



Asset Management & Investment Funds

QL Quarterly Legal &
RD Regulatory Developments

April 2022 to June 2022

Global Legal and Professional Services

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1.	UCITS DEVELOPMENTS.....	4
1.1	European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2022	4
1.2	Central Bank's notice of intention relating to UCITS side-pocketing arrangements	4
2.	CENTRAL BANK UPDATES	4
2.1	Outsourcing register	4
2.2	CP86 questionnaire.....	4
2.3	Fitness and Probity updates	4
2.4	Fund profile return updates.....	6
2.5	Valuation CSA Questionnaire	6
2.6	Central Bank's markets updates	6
2.7	Central Bank financial sanctions letter.....	7
2.8	Financial Stability Review	7
2.9	Financial Stability Note	7
2.10	Central Bank's prudential regulatory flexibility measures	7
2.11	Central Bank's Quarterly Bulletin	8
2.12	Central Bank letter on IBAN discrimination.....	8
2.13	Central Bank speeches.....	8
3.	OTHER LEGAL AND REGULATORY DEVELOPMENTS	9
3.1	AIFMD and UCITS Directive Review	9
3.2	AML.....	10
3.3	Benchmarks Regulation.....	10
	(a) <i>Level 2 Regulations published</i>	10
	(b) <i>Consultation</i>	10
	(c) <i>Updated ESMA Q&As</i>	10
3.4	Companies Act – Interim period extension	10
3.5	Consultations on Central Counterparty Resolution Regime	11
3.6	CSDR mandatory buy-in regime	11
3.7	Distance Marketing of Consumer Financial Services	11
3.8	EMIR	11
	(a) <i>ESAs propose extending temporary exemptions regime for intragroup contracts during EMIR review</i>	12
	(b) <i>ESMA proposes increase of the commodity derivatives EMIR clearing threshold</i>	12
	(c) <i>Report on highly liquid financial instruments for CCP investment policies</i>	12
	(d) <i>Transition from IBORs – Amendments to regulatory technical standards</i>	12
	(e) <i>Consultation</i>	12
3.9	ESMA.....	13
	(a) <i>Final report on CSA on fund costs and fees</i>	13
	(b) <i>Consultation on notifications for cross-border marketing and management of funds</i>	13
	(c) <i>Public statement on implications of Russia's invasion of Ukraine</i>	14
	(d) <i>Prioritisation of 2022 ESMA deliverables</i>	14
	(e) <i>Annual report</i>	14
	(f) <i>Risk assessment update</i>	15
	(g) <i>Risk analysis report on leverage and derivatives</i>	15
	(h) <i>Working paper on cloud outsourcing</i>	15
	(i) <i>ESAs' joint committee annual report</i>	15
	(j) <i>ESAs' first joint risk assessment report of 2022</i>	16
	(k) <i>Fourth statistical report on cost and performance of EU retail investment products</i>	16
	(l) <i>EMIR and SFTR data quality report 2021</i>	16
	(m) <i>Updated Q&As relating to guidelines on alternative performance measures</i> 17	
	(n) <i>ESMA speeches</i>	17
3.10	European Commission's equivalence decisions	18

3.11	Financial Stability Board (" FSB ") update	18
3.12	IOSCO updates	19
	(a) <i>Report on market data in the secondary equity markets</i>	19
	(b) <i>Call for papers on vulnerabilities from liquidity mismatch in open-ended funds</i>	19
	(c) <i>Discussion paper on corporate bonds</i>	19
	(d) <i>Consultation on ETFs</i>	20
3.13	Money Market Funds	20
3.14	PRIIPs	20
	(a) <i>PRIIPs Delegated Regulation delaying implementation published</i>	20
	(b) <i>Supervisory statement on the PRIIPs KID</i>	20
	(c) <i>Technical advice on PRIIPs Regulation review</i>	21
	(d) <i>Corrigendum published</i>	21
3.15	SFTR – Updated Data Reporting Q&As	21
3.16	Short Selling Regulation	21
3.17	Sustainable Finance.....	21
	(a) <i>Call for input on greenwashing</i>	21
	(b) <i>Results of call for evidence of ESG ratings</i>	22
	(c) <i>Central Bank clarifies expectations on Taxonomy Regulation disclosures</i> ...	22
	(d) <i>Corporate Sustainability Reporting Directive ("CSRD") update</i>	22
	(e) <i>Taxonomy Complementary Delegated Act update</i>	22
	(f) <i>Clarifications on key areas of SFDR Level 2 Regulations</i>	23
	(g) <i>Supervisory briefing on the integration of sustainability risks and disclosures in the area of asset management</i>	23
	(h) <i>Queries on interpretation of aspects of SFDR and the Taxonomy Regulation</i>	23
	(i) <i>Mandates from the European Commission to the ESAs on SFDR Level 2 Regulations</i>	24
	(j) <i>Risk analysis report on the drivers of the costs and performance of ESG funds</i>	24
	(k) <i>FSB interim report on supervisory and regulatory approaches to climate- related risks</i>	24
	(l) <i>SFDR Level 2 Regulations adopted</i>	25
	(m) <i>Consultation on ESG ratings and sustainability factors in credit ratings</i>	25

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

1. UCITS DEVELOPMENTS

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

On 31 May 2022, the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) [Regulations](#) 2022 were published in Iris Oifigiúil and will come into operation on 1 January 2023. The regulations deal with the requirement for UCITS to prepare a PRIIPs KID and for this document to satisfy the requirements under the UCITS Directive to prepare a KIID.

1.2 Central Bank's notice of intention relating to UCITS side-pocketing arrangements

Following ESMA's public statement on the implications of Russia's invasion of Ukraine on investment fund portfolios referred to in section 3.9(c) below which permits the use of side pocket arrangements for AIFs and UCITS, the Central Bank issued a [notice of intention](#) relating to the approval process for UCITS side-pocketing arrangements in relation to Russian, Belarusian and Ukrainian assets that are impacted by the Russian invasion into Ukraine and/or impacted by sanctions that have been imposed as a result of Russia's invasion of Ukraine. This notice of intention states that the Central Bank will permit a UCITS to implement a side pocket arrangement only for Russian, Belarusian and Ukrainian assets that are directly and/or indirectly impacted by the Russian invasion into Ukraine and/or impacted by sanctions that have been imposed as a result of Russia's invasion of Ukraine where the affected securities have become illiquid or untradeable as a result of the Russian invasion and are difficult to value accurately. This arrangement may be implemented by way of establishment of a clone fund into which liquid assets may be transferred.

The notice of intention sets out the process that needs to be followed if a side pocket arrangement is being put in place for a UCITS with advanced notice to the Central Bank and shareholder approval required.

2. CENTRAL BANK UPDATES

2.1 Outsourcing register

The Central Bank has advised that the outsourcing register template has been undergoing testing which has delayed its publication. The Central Bank has confirmed that those required to submit the register to the Central Bank (those with a rating of medium low and above) will have approximately 8 weeks from its publication to complete and file the register with the Central Bank.

2.2 CP86 questionnaire

On 3 June 2022, the Central Bank issued a questionnaire to all fund management companies including self-managed UCITS and AIFs. Responses were required to be submitted to the Central Bank via the ONR by close of business on 24 June 2022.

2.3 Fitness and Probity updates

On 10 May 2022, the Central Bank updated its Fitness and Probity webpage to advise that the in-situ returns process opened on the ONR from Wednesday 18 May for a six week period. All firms are to use the file included on the webpage linked below to submit their returns. The closing date for submission of these returns was 30 June 2022.

<https://www.centralbank.ie/regulation/how-we-regulate/fitness-probity/communications-publications>

The Central Bank also published [guidance](#) on this return which contains practical information on how to submit the return on the ONR.

On 5 April 2022, the Central Bank published a [feedback statement](#) on the notice of intention on amendments to the list of PCFs issued in September 2021 together with [amending regulations](#).

PCF	Amendment
PCF-2	Being split in two – PCF-2A – Non-Executive Director PCF-2B – Independent Non-Executive Director
PCF-3, PCF-4, PCF-5, PCF-6 and PCF-7	Title of the role being amended to remove the reference to "man" PCF-3 – Chair of the Board PCF-4 – Chair of the Audit Committee PCF-5 – Chair of the Risk Committee PCF-6 – Chair of the Remuneration Committee PCF-7 – Chair of the Nomination Committee
PCF-15	Head of Compliance with responsibility for Anti Money Laundering and Counter Terrorist Financing Legislation is being removed
PCF-16	Being expanded to include Branch Managers in non-EEA countries
PCF-31	Head of Investment is being removed
PCF-52	New designation, Head of Anti-Money Laundering and Counter Terrorist Financing Compliance, introduced

As set out in the above table, the PCF-2 designation is being split into PCF-2A – Non-executive director and PCF-2B – Independent non-executive director. All individuals currently occupying PCF-2 roles will be re-designated as PCF-2A and regulated financial service providers ("**RFSPs**") were required to submit confirmation of any PCF-2B designations to the Central Bank by 30 June 2022. Action is only required in relation to independent directors.

A new PCF role, PCF-52 – Head of Anti-Money Laundering and Counter Terrorist Financing Compliance, is being introduced. However, the Central Bank notes in its feedback statement that this amendment does not, in and of itself, result in any additional or changed requirements regarding the appointment of separate individuals to PCF-12 and PCF-52. The Central Bank also notes that an individual can occupy more than one PCF role e.g. an individual could be listed as PCF-12 and PCF-52 and it will be the responsibility of the RFSP to determine if a position represents both PCF roles. PCF-15 – Head of Compliance with responsibility for Anti Money Laundering and Counter Terrorist Financing Legislation is being removed. For those currently holding a PCF-15 designation, this is being end-dated and RFSPs were required to notify the Central Bank of the appropriate PCF designation(s) of the individual i.e. either or both PCF-12 and PCF-52 by 30 June 2022.

PCF-16 has been expanded to branch managers of branches established outside the State and RFSPs caught by the expansion of this function (i.e. those with branches outside of the EEA, including in the UK) were required to submit confirmation of their assessment in respect of in-situ individuals by 30 June 2022.

PCF-31 – Head of Investment is being removed, no action required from RFSPs as those that currently hold PCF-31 designations will automatically be re-designated as PCF-30 – Chief Investment Officer.

2.4 Fund profile return updates

On 29 April 2022, the Central Bank published an updated [template](#) for the fund profile return together with updated [guidance](#) dated May 2022. This fund profile V2 replaces the fund profile return and the annual investment fund sub-fund profile return and will need to be completed: (i) on the approval/authorisation of a new sub-fund/standalone fund; and (ii) annually to confirm the fund's profile and update for changes reflected in the fund's offering documents since the last update.

In terms of timing, the guidance states that the first annual fund profile V2 is required for all Irish authorised funds at 30 April 2022 and the return is due on 31 July 2022 with this return to be submitted on the Central Bank's online reporting system. From next year, the return will be required in respect of all Irish authorised funds at 31 December and will be due the following 28/29 February.

On 30 June 2022, the Central Bank published a further [update](#) to the guidance referenced above. The only change to the guidance dated May 2022 relates to a performance fee question as detailed in the change monitor at the start of the document.

2.5 Valuation CSA Questionnaire

The Central Bank has sent a questionnaire to a number of fund managers as part of the common supervisory action on asset valuation ("**CSA**") launched by ESMA earlier this year. The aim of the CSA exercise is to investigate whether managers of UCITS and open-ended AIFs comply with the organisational requirements set out in the UCITS and AIFMD frameworks and whether they adhere to valuation principles and methodologies which reflect a true and fair view of their financial positions both under normal and stressed market conditions.

The questionnaire contains seven sections, with the first section relating to organisational requirements to be completed by all managers that have received the questionnaire with the other sections relating to: (i) unlisted equities; (ii) unrated bonds; (iii) high yield bonds; (iv) emerging markets; (v) listed equities not actively traded; and (vi) bank loans, only required to be completed if applicable.

2.6 Central Bank's markets updates

On 23 June 2022, the Central Bank published its sixth markets [update](#). In addition to the updates from the Central Bank covered separately in this report the report contains updates (i) relevant for investment firms – amendments to CAR and the final form IFRs; and (ii) relating to the crowdfunding regulation.

On 19 May 2022, the Central Bank published its fifth markets [update](#). In addition to the updates from the Central Bank covered separately in this report, the Central Bank reinforced its consumer protection expectations in context of changing retail banking landscape and also advised that it has published updates to the Funds Authorisation and Funds Service Providers sections of the website. The update contained in the markets update states that the Central Bank recognises the benefit in having clarity and transparency related to authorisation processes and procedures. In particular, clear website disclosure assists applicants when engaging with the authorisation processes. In light of the evolving authorisation process in respect of investment funds and to keep industry participants up to date on various processes applicable to the area, the website has been updated as follows:

- a dedicated section setting out information on the process in respect of requests for derogation for [UCITS](#), [Retail Investor AIFs and Qualifying Investor AIFs](#);
- [guidance](#) on how investment managers, investment advisers, and non-EU AIFMs are reviewed by the Central Bank which involve some changes to existing processes for investment managers; and
- a dedicated "Contact Us" [section](#) setting out relevant email addresses for different types of queries.

These website updates are being carried out in the context of a wider review of fund authorisation processes which the Central Bank has underway. This will involve a review of (i) authorisation processes related to UCITS and Retail Investor AIFs and (ii) authorisation processes for Qualified Investor AIFs. Both reviews will be completed during the course of 2022.

Our [advisory](#) provides an overview of these updates setting out information on:

- the UCITS and RIAIF/QIAIF derogation requests processes;
- the attestation letter required in respect of an application for a non-EU investment manager; and
- the email addresses to be used for various funds related queries.

On 16 May 2022, the Central Bank published its fourth markets [update](#). In addition to the updates from the Central Bank covered separately in this report, there was also a reminder from the Central Bank to MiFID investment firms with branches outside the EU/EEA on relevant requirements.

On 27 April 2022, the Central Bank published its third markets [update](#) of 2022. In addition to the updates from the Central Bank covered separately in this report and the report covering the first quarter of 2022, there was one update of relevance to investment firms; an update relating to the Central Bank's revised guidance on the transparency regulatory framework; and an update from the Central Bank on the European Supervisory Authorities' ("**ESAs**") supervisory statement on the application of SFDR.

2.7 Central Bank financial sanctions letter

On 20 June 2022, the Central Bank published a [letter](#) sent to business and professional representative bodies on financial sanctions. The purpose of this letter is to provide information and to request that the information be shared, in order to assist their members as they meet their obligations under the EU's financial sanctions regime.

2.8 Financial Stability Review

On 15 June 2022, the Central Bank published its first financial stability [review](#) of 2022. This report outlines the key risks facing the financial system and the Central Bank's assessment of the resilience of the economy and financial system to adverse shocks.

The review contains sections relating to (i) the non-bank financial sector that specifically mention property funds (pages 56 to 59); and (ii) macroprudential policy in market based finance which specifically covers macroprudential measures for property funds (pages 78 to 80).

2.9 Financial Stability Note

On 26 May 2022, the Central Bank published a financial stability [note](#) entitled "Non-bank mortgage lending in Ireland: recent developments and macroprudential considerations" which makes reference to sales of loan portfolios to Irish funds.

2.10 Central Bank's prudential regulatory flexibility measures

On 3 May 2022, the Central Bank [updated](#) the information on their website relating to the prudential regulatory flexibility measures it introduced in 2020. The main change to the [version](#) published on the website from 1 March 2022 to 3 May 2022 is to remove the information under the heading "Expectations in respect of the European Single Electronic Format (ESEF) Regulation".

2.11 Central Bank's Quarterly Bulletin

On 6 April 2022, the Central Bank published its second quarterly [bulletin](#) of 2022. While the bulletin provides updates on the Irish economy including recent developments and information on domestic demand; exports, imports and balance of payments, the labour market; prices and costs; and the public finances, there is nothing specifically relating to funds or the asset management industry in this bulletin.

2.12 Central Bank letter on IBAN discrimination

On 17 June 2022, the Central Bank published a [letter](#) it sent to all regulated financial service providers relating to IBAN discrimination. The letter: (i) provides background on the Single European Payments Area ("SEPA") initiative; (ii) sets out the legislation governing the SEPA initiative, both at a European and Irish level; (iii) emphasises that discrimination between an Irish IBAN and an IBAN in any other SEPA Member State, when making or receiving payments (known as IBAN discrimination), is prohibited; and (iv) requests that addressees consider whether they need to make a technical or policy changes to ensure that IBAN discrimination is prevented from occurring.

2.13 Central Bank speeches

24 June 2022

On 24 June 2022, Gerry Cross, Director of Financial Regulation: Policy and Risk gave a [speech](#) entitled "Individual accountability – a maturing of financial regulation".

Some key takeaways from the speech include:

- at roughly the same time that the Central Bank will be rolling out their implementation of the new Individual Accountability framework they will also be implementing their enhanced supervisory approach to culture and behaviour within firms. This will be a holistic approach which will embed their assessment of firms' culture and behaviour in all of their supervisory activities in line with relevant guidance and expectations;
- under the Senior Executive Accountability Regime ("**SEAR**") firms will need to set out clearly the responsibilities of each senior executive in their Statement of Responsibilities. This will then allow firms to develop a Management Responsibility Map for the firm documenting key management and governance arrangements. The Central Bank is currently finalising the relevant regulations and guidance to aid firms in their implementation of the regime. These will form part of our consultation package to be published immediately after the legislation is adopted. The initial scope will include credit institutions, insurance undertakings (other than certain specific categories), and higher risk activity investment firms – amounting in total to approximately 150 firms;
- proposal to align the roles to which the SEAR applies (so-called "Senior Executive Functions" ("**SEFs**")) with those Pre-approved Control Functions ("**PCFs**") to which the Fitness and Probity ("**F&P**") Regime applies;
- firms in scope of SEAR will be required to maintain a Responsibility Map detailing the allocation of responsibilities across the firm, including the key management and governance arrangements, in a comprehensive, accessible and clear single source of reference. The Central Bank will provide guidance on the compilation of these maps;
- all non-executive directors will be senior executive functions under SEAR;
- on the question of outsourcing in the context of SEAR, to ensure transparency and accountability, the Bank expects that where outsourcing arrangements are in place then there

will be a Senior Executive Function in the regulated firm with responsibility for outsourcing arrangements;

- the conduct standards will apply to all regulated firms. The standards comprise Common Conduct Standards for individuals carrying out controlled functions ("**CFs**"), Additional Conduct Standards for senior executives, and the Standards for Businesses; and
- expect the draft legislation to be published very shortly and enacted into law during the course of the months ahead.

31 May 2022

On 31 May 2022, the Central Bank Governor Gabriel Makhlouf gave a [speech](#) at the Irish Funds conference entitled "Funds – facing the future". This speech focuses on:

- the capital markets union;
- effective regulation – reviews of the ELTIF regulation and AIFMD;
- effective supervision;
- vulnerabilities – it was noted that the Central Bank are at the forefront of efforts to develop and operationalise the macroprudential framework for the funds sector; and
- sustainable finance.

31 May 2022

On 31 May 2022, Gerry Cross, Director of Financial Regulation: Policy & Risk, gave a [speech](#) at Blockchain Ireland Week 2022 entitled "Blockchain, cryptography, and financial services: a regulatory perspective". This speech focuses on the challenges from a regulatory perspective, looking at the use case for blockchain and cryptotechnology, understanding the issues as this is a complex area, risk mitigation, regulatory openness and the climate. He also refers to approvals and authorisations in this space and the general requirements as well as covering VASPs and crypto assets and regulatory frameworks.

27 April 2022

On 27 April 2022, Derville Rowland, Director General Financial Conduct, [spoke](#) at a joint Institute of Banking/Compliance Institute seminar. Her speech focused on (i) ensuring effective governance through accountability – where the individual accountability framework is summarised; (ii) the structural changes in the Irish retail banking sector; and (iii) sustainable finance, disclosure and transparency where specific reference is made to the asset management sector in the context of public disclosure by firms relating to climate and other sustainability/ESG risks contribute to wider market integrity. The speech states that "Firms are responsible for providing disclosures to their clients and customers on the sustainability risks and, where relevant, impact of investment products. They must ensure that such disclosures are clear, fair and not misleading." It is also noted that the Central Bank is carrying out a review of fund documentation with a view to identifying good and poor practices across the sector.

3. OTHER LEGAL AND REGULATORY DEVELOPMENTS

3.1 AIFMD and UCITS Directive Review

On 18 May 2022, the Rapporteur for the AIFMD and UCITS reviews, MEP Isabel Benjumea, published a draft [report](#) on the reviews which complements the European Commission's legislative proposal.

3.2 AML

On 1 June 2022, ESMA advised that the ESAs published a joint [report](#) on the withdrawal of authorisation for serious breaches of AML/CFT rules. With regard to the notion of serious breaches of AML/CFT rules, the report clarifies the criteria of a serious breach of AML/CFT rules that shall be considered and assessed by the AML/CFT supervisor, pointing out that the AML/CFT supervisor needs to take into consideration the context of the breach and therefore that it remains a case-by-case assessment.

3.3 Benchmarks Regulation

(a) *Level 2 Regulations published*

On 24 May 2022, the following delegated regulations were published in the Official Journal of the EU, each taking effect on 27 May 2022:

- [Commission Delegated Regulation \(EU\) 2022/804](#) of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying rules of procedure for measures applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators. This sets out the rules of procedure in infringement proceedings before the investigation officer and before ESMA with regard to fines and supervisory measures and periodic penalty payments together with the limitation periods and details relating to the collection of fines and periodic penalty payments; and
- [Commission Delegated Regulation \(EU\) 2022/805](#) of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying fees applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators. This details the fees payable in relation to authorisation and recognition together with annual supervisory fees and also sets out information of the payment of these fees.

(b) *Consultation*

On 20 May 2022, the European Commission published a consultation [paper](#) on the regime applicable to the use of benchmarks administered in a third country. Views are being sought specifically on the rules applicable to non-EEA benchmarks and the impact on market participants of the full entry into application of the third country regime as of 1 January 2024.

Responses are sought by 12 August 2022.

(c) *Updated ESMA Q&As*

On 1 April 2022, ESMA published an updated version of its Benchmarks Regulation [Q&As](#) with Q10.6 relating to EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks updated.

3.4 Companies Act – Interim period extension

On 28 April 2022, a further extension of the interim period in the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (the "**Act**") to 31 December 2022 was [announced](#).

By way of reminder, the Act addresses areas of concern in respect of operational matters in relation to compliance under the Companies Act and Industrial and Provident Societies Act as a result of COVID-19, such as:

- provisions relating to the use of the company seal;
- the requirement to hold an annual general meeting including electronically;
- the ability to withdraw or amendment of resolutions approving dividend payments; and
- protective measures designed to pre-empt certain impacts the COVID-19 crisis may have on a company's solvency with a view to protecting viable businesses, retaining employment and supporting economic recovery post-crisis.

3.5 Consultations on Central Counterparty Resolution Regime

On 19 May 2022, ESMA published four consultation papers on its proposed Guidelines for the EU central counterparty ("**CCP**") resolution regime. The aim of these consultations is to further advance on the recovery and resolution regime for CCPs where the proposed Guidelines complement the new Recovery and Resolution Regulation and will provide further guidance on cooperation as well as provide EU regulators with the necessary tools to ensure supervisory convergence across the EU.

The four consultation papers cover two mandated proposals for Guidelines on the [assessment of resolvability](#) by resolution authorities and on the [type and content](#) of the provisions included in the cooperation arrangements between Member States and third-country authorities. The consultation papers also include two non-mandated proposals for Guidelines on the [summary of the resolution plan](#) to be shared with CCPs, as well as on a template for the [standard written arrangement](#) referred to in the regulatory technical standards for resolution colleges.

The consultation period is open until 1 August 2022.

3.6 CSDR mandatory buy-in regime

On 2 June 2022, ESMA published a final [report](#) on amending the regulatory technical standards on settlement discipline to postpone the application of the Central Securities Depositories Regulation ("**CSDR**") mandatory buy-in regime for three years.

The proposed amendments are based on the expected changes to the CSDR buy-in regime presented in the Commission's legislative proposal for the CSDR review and on the amendment made to CSDR through the DLT Pilot Regulation which allows ESMA to propose a later start date for the CSDR buy-in regime.

3.7 Distance Marketing of Consumer Financial Services

On 13 May 2022, the European Commission published a [consultation](#) on a proposal to amend the Directive on Distance Marketing of Consumer Financial Services (2002/65/EC) which will result in this Directive being repealed and provisions relating to distancing marketing being included in the Consumer Rights Directive (Directive 2011/83/EU) which currently excluded financial services from its scope. This will result the existing provisions of this directive applying to financial services and also a dedicated section on distance contracts for consumer financial services.

3.8 EMIR

(a) *ESAs propose extending temporary exemptions regime for intragroup contracts during EMIR review*

On 13 June 2022, ESMA published an update relating to a final [report](#) published by the ESAs with draft regulatory technical standards ("**RTS**") proposing to amend the Commission Delegated Regulation on the risk mitigation techniques for OTC derivatives not cleared by a CCP under EMIR. The draft RTS propose extending the current temporary exemptions regime for intragroup contracts by three years. This will accommodate the ongoing assessment of third-country equivalence and allow for a review of the intragroup exemptions framework under the EMIR review.

ESMA also published a final [report](#) with a new draft RTS proposing to amend accordingly the three Commission Delegated Regulations on the clearing obligation under EMIR.

(b) *ESMA proposes increase of the commodity derivatives EMIR clearing threshold*

On 3 June 2022, ESMA published its final [report](#) on the increase of the commodity derivatives EMIR clearing threshold and proposes to increase the clearing threshold from €3 billion to €4 billion.

(c) *Report on highly liquid financial instruments for CCP investment policies*

On 19 May 2022, ESMA published a [report](#) on highly liquid financial instruments for CCP investment policies under EMIR which considers whether the scope of the financial instruments which are considered highly liquid with minimal market and credit risk should be extended and to assess whether money market funds authorised under the Money Market Fund Regulation (the "**MMF Regulation**") should be included in the list.

(d) *Transition from IBORs – Amendments to regulatory technical standards*

On 17 May 2022, [Commission Delegated Regulation \(EU\) 2022/750](#) of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts was published in the Official Journal of the EU. This delegated act amends the regulatory technical standards on the clearing obligation under EMIR with certain classes subject to the clearing obligation denominated in EUR that reference EONIA and those denominated in GBP, JPY or USD that reference LIBOR. The classes of derivatives currently in scope of the clearing obligation and that are referencing EONIA, GBP LIBOR or JPY LIBOR will no longer meet two of the conditions to be subject to the clearing obligation set out in EMIR, i.e. to have a sufficient level of liquidity and to be cleared by an authorised or recognised CCP, while the classes of derivatives currently in scope of the clearing obligation and that are referencing USD LIBOR will no longer meet one of the conditions to be subject to the clearing obligation set out in EMIR, i.e. to have a sufficient level of liquidity. It follows that those classes should be removed from the scope of the clearing obligation. In addition, ESMA has determined that classes of OTC interest rate derivatives referencing some of the risk-free rates (€STR, SOFR, SONIA or TONA) should be subject to the clearing obligation. The changes made to introduce the new classes of OTC interest rate derivatives referencing the risk-free rates and denominated in EUR and GBP will apply from tomorrow (the date that this delegated regulation enters into force) however the changes made to introduce the new class of OTC interest rate derivatives referencing the risk-free rate denominated in USD will three months after this delegated regulation comes into force.

(e) *Consultation*

On 5 April 2022, ESMA published its [response](#) to the consultation on a targeted review of EMIR. In its response ESMA recommends a set of measures for consideration that will support the EU objective of increasing the attractiveness of EU markets and reducing exposure to CCPs located outside the EU. The recommendations include proposals to:

- increase the attractiveness of cleared EU markets, e.g. by expanding and facilitating entities clearing in the EU;
- improve the clearing obligation framework, e.g. by changing the reference from OTC to non-cleared derivatives in the clearing thresholds;
- incentivise EU clearing participants to reduce their exposures to UK CCPs;
- enhance the EU supervisory framework for CCPs; and
- mitigate risks remaining at UK CCPs.

3.9 ESMA

(a) *Final report on CSA on fund costs and fees*

On 31 May 2022, ESMA published its final [report](#) on the common supervisory action ("**CSA**") on the supervision of costs and fees of UCITS. The findings contained within the report are set out under the following headings: (i) setting and reviewing of fees; (ii) the notion of undue costs; (iii) related party transactions; (iv) quantitative findings; and (v) EPM techniques. National competent authorities ("**NCAs**") were asked to report on follow-up actions they plan on taking following the CSA exercise with many NCAs planning to issue a public report or industry letter aimed at identifying best market practices. We expect the Central Bank to publish an industry letter in due course.

Our [advisory](#) provided an overview of the key findings including:

- setting and reviewing of fees including that all fund managers have a structured and formalised fees and costs pricing process in place in line with the recommendations set out in ESMA's supervisory briefing and the characteristics of the fund;
- notion of undue costs should be primarily assessed against what should be considered as being in the best interest of the fund and its investors;
- there is potential for intragroup/related party transactions to result in higher costs and/or costs higher than average being charged;
- ESMA expects NCAs to take action to specifically address the issue of costs for smaller Managers and funds, where the risk of investors being charged with undue costs appears to be higher due to the lack of a structured pricing process; and
- ESMA states that the absence of any policies and procedures on the use of EPM constitutes a breach of regulatory obligations to have adequate policies and procedures in place on risk and portfolio management.

(b) *Consultation on notifications for cross-border marketing and management of funds*

On 17 May 2022, ESMA published a [consultation](#) on the information and templates to be provided, and used by firms, when they inform regulators of their cross-border marketing and management activities under the UCITS Directive and the AIFMD. The consultation paper sets out draft technical standards, both implementing and regulatory technical standards, with the RTS relating to the information to be notified by managers to carry out their activities in a host member state, either directly or through a branch and the ITS relating to the form and content of notification letters to be used in respect of the cross-border marketing and management of UCITS and domestic and cross-border marketing and cross-border management of AIFs.

The drafts are set out in Annex IV and V of the consultation paper. The closing date for responses is 9 September 2022.

(c) *Public statement on implications of Russia's invasion of Ukraine*

On 16 May 2022, ESMA issued a public [statement](#) on the implications of Russia's invasion of Ukraine on investment fund portfolios. The public statement is intended to promote convergence in relation to actions taken to manage the impact of the Russian invasion of Ukraine on investment fund portfolios exposed to Russian, Belarusian and Ukrainian assets. It highlights the obligations on fund managers (including AIFMs, UCITS ManCos and SMICs) to manage investment funds in the best interest of investors, have adequate liquidity management systems in place and ensure fair valuation of assets. The statement allows for the use of side pockets for both AIFs and UCITS in specific circumstances.

The public statement focuses on two matters – the general principles in case of liquidity issues and valuation uncertainties and the permissibility of side pockets.

(d) *Prioritisation of 2022 ESMA deliverables*

On 30 June 2022, ESMA published a [letter](#) it sent to the European Commission in relation to a number of deliverables that it considers could be deprioritised or delayed including:

Deprioritised

- report on the supervisory measures and penalties under EMIR;
- annual report on CSDR implementation;
- annual report on currently adopted AMP under MAR; and
- annual review of RTS 2.

Delayed

- EMIR Refit reports;
- report on efficiency of SFTR;
- report of SFTR fees; and
- STS peer review.

(e) *Annual report*

On 15 June 2022, ESMA published its annual [report](#) which reviews the work undertaken in 2021. The press release accompanying the report highlights the following as ESMA's key achievements in 2021 relating to its work on its cross-sectoral priorities:

Supporting the development of sound EU capital markets

- new supervisory responsibilities for securitisation repositories, data reporting service providers and critical benchmark administrators;
- advisory reports on the MiFID/MiFIR, ELTIF, Short-Selling Regulation and Money Market Funds Regulation Reviews;

- peer reviews on CCP liquidity stress testing and NCAs supervision of cross-border activities of investment firms;
- enforcement action against CRAs and Trade Repositories with fines of €4.3 million;
- comprehensive assessment of Tier 2 CCPs and recognition and monitoring of Tier 1 third-country CCPs;
- public statements on social media investment recommendations aimed at safeguarding retail investors;

Sustainable finance

- ESMA's Sustainable Finance Roadmap 2022-24;
- Taxonomy Regulation and European Union Platform on Sustainable Finance; and
- preliminary report on the European Union carbon market;

Innovation and digitalisation

- technical advice on the digital finance package; and
- preparation for the distributed ledger technology pilot regime.

(f) Risk assessment update

On 9 June 2022, ESMA published its latest risk assessment [update](#) which takes account of the impacts on financial markets of Russia's invasion of Ukraine and the deteriorating economic environment.

The update notes that the risk to ESMA's overall remit remains at the highest level, with political event risk, surging inflation and jumps in market volatility negatively impacting the outlook.

(g) Risk analysis report on leverage and derivatives

On 18 May 2022, ESMA published a risk analysis [report](#) entitled "Leverage and derivatives – the case of Archegos" which considers how regulatory reporting data can be used to identify risks in derivatives markets, such as occurred in the case of Archegos. By way of reminder, the report states that on 26 March 2021, Archegos Capital Management, a US family office, defaulted on margin calls from several derivatives counterparties. Following the default of the firm, dealer banks liquidated the derivatives positions, including through forced sales of stocks, resulting in more than US\$10bn in losses for counterparty banks. While this event didn't impact financial stability, it raises a number of issues related to the use of derivatives to acquire leverage which are considered in the report.

(h) Working paper on cloud outsourcing

On 12 May 2022, ESMA published its second working [paper](#) of 2022 entitled "Financial stability risks from cloud outsourcing" which considers how, given the high concentration of cloud service providers, a single cloud service provider outage could generate simultaneous firm level outages, posing systemic risk.

(i) ESAs' joint committee annual report

On 19 April 2022, the ESAs published the 2021 annual [report](#) of the joint committee of the ESAs. The main areas of cross-sectoral focus continued to be joint risk assessment, enhancement of consumer

protection, development of the regulatory and supervisory frameworks for sustainable finance and securitisation.

(j) ESAs' first joint risk assessment report of 2022

On 13 April 2022, ESMA published the ESAs' first joint risk assessment [report](#) for 2022. The report highlights the increasing vulnerabilities across the financial sector as well as the rise of environmental and cyber risks.

In light of the risks and uncertainties highlighted in the report, the ESAs advise national competent authorities, financial institutions and market participants to take the following policy actions:

- financial institutions should be prepared for further potential negative implications stemming from geopolitical tensions and ensure compliance with the sanctions regimes put in place both at the EU and at global levels;
- financial institutions and supervisors should prepare for a possible deterioration of asset quality in the financial sector;
- the impact of further increases in yields and sudden reversals in risk premia on financial institutions and investors should be closely monitored;
- retail investors are of particular concern, and supervisors should monitor risks to retail investors seeing that their participation in financial markets has increased substantially in recent years;
- financial institutions should further incorporate ESG considerations into their business strategies and governance structures; and
- considering the elevated level and frequency of cyber incidents, financial institutions should strengthen their cyber resilience and prepare for a potential increase in cyberattacks.

(k) Fourth statistical report on cost and performance of EU retail investment products

On 5 April 2022, ESMA published its fourth statistical [report](#) on cost and performance of EU retail investment products. An interesting finding noted by ESMA this year is that UCITS with an ESG strategy (including equity, bond and mixed funds) outperformed their non-ESG peers, and were also overall cheaper.

Other points of note include:

- 15% of the managers of UCITS in our sample managed 90% of assets. Cross-border funds were, on average, larger than funds sold only in their home market and on average 60% of funds included in the sample were effectively sold cross-border;
- costs were significantly higher for active UCITS than for passive funds and ETFs. ETF UCITS performance was in line with that of other passive UCITS investing in similar assets; and
- costs remained a critical component when evaluating the ultimate benefits of an investment, they reduced only marginally over time. Total costs were higher for retail investors than for institutional investors, on average. Costs for cross-border funds were higher than those for domestic funds.

(l) EMIR and SFTR data quality report 2021

On 1 April 2022, ESMA published the second edition of its data quality [report](#) based on data gathered under EMIR and SFTR reporting regimes. This is the first time SFTR data has been included.

The report presents an analysis of data quality for regulatory and supervisory use and finds that the coordinated supervisory actions by ESMA and the national competent authorities have significantly enhanced data quality in 2021. However, it is noted that certain aspects relating to data reconciliation will require more efforts by reporting entities, in particular, the report suggests that data quality could be enhanced if counterparties also used the same data set and the same identifiers for the reported data in their internal risk management processes.

In terms of EMIR data quality, the report notes that:

- misreporting of valuations was reduced by about 50% of the reporting firms;
- while less than 10% of reported derivatives tend to be reported late by the counterparties, more than 20% do not receive updated valuation daily, as required by EMIR; and
- reconciliation continues to be insufficient as around 5 million of reconcilable derivatives remained unpaired.

In terms of SFTR data quality the report states that:

- 10% of SFTs are reported late (after T+1);
- rejected data concerns only 2% of all transactions; and
- the reconciliation rate of loan and collateral data has been low but has increased to around 40% and 30%, respectively.

(m) Updated Q&As relating to guidelines on alternative performance measures

On 1 April 2022, ESMA published an updated version of its [Q&As](#) relating to guidelines on alternative performance measures ("**APM**") with updates to Q19 relating to the application of the APM guidelines to measures related to ESG matters and Q20 relating to labels used by issuers on ESG financial measures.

(n) ESMA speeches

31 May 2022

On 31 May 2022, ESMA Chair, Verena Ross, gave a [speech](#) at the Irish Funds conference entitled "Key priorities for EU retail fund investors". This speech focuses on the PRIIPs review, fund costs and fees and sustainability.

On the **PRIIPs Regulation review**, ESMA's main message is that a significant number of changes to the PRIIPs regulation are needed and they encourage the Commission and the co-legislators to consider a broad review of the PRIIPs framework. Past performance information in the PRIIPs KID was also discussed with ESMA's view that past performance is important for the KID disclosure of investment funds.

On costs and fees, she notes that the outcome of the CSA on costs and fees had just been published and that there are three important results to highlight – (i) there is room for improvement in the application of the ESMA supervisory briefing on the supervision of costs in UCITS and AIFs; (ii) in some instances UCITS managers over-rely on delegated portfolio managers for the pricing of the fund with the importance of UCITS managers perform an independent analysis of the fee structures once those have been established and avoiding overreliance on the assessment made by the delegated portfolio manager being stressed; and (iii) the importance of ensuring that investors are adequately compensated in all cases where they were charged with undue costs or fees, and also in cases where there were calculation errors that resulted in a financial detriment for investors.

On **sustainability**, it was acknowledged that the sustainability disclosure framework is incomplete and imperfect at this time, noting that there is a plan to issue a comprehensive set of formal Q&As after the delegated regulation is published in the Official Journal on the practical application of the rules, covering the SFDR disclosures and the additional taxonomy-related product disclosures. She also refers to the supervisory briefing published the day prior, noting that ESMA will be working with NCAs to reduce what one might call "over-disclosure" by investment funds under Article 8, to avoid misleading disclosures to investors about the greenness of a product.

20 April 2022

On 20 April 2022, ESMA's chair, Verena Ross, gave a [speech](#) entitled "ESMA – driving forward high-quality supervision and transparency in a single EU capital market" which focused on two topics:

- ESMA's direct supervision role – ESMA is directly responsible for supervising credit rating agencies, trade repositories, securitisation repositories, data reporting services providers, administrators of EU critical benchmarks and third country central counterparties; and
- ESMA's role in further driving forward the integration and transparency of the EU financial markets, focusing particularly on the most recent proposals by the European Commission on the European Single Access Point ("**ESAP**") and the consolidated tape.

3.10 European Commission's equivalence decisions

On 6 April 2022, Commission Implementing [Decision](#) (EU) 2022/551 of 4 April 2022 amending Implementing Decision (EU) 2021/85 on the equivalence to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the U.S. Securities and Exchange Commission was published in the Official Journal of the EU. The decision came into force on 7 April 2022.

Commission Implementing [Decision](#) (EU) 2022/552 of 4 April 2022 determining that national securities exchanges of the United States of America that are registered with the Securities and Exchange Commission comply with legally binding requirements which are equivalent to the requirements laid down in Title III of Directive 2014/65/EU and are subject to effective supervision and enforcement was also published and entered into force on 26 April 2022. This decision lists the national securities exchanges registered with the SEC considered equivalent to regulated markets under MiFID II.

In addition, on 4 April 2022, the European Commission issued a [press release](#) advising that it has adopted a decision declaring that a number of United States exchanges supervised by the US Securities Exchange Commission are equivalent to EU regulated markets. As a result, derivatives traded on these US exchanges will now be treated as exchange-traded derivatives under EU law.

3.11 Financial Stability Board ("**FSB**") update

On 2 June 2022, the FSB published a background [note](#) on its public research conference to be held on 8 and 9 June entitled "Understanding and addressing systemic risks in non-bank financial intermediation" which details the growth of non-bank financial intermediation since March 2020 and makes specific reference to money market funds and also to policy tools that are most relevant to addressing these systemic risk – in the context of open-ended funds, liquidity management tools are mentioned.

3.12 IOSCO updates

(a) *Report on market data in the secondary equity markets*

On 28 April 2022, IOSCO published [report](#) entitled "Market Data in the Secondary Equity Market: Current Issues and Considerations" that sets out some issues and considerations for regulators when reviewing the regulation of market data. The report highlights that market data is an essential element of efficient price discovery and for maintaining fair and efficient markets and specifically, that market data enables market participants to identify liquidity, make informed order routing and investment decisions and comply with regulatory requirements, such as best execution.

(b) *Call for papers on vulnerabilities from liquidity mismatch in open-ended funds*

On 13 April 2022, IOSCO and the FSB [announced](#) a call for papers relating to vulnerabilities from liquidity mismatch in open-ended funds and policies to address them. They are inviting submissions of papers for a conference to be held in June on the financial stability risks arising from such liquidity mismatches. The closing date for submissions was 6 May 2022.

(c) *Discussion paper on corporate bonds*

On 6 April 2022, IOSCO published a discussion [paper](#) entitled "Corporate Bond Markets – Drivers of Liquidity During COVID-19 Induced Market Stresses" on which it is sought feedback, by 30 June 2022, on possible ways to help improve market functioning and liquidity provision, such as assessing the feasibility, benefits and costs of mitigating shifts in liquidity demand and alleviating supply side market constraints, including the potential unintended consequences from any prospective market changes. Ten key outcomes from the report are summarised at the start of the report and are as follows:

- corporate bond markets have grown significantly, including on a cross-border basis, over the past decade, with new issuance volume almost tripling in certain jurisdictions;
- corporate bond markets are less liquid than some other traded markets and the number of individual corporate debt securities that trade regularly is small;
- primary markets are important to the overall market liquidity;
- overall, the broader corporate bond market showed reduced liquidity during the turmoil;
- it is difficult to assess whether corporate bond market liquidity primarily dried up because of reduced liquidity supply by dealers, increased liquidity demand by investors, or a combination of both – and what was the greater relative contributor to the stresses;
- on the demand side, evidence on the influence of long-term investors in corporate bond markets during the COVID-19 stress is mixed, in part because their behaviour varies considerably by jurisdiction, in part due to the nature of their investment strategies, and in part due to the extraordinary speed of the crisis and subsequent recovery;
- liquidity in open-ended funds ("**OEFs**") during the COVID-19 induced market stresses of March 2020 showed that some OEFs contributed to selling pressure in some jurisdictions, driven by investor redemptions mostly related to the flight-to-quality and the dash-for cash;
- the distressed asset community played an important role, particularly in longer duration investment grade bonds (which is not their typical investment strategy) and other traditionally safe sectors;
- on the supply side, dealers did not contribute to selling pressure in the way they did during the global financial crisis. However, their behaviour had little dampening effect to the extent that

dealers did not expand their market-making activities to meet increased liquidity demands during the peak phase of the turmoil and were inclined to reduce pre-trade transparency to the market; and

- the structure of the corporate bond markets also contributed to the constraints in meeting demand for liquidity during the COVID-19 induced market stresses of March 2020.

(d) Consultation on ETFs

On 6 April 2022, IOSCO published a consultation [paper](#) on good practices relating to ETFs which proposes 11 good practices covering product structuring (including means of facilitating effective arbitrage and range of assets and strategies for ETF offerings), disclosure, liquidity provision and volatility control mechanisms. This document is intended to supplement IOSCO's [2013 Principles for the Regulation of Exchange Traded Funds](#). Feedback was sought prior to 6 July 2022.

3.13 Money Market Funds

On 4 May 2022, the translations of the [guidelines](#) on stress test scenarios under the MMF Regulation were published by ESMA. The amendments made to the previous version of the guidelines are set out in red and apply two months after the date of publication of the translations, being 4 July 2022.

3.14 PRIIPs

(a) *PRIIPs Delegated Regulation delaying implementation published*

On 24 June 2022, Commission Delegated [Regulation](#) (EU) 2022/975 of 17 March 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/653 as regards the extension of the transitional arrangement laid down in Article 14(2) of that Regulation and amending the regulatory technical standards laid down in Delegated Regulation (EU) 2021/2268 as regards the date of application of that Regulation was published in the Official Journal of the EU. This officially postpones the application date for certain PRIIPs requirements that were due to come into effect on 1 July 2022 to 1 January 2023.

The ESAs have published an [update](#) drawing stakeholders' attention to a [statement](#) issued by the European Commission on the application date of new rules for the PRIIPs KID.

(b) *Supervisory statement on the PRIIPs KID*

On 10 May 2022, ESMA published a supervisory [statement](#) issued by the ESAs relating to the "What is this product?" section of the PRIIPs KID. The aim of the supervisory statement is to improve the quality of descriptions provided by PRIIPs manufacturers. The ESAs have identified a range of poor practice in how products are described in this section which can cause confusion for retail investors.

The ESAs state that as the first descriptive section of the KID, this section is an essential part of part of the document to enable retail investors to understand the key features of the product. As there are not pre-defined narrative explanations for this section, it should provide an answer which covers five elements:

- the type of the PRIIP;
- its objectives and the means for achieving them, including by means of direct or indirect exposure to the underlying assets;
- the description of the type of retail investor to whom the PRIIP is intended to be marketed;
- where applicable, details of the insurance benefits; and

- the term of the PRIIP.

For each of these elements the statement sets out some of the practices observed together with the ESAs' expectations.

(c) Technical advice on PRIIPs Regulation review

On 2 May 2022, the ESAs published technical [advice](#) to the European Commission on the review of the PRIIPs Regulation. The ESAs recommend significant changes to the PRIIPs Regulation and encourage the Commission to consider a broad review of the PRIIPs framework as well as to undertake appropriate consumer testing before formulating proposals for changes.

(d) Corrigendum published

On 13 April 2022, a [corrigendum](#) to Commission Delegated Regulation (EU) 2021/2268 was published in the Official Journal of the EU. The amendments to the regulation are minor in nature and appear to relate to the correction of incorrectly numbered sections.

3.15 SFTR – Updated Data Reporting Q&As

On 1 April 2022, ESMA published an updated version of its SFTR data reporting [Q&As](#) with an updated Q12 relating to the currency for the overview report, which is amended to make reference to margin reports.

3.16 Short Selling Regulation

On 4 April 2022, ESMA published its final [report](#) on the review of the Short Selling Regulation. The final report proposes targeted amendments to improve the regulation's operation, focusing on clarifying the procedures for the issuance of short and long-term bans, ESMA's intervention powers, the prohibition of naked short selling and the calculation of net short positions and their publication.

This report has been submitted to the European Commission for consideration.

3.17 Sustainable Finance

(a) Call for input on greenwashing

On 30 June 2022, the European Commission published a [letter](#) and [request for input](#) that it sent to the ESAs in May 2022. In the letter, the European Commission requests that each of the ESAs provides input, individually but in a coordinated manner, on several aspects related to greenwashing and its related risks and the implementation, supervision and enforcement of sustainable finance policies intended to prevent greenwashing.

The request document itself sets out more details on the type of information that the European Commission is seeking, noting that each of the ESAs is requested to prepare "progress" and "final" reports focusing on how greenwashing is understood and where it may materialise; actions taken and tools developed to ensure adequate monitoring of greenwashing risks; and early supervisory challenges in monitoring the application and enforcement of new policies.

The "progress" reports are due within 12 months of the request with the "final" reports due within 24 months.

(b) Results of call for evidence of ESG ratings

On 27 June 2022, ESMA published a [letter](#) it has sent to the European Commission setting out the findings from ESMA's call for evidence on ESG ratings.

In its [press release](#) in respect of the letter, ESMA notes that it received a total of 154 responses and found 59 ESG rating providers currently active in the EU. It also noted that the analysis of the responses further indicated several characteristics and trends as follows:

- ESG rating providers – the structure of the market shows that there is a small number of very large non-EU providers, and a large number of significantly smaller EU entities. While the legal entities of respondents are spread out across almost half of the EU Member States, a large number of these are clustered in a small number of Member States;
- users of ESG ratings are typically contracting for these products on an investor-pays basis from several providers simultaneously. Their reasons for selecting several providers are to increase coverage, either by asset class or geographically, or in order to receive different nature of ESG assessments. The most common shortcomings identified by the users were a lack of coverage of a specific industry or a type of entity, insufficient granularity of data, and a lack of transparency around methodologies used by ESG rating providers. However, the provision of ESG ratings on an issuer-pays basis was also evidenced and more prevalent than anticipated; and
- entities covered by ESG ratings dedicate at least some level of resourcing to their interactions with ESG rating providers, although the amount largely depends on the size of the rated entity itself. Most respondents highlighted some degree of shortcoming in their interactions with the rating providers, most notably on the level of transparency as to the basis for the rating, the timing of feedback or the correction of errors.

(c) Central Bank clarifies expectations on Taxonomy Regulation disclosures

The Central Bank has updated its guidance on the pre-contractual disclosures required under the Taxonomy Regulation to reflect the European Commission's responses to the ESAs' queries published on 25 May 2022 (see section 3.17(h)). The guidance sets out three options in terms of disclosures for in scope funds.

(d) Corporate Sustainability Reporting Directive ("CSRD") update

On 21 June 2022, the European Parliament and the Council [announced](#) that they had reached a provisional political agreement on CSRD.

A staged implementation is currently proposed as follows:

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

(e) Taxonomy Complementary Delegated Act update

On 14 June 2022, MEPs of the European Parliament Committees on Environment, Public Health and Food Safety and on Economic and Monetary Affairs adopted an objection to the European Commission's proposal to include specific nuclear and gas energy activities in the list of environmentally

sustainable economic activities covered by the EU Taxonomy, with 76 votes to 62 votes and 4 abstentions.

MEPs also requested that any new or amended delegated acts are subject to a public consultation and impact assessments, as they could have significant economic, environmental and social impacts.

The draft resolution is scheduled for a vote before the full European Parliament at the plenary session on 4-7 July 2022. The European Parliament and the Council have until 11 July 2022 to decide whether to veto the Commission's proposal. If an absolute majority of MEPs (353) objects to the Commission's proposal, the Commission will have to withdraw or amend it.

(f) Clarifications on key areas of SFDR Level 2 Regulations

On 2 June 2022, ESMA published a [statement](#) prepared by the ESAs which provides clarifications on various matters set out in the draft Level 2 regulations under SFDR. The topics covered are:

- clarifications related to disclosure of PAI of investment decisions on sustainability factors – use of "sustainability indicators"; PAI calculation methodology; and look-through approach and investment instrument scope for PAI disclosures;
- disclosures for direct and indirect investments in pre-contractual and periodic disclosures;
- further guidance on the adverse impact indicators in Tables 1-3 of Annex I;
- guidance related to pre-contractual financial product disclosures;
- guidance related to periodic financial product disclosures;
- guidance related to taxonomy-related financial product disclosures;
- guidance related to "do not significantly harm" ("DNSH") disclosures; and
- guidance related to disclosures for financial products with investment options.

(g) Supervisory briefing on the integration of sustainability risks and disclosures in the area of asset management

On 31 May 2022, ESMA published a supervisory [briefing](#) on the integration of sustainability risks and disclosures in the area of asset management. The briefing sets out (i) guidance for the supervision of fund documentation and marketing material – (a) verification of the compliance of the pre-contractual disclosures; (b) verification of the consistency of information in the fund documentation and marketing material; (c) verification of the compliance with the website disclosures' obligations; (d) verification of the compliance with the periodic disclosures' obligations; and (e) additional supervisory actions; (ii) integration of sustainability risks by AIFMs and UCITS managers; and (iii) regulatory interventions in case of breaches.

(h) Queries on interpretation of aspects of SFDR and the Taxonomy Regulation

On 13 May 2022, ESMA published [queries](#) submitted by the ESAs to the European Commission with queries relating to the interpretation of SFDR and the Taxonomy Regulation. The questions relate to:

- principal adverse impact disclosures – Question 1;
- financial advisers – Questions 2 to 5;

- transparency of the integration of sustainability risks and rules for products no longer made available – Questions 6 and 7;
- good governance practices – Questions 8 and 9;
- scope of Articles 5 and 6 of the Taxonomy Regulation – Question 10.

On 25 May 2022, a European Commission [decision](#) relating to the adoption of the responses to the above queries together with an accompanying [letter](#) and the [responses](#) were published by ESMA.

(i) Mandates from the European Commission to the ESAs on SFDR Level 2 Regulations

On 6 May 2022, ESMA published two mandate letters sent by the European Commission to the ESAs relating to:

- [amendments](#) to the SFDR level 2 Regulations to reflect the provisions set out in the Complementary Climate Delegated Regulation (the draft legislation governing the inclusion of nuclear and gas in the Taxonomy). The Commission has asked the ESAs to propose amendments relating to the information that should be provided in pre-contractual documents, on websites, and in periodic reports relating to the exposure of financial products to investments in fossil gas and nuclear energy activities. Such proposals are to be provided to the Commission by 30 September 2022 at the latest; and
- [amendments](#) to the SFDR level 2 Regulations in respect of the principal adverse impact indicators and also to include information on decarbonisation targets, including intermediary targets and milestones, where relevant, and actions pursued in pre-contractual documents, on websites, and in periodic reports. The Commission has invited the ESAs to (i) streamline and develop further the regulatory framework; (ii) consider extending the lists of universal indicators for principal adverse impacts, as well as other indicators; and (iii) refine the content of all the indicators for adverse impacts and their respective definitions, applicable methodologies, metrics and presentation. The ESAs have been given 12 months from the date of the letter, being 11 April 2022, to submit draft amendments to the SFDR Level 2 Regulations to reflect the above.

(j) Risk analysis report on the drivers of the costs and performance of ESG funds

On 23 May 2022, ESMA published a risk analysis [report](#) entitled "The drivers of the costs and performance of ESG funds" which looks at the potential reasons behind the relatively lower ongoing costs, and better performance, of ESG funds compared to other funds, between April 2019 and September 2021. The report finds several differences between the two categories of funds which may be considered possible drivers – ESG funds are more oriented towards large cap stocks; ESG funds are more oriented towards developed economies; and the sectoral exposures also differ between ESG and non-ESG funds. Although it is noted that further research is needed to identify other factors driving these cost and performance differences.

(k) FSB interim report on supervisory and regulatory approaches to climate-related risks

On 29 April 2022, the FSB published its interim [report](#) on supervisory and regulatory approaches to climate-related risks. This report aims to assist supervisory and regulatory authorities in developing their approaches to monitor, manage and mitigate risks arising from climate change and to promote consistent approaches across sectors and jurisdictions.

The report examines supervisory and regulatory reporting and collection of climate-related data from financial institutions (the lack of sufficiently consistent, comparable, granular and reliable climate data reported by financial institutions is a main challenge for authorities); explores system-wide supervisory and regulatory approaches to assessing climate-related risks, including the use of analytical tools such

as climate scenario analysis and stress testing; and assesses the extent to which current policies and tools address climate-related risks and gives early consideration to other potential macro prudential policies and tools.

Views were sought on the recommendations set out in the report by 30 June 2022.

(l) SFDR Level 2 Regulations adopted

On 6 April 2022, the European Commission advised that they have adopted the SFDR level 2 [regulations](#) with the annexes being provided in separate documents:

- [Annex 1](#) – Template PAI statement;
- [Annex 2](#) – Template Article 8 pre-contractual disclosures;
- [Annex 3](#) – Template Article 9 pre-contractual disclosures;
- [Annex 4](#) – Template Article 8 periodic disclosures; and
- [Annex 5](#) – Template Article 9 periodic disclosures.

The main changes to the annexes are in Annex I where a requirement to included actions planned and targets set for the next reference period should be included in the disclosure in addition to details of the actions taken in respect of the specific sustainability indicators.

While these draft regulations need to be signed off by the European Parliament and Council before being published in the Official Journal of the EU, the information set out in this draft can be used to start collating the information that will be needed to complete the templates contained in the annexes. The scheduled implementation date remains 1 January 2023 with the first principal adverse impacts statement to be published by 30 June 2023.

(m) Consultation on ESG ratings and sustainability factors in credit ratings

On 4 April 2022, the European Commission launched a targeted [consultation](#) on ESG ratings and sustainability factors in credit ratings. The consultation period ran until 6 June 2022.



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