common Supervisory Action](#) (**‘CSA’**). The purpose of the CSA was to assess UCITS management company compliance with the relevant cost-related provisions contained in the UCITS framework.

Whilst the Central Bank did not identify examples of material undue costs charged to UCITS, a number of deficiencies were identified by the regulator in the cost and fee structure set by UCITS management companies (**“UCITS Mancos”**) for investment funds.

The key findings detailed in the industry letter focus on six distinct areas. Our recent [advisory](#) outlines the key findings and expectations outlined by the Central Bank in the industry letter and next steps for fund management companies, as further detailed below.

Area of Focus	Industry Letter Finding	Central Bank’s key expectations of fund management companies (“FCMs”)
1. Lack of policies and procedures on costs and fees	A significant majority of UCITS Mancos reviewed failed to demonstrate that they have sufficient pricing governance structures in place. The absence of detailed documented policies and procedures to govern the calibration and imposition of costs and fees gives rise to the risk that the control environment for costs and fees is ineffective and increases the potential for undue costs to be imposed on investors.	<ul style="list-style-type: none"> All FMCs should have structured, formalised pricing policies and procedures in place with clear oversight and approval from senior management that allows for the transparent identification and quantification of all costs charged to the fund.
2. Periodic reviews of costs and fees	A majority of UCITS Mancos reviewed failed to evidence that regular reviews were conducted of their costs and fees structure. In some	<ul style="list-style-type: none"> All costs, both new and existing, are reviewed on an annual basis taking into account the investment objective and strategy of the fund, the target and actual

	<p>instances, fee structures were established prior to the fund being launched and were not reviewed during the lifetime of the fund.</p>	<p>level of performance achieved and the role and responsibilities of service providers.</p> <ul style="list-style-type: none"> • Periodic independent reviews of cost and fee structures should also be performed to ensure that these structures continue to offer investors a return commensurate with the risk profile of the fund.
<p>3. Design and oversight of fee structure</p>	<p>Where the UCITS Mancos did not have documented pricing policies and processes in place, there was an over-reliance by UCITS Mancos on the assessments made by delegate investment managers for determining the pricing structure of the funds, with limited engagement in the process by some UCITS Mancos.</p>	<ul style="list-style-type: none"> • Clear policies and procedures are required for the design, oversight and regular review of the costs and fees structures to ensure they are operating effectively and in the best interests of investors.
<p>4. Efficient Portfolio Management ("EPM")</p>	<p>A number of UCITS Mancos engaged in securities lending programmes retained significantly more revenue (between 30-40%) than their peers from their securities lending programmes. In addition, a significant majority of UCITS Mancos utilising EPM did not have formalised policies and procedures in place covering EPM activities, or where they were in place, there was a general lack of sufficient detail. There was a lack of evidence that UCITS Mancos undertook regular reviews of the fees applicable to securities lending arrangements on a planned and systematic basis.</p>	<ul style="list-style-type: none"> • All fee arrangements with respect to securities lending programmes should be compliant with ESMA's Guidelines on ETFs and other UCITS issues and be clearly disclosed within the fund prospectus or supplements as well as being captured in the FMC's policies and procedures. • Fee arrangements relating to all EPM activities should be reviewed as part of the FMC's annual costs and fees review. • FMCs should undertake a review of EPM disclosures within fund documentation to ensure these clearly describe the EPM strategy, the risks involved and the fee structure relating to the specific EPM techniques, which the fund is utilising.
<p>5. Fixed Operating Expense ("FOE") Models</p>	<p>Where a FOE rate covering all of the running costs of a fund was provided for, a majority of UCITS Mancos were in receipt of additional income from their decision to implement a FOE.</p>	<ul style="list-style-type: none"> • Where a FOE model is used for the purposes of providing investors with protection and certainty with respect to the fees being incurred, those investors should be fully aware of all expenses and the model should be calibrated so that any differential is minimised and that undue costs are not charged to investors. • FMCs should undertake a review of FOE models as part of the annual costs and fees review.
<p>6. Non-discretionary Investment Advisors</p>	<p>The practice of a non-discretionary investment advisor being paid a greater fee than the delegated investment manager raised supervisory concerns as to whether:</p>	<ul style="list-style-type: none"> • The role performed by the investment advisor is expected to be non-discretionary in nature and an adjunct to the role performed by the investment manager.

	(i) the investment advisor is in fact the de facto discretionary investment manager; and (ii) the negotiated fee is in the best interests of the investors.	<ul style="list-style-type: none"> FMCs should ensure that the fee arrangements for non-discretionary advisors are appropriate for the services provided.
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The letter includes a requirement for all firms managing both UCITS and AIFs to put a plan in place by the end of Q3 2023 to remediate any gaps in their arrangements as against the Central Bank's expectations outlined in the letter.

3.2 Key Financial Regulation and Supervisory Priorities for 2023

On 25 January 2023, the Governor of the Central Bank delivered a [statement](#) at the Joint Oireachtas Committee on Finance on the Central Bank's financial regulation priorities for the year ahead.

In addition, the Central Bank published the Governor's accompanying [letter](#) to the Minister for Finance and a press release where the Governor [highlighted](#) financial regulatory priorities of interest to the funds industry.

On 16 February 2023, the Central Bank issued a cross-sectoral '[Dear CEO' Letter](#) highlighting to firms the key regulation and supervisory priorities for 2023, with [further engagement](#) on the priorities at an event hosted by the Institute of Banking and attended by representatives from across the regulated financial services sector.

A key milestone in the Central Bank's regulatory work programme for this year is to enhance the governance, oversight and investor outcomes specifically in the funds sector, including the implementation of new ESG requirements and measures to mitigate greenwashing risks. The Central Bank also intends to focus on strengthening the resilience of the financial system to climate change risks and its ability to support the transition to a climate-neutral economy, along with implementing the EU's Sustainable Finance Disclosures Regulation ("**SFDR**"). The Central Bank's thematic review of investment fund classifications and a spot-check review of the SFDR Level II filings are currently underway.

Other Central Bank initiatives aimed at enhancement of the financial regulatory framework this year are set out below.

- Resilience - The Central Bank intends to prioritise the assessment and management of risks to financial and operational resilience, together with a focus on implementation of EU Regulation 2022/2554 on digital operational resilience for the financial sector ("**DORA**") (as outlined at section 4.5 below) and the implementation of the proposed [Regulation](#) on Markets in Crypto-assets ("**MiCA**"), which is expected to enter into force by the end of Q1 2023 at the earliest and due to apply in 2024.
- Consumer Protection - Driving fair outcomes for consumer and investors through the Central Bank's planned consultation and engagement on the development of its consumer protection framework this year.
- Non-Bank Systemic Risk - The Central Bank has indicated it will continue to progress actions on the systemic risks generated by non-banks (in particular, advancing the development/operationalisation of a macro-prudential framework for non-banks, improvements to the Central Bank's legislative frameworks, and investor protections in the investment fund sector).
- Individual Accountability Framework - The Central Bank engagement on the operationalisation of the Individual Accountability Framework, to ensure it is properly embedded by firms and individuals in order to enhance governance and standards of behaviour in financial firms (as outlined at section 3.6 of this report). The Central Bank (Individual Accountability Framework) Bill is currently progressing through the legislative process with enactment expected in Q1 2023.

- Overseas Funds Regime - The Central Bank also lists as a priority for the first time the implications of the UK's Overseas Funds Regime ("**OFR**") (including the ongoing equivalence process) to ensure that Irish domiciled funds can continue to service UK investors. While the OFR has been legislated for in the UK there are a number of steps remaining before it is operational. Furthermore, the UK has commenced its equivalence assessment for EU UCITS under the OFR, however, the Financial Conduct Authority ("**FCA**"), is still to publish details on how the OFR will work in practice.

Many of the Central Bank's priorities align with ESMA's 2023 Annual Work Programme (*as outlined in our previous update at section 4.6 of the report covering the fourth quarter of 2022*), for example, consumer and investor protection, digital operational resilience, and ESG requirements.

Regulated firms should ensure that developments in these areas are monitored and addressed in their firm's horizon planning for 2023.

3.3 Securities Markets Risk Outlook Report 2023

On 2 March 2023, the Central Bank has published its securities markets risk outlook [report](#) for 2023 which informs regulated financial service providers, investors and market participants of the key risks and areas of focus for markets supervision.

This report highlights key conduct risks that the Central Bank has identified, namely sustainable investing, fund leverage and market integrity. Firms must also demonstrate clear leadership on climate issues, have robust governance processes and ensure services are resilient from cyber risk. It details actions that firms should take to identify, mitigate and manage those risks.

Supervisory Priorities	Areas of Focus	Central Bank's expectations of Financial Service Providers ("FSPs")
1. External Risk Environment	<ul style="list-style-type: none"> • Highly Leveraged Funds; • Less Liquid Funds (high yield funds, credit risks, daily dealing funds); and • Sanctions. 	<ul style="list-style-type: none"> • Conduct robust stress testing, updated regularly, to take due account of market dynamics so that all funds are positioned to ensure their liquidity arrangements are sufficient to meet redemptions and margin calls; • Ensure that liquidity management tools ("LMTs") are being utilised when needed and that appropriate LMTs are in place; • Verify valuations of assets affected by rising interest rates and sanctions; and • Have appropriate systems and controls in place to identify relevant sanctioned instruments and individuals to ensure they are compliant with their obligations in relation to financial sanctions.
2. Sustainable Investing	<ul style="list-style-type: none"> • SFDR product classifications – focus on ensuring that investors are fully informed and in no way misled where investments or financial products are described as "green" or "sustainable"; • Integration of sustainability risks by Fund Management Companies; • ESMA / NCAs Common Supervisory Action on sustainability in 2023; and 	<ul style="list-style-type: none"> • Ensure they adhere to their regulatory obligations regarding the correct disclosure of sustainability related information in product offerings; and • Have robust procedures and policies in place to ensure products marketed as 'green' or 'sustainable' meet the criteria to be described as such.

	<ul style="list-style-type: none"> Green Bonds (i.e. debt instruments that finance, in part or in whole, environmentally sustainable projects). 	
3. Market Integrity	<ul style="list-style-type: none"> Market Surveillance; Cancellation/Amendment of Orders; Reporting of Suspected Market Abuse; and Inside Information. 	<p>In-scope FSPs (and issuers of financial instruments) are expected to:</p> <ul style="list-style-type: none"> Ensure that frameworks for the identification, assessment and reporting of suspected instances of market abuse are sufficiently robust to identify, manage and mitigate emerging risks in what is a rapidly changing market environment; Monitor all orders and trades, including cancelled and amended orders; Submit a Suspicious Transaction and Order Report to the Central Bank without delay once there is a reasonable suspicion that the relevant conduct could constitute market abuse; and Maintain robust frameworks and associated controls to comply with the provisions in the Market Abuse Regulation ("MAR") concerning inside information.
4. Market Conduct Risk Management	<ul style="list-style-type: none"> Risk Identification and Assessment (in particular, effective conflicts of interest policies and processes); and Hybrid-Working Environment. 	<ul style="list-style-type: none"> Develop and embed more robust frameworks for the identification and assessment of market conduct risk inherent to their business; Manage and mitigate emerging risks in what is a rapidly changing geopolitical and economic environment; and Record business telephone and electronic communications including when alternative working arrangements are in place and ensure communications are not taking place through unauthorised channels.
5. Delegation and Outsourcing	<ul style="list-style-type: none"> Funds Delegation and Outsourcing; Non-Funds Delegation and Outsourcing; and Increased dependence on outsourcing in areas such as cybersecurity and digital business processes. 	<p>FSPs are expected to have regard to:</p> <ul style="list-style-type: none"> The Cross Industry Guidance on Outsourcing; The requirements of the markets abuse regulation ("MAR") and MiFID, and ensuring that the firm outsourcing activities retains ultimate responsibility for governance and oversight of the delegated activities; and Oversight and continuous monitoring of any digital processes outsourced to third parties.
6. Cybersecurity	<ul style="list-style-type: none"> Increased likelihood of cyber-attacks; and Cybersecurity governance and risk management 	<ul style="list-style-type: none"> Note the priorities identified in existing guidance published by the Central Bank in recent years, many of which are closely aligned to DORA:

	processes reflect the objectives of DORA.	<ul style="list-style-type: none"> ○ Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks ○ Cross Industry Guidance on Operational Resilience ○ Cross Industry Guidance on Outsourcing ▪ Ensure adequate tools and governance frameworks are in place locally to identify, measure, manage, monitor and report Information and Communications Technology ("ICT")/cybersecurity risks; ▪ Ensure ICT governance and ICT risk management frameworks are appropriately designed and implemented; and ▪ Ensure they have robust ICT/cybersecurity risk management practices in place.
7. Data Quality	Persistent issues with the quality of data received from market participants e.g. those datasets gathered in line with AIFMD, EMIR, MiFIR and the SFTR which are used extensively across the Central Bank to monitor risk and develop policy.	<ul style="list-style-type: none"> • Submit accurate data on a timely basis in line with their obligations; • Have appropriate oversight of data reporting from Board level down (including where data reporting is outsourced); • Ensure escalation channels are in place to promptly address data reporting issues; and • Engage with the Central Bank as soon as possible after any data issues are identified. Failure to do so may warrant supervisory intervention up to and including enforcement action.
8. Digital Innovation	<ul style="list-style-type: none"> • Implementing New Technologies; and • Crypto Assets (the Central Bank's position remains that it is "highly unlikely" to approve crypto proposals for UCITS or RIAIFs. This position remains under review and will be informed by European regulatory discussions on the topic). 	<p>FSPs (and issuers of financial instruments) are expected to:</p> <ul style="list-style-type: none"> • Note the requirements of the upcoming MiCA; • Be aware that the Central Bank presently considers exposure to crypto assets to be unsuitable for retail investors in line with the joint position of the ESAs; and • Ensure that risk frameworks support the identification, mitigation and management of risks arising from the implementation of new technologies.

Our recent [advisory](#) outlines the Central Bank's key areas of supervisory focus for 2023 and next steps for boards of funds and their service providers. Walkers will continue to keep firms and boards apprised of developments in the Central Bank's identified regulatory and supervisory priorities.

3.4 Demographic Analysis Report 2022 for PCF Roles

On 10 March 2023, the Central Bank published the seventh edition of its demographic and diversity [report](#) within the regulated financial services industry which includes data on the gender diversity of applications for pre-approval controlled functions ("PCF") roles during 2022.

The report notes that across the financial services sector overall, significant progress is still required. For example, female applications for all board level positions increased only marginally from 28% in 2021 to 29% in 2022. A pronounced gender imbalance in board level applications remains. Derville Rowland noted that the Central Bank 'want to see much deeper and sustained progress than this on diversity in all its forms: Age, ethnicity, sexual orientation, education, nationality, disability, beliefs and more.'

The Central Bank published a [speech](#) by the Deputy Governor for consumer and investor protection, Derville Rowland on Diversity and Inclusion in the Financial Services Sector which was given at the Walkers International Women's Day event which coincided with the launch of the Central Bank report.

[Walkers welcomes Central Bank of Ireland Deputy Governor to International Women's Day event focused on "Embrace Equity"](#)

Her speech in particular highlighted the importance of equity – the central theme of International Women's Day and noted that the Central Bank "want the firms we regulate to be sufficiently diverse and inclusive, at all levels and particularly at senior level, to prevent group-think, guard against overconfidence, and promote internal challenge."

3.5 Changes to the Fitness & Probity application process

On 7 March 2023, the Central Bank published an [overview](#) of the planned changes to the system for submitting fitness & probity applications to a pre-approval controlled function.

On 30 March 2023, the Central Bank published further guidance on the [changes to its Fitness & Probity application process](#) for regulated financial service providers and also published the new PCF Individual Questionnaires ("IQ") template.

The guidance outlines that on 24 April 2023, the Central Bank's portal will be enhanced with improved functionality in order to facilitate the submission of IQs which will no longer be submitted via the Online Reporting System ("ONR").

Portal administrators are required to review and approve portal users' requests to link their ONR and portal accounts to ensure they can inherit the permissions and access rights of their ONR account. Individuals who are not currently registered as portal users and who will be completing applications as a PCF, proposer or IQ point of contact, should ensure that they are registered as a user on the portal. Once registered, applicants will have their own new F&P profile. This F&P profile will only require completion on an individual's first use, and can then be used for subsequent IQ submissions, rather than having to complete this F&P profile for every application. The new F&P profile includes an option for applicants to share their information relating to gender, country of birth and ethnic origin. As outlined above, individuals involved in the IQ application process as either an applicant, proposer or point of contact should ensure that they are registered as a user on the portal.

- Key changes to the template PCF IQ

The guidance notes a number of sections of the IQ which have been amended to include new or updated questions.

At section 3 of the IQ, which relates to the professional experience of the applicant, there are new questions in respect of the applicant demonstrating: the competence and skills appropriate to the proposed PCF role, sound knowledge of the business of the RFSP and clear and comprehensive understanding of the regulatory and legal environment appropriate to the relevant function.

At section 5, which relates to the reputation and character of the applicant, there are new questions for example, in respect of: remuneration clawbacks for alleged wrongdoing, disciplinary proceedings by an employer and requests for further information on prosecutions and proceedings.

At section 6, relating to existing Central Bank approvals, the PCF information which will now be linked on the Central Bank's system will be pre-populated to the IQ.

Section 11 sets out the proposer declaration and now includes questions on whether the proposing entity is making the appointment in compliance with its internal targets for gender diversity for PCFs, whether conflicts of interests have been considered and the reasons why any matters in section 5 of the IQ are not considered to affect the applicant's suitability to perform the role.

These changes are planned to go live on Monday 24 April 2023 and access to the Fitness and Probity section of the ONR will be disabled on Thursday 20 April 2023 at 5pm. From 24 April 2023, all IQs which are at the pre-submission stage on ONR will need to be re-entered and submitted on the new system.

3.6 Consultation on the Individual Accountability Framework (*This is a further update to section 3.5 of the quarterly report covering the third quarter of 2022*)

Following enactment of the Central Bank (Individual Accountability Framework) Act 2023 (5 of 2023) (the "Act") on 9 March 2023, the Central Bank published its public consultation [CP153](#) on 'Enhanced governance, performance and accountability in financial services Regulation and Guidance under the Act'.

CP153 incorporates a three-month public consultation period on key aspects of the Individual Accountability Framework, and the consultation includes the publication of draft [regulations](#) (Annex I) and [guidance](#) (Annex II).

The draft regulations and guidance seek to provide clarity in terms of the Central Bank's expectations for the implementation of three aspects of the framework: namely the Senior Executive Accountability Regime, the conduct standards and the enhancements to the fitness and probity regime. The latter requirements which will apply from 31 December 2023 would be enshrined in the Fitness & Probity Certification Regulations which will clarify the obligation for regulated firms to proactively certify that individuals carrying out certain specified functions are fit and proper.

Our recent [advisory](#) outlines the enactment of the Act and the key points to note in CP153.

3.7 Dear CEO Letter - MiFID Investment Firms and Market Operators

On 29 March 2023, the Central Bank published its [Dear CEO Letter](#) on 'Targeted Reviews on Control Frameworks and Risk Appetite Statements in MiFID Investment Firms and Market Operators'.

The purpose of this letter is to outline the best practices and key findings identified during its targeted reviews. The good practices observed are set out in Appendix 1 to the letter and key findings, together with associated Central Bank expectations, are outlined in Appendix 2.

The Central Bank expects investment firms to fully consider the best practices as well as the key findings identified and evaluate their own risk and compliance governance structures, risk management frameworks and their risk appetite statements to identify if any improvements are required. Where gaps/weaknesses are identified, investment firms should develop and implement actions to address these in a proactive and timely manner. The Central Bank requires this letter to be discussed at the next board meeting, and for the discussion to be recorded in the meeting minutes

3.8 Central Bank Speeches During the Period

(a) *Governor's remarks on resilience of the non-bank financial sector*

On 14 February 2023, the Governor of the Central Bank delivered [remarks](#) in Berlin, which addressed the fragility of, and the need to build resilience in the non-bank financial sector and in particular the investment fund sector.

(b) *"Navigating organisations through uncertainty and change"*

On 15 February 2023, Sharon Donnery, Deputy Governor of the Central Bank [addressed](#) the Institute of Directors on the theme of 'Navigating Organisations through a Time of Uncertainty and Change',

which touched on a number of key themes. These themes included regulation and the Central Bank's strategy, which has four connected themes namely safeguarding, future-focused, open & engaged, and transforming. Ms Donnelly's remarks also touched on risks arising from these complex and uncertain economic and geopolitical developments are in turn creating a volatile and uncertain outlook for the financial sector.

(c) *'Implementing DORA - Achieving enhanced digital operational resilience in European financial services'*

On 29 March 2023, the Central Bank published a [speech](#) delivered by Gerry Cross, Director of Financial Regulation, Policy & Risk entitled "Implementing DORA - Achieving enhanced digital operational resilience in European financial services". In his capacity as Chair of the Joint European Supervisory Authorities (ESAs) Sub-Committee on Digital Operational Resilience, Mr. Cross outlined the direct governing principles of the ESA's approach to its work on DORA framework. Noting the challenging timelines and complexity of work needed to implement DORA In particular the principle of proportionality is essential, given the very wide range of firms that fall within the scope of the new framework, that framework has to be fit for application to firms of all types, sizes, shapes, and levels of complexity. Mr. Cross noted that there is already a great deal of proportionality built into the text of the Level 1 regulation, much of which is inherent proportionality – that is, requirements and approaches that quite simply have a different meaning depending on the nature, scale and complexity of the firm.

The remarks also outlined the relevant timelines with the new framework becoming applicable on 17 January 2025, the deadline for completion of the ESA's work on the first package of regulatory measures is January 2024, and July 2024 for the second package of measures. The ESA's outputs generally fall under three main headings: (i) risk management; (ii) incident reporting; and (iii) oversight of critical third party providers.

3.9 Central Bank markets updates

(a) *Issue 1 of 2023*

On 3 February 2023, the Central Bank published its first [markets update](#) of 2023, which included updates of note on the revised client asset requirements and a revised [notice](#) on the implementation of its competent authority discretions pursuant to EU (Investment Firms) Regulations 2021 and Regulation (EU) No 2019/2033.

- Revised Client Asset Regulations

The updated [client asset regulations](#) are contained in Part 6 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 (S.I.10/2023) (the "**2023 Regulations**") and will take effect from 1 July 2023.

Following its consultation in [CP133](#) the Central Bank has also published an [Addendum to its Guidance](#) on the revised client asset requirements, addressing the topic of Transfers of Business.

The client asset requirements apply to investment firms which hold client assets or which enter into title transfer collateral arrangements. 'Investment firms' include MiFID investment firms, investment business firms and UCITS management companies/AIFMs with MiFID 'top-up' permissions (only in respect of those top-up' activities). Certain exclusions apply, including custodial operations for administration of investment instruments or fund accounting services.

The [existing](#) client asset requirements will remain in force until repealed on 1 July 2023. The Central Bank expects that investment firms and credit institutions will have begun their preparations to ensure that they will be fully compliant with the 2023 regulations at the end of the transitional period (1 July 2023 for investment firms and 1 January 2024 for credit institutions undertaking MiFID investment business).

(b) *Issue 2 of 2023*

On 20 February 2023, the Central Bank published its second [markets update](#) of 2023.

- Process Clarification – fast-track filing process for revisions to SFDR pre-contractual annexes

On 17 February 2023, the Central Bank published its [Process Clarification](#) for updates to UCITS and AIF pre-contractual documents arising from Commission [Delegated Regulation \(EU\) 2023/363](#) which was published in the Official Journal of the European Union (the "OJ") on 17 February 2023 (as outlined in the report below at section 4.14(e)).

This Process Clarification notes that the coming into force of Delegated Regulation 2023/363 will result in updates to pre-contractual documentation for UCITS, RIAIFs and QIAIFs. The Central Bank has established a streamlined filing process for pre-contractual document updates based on the revised requirements, under which the Responsible Person¹ will be required to certify compliance via an attestation.

This streamlined process is only available for updates related to Delegated Regulation 2023/363, other SFDR Level I or Level II requirements, updates to ensure consistency with the disclosures included in the annex laid down in Delegated Regulation (EU) 2022/1288, (SFDR RTS) or other SFDR related updates that arise due to clarifications from European Commission, ESAs or the Central Bank. Any other changes must comply with the usual Central Bank review process for the relevant fund and should be submitted in a manner that allows the Central Bank sufficient time to consider the changes.

Alongside the updated documentation, a Responsible Person shall provide an attestation certifying that the amendments made are in accordance with Commission Delegated Regulation (EU) 2023/363, SFDR Level I, SFDR Level II and/or the Taxonomy Regulation (EU) 2020/852). This confirmation should also make it clear that the revised document does not contain any other amendments to the pre-contractual documentation and any amendments made to the investment policy / strategy are only to allow consistency with the disclosure changes referenced above. This attestation along with the relevant revised final dated documents (prospectus/supplement) for UCITS and AIFs are required to be submitted to the dedicated mailbox SFDR@centralbank.ie as soon as possible. Documents should be dated the date they are submitted.

This streamlined process will not apply in the case of SFDR re-classifications or for any new fund/sub-fund application that has been made with the Central Bank for which the disclosures made in relation to SFDR requirements will be reviewed as part of the normal review processes. The Central Bank will apply a version of the streamlined process where the SFDR related updates also involves a change of name, provided the submission includes the attestation referenced.

Filings under this streamlined process should be submitted as soon as possible and at the earliest available opportunity. The Central Bank will keep the submission of the revised documents under review and the streamlined process will be time limited. Industry is engaging with the Central Bank to seek clarity on queries related to filings facilitated under the Process Clarification.

Please also refer to our recent [briefing](#) on the Process Clarification.

(c) *Issue 3 of 2023*

On 28 February 2023, the Central Bank published its third [markets update](#) of 2023, which included updates of note on the expiration of remaining regulatory flexibility in light of Covid-19 and the Central Bank's website guidance on marketing requirements for UCITS and AIFs.

- Expiration of remaining regulatory flexibility for Securities Markets, Investment Management, Investment Firms and Fund Service Providers in light of COVID-19 (*This is a further update to section 3.4 of the quarterly report covering the second quarter of 2022*)

During 2020, in recognition of the challenges faced by firms and market participants as a result of the COVID-19 crisis, the Central Bank allowed flexibilities for regulated firms in specified areas, including

¹ The Responsible Person of a UCITS is the UCITS management company or the UCITS self-managed investment company; the Responsible Person of an AIF is the AIFM or the internally managed AIF, or in the case of an AIF with a non-EU AIFM the Responsible Person is the fund itself.

the suspension of certain due diligence arrangements and periodic on-site visits to outsourcing providers and delegates by fund service providers. Many of these measures have now expired under their own terms and, with the lifting of COVID-19 restrictions, the Central Bank no longer considers the remaining flexibility to be necessary.

As of 28 February 2023, the Central Bank has now [confirmed](#) that on-site visits to outsourcing service providers and delegates by fund service providers should resume in accordance with the relevant requirements. The unedited text of the now superseded communication on the Central Bank's expectations for Securities Markets, Investment Management, Investment Firms and Fund Service Providers in light of COVID-19 is available [here](#).

- Website guidance on marketing requirements for UCITS and AIFs

On 27 February 2023, the Central Bank published revised website guidance on national provisions governing marketing requirements for [UCITS](#) and [AIFs](#). The revised website guidance contains updated information concerning compliance of marketing material with the [ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds](#) and the Central Bank's approach to verification of marketing communications. The website guidance for both UCITS and AIF now states that the Central Bank 'may request and verify marketing communications on a case-by-case basis, for instance, where the Central Bank identifies that there is a heightened risk of potentially misleading marketing communications being made available to investors or potential investors'.

The remaining updates of relevance in this issue are covered elsewhere in this report.

(d) *Issue 4 of 2023*

On 24 March 2023, the Central Bank published its fourth [markets update](#) of 2023, which includes the updated guidance in relation to the PRIIPs KIDs for UCITS, as outlined at section 1.2 of this report.

- Notice of intention in relation to the application of the ESMA Guidelines on stress test scenarios under the Money Market Fund ("**MMF**") Regulation ("**MMFR**")

On 27 March 2023, the Central Bank published a [notice of intention](#) in relation to the ESMA Guidelines on stress test scenarios under the MMFR (the "**Guidelines**"). The notice sets out that the Central Bank expects full compliance with the Guidelines from 27 March 2023. The Central Bank will, in due course, consult on the incorporation of a provision in the Central Bank UCITS Regulations and AIF Rulebook that all managers of MMFs adhere to the Guidelines.

3.10 Central Bank Information Note on liability driven investment ("**LDI**") funds

On 29 March 2023, the Central Bank published an [information note](#) on LDI funds which follows a [statement](#) by the Bank of England's Financial Policy Committee which noted LDI funds should be resilient to a yield shock of around 250 basis points, at a minimum.

In this information note the Central Bank reiterates its expectation that the minimum safeguards highlighted in its November [industry communication](#), in relation to the maintenance of a minimum yield buffer of 300-400 basis point, should continue to be observed.

3.11 Q4 2022 Investment Fund Statistics

On 28 February 2023, the Central Bank published its Investment Fund [Statistics](#) for Q4 2022, which show large inflows into Irish regulated funds ("**IFs**") as the total net asset values of IFs increased by €20bn during the fourth quarter.

On 28 February 2023, EFAMA also published its European Quarterly Statistical [Release](#) for Q4 2022, together with an overview of the full year 2022.

4. OTHER LEGAL AND REGULATORY DEVELOPMENTS

4.1 ELTIF Regulation Update (*This is a further update to section 4.7 of the report covering the fourth quarter of 2022*)

On 20 March 2023, the revised ELTIF Regulation [2023/606](#) of the European Parliament and of the Council of 15 March 2023 amending the Regulation on European long-term investment funds ("ELTIFs") (EU) 2015/760 was published in the OJ. It will enter into force on the twentieth day following publication and will apply from 10 January 2024.

ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before 10 January 2024 shall be deemed to comply with the Regulation until 11 January 2029. ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before 10 January 2024, which do not raise additional capital, shall be deemed to comply with the Regulation. An ELTIF authorised before 10 January 2024 may choose to be subject to the Regulation, provided that the competent authority of the ELTIF is notified

On 14 February 2023, Commissioner McGuinness delivered [remarks](#) on the revised ELTIF regime.

Our recent [advisory](#) addresses the enactment of the revised ELTIF Regulation.

4.2 Benchmarks Regulation ((EU) 2016/1011) ("**EU BMR**")

(a) *EU-UK third-country benchmark administrators*

On 25 January 2023, ESMA and the FCA announced agreement on the text of two memoranda of understanding ("**MOUs**") relating to co-operation arrangements in respect of third-country benchmark administrators under the EU BMR and the UK retained law version of EU BMR (UK BMR).

ESMA and the FCA have agreed a [MoU](#) regarding cooperation and the exchange of information with respect to benchmark administrators based in the UK. The MoU for the purposes of Article 32(5) of the EU BMR concerns benchmark administrators who seek recognition or are recognised in the EU. Under the EU BMR, when a non-EU benchmarks administrator applying for recognition in the EU is subject to supervision in its home jurisdiction, ESMA must first establish an MoU with the relevant non-EU authority as a prerequisite for it to be able to grant recognition to that non-EU administrator. The MoU confirms that the effective exercise of ESMA's supervisory functions under the EU BMR is not prevented by UK laws and that there is no limit on the FCA's ability to exercise the supervisory or investigatory powers awarded to it. The new MOU with the UK FCA enables ESMA to start recognising benchmarks administrators from the UK.

The FCA separately announced a [MoU](#) with ESMA establishing a co-operation arrangement for the purposes of Article 30(4) of the UK BMR. The MoU provides a framework for the exchange of information in relation to EU critical benchmarks and non-critical benchmarks provided by administrators of EU critical benchmarks supervised by ESMA.

(b) *Consultation on scope and third-country regime of the EU BMR (This is a further update to section 4.6(i) of the report covering the fourth quarter of 2022)*

On 2 March 2023, the Commission published a [call for evidence](#) on the scope and third-country regime of the EU BMR.

The two aims of the call for evidence are to:

- (a) ensure continued access to non-EU benchmarks for EU businesses and investors.
- (b) promote EU benchmark labels as an open standard under EU supervision.

4.3 European Commission (the "**Commission**")

- (a) *Commissioner speech on financial services priorities (This is a further update to section 4.5 of the report covering the third quarter of 2022)*

On 24 January 2023, Commissioner McGuinness delivered [remarks](#) at the EU Parliament's ECON Committee where she outlined the Commission's financial services priorities.

Her remarks outlined a number of ongoing Commission initiatives including work on the usability of the Taxonomy Regulation (EU) 2020/852) and the Commission's forthcoming Retail Investment Strategy ("RIS"). The RIS will consider the distribution of financial products to retail investors, the information received by consumers, the behaviour of customers in the digital world, the role of sustainable investing, and consumers' interest, financial advice and inducements. The Commissioner highlighted the issue of inducements, commenting that the Commission has considered closely the effects of the ban on inducements in the Netherlands. Her remarks highlighted conflicts of interest and higher costs that can result from retail investors not being offered independent advice and more cost-effective products. The Commissioner specifically singled out the fact that low-cost products like ETFs are hardly ever recommended.

- (b) *Decision on European Supervisory Authorities ("ESAs") Q&A on PRIIPs KID (This is a further update to section 3.14(c) of the report covering the second quarter of 2022)*

On 17 January 2023, ESMA published the Commission [Decision](#) to the ESA's question on the process for filing the PRIIPs KID for the purposes of UCITS cross-border marketing notifications (originally posed in its April 2022 [advice](#) to the Commission on its review of the PRIIPs Regulation).

The content of the Commission's response is contained in the [Annex](#) to the Commission's decision and confirms that UCITS (or their management companies) shall send a PRIIPs KID (instead of the UCITS KIID) to the home competent authority of the UCITS (per Article 82 of Directive 2009/65/EC) in accordance with existing UCITS KIID rules.

Accordingly, Article 82 should be read as requiring the filing of PRIIPs KIDs (instead of UCITS KIIDs) with home national competent authorities where UCITS produce PRIIPs KIDs in satisfaction of the UCITS KIID rules.

- (c) *Updated FAQs on Russian and Belarusian sanctions*

On 28 February 2023, the Commission published an updated version of its [Consolidated FAQs](#) on the implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014 on Russian and Belarusian sanctions.

4.4 Companies Registration Office ("CRO") update – PPS numbers submission

Following the commencement of section 33 of the Companies (Corporate Enforcement Authority) Act 2021 which requires Directors to submit Personal Public Service ("PPS") numbers, the CRO [confirmed](#) that the requirement will be implemented for all directors each time a prescribed filing is made with effect from 23 April 2023.

A specific filing to register the PPS number will not be required but from the effective date a PPS number of the directors will be required for the following filings;

- Form A1 – for incorporation of a new company
- Form B1 – annual return
- Form B10 – for the appointment or resignation of a director, or change of their details
- Form B69 – notice by a director of cessation of office where a company has failed to file a form B10

The PPS number will be retained securely by the CRO the same as the RBO in hashed format and will not be publicly available.

Where a director does not have a PPS number, they need to apply for a verified identity number ("**VIN**"), by means of a Form VIF. And provide their VIN to the CRO in conjunction with the above filings.

4.5 Digital Operational Resilience Act (*This is a further update to section 4.9 of the report covering the third quarter of 2020 and section 4.4(k) of the report covering the third quarter of 2022*)

[Regulation \(EU\) 2022/2554](#) on digital operational resilience for the financial sector ("**DORA**") and the [Amending Directive \(EU\) 2022/2556](#) (the "**Amending Directive**") were published in the OJ on 27 December 2022 and entered into force on 16 January 2023. The Amending Directive will align a number of other directives, including MiFID II, PSD2, UCITS and AIFMD with DORA.

DORA was proposed as part of the Commission's digital finance package aiming to prevent and mitigate cyber threats and ensure that firms can withstand, respond to and recover from all types of information and communication technology ("**ICT**") related disruptions and threats.

The Commission has written a [letter](#) and accompanying [provisional call for advice](#) dated 21 December 2022 requesting technical advice from the ESAs on delegated acts to be adopted regarding designation criteria and fees for the DORA oversight framework.

The ESAs have already announced that they intend to develop technical standards applicable to all in scope financial entities on ICT risk management framework and guidelines on the methodology for calculating costs, and quantifying losses for response and recovery, as mandated under DORA. It also intends to produce standards and reports on reporting of ICT-related incidents.

DORA will apply from 17 January 2025 and member states are required to adopt the measures necessary to comply with the Amending Directive also by 17 January 2025.

On 14 February 2023, ESMA's Securities and Markets Stakeholder Group (the "**SMSG**") delivered its [advice](#) to ESMA on potential practical challenges regarding the implementation of DORA, which came into effect on January 16, 2023. DORA comprises twelve new mandates for the ESAs to issue technical standards and guidelines within the next twelve to eighteen months, often dealing with very complex matters at a high level of granularity. In particular, the advice recommends that a regulatory roadmap for the implementation of DORA that addresses potential overlaps with existing EU and member-state rules could be of great help for entities planning for the transition to allow for a smooth and comprehensive migration towards the new framework.

4.6 Distributed ledger technology ("**DLT**") pilot regime

On 23 March 2023, [Regulation 2022/858](#) of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology (the "**DLT Pilot Regime**") entered into force.

The purpose of the DLT Pilot Regime is to introduce certain temporary exemptions (up to 6 years) from certain existing requirements of EU financial services legislation in order to enable the use of DLT market infrastructures without contravening the current EU framework. Units in UCITS (not AIFs) whose market value is less than € 500 million may be listed and traded on DLT market infrastructures.

On 31 March 2023, ESMA published an updated version of its [Q&As](#) relating to the implementation of the DLT Pilot Regime Regulation. The latest Q&A has added a new Q&A on shares valuation.

4.7 EMIR Regulation (648/2012) ("**EMIR**")

(a) *Memoranda of understanding – Taiwan & Malaysia*

On 16 January 2023, ESMA published memoranda of understanding ("**MoUs**") with the regulatory authorities of [Taiwan](#) and the [Malaysia](#) respectively, with respect to the recognition of third-country central counterparties ("**CCPs**") or covered CCPs pursuant to Article 25 of EMIR. Each MoU is 'based upon close co-operation and the Authorities' mutual respect for each jurisdiction's regulatory regime and each Authority's supervisory practices'.

(b) *Publication of amending Delegated Regulations*

On 13 February 2023, the following two amending Delegated Regulations containing regulatory technical standards ("**RTS**") that extend the temporary exemptions regime for intragroup contracts for three years to 25 June 2025 were published in the OJ and entered into force on 14 February 2023:

- [Commission Delegated Regulation \(EU\) 2023/314](#) amending the RTS laid down in Delegated Regulation (EU) 2016/2251 (the margin RTS) as regards the date of application of certain risk management procedures for the exchange of collateral. This extends the deferred date of application of the margin requirements for intragroup transactions set in the margin RTS to 30 June 2025.
- [Commission Delegated Regulation \(EU\) 2023/315](#) amending the RTS laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts). This extends the deferred date of application of the clearing obligation for intragroup transactions set in the three Commission Delegated Regulations to 30 June 2025.

These amendments may be impactful for certain intra-group transactions between Irish counterparties and other entities in the same group, established in countries where no equivalence decision has been adopted pursuant to Article 13(2) of EMIR.

(c) *Consultation on amendments to guidelines on position calculation*

On 28 March 2023, ESMA published a [consultation paper](#) on amendments to its guidelines on position calculation for trade repositories ("**TRs**"). The aim of the consultation is to ensure consistency of position calculation across TRs with regards to the time of calculations, the scope of the data to be used in calculations and the calculation methodologies under the new EMIR Refit standards.

The consultation closes on 9 May 2023. ESMA intends to publish a final report on the amended guidelines during Q3 2023 to allow for at least a six-month implementation period before the go-live of EMIR Refit on 29 April 2024.

(d) *EMIR 3.0*

The [European Systemic Risk Board](#) ("**ESRB**") (on 20 March 2023) and the [European Fund and Asset Management Association](#) ("**EFAMA**") (on 14 March 2023) issued respective responses to the Commission's proposal of 7 December 2022 regarding EMIR (the "**EMIR 3.0**" review). Under EMIR 3.0, market participants would be required to have an active account with an EU-based clearing house. UK clearing counterparties would be able to continue to serve EU clients until the end of June 2025.

The ESRB makes a number of recommendations that could be incorporated into EMIR 3.0 review in order to make the financial system safer. EFAMA was more critical of the proposals noting that "the objective of maintaining a competitive and efficient clearing ecosystem would be undermined by the proposal to introduce mandated active accounts" at EU central clearing counterparties. According to EFAMA, asset managers "require a free choice" of clearing counterparties "to fulfil their fiduciary duty to act in their client's best interest and obtain the best investment outcomes".

4.8 ESMA and ESAs

(a) *ESMA Chair speech – macro-prudential supervision of investment funds*

On 21 March 2023, ESMA published a [speech](#) by ESMA chair, Verona Ross, on "the macro-prudential supervision of investment funds- from a global debate to a balanced European regulatory frameworks". Her remarks discussed ongoing EU and global regulatory efforts to strengthen the remaining vulnerabilities of open-ended funds ("**OEF**").

The remarks noted that the Financial Stability Board ("**FSB**") and IOSCO are working on promoting greater availability and use of LMTs, developing detailed guidance on the design and use of LMTs, enhancing the availability of data for financial stability monitoring and promoting the use of stress testing. The FSB is expected to adopt its new recommendations in 2023 and IOSCO is working, at the same time, on guidance on price-based LMTs (including swing prices and dilution levies).

Her remarks touched on the AIFMD review which also aims at addressing the vulnerabilities identified by global and European bodies to make the sector more resilient as well as increasing investor protection. These include the development of an EU framework for the design and use of LMTs, harmonised rules for loan-origination funds and the creation of new reporting for UCITS.

The speech also noted the lack of legislative action for money market funds reform. It is understood that the Commission plans to present a report on the functioning of the money market fund sector to MEPs and member states in the coming weeks but that the rules are not expected to be implemented before the new Commission is established in 2025.

(b) *Annual report costs and performance of EU retail investment products*

On 17 January 2023, ESMA published its fifth annual statistical [report](#) and accompanying [annexes](#) on which examined the costs and performance of EU retail investment products between 2012 and 2021.

In its [press release](#), ESMA finds that the costs of investing in the most important retail financial products continued to decline, albeit at a very slow pace. The report emphasises the demonstrates the relevance of disclosure of costs to investors, as required by the MiFID II, UCITS and PRIIPs rules and the need for asset managers and investment firms to act in the best interest of investors especially considering their role in manufacturing and distributing investment products.

(c) *CSA with national competent authorities ("NCAs") on the application of the disclosure rules under the MiFID II Directive*

On 16 January 2023, ESMA [announced](#) the launch of a CSA with NCAs on the application of the disclosure rules under the MiFID II Directive.

ESMA notes the key role that marketing communications and advertisements can play in determining consumer behaviour and influencing investment decisions. It is therefore launching the CSA to assess the application by investment firms and credit institutions of the MiFID II requirements on marketing communications across the EU. The ESMA press release highlights that the work will include:

- NCAs reviewing whether marketing communications (including advertisements) are fair, clear and non-misleading and how firms select the target audience for the marketing communications, especially in the case of riskier and more complex investment products;
- Considering marketing and advertising by firms through distribution channels including apps, websites, social media and collaborations with affiliates such as influencers; and
- Collecting information about possible greenwashing practices observed in marketing communications and advertisements.

ESMA believes the initiative, and the related sharing of practices across NCAs, will help ensure consistent implementation and application of EU rules and enhance the protection of investors in line with ESMA's objectives.

The CSA will be conducted over the course of 2023.

(d) *Publication of the updated Money Market Funds Guidelines (This is a further update to section 4.6(h) of the report covering the fourth quarter of 2022)*

On 27 January 2023, ESMA published [translations](#) in the official EU languages, including the [English language version](#), of its updated guidelines on stress test scenarios under the MMFR.

The updated text of the guidelines apply from two months from the date of publication of the translations i.e. from 27 March 2023. The existing guidelines already apply from the dates specified in Articles 44 and 47 of the MMFR.

(e) *Consultation on the review of the methodology on stress test scenarios for Money Market Funds*

On 31 January 2023, ESMA launched its [consultation](#) on the review of the methodology included in the Guidelines on stress test scenarios under the MMFR.

In light of recent market developments and the COVID-19 related stress of March 2020, ESMA's proposed revision of the scenarios relate to the hypothetical changes in the level of liquidity of the assets held in the portfolio of a MMF and the hypothetical macro systemic shocks affecting the economy as a whole.

The [consultation paper](#) focuses on the following changes to the current methodology:

- the proposed revision of the liquidity scenario aims to better take into account the interaction between liquidity and redemption pressures, in light of the stress event experienced in March 2020; and
- the proposed revision of the macro scenario intends to better capture the macro-prudential impact of the scenario, by including assumptions on the underlying markets and other market participants.

The consultation also presents ESMA's considerations on a potential climate risk scenario.

Feedback on the consultation is invited from stakeholders by 28 April 2023. ESMA will then assess responses with the aim of finalising the final report by Q4 2023. The final guidelines on MMF stress tests will also include the calibration of the 2023 stress testing scenario for implementation.

(f) *Inaugural market report on MMFs (This is a further update to section 4.12(a) of the report covering the first quarter of 2022)*

On 8 February 2023, ESMA published its [inaugural market report](#) on EU MMFs providing for the first time a comprehensive market-level view of EU MMFs, based on supervisory information collected by NCAs and ESMA.

The main findings included in the report are:

- **EU MMF sector:** The EU MMF sector had €1.44tn of assets in 2021, with 89% of the funds domiciled in France, Luxembourg and Ireland.
- **Sector breakdown:** Low-volatility NAV ("**LVNAV**") MMFs account for 46% of the total assets, followed by Variable NAV ("**VNAV**") MMFs (42%) and Constant NAV ("**CNAV**") MMFs (12%). All MMFs domiciled in France are of the VNAV type and almost exclusively denominated in EUR. MMFs in Luxembourg and Ireland are mainly in non-EU currencies and set up mostly as CNAVs and LVNAVs. MMFs authorised in other EU jurisdictions are VNAVs denominated in other EU domestic currencies and account only for a small fraction of assets.
- **Asset allocation:** The portfolio structure of EU MMFs remains relatively stable over time, and they are mainly exposed to the financial sector. Between March 2020 and June 2022, average exposures to credit institutions amount to 60% of total assets. Most of the EU MMFs' government debt exposure is towards non-EU sovereigns, and during March to December 2020 LVNAVs increased their share of government bonds before starting a slow readjustment back to the pre-COVID composition.
- **Liquid assets and risk sensitivity:** The share of daily and weekly liquid assets remained above the regulatory minimum, and increased for CNAVs at a regular pace starting in 3Q20. As of 3Q21, EU MMFs have significantly reduced the interest rate risk sensitivity of their portfolios, measured as the weighted average maturity of assets, to improve resilience to a rate rise.
- **Ownership and liabilities:** Professional investors hold more than 90% of EU MMFs. Financial corporations are the main unitholders of MMF shares, with insurance firms, pension funds and banks accounting together for 25% of NAV and other financial institutions, including collective investment undertakings, for 45% of the NAV. Between December 2021 and March 2022 MMFs

experienced substantial outflows, partially driven by investor expectations linked to the increase in interest rates and a turning investor sentiment away from fixed income instruments in general, a trend that reversed later in 2022.

The report also referred to its 2022 proposed [reforms](#) to the MMF Regulation, intended to make MMFs more resilient and which would help to improve the overall stability of financial markets, by reducing the risk of liquidity stress. Alongside key policy measures such as addressing the threshold effects for CNAV MMFs, and addressing liquidity related issues, ESMA suggested complementary reforms aimed at enhancing MMFs' preparedness for a crisis. These reforms also include enhancements of reporting requirements and the stress-testing framework, as well as new disclosure requirements linked to the rating of MMFs.

ESMA has reiterated the importance of having these changes to the MMF Regulation implemented speedily.

(g) *AIFMD Reporting – IT Technical Guidance*

On 6 January 2023, ESMA published [revision 5](#) of its IT technical guidance on AIFMD Reporting, which will be applicable from November 2023 onwards.

The new IT technical guidance introduces new validation rules making more fields mandatory or with stricter rules to improve data quality. The new changes are specified in the tab 'change history' of the excel document. Reporting entities should use the version revision 5 to submit reports required under Articles 3(3)(d) and 24(1), (2) and (4) of AIFMD by November 2023.

The IT technical guidance (revision 4) remains currently applicable until November 2023 when revision 5 becomes applicable. The exact date will be published at a later stage.

(h) *ESAs consult on the exchange of information relevant to the assessment of fitness and propriety*

On 31 January 2023, the ESAs launched a [consultation](#) on draft joint guidelines on the system for the exchange of information by competent authorities when assessing the fitness and propriety requirements of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants.

The proposed guidelines aim to increase the efficiency of the information exchange between sectoral supervisors by harmonising practices and clarifying how competent authorities should use the information system developed by the three ESAs.

Feedback on the consultation is invited from stakeholders by 2 May 2023. The ESAs will aim to finalise the guidelines and the ESAs Information System with a view to making available to competent authorities the system for the exchange of information relevant to the assessment of fitness and propriety by the end of 2023.

(i) *Joint Report on digitalisation education initiatives (This is a further update to section 4.9(l) of the report covering the first quarter of 2022)*

On 12 January 2023, the joint committee of the ESAs published a [joint thematic report](#) on good practices that NCAs and other public entities can follow when designing financial education initiatives on digitalisation, with a focus on cybersecurity, scams, and fraud.

The accompanying [press release](#) outlines that the report identifies 12 good practices that NCAs can follow when designing and implementing their financial education initiatives on these topics. These include:

- the publication of a blacklist of fraudulent providers to help digitally literate consumers properly assess the financial risks arising from financial products and services linked to new technologies, such as crypto assets.

- the application of search engine optimisation to ensure that NCAs' financial education websites appear among the first search results when consumers look for information on specific financial subjects.

The Report is based on an analysis of the [Joint ESA's thematic repository of 127 national financial education initiatives on digitalization](#) with a focus on cybersecurity, scams and fraud published on 31 January 2022.

(j) *First Trends, Risks and Vulnerabilities Report of 2023*

On 9 February 2023, ESMA published its first Trends, Risks and Vulnerabilities [Report](#) for 2023. The following are the main findings relevant to funds and fund service providers.

(i) Overall risk assessment (section 2 of the report):

Contagion and operational risks are considered very high, as are liquidity and market risks. Credit risk stays high and is expected to rise, reflecting the growing concerns over public and corporate indebtedness. Risks remain very high in securities markets and for asset management. Risks to infrastructures and to consumers both remain high, though now with a worsening outlook, while environmental risks remain elevated.

(ii) Market environment (3.1):

The tightening of financial conditions globally has weighed on economic activity, while inflation remains very high. Volatility in energy markets stayed elevated despite a general decline in prices. Structural vulnerabilities expose markets and participants to the risk that shocks to markets could be amplified by liquidity supply and demand imbalances.

(iii) Securities markets (3.2):

Equity prices were volatile in 2H22 with markets partially recovering 3Q22 losses based on news flow around relatively stable inflation and positive corporate earnings.

(iv) Asset management (3.3):

The EU fund sector has seen outflows and low performance across most fund types in 2H22, as assets under management experienced their sharpest decline since the global financial crisis. Maturity mismatches in commercial real estate funds persist, and the impact of the UK gilt market turmoil on leveraged liability-driven investment funds in 2H22 confirmed existing concerns over fund liquidity risk management and excessive leverage, as well as contagion risks given strong systemic interconnections.

(v) Infrastructures and services (3.5):

Central clearing volumes grew further, as margins collected for interest rate and commodity derivatives rose with rises in prices and volatility in underlying instruments, while some migration from exchange-traded derivatives to OTC energy derivatives was observed.

(vi) Market-based finance (4.1):

Capital market financing decreased sharply in 2022, turning negative for the first time since the market stress in early 2020. The drop in activity is linked to high investor uncertainty, tighter credit standards for firms, high corporate debt levels and a rapid increase in the overall cost of external financing in the euro area.

(vii) Sustainable finance (4.2):

Net-zero pledges have come under growing scrutiny, with the energy crisis jeopardising decarbonisation objectives. More broadly, the focus on greenwashing has increased while investors

increasingly appear to differentiate between products based on their sustainability credentials, as reflected in steady net flows into SFDR Article 9 funds. Despite this, ESG markets continued to grow, with this trend showing resilience to broader market developments.

Since the introduction of the SFDR disclosure regime, many funds have changed SFDR status. A large majority of these reclassifications were funds 'upgrading' from SFDR Article 6 to Article 8, reflecting (at least to some extent) the rise of ESG investing in the EU. SFDR fund 'downgrades' remained more limited until several large asset managers reclassified around €130 bn worth of Article 9 products in 4Q22. This followed a string of upgrades towards the end of 2021, which had raised concerns over the possible misuse of Article 9 status. The misuse of SFDR as a marketing tool could create potential risks to investors as demand for sustainable products remains strong.

(viii) *Crypto-assets and financial innovation (4.3):*

Crypto-asset valuations have now fallen by almost 70% year-on-year, driven by macro-economic factors and several high-level collapses in 2022. The recent failure of FTX, formerly one of the largest centralised crypto exchanges, triggered some large market corrections across crypto-assets. Contagion within the crypto sector has been substantial, reflected in further price drops of key crypto instruments and knock-on bankruptcies among service providers. Given low exposures by EU market participants, material spill-over effects of the crypto turmoil into the EU finance sector and the real economy have not been registered so far.

(k) *Research on Artificial Intelligence ("AI") in securities markets*

On 1 February 2023, ESMA published a research [article](#) on the current and potential applications of AI in securities markets, explaining the interplay between industry practices in the degree of adoption of AI-based tools and the regulatory framework. The article outlines how use of AI in finance is under increasing scrutiny from regulators and supervisors interested in examining its development and the related potential risks. In particular, the proposed [Regulation](#) laying down harmonised rules on AI (the '**AI Act**') is scheduled to be voted on by the EU Parliament during March 2023 (with a view under the current timeline to adoption of the final AI Act by the end of 2023).

On 7 February 2023, ESMA's Chair also delivered [remarks](#) on 'Developments in AI and Blockchain – how do we protect investors and supervise markets effectively?'

(l) *Report on clearing and derivatives trading obligations*

On 1 February 2023, ESMA published its [final report](#) on its review of the scope of the clearing and derivative trading obligations to accompany the benchmark transition. The report presents draft amending RTS relating to the benchmark transition away from EONIA and LIBOR and onto new Risk-Free Rates (RFR).

The draft RTS have been submitted to the Commission for endorsement in the form of Commission Delegated Regulations.

(m) *Statement on the Derivatives Trading Obligation*

On 30 March 2023, ESMA published a [statement on the Derivatives Trading Obligation](#) in the context of the migration of credit default swap contracts out of ICE Clear Europe.

The objective of this statement is to support the orderly migration of positions from ICE Clear Europe to other CCPs, following the announcement of the forthcoming closure of ICE Clear Europe's credit default swap clearing service on 27 October 2023.

(n) *Updated Q&As on EMIR, SFTR, BMR*

On 31 March 2023, ESMA published a number of updated Q&As of interest to funds and their service providers including on [SFTR data reporting](#), [EMIR implementation](#) and the [BMR](#).

(o) *ESMA raises concerns with the proposed changes to the insider list regime*

On 20 March 2023, ESMA sent a [letter](#) to the European Parliament and Council raising concerns with proposed changes to the insider list regime in the MAR.

(p) *Final Report on MiFID II product governance guidelines*

On 27 March 2023, ESMA published a [final report](#) following its review of the guidelines on product governance requirements under the MiFID II Directive. The aim of the guidelines is to strengthen investor protection and ensure that firms act in their clients' best interests during all stages of a product's life cycle. The MiFID II product governance requirements are designed to ensure that firms act in their clients' best interests during all stages of the product's life cycle. The report includes feedback from ESMA's consultation and Annex V to the report contains the detailed guidelines. Key changes contained in the published guidelines include:

- practice of identifying a target market per cluster of products instead of per individual product ("clustering approach");
- specification of the compatibility of a product with any sustainability-related objectives;
- determining a compatible distribution strategy where distributors consider that a more complex product can be distributed under non-advised sales; and
- periodic review requirement, including the application of the proportionality principle.

The guidelines will be translated into the official languages of the EU and published on ESMA's website and will apply two months after the date of publication.

(q) *Statement on derivatives on fractions of shares*

On 28 March 2023, ESMA published a [statement](#) addressing investor protection concerns raised by derivatives on fractions of shares.

The statement is addressed to firms and NCAs and clarifies the application of certain investor protection requirements established under the MiFID II Directive (and its implementing measures). The statement explains that the active marketing and sale of so-called "fractional shares" by firms to retail clients is a relatively new phenomenon that has gained momentum in the context of on-line trading platforms and neo-brokers. Such shares allow investors to participate in the share performance of an issuer by way of an instrument that tracks the share price but is available at a smaller purchase price, namely the pro rata share price of the underlying share. Fractional shares usually allow the investor to receive the economic benefits stemming from dividends, but normally do not carry voting rights.

The statement reminds firms that:

- all information to clients, including marketing information, should be fair, clear and not misleading;
- firms offering fractional shares must clearly disclose all direct and indirect costs and charges relating to them and the services provided;
- the target market for these instruments needs to be identified in more detail considering counterparty and liquidity risks;
- as derivatives are complex financial instruments, an appropriateness assessment needs to be carried out where non-advised services are provided; and
- the potential application of the PRIIPs Regulation.

(r) *Warning on crypto-assets*

On 17 March 2023, the ESAs issued a [warning](#) to consumers that many crypto-assets are highly risky and speculative. The ESAs set out key steps consumers can take to ensure they make informed decisions. This warning comes in the context of growing consumer activity and interest in crypto-assets and the aggressive promotion of those assets and related products to the public, including through social media.

In their warning, the ESAs highlight that these assets are not suited for most retail consumers as an investment or as a means of payment or exchange, as consumers:

- face the very real possibility of losing all their invested money if they buy these assets;
- should be alert to the risks of misleading advertisements, including via social media and influencers; and
- should be particularly wary of promised fast or high returns, especially those that look too good to be true.

The ESAs also warn consumers that they should be aware of the lack of recourse or protection available to them, as crypto-assets and related products and services typically fall outside existing protection under current EU financial services rules.

4.9 European Systemic Risk Board ("**ESRB**") (*This is a further update to section 4.7 of the report covering the first quarter of 2022*)

On 14 February 2023, the ESRB [published](#) a [report](#) on advancing macroprudential tools for cyber resilience.

The ESRB is of the view that extra work is needed to increase the resilience of the financial system as a whole against cyber incidents. The report builds on the ESRB's January 2022 [recommendations](#) and the accompanying [report](#) on cyber incidents and is also described as complementing work under DORA. The report has three key areas of focus:

- the ESRB encourages authorities to use the cyber resilience scenario testing approach to pilot system-wide cyber resilience scenario testing as soon as possible.
- the ESRB advocates the use of systemic impact tolerance objectives and will continue to transition from a conceptual approach to a practical basis for implementing them.
- the ESRB will consider which operational policy tools are most effective in responding to a system-wide cyber incident and identify gaps across operational and financial policy tools.

The ESRB will continue to work on an EU-wide strategy to help mitigate systemic cyber risk.

4.10 Guidelines under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("**CJA 2010**")

The Department of Justice issued [guidelines](#) addressed to the competent authorities in respect of functions in Ireland that may be considered to be prominent public functions for the purpose of identifying politically exposed persons under section 37(12) of CJA 2010. A 'prominent public function,' has been generally defined in the guidelines as an office or other employment in a public body in respect of which the remuneration is not less than the lowest remuneration in relation to the position of Deputy Secretary General in the Civil Service.

4.11 International Monetary Fund (the "**IMF**")

On 23 February 2023, the IMF published a policy paper entitled '[Elements of Effective Policies for Crypto Assets](#)'. The paper is designed to provide guidance to IMF member countries on key elements of an appropriate policy response to crypto assets.

The paper contains a framework of nine elements or policy actions that can help IMF member countries develop a comprehensive, consistent, and coordinated policy response to recent failures in the crypto-asset ecosystem, noting that such a framework will not fix any underlying

4.12 IOSCO

(a) *Investment Funds Statistics Report*

On 27 January 2023, IOSCO [published](#) the second edition of the Investment Funds Statistics Report (IFSR), which provides new insights into the global investment funds industry including trend analysis on open-ended funds and closed-ended funds.

(b) *Revised Principles for the Regulation and Supervision of Commodity Derivatives Markets*

On 31 January 2023, IOSCO published a revised version of its [Principles](#) for the Regulation and Supervision of Commodity Derivatives Markets (the "**Principles**") to ensure market integrity.

The aim of the revisions are to ensure that these Principles continue to provide a resilient framework for the regulation and oversight of the commodity derivatives markets.

In revising its Principles, IOSCO focused on market surveillance; transparency; price discovery; the correlation with physical markets; addressing disorderly markets; responding to market abuse; and strengthening the enforcement powers of trading venues against end-user behaviours. The Principles in general and the revisions address various issues highlighted during the recent commodity markets turmoil and volatility. Specifically, the new Principle 16 on unexpected disruptions aims to guide regulators in restoring orderly markets in the case of an unexpected disruption and ensure market participants have a process and adequate plans to address these events.

IOSCO believes that relevant market authorities should review their policies and regulation to ensure that the Principles are effected.

(c) *Report on retail market conduct issues*

On 30 March 2023, IOSCO published its [final report](#) on retail market conduct prepared by its Retail Market Conduct Task Force.

The final report provides an overview of the rapidly evolving retail trading landscape. It considers potential magnifiers of retail investor harm, including increasing retail trading and changing retail behaviour, evolving frauds and scams, and the impact of technological elements, such as social media and digitalisation.

The report sets out a collection of adaptable measures for regulators to consider when dealing with retail market conduct issues, in the form of a toolkit. The toolkit includes various innovative approaches under five overarching categories:

- heightening regulators' digital presence and online strategy to proactively address retail investor harm;
- honing approaches to better identify and mitigate misconduct;
- enhancing cross-border and domestic supervisory and enforcement co-operation frameworks;
- addressing retail investor harm that stems from crypto-assets; and
- implementing new regulatory approaches against retail misconduct.

The final report follows IOSCO's December 2020 report on the retail market conduct implications of COVID-19 and IOSCO will continue to monitor developments in this area.

4.13 Financial Stability Board ("**FSB**") - Progress report on Implementation of G20 Non-Bank Financial Intermediation ("**NBFI**") Reforms (*This is a further update to section 4.9(b) and (c) of the report covering the fourth quarter of 2022*)

On 18 January 2023, the FSB published a [progress report](#) on implementation of the G20 NBFI reforms, which were agreed following the 2008 global financial crisis to strengthen oversight and regulation.

The report's findings include that:

- Adoption of the 2012 International Organization of Securities Commissions (IOSCO) recommendations to reduce the run risk of money market funds (MMFs) is most advanced in the largest MMF markets.

- Adoption of the IOSCO recommendations on incentive alignment approaches for securitisation and of the Basel Committee on Banking Supervision standard on the revised securitisation framework is ongoing.
- Implementation of FSB recommendations for dampening pro-cyclicality and other financial stability risks associated with SFTs is incomplete and continues to face significant delays in most jurisdictions.
- Implementation of most FSB recommendations to assess and mitigate systemic risks posed by other non-bank financial entities and activities is ongoing.

Section 5 of the progress report focuses on implementation of policy recommendations to address structural vulnerabilities from asset management activities and additional recommendations specifically for hedge funds.

The FSB assessment finds that authorities have made meaningful progress in implementing the [2017 FSB Recommendations](#) on asset management structural vulnerabilities. Nevertheless, lessons learnt since then, including during the March 2020 turmoil, have produced new insights into liquidity management challenges in segments of the open-ended funds sector.

On its [2018 recommendations](#), the FSB finds there was a high degree of implementation of regulatory requirements consistent with the objectives of the recommendations.

Based on this assessment, the FSB and IOSCO will carry out follow-up work to:

- revise the FSB and IOSCO Recommendations to address structural liquidity mismatch and promote greater inclusion and use of LMTs, as well as to clarify the appropriate roles of fund managers and authorities in implementing the Recommendations;
- develop detailed guidance on the design and use of LMTs; enhance the availability of OEF-related data for financial stability monitoring; and
- promote the use of stress testing.

In addition to these reforms, the FSB is carrying out further analytical and policy work to enhance the resilience of the NBFIs sector, building on the lessons from the March 2020 market turmoil. Progress in the implementation of new agreed NBFIs policies will be reported in future versions of the report.

4.14 Sustainable Finance

- (a) *Corporate Sustainability Reporting Directive (This is a further update to section 4.15(j) of the report covering the fourth quarter of 2022)*

The [final text](#) of Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 as regards corporate sustainability reporting ("**CSRD**") was published in the OJ and entered into force on January 5 2023. CSRD extends the scope of mandatory sustainability reporting under the non-financial reporting directive (2014/95/EU) ("**NFRD**") regime to all large and listed companies in the EU. Entities falling in scope for CSRD will be subject to reporting on the extent to which activities are environmentally sustainable under the Taxonomy Regulation.

In acknowledgement of the complexity of the reporting regime, CSRD will be introduced on a phased basis (between 2024 and 2028) to allow certain undertakings with more limited resources greater time to prepare for the imposition of requirements. First reporting will commence in 2025, for financial years beginning on or after 1 January 2024, for large public interest entities (over 500 employees) already in the scope of NFRD.

CSRD provides for an exclusion from the scope of the sustainability reporting rules for AIFs and UCITS, as defined in SFDR. Management companies and asset managers are not expressly excluded from the

requirements and accordingly may be in scope for the requirements as either large undertakings or listed companies.

Large undertakings are those meeting two or more of the following criteria:

- balance sheet total exceeding €20 million;
- net turnover exceeding €40 million; and
- average number of employees exceeding 250 during the financial year.

Parent undertakings of large groups (meeting two of the three criteria outlined for large companies above on a consolidated basis) will also fall in scope of the legislation.

Non-EU entities with 'significant activity in the EU' are in scope of the sustainability reporting requirements for applicable third country undertakings which will apply for financial years starting on or after 1 January 2028.

Non-EU entities with significant activity in the EU are those having:

- turnover exceeding €150 million in the Union for each of the last two consecutive financial years; and
- an EU branch with turnover exceeding €40 million in the Union or a large or listed EU subsidiary.

(b) *Consultation on the exercise of Ireland's member state options under CSRD*

On 30 January 2023, the Department of Enterprise, Trade and Employment launched a public [consultation](#) seeking the views of stakeholders and interested parties on the member state options contained within the CSRD, ahead of its transposition into Irish law. Member States have 18 months from the entry into force of CSRD to enact implementing national legislation. Each member state may decide on provisions that are left to the discretion of individual member States and has the option of enacting national provisions that are more stringent than those contained in the text of CSRD.

Member state options for which the Department requests the views of interested parties include those in respect of:

- the exclusion of commercially sensitive information from sustainability reporting;
- website publication of management reports (or making a copy of reports available on request);
- translation of reports;
- provisions for third country undertakings reporting of their turnover;
- introduction of a new category of independent assurance services provider (IASP) to provide for the assurance of sustainability reporting by undertakings; and
- miscellaneous provisions in respect of the assurance of sustainability reports, including not to provide for an administrative sanction regime, where existing criminal law already applies.

The consultation closed on 9 March 2023. Ireland and other member states now have 18 months to transpose the Directive, that is, by July 2024.

(c) *ESMA Opinion on the European Sustainability Reporting Standards (This is a further update to section 4.15(j) of the report covering the fourth quarter of 2022)*

On 26 January 2023, ESMA issued an [opinion](#) on the first set of draft European Sustainability Reporting Standards (ESRS Set 1) developed by the European Financial Reporting Advisory Group ("**EFRAG**"). EFRAG has been tasked by the Commission to develop the mandatory sustainability reporting

standards introduced by CSRD, which will specify, in prescriptive detail the information required to be reported.

ESMA finds that ESRS Set 1 broadly meets the objective of being conducive to investor protection and of not undermining financial stability.

The Commission will now consider ESMA's opinion alongside opinions submitted by the [EBA](#), [EIOPA](#) and other public bodies and adopt ESRS Set 1 into delegated acts by 30 June 2023.

- (d) *ESA Call for Evidence on Greenwashing (This is a further update to section 4.15(m) of the report covering the fourth quarter of 2022)*

On 18 January 2023, ESMA published responses to the ESA's [Call for Evidence](#) on Better Understanding Greenwashing. A number of these responses have been published and are of interest, including the [advice](#) received from the SMSG and EFAMA's [response](#).

In its advice, the SMSG highlighted expressed concern over a strict interpretation of rules for article nine classification and highlighted that the scope of products classified as article eight and article nine under SFDR should be further clarified. It further noted that retail non-professional investors would be better protected from greenwashing whereby article nine funds were the sole carriers of a green classification.

In its advice on the interpretation of greenwashing, EFAMA noted the differences between misleading with intent and regulatory uncertainty. It has highlighted its view that greenwashing assessments should consist of two components namely (a) knowingly misrepresenting sustainability-related practices or features of a product, (b) with the objective or intention to mislead or induce the receiver of the sustainability claim.

On 16 March 2023, the SMSG published a further [report](#) with additional advice concerning greenwashing.

In its report the SMSG propose the following holistic definition of "greenwashing": "the practice of misleading investors, notably (but not limited to) in the context of gaining an unfair competitive advantage, by making an unsubstantiated ESG claim about a financial product or service". It recommends inserting an explicit link to the definition of greenwashing, for every market participant, to the concrete standards that they would violate when engaging in greenwashing.

The SMSG defers to applicable legislation on whether intent is relevant or not, as well as the question of how materiality of a potential breach will be assessed.

On 'greenbleaching' i.e. the phenomenon that fund managers invest in sustainable activities but refrain from claiming so to avoid the related legal risks, the SMSG is of the opinion that as long as there is no legal obligation to disclose how sustainable a product is, not claiming sustainability cannot be considered a misrepresentation and should not be sanctioned. Nevertheless ESMA has a role in monitoring greenbleaching to assess whether (or not) sustainable finance legislation reaches its goals.

Citing research that 70% of all article 9 ETFs have been downgraded to an Article 8, in the fourth quarter of 2022 alone, the SMSG is of the opinion that there are currently too many uncertainties in respect of the conditions to qualify as an article 9 SFDR fund - 'the risk arises that the Article 8 category becomes meaningless, while the article 9 category becomes empty.' ESMA should have a role in assessing and advising the Commission on whether these uncertainties in legislation are driving funds away from an Article 9 classification.

These contributions will feed into the ESAs findings for progress reports to be published in May 2023, with its final reports due in May 2024.

- (e) *Publication of Delegated Regulation (EU) 2023/363 in the OJ*

[Delegated Regulation \(EU\) 2023/363](#) of 31 October 2022 amending and correcting the regulatory technical standards laid down in Delegated Regulation (EU) 2022/1288 (SFDR RTS) as regards the

content and presentation of information in relation to disclosures in pre-contractual documents and periodic reports for financial products investing in environmentally sustainable economic activities (the "**Delegated Regulation**") was published in the OJ on 17 January 2023. The Delegated Regulation came into force three days later on 20 February 2023. The Delegated Regulation amends the SFDR RTS in order to reflect the inclusion of gas and nuclear activities in the Taxonomy Regulation and other corrections.

On 23 March 2023, the ESAs published an editable version of the annex [templates](#) contained within the Delegated Regulation.

(f) *Provisional agreement on proposed regulation on European green bonds*

On 28 February 2023, the Council of the EU [announced](#) provisional agreement had been reached between the institutions on the proposed regulation governing the creation of European green bonds ("**EuGB**"). The EuGB proposal aims to regulate the use of the designation 'European green bond' or EuGB for bonds that pursue environmentally sustainable objectives that are aligned with the EU taxonomy and made available to investors globally. It aims to establish a system for the registration and supervision of entities acting as external reviewers for EuGB and to regulate the supervision of issuers of EuGB.

The agreement is provisional, as it will need to be confirmed by the Council and the European Parliament, and adopted by both institutions before it is final. It will commence applying 12 months after its entry into force.

(g) *Consultation on guidelines for the use of ESG or sustainability-related terms in fund names (This is a further update to section 4.15(d) of the report covering the third quarter of 2022)*

Following the closure of the consultation period on 20 February 2023 for ESMA's consultation on draft guidelines for the use of ESG or sustainability-related terms in fund names (the "**Guidelines**"), responses have been published from the SMSG in the form of its [advice](#) and separately from [EFAMA](#).

Both the SMSG and EFAMA make a number of observations and suggestions and in particular express concerns about ESMA's proposed quantitative threshold approach. The SMSG considers that a two-step approach (a qualitative first stage and quantitative at a second stage) may be a more appropriate approach.

EFAMA advocates a more principles-based approach rooted in disclosure, i.e. that it will be more proportionate to require that funds that use 'sustainable' or any other related term should reflect sustainability in their in the fund's investment objectives and policy and its strategy as described in the relevant fund documentation.

ESMA will now consider all the feedback it has received to the Guidelines. ESMA proposes that the Guidelines would become applicable from three months after the publication of their translation on the ESMA website. Furthermore, a transitional period of six months to comply with the Guidelines has been included in the Guidelines for those funds launched prior the relevant application date.

(h) *ESAs-ECB statement on climate related disclosure for structured finance products*

On 13 March 2023, the ESAs, together with the European Central Bank (ECB), published a [joint statement](#) on climate-related disclosure for structured finance products. The joint statement encourages the development of disclosure standards for securitised assets through harmonised climate-related data requirements.

Asset backed securities are often directly exposed to physical or transition climate-related risks, such as real estate mortgages or auto loans. While mandatory disclosure requirements are not yet in place, the Statement calls on originators to collect, at the time of loan origination, the data that investors need to assess the climate-related risks of the underlying assets. The lack of climate-related data on the assets underlying structured finance products poses an obstacle for the classification of products and

services under the EU Taxonomy Regulation and the SFDR and hinders the proper assessment and management of climate-related risks.

The statement sets out the joint efforts of the ECB and the ESAs to facilitate access to climate-related data with a view to improving sustainability-related transparency in securitisations and to promote consistent and harmonised requirements for similar instruments:

- The ESAs have been [developing templates](#) for voluntary sustainability-related disclosures for “simple, transparent and standardised” (STS) securitisations;
- In March 2022, the EBA also provided [guidance](#) on how ESG standards could be implemented in the context of securitisation;
- ESMA has been mandated to undertake a review of the loan-level securitisation disclosure templates, with a view to not only simplifying the reporting templates where possible, but also considering (with engagement with originators/investors/regulatory bodies) whether new, proportionate and targeted climate change-related metrics should be introduced that will be useful for investors and supervisors.

The statement also notes that new climate change-related disclosure requirements for securitisations may become also relevant for similar funding instruments backed by the same type of underlying assets, such as covered bonds. Covered bonds are not “financial products” under Article 2(12) of SFDR, and therefore they are not subject to the financial product disclosure rules set out under Articles 6 to 11 of the SFDR or under the templates in Annexes II-V of the SFDR Delegated Regulation. However, they are captured as “investments” under Article 4 principal adverse impact (PAI) disclosure at entity level, just as securitisations are. Covered bonds related ESG-disclosure, if any, is also regulated by Article 14 of the Covered Bond Directive (2019/2162) which applies on an aggregated basis.

- (i) *Taskforce on Nature-related Financial Disclosures consults on fourth and final draft of disclosure framework*

On 28 March 2023, the Taskforce on Nature-related Financial Disclosures (“TNFD”) [published](#) the [fourth and final beta version](#) of its disclosure framework. The TNFD framework will provide guidance for organisations to report on nature-related risks, to support a shift in global financial flows away from nature-negative outcomes and towards nature-positive outcomes.

Since the third beta version, the TNFD has made minor changes to the proposed risk and opportunity assessment process and has reduced the proposed recommended disclosures. For the first time, stakeholders can see a full representation of the framework, including the TNFD approach to disclosure metrics.

TNFD is consulting on the fourth beta version from 30 March 2023 to 1 June 2023. The TNFD’s final recommendations based on final feedback and pilot testing (v1.0) will be published in September 2023.

While there is currently no mandatory requirement to report against TNFD but it is expected to set the tone for the consideration of nature-related financial risk by business and investors.

- (j) *Report containing key considerations for development of an effective global assurance framework for sustainability-related corporate reporting*

On 28 March 2023, IOSCO published a [report](#) on international work to develop a global assurance framework for sustainability-related corporate reporting.

In the report, IOSCO encourages timely and high-quality profession-agnostic standard-setting outcomes responsive to the public interest; calls for early engagement with preparers, investors and providers; and supports capacity building across the entire sustainability reporting ecosystem

This report is a continuation of the work of IOSCO's Sustainable Finance Task Force toward improving the global sustainability-related reporting ecosystem and a response to a growing demand among investors for high-quality assurance over sustainability-related information.

(k) *FCA delay on its sustainability disclosure requirements*

On 29 March 2023, the UK FCA published a [press release](#) providing an update on its consultation paper on sustainability disclosure requirements (SDR) and investment labels (CP22/20). Although originally the FCA intended to publish final rules by the end of the first half of 2023, to take account of the significant responses received, it intends to publish the policy statement in Q3 2023. The proposed effective dates in the consultation will be adjusted accordingly.