






Asset Management & Investment Funds Update

March 2022

Key Dates & Deadlines: Q1 / Q2 2022

DATE	SOURCE	SUMMARY	ACTION/IMPACT
9 March		EU sanctions prohibit dealing in transferable securities or money market instruments issued after 9 March 2022 by Russia and its government or the Central Bank of Russia or any entity acting on behalf of or at the direction of one of these entities.	Update screening processes and procedures to take account of EU sanctions and address regulatory expectations set out in Central Bank industry correspondence dated 7 March 2022. See article on topic in this edition.
31 March		Central Bank deadline for completion of compliance review by MiFID firms with client suitability rules.	Firms providing portfolio management and advisory services (including UCITS managers and AIFMs with MiFID top-up licences) should review suitability practices against CSA findings and ensure compliance with MiFID suitability rules in line with Central Bank's expectations. See here for further details.
31 March (and 30 June 2022, 30 September 2022 and 31 December 2022)		First calculation date for entity-level assessment of principal adverse impacts of investment decisions under SFDR Article 4(1)(a), (3) or (4). Fund management companies which are either required or have chosen to comply with the entity-level principal adverse sustainability impact (PAI) reporting regime under Article 4 of the SFDR will be required to publish a PAI statement on the principal adverse impacts of	Implement processes and procedures for the collection of data necessary to calculate PAIs on each of the calculation dates during the first PAI reference period of January – December 2022 ahead of the publication of the first PAI statement by 30 June 2023. See here for further details.

investment decisions on sustainability factors using specific indicators set down in the regulatory technical standards supplementing the SFDR on or before 30 June 2023.

12 April



EU sanctions prohibit dealing in any transferable securities and money market instruments issued after 12 April 2022 by 23 specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.

Update screening processes and procedures to take account of EU sanctions and address regulatory expectations set out in Central Bank industry correspondence dated 7 March 2022. See article on topic in this edition.

30 April



Expiration date for interim company law flexibility measures introduced under the Companies (Miscellaneous Provisions) (COVID-19) Act.

If availing of flexibility measures, consider any adjustments necessary ahead of the expiry of measures. See [here](#) for further details.

30 June



Transposition deadline for UCITS amendments allowing the preparation of a PRIIPs KID in satisfaction of UCITS KIID rules with effect from the application of PRIIPs rules to UCITS on 1 January 2023.

Advance preparations for compliance with the PRIIPs deadline for UCITS of 1 January 2023, at which point UCITS must produce:

- a PRIIPs KID for retail investors
- either a PRIIPs KID or UCITS KIID for professional investors
- a UCITS KIID for any UK investors

See [here](#) for further details.

EU Sanctions in response to Situation in Ukraine

To date in 2022, the EU has adopted four sanctions packages in response to the developing situation in Ukraine (**2022 Sanctions Packages**). Each of the 2022 Sanctions Packages includes one or more directly effective EU Regulations which either introduce new or amend existing EU sanctions regimes (in place since 2014). The 2022 Sanctions Packages include several restrictive measures of relevance to funds and fund management companies (**FMCs**) including:

1. an **asset freeze** in respect of specified individuals, including members of the Russian Government, businesspeople and oligarchs who financially or materially support the military operations in the Ukraine, and five entities including three private banks, an entity responsible for disinformation and one entity which insured projects related to annexed Crimea; and
2. restrictions on access to EU capital markets for certain financial institutions which include **prohibitions on dealing in any newly issued transferable securities and money market instruments** issued by specified entities, any non-EU entity majority owned by one of the specified entities or any EU or non-EU entity acting on behalf or at the direction of one of the specified entities.

Application of EU sanctions

EU sanctions are applicable when there is EU jurisdiction (i.e., a nexus linking a certain activity to the EU) and as such EU Member State nationals and companies or other entities incorporated in an EU Member State must comply with EU sanctions and non-EU companies and persons may be subject to EU sanctions depending on their activities in the EU and their connection to any activities restricted by sanctions.

Failure to comply with EU sanctions can expose companies and individuals to fines and/or imprisonment. FMCs must, therefore, carefully consider and screen investors, investments, counterparties and their ultimate beneficial owners against applicable sanctions lists to establish that they are not under sanction. The Central Bank, in correspondence to financial service providers (**FSPs**) dated 7 March 2022, reminded FSPs (including FMCs) of their obligation to comply with applicable EU sanctions with respect to any impacted fund asset or fund investor and "*In particular, recognising that this is a complex and changing environment, the Central Bank expects Fund Service Providers to take timely action, with heightened precautions, to ensure no breaches of the sanctions occur.*"

Apart from their sanctions screening obligations under the 2022 Sanctions Packages, Irish Anti-Money Laundering (AML) and Counter-Terrorist Financing (CFT) laws impose screening obligations on designated persons such as funds and FMCs. The Central Bank's AML/CFT Guidelines provide that "*Firms should have systems appropriate to the nature, size and risk of their business. Screening new and existing customers and payments against the relevant and up to date. EU and UN lists helps ensure that Firms will not breach the sanctions regulations. Customer screening should take place at the time of customer take-on and at regular intervals thereafter.*"

Key sanctions of relevance to Fund Management Companies

1. Asset Freeze

The most widely used type of EU sanction and of relevance to funds and FMCs is the asset freeze. Notably, there are separate asset freeze regulations for each sanctions regime and the EU maintains a consolidated list of persons subject to any EU asset freeze, i.e., where all funds and economic resources of the listed person that belong to, are owned, held or controlled by that person are required to be frozen. In addition, funds or economic resources, must not be made available directly or indirectly, to, or for the benefit of, the listed persons.

2022 Asset Freeze

In March 2014 and in response to threats to Ukrainian sovereignty and independence, the EU adopted sanctions which froze the assets of 21 individuals (EU 296/2014). Since then, the list of persons subject to the 2014 asset freeze has been amended and extended on numerous occasions and most significantly by the 2022 Sanctions Packages which have resulted in the assets of over 700 individuals and 53 entities being frozen. A consolidated list of persons, groups and entities subject, under EU sanctions, to an asset freeze and prohibition to make funds and economic resources available to them is accessible [here](#).

Central Bank Guidance

The Central Bank has published guidance on its website in respect of the 2022 Sanctions Packages which reiterates funds' and FMCs' obligations to carry out ongoing monitoring of transactions and customers to ensure compliance with EU sanctions. Account(s) of sanctioned persons, entities or bodies must be immediately frozen and/or transaction(s) stopped and, once reasonable steps are taken to verify the identity of the sanctioned individual or entity, a report must be submitted to the Central Bank using its Sanctions Return Form (accessible [here](#)).

2. Restrictions on Trade and Investment

EU sanctions also target specific sectors in certain countries, e.g., sanctions restricting access to the EU's capital markets for certain Russian state-owned banks and companies active in the energy and defence sectors, and their non-EU subsidiaries and any other entity (EU or non-EU) acting on their behalf or at their direction. Importantly, the sanctions prohibit dealings, directly or indirectly, with certain new transferable securities and money market instruments issued by these targeted entities, and making, or being part of any arrangement to make, certain new loans or credit to these entities or to materially amend existing loans or credit.

2022 Restrictions on Investment

From 25 February 2022, direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) is prohibited in any transferable securities and money market instruments issued after 12 April 2022 by 23 specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.

From 23 February 2022, direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) is prohibited in transferable securities or money market instruments issued after 9 March 2022 by Russia and its government or the Central Bank of Russia or any entity acting on behalf of or at the direction of one of these entities.

The February 2022 restrictions above are in addition to those adopted in 2014 which continue to apply and include:

- *From July 2014:* restrictions on direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) in transferable securities and money market instruments with a maturity >90 days issued after 1 August 2014 to 12 September 2014 by 5 specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.
- *From 8 September 2014:* restrictions on direct or indirect dealing (purchase/sale/provision of investment services/assistance in the issuance of or otherwise dealing) in transferable securities and money market instruments with a maturity >30 days issued after 12 September 2014 to 12 April 2022 by 11 specified Russian banks and entities and any other entity (EU or non-EU) acting on their behalf or at their direction.

Next Steps

The impact of the 2022 Sanctions Packages on asset values and market liquidity has been widely reported. In its March 2022 correspondence to FSPs, the Central Bank highlighted several key expectations of FMCs in this regard:

- ensure proper valuation of fund assets by applying fair, appropriate and consistent pricing models and valuation procedures;
- appropriately reflect any pronounced devaluations and/ or an impaired ability to trade particular assets;
- continuously assess fund liquidity and factor in potential demand for investor redemptions; and
- remain open and forthcoming with the Central Bank about material issues (including the activation of certain liquidity management tools e.g., suspensions) affecting underlying funds and report breaches in the normal course.

As the situation in the Ukraine continues to evolve, the EU Commissioner for Financial Services, Financial Stability and Capital Markets Union confirmed, at [William Fry's recent ESG event](#), that "*nothing is off the table*" when it comes to further measures against Russia. Funds and FMCs must, therefore, continue to monitor EU efforts to support Ukraine and ensure timely application of appropriate processes and procedures, including in respect of screening, valuation, liquidity and regulatory reporting, in order to comply with EU sanctions and applicable legal and regulatory obligations.

Central Bank 2022 Supervisory Priorities

On 8 February 2022, the Central Bank published the second edition of its annual Securities Markets Risk Outlook Report outlining the key risks and areas of focus for the Central Bank in 2022 (the **Risk Outlook Report**). The Risk Outlook Report highlights eight key risk areas in focus for 2022, as detailed below, and references several previously announced, planned supervisory assessments including the ESMA CSA on Valuations, follow-up from the CP86 review and the CSA on UCITS costs and fees and a proposed review of the PRISM impact rating model for funds and supervisory engagement. The Central Bank expects firms to review the risks and supervisory priorities outlined in the Risk Outlook Report and address, as appropriate, for example through the alignment of risk assessment and mitigation programmes and compliance plans with regulatory expectations (summarised below).

1. **MISCONDUCT RISK:** including risks arising from issues identified in the recent MAR thematic review findings, inconsistent Suspicious Transaction and Order Reports (STORs), deficiencies in firms' trade surveillance systems, inadequate maintenance of insider lists and a lack of informative management information (MI) reporting.

The Central Bank expects firms to address misconduct risks including by reviewing STOR submission obligations, trade surveillance systems, alert thresholds and parameters, insider list obligations and internal controls and systems overseeing trading and adherence to trade mandates.

2. **SUSTAINABLE FINANCE:** including greenwashing ("products marketed with sustainable credentials but in reality, do not meet such criteria") risk arising from inadequate or incorrect disclosures misleading investors into buying products that do not meet their sustainable expectations.

The Central Bank expects firms to address greenwashing risks by devoting sufficient resources to complying with SFDR Levels 1 and 2 and ensuring investors are fully informed of a product's sustainability characteristics in a manner that is measurable and quantifiable, using transparent parameters.

3. **GOVERNANCE:** including risks arising from inadequate governance structures, Board oversight of delegates and third-party intermediaries and delegate due diligence.

The Central Bank expects firms to address governance risks by

- thoroughly scrutinising proposed delegate arrangements including legal agreements, regulated status and stated expertise and prior relationships; adopting clear, documented governance structures including escalation chains; and developing frameworks for the management of risks associated with outsourcing in line with the Cross-Industry Guidance on Outsourcing published in December 2021
- having appropriate levels of resources and appointing local designated persons with the relevant skills and appropriate seniority for their managerial function
- in the context of third-party fund management company appointments by self-managed funds, performing adequate due diligence and ensuring operational capacity at the level of the management company
- where appointing investment advisors, by ensuring that such delegates do not have undue influence or control and that investment advisors perform non-discretionary roles adjunct to that of the investment manager. In this regard, the Central Bank highlights the regulatory oversight risks arising from structures whereby interactions, reporting and the resolution of issues are exclusively with the investment advisor as opposed to the investment manager or fund management company.

4. **CONFLICTS OF INTEREST:** including risks arising from firms' failure to consider conflicts of interest in their day-to-day operations and ensure they are not financially benefiting at the expense of underlying investors, clients or market counterparties or have a financial incentive to favour one client over another.

In the case of investment funds, a key focus is on the risks arising from connected party transactions (**CPTs**) and identified shortcomings on the part of depositaries and designated persons to apply the appropriate level of rigour in complying with the regulatory rules for CPTs. Cases have been identified of relevant parties not being notified of CPTs and entities failing to identify themselves as connected parties e.g., as a result of side letter arrangements entered into between entities and investments

The Central Bank expects firms to address conflicts of interest risks including by adopting robust CPT processes and procedures and engaging rigorously with depositaries and designated persons when contemplating a CPT to ensure the protection of investors' interests and compliance with applicable regulatory rules.

managers/advisors for the purchase or financing of assets following which the valuation of the asset may be called into question.

5. **FINANCIAL INNOVATION:** including the risks to retail investors arising from the increased use of social media to recommend/disseminate online advice and facilitate retail trading and the proliferation of new products as a result of the low interest rate environment. Special purpose acquisition companies (SPACs) and crypto assets are both cited as products of concern and the Central Bank highlights its current position, as outlined recently in new AIFMD and UCITS Q&As, that such assets are not currently suitable for retail investors.

The influence of third parties, specifically that of index providers on the design of new products and platforms/distributors on fund dealing and settlement times, are of concern to the Central Bank.

Fund managers are cautioned to retain governance and oversight of product design and reminded of the importance of understanding the index calculation methodology and performing appropriate levels of due diligence on index providers. Adapting dealing and settlement procedures solely to access specific platforms/distributors, where such procedures are inconsistent with the characteristics and profile of the relevant fund, is deemed inappropriate by the Central Bank.

6. **DATA:** including regulatory oversight risks arising from data quality issues in firms' regulatory returns. In 2022, the Central Bank will prioritise engagement to ensure the receipt of complete, accurate and timely data which may take the form of supervisory action where data issues are identified.

The Central Bank expects firms to prioritise data quality and, where data submission is outsourced or automated technology is used, ensure a high level of delegate oversight and testing of systems.

7. **CYBER SECURITY:** including financial stability and operational resilience risks arising from cyberattacks.

The Central Bank expects firms to be operationally resilient including through the adoption of adequate ICT risk management policies and procedures, disaster recovery plans and ensuring the education of staff on cybersecurity and the reliability, security and scalability of automated systems.

8. **MARKET DYNAMICS:** including liquidity risks arising from the low interest rate environment and leverage-related risks from the use of instruments such as CFDs and TRS.

The Central Bank expects firms to address market risks by having an appropriate risk management framework in place and regularly stress testing liquidity and leverage positions while having regard to the ESMA and Central Bank findings and recommendations on liquidity risks in funds.

Inducements Ban for all Retail Investment Products

On 3 February 2022, Better Finance (an EU investor group) published a paper entitled 'Evidence & Arguments for Banning Inducements in Retail Investment Services' with the aim of supporting EU legislators' consideration of a ban on inducements across all retail investment products. The inducements ban is being considered by the EU as part of its Retail Investment Strategy for Europe which was published for consultation in H1 2021 and includes various proposed amendments, including the inducements ban, to the current EU framework for retail investments. As has been widely reported, the Better Finance paper forcefully rebuts certain asset management industry views set out in the November 2021 KPMG whitepaper entitled 'The Future of Advice: A comparison of fee-based and commission-based advice from the perspective of retail clients'. The Commission is expected to publish an action plan for the Retail Investment Strategy in Q4 2022 following a review of the feedback received to its 2021 consultation and that from respondents to the individual ESA consultations which concluded with the EIOPA consultation on 25 February 2022.

ESMA Opinion on MMFR Review

On 16 February 2022, ESMA published its opinion on the review of the Money Market Fund Regulation (**MMFR**) (the **Opinion**). The Opinion, which will inform the Commission's review of the MMFR scheduled for later this year, takes account of feedback to ESMA's 2021 industry consultation along with review proposals outlined in the October 2021 FSB report and January 2022 ESRB Recommendation.

The Opinion, which is strongly influenced by MMF difficulties identified during the COVID crisis of March 2020, sets out MMFR reform proposals focussed on addressing liquidity-related issues and first-mover advantage issues applicable to CNAV MMFs.

ESMA suggested reforms include:

CNAV/LVNAV MMFs

- removing the possibility to use amortized costs for LVNAVs
- decoupling regulatory thresholds from suspensions/gates/redemption fees for LVNAV/CNAV

MMFs generally

- mandatory availability of at least one liquidity management tool (**LMT**) for all MMFs. ESMA recommends requiring each MMF have in place at least one type of LMT (anti-dilution levies (ADL), liquidity fees and/or swing pricing) and while use of such LMT would be at the discretion of the MMF manager, ESMA recommends setting down in a delegated act the circumstances under which LMTs must be used.
- amendments of the Daily liquidity assets ratios (DLA)/ Weekly liquidity assets ratios (WLA) of VNAV (and LVNAV) MMFs, as well as the pool of eligible assets (including public debt assets) which can be used to satisfy these liquidity ratios. With respect to VNAVs (both short-term and standard), the DLA and WLA requirements should be increased to $7.5\%+X(\text{VNAV}\%) / 15\%+Y(\text{VNAV}\%)$ respectively (as compared to the current 7.5%/15%) while leaving the option to managers to include a maximum proportion of public debt (of a maturity up to 190 days) ($Z(\text{VNAV}\%)$) in the computation of the WLA (similarly to what currently applies to LVNAV, according to Art. 24(1)(g)). In relation to public debt holding and while not recommending the mandatory holding of public debt for MMFs, ESMA suggests allowing MMFs include public debt assets (up to a certain percentage) in the pool of assets used to meet the WLA requirements.
- inclusion/reinforcement of the possibility to temporarily use liquidity buffers in times of stress. ESMA recommends that, in stressed market conditions, it should be possible for MMF managers to, on a time-limited basis, release a portion of each MMFR liquidity ratio. The conditions under which this would be permitted, and any potential quantification of the release should be specified in a delegated act.

Complementary / crisis preparedness reforms

- enhancement of MMF reporting requirements. ESMA recommends more frequent reporting (daily) in stress market conditions as well as an increase in the frequency of reporting in normal times from quarterly to monthly (for MMFs whose assets under management exceed EUR 100 000 000) and from annually to quarterly (for MMFs whose assets under management do not exceed EUR 100 000 000).
- enhancement of the MMF stress testing framework. ESMA recommends direct reporting from the MMF manager to ESMA, as well as national competent authorities, to facilitate ESMA's coordination role.
- clarification of the requirements on external support. ESMA does not recommend amendments to the MMFR ban on external support but suggests clarifications be made to reflect its July 2020 statement on external support.
- new disclosure requirements on ratings of MMFs. ESMA suggests making it mandatory for MMFs to disclose that they are rated, as well as the main features of that rating (especially the conditions under which the ratings are downgraded) with such disclosures only requiring to be updated in the event of material changes to the rating / rating methodology.

Next steps

The Opinion will now be sent to the Commission to inform its MMFR review which is due for completion by 21 July 2022.

ESMA CSA on MiFID Costs and Charges Rules

On 8 February 2022, ESMA launched a common supervisory action (**CSA**) with national competent authorities (**NCA**s) on compliance by MiFID firms with the MiFID costs and charges disclosure rules. The CSA, which will be conducted over the course of 2022, will focus on the information provided by MiFID firms to retail clients and NCAs will review compliance with rules for disclosures (including relevant [ESMA Q&A guidance](#)) to:

- be provided in a timely manner;
- be fair, clear and not misleading;
- be based on accurate data reflecting all explicit and implicit costs and charges; and
- adequately disclose inducements.

Next Steps

MiFID firms can expect to receive requests for information to support the Central Bank's review of compliance with relevant rules and requirements shortly. While the launch notice does not reference a specific timeline for the CSA, MiFID firms should prepare for near-term engagement by the Central Bank and ensure disclosures on costs and charges are in line with applicable rules and regulatory expectations to avoid being subject to any risk mitigation actions which may form part of the post-information gathering phase of the CSA.

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