














## Asset Management & Investment Funds Update

April 2022

### Key Dates & Deadlines: Q2 / Q3 2022

DATE	SOURCE	SUMMARY	ACTION/IMPACT
31 March		Revised MiFID remuneration guidelines published with an effective date of six months post publication of the translated guidelines on ESMA's website.	UCITS managers and AIFMs with MiFID top-up licences should review the revised guidelines and prepare for compliance ahead of the, as-yet-to-be confirmed, effective date. See article on topic in this edition for further details.
5 April		Effective date of amended list of Pre-Approval Control Function (PCF) roles under Fitness & Probity regime.	By 3 June 2022, notify the Central Bank of any individuals performing newly created PCF-2B role and whether existing PCF-15 roles should be redesignated as PCF-52 and/or PCF-12. See article on topic in this edition for further details.
12 April		EU sanctions prohibit dealing in any transferable securities and money market instruments issued after 12 April 2022 by specified Russian entities and prohibit the sale to any Russian national, resident or entity established in Russia of euro-denominated transferable securities or shares in funds with exposure to such securities.	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 <a href="#">here</a> for further details.
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 <a href="#">here</a> for further details.

3 June		Central Bank deadline for any notification(s) in respect of the amended list of PCF roles.	Ensure any necessary notifications are filed with the Central Bank in advance of the deadline. See article on topic in this edition for further details.
30 June		Transposition deadline for UCITS amendments facilitating preparation of a PRIIPs KID in satisfaction of UCITS KIID rules with effect from the application of PRIIPs rules to UCITS from 1 January 2023.	Advance preparations for compliance with the PRIIPs deadline for UCITS of 1 January 2023, at which point UCITS must produce: <ul style="list-style-type: none"> <li>• a PRIIPs KID for EEA retail investors</li> <li>• either a PRIIPs KID or UCITS KIID for professional investors</li> <li>• a UCITS KIID for any UK investors</li> </ul> See <a href="#">here</a> for further details.
30 June (30 September 2022 and 31 December)		Second calculation date for entity-level assessment of principal adverse impacts (PAIs) of investment decisions under SFDR Article 4(1)(a), (3) or (4) and SFDR Level 2, Chapter II.	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 <a href="#">here</a> for further details.
Q3 (exact date to be confirmed)		Deadline for filing PPSNs for beneficial owners of ICAVs, ILPs, CCFs and unit trusts with the Central Bank as Registrar for the relevant beneficial ownership register.	Relevant fund vehicles to gather PPSNs for beneficial owners and for those without PPSNs, identify whether a Central Bank reference number is available and, if not, prepare to file declarations in accordance with specified regulatory process. See article on topic in this edition for further details.
Q3 (exact date to be confirmed)		ESMA Guidance on MiFID appropriateness and execution-only requirements likely to take effect. Effective date dependant on the date of the as-yet-to-be published translations of the final guidelines published on 3 January 2022.	AIFMs with MiFID top-up licence should advance compliance preparations in anticipation of the entry into effect of the ESMA guidelines.
6 July		Anticipated end of SFDR Level 2 legislative scrutiny period following which, if no objections are raised on the Commission's adopted text, SFDR Level 2 will enter into force and be applicable from the scheduled date of 1 January 2023.	Advance preparations for, as applicable, disclosure of entity-level PAIs and product-level green/social characteristics/objectives using the mandated disclosure templates appended to SFDR Level 2. See article on topic in this edition for further details.
1 August		Effective date for UCITS Directive and AIFMD provisions for the governance and management of sustainability risks and adverse sustainability impacts.	Advance compliance preparations including any necessary updates to investment due diligence, risk management, conflicts of interest and resourcing arrangements for the

management of sustainability risk. See [here](#) for further details.

2 August



Effective date for MiFID organisational requirements and operating conditions for the integration of sustainability factors, risks and preferences including the amended MiFID client suitability assessment rules.

In-scope fund managers to advance compliance preparations for sustainability risk management rules and update client suitability assessment processes and procedures to reflect new sustainability preference rules. See [here](#) and [here](#) for further details.

1 September



Last phase of applicants (covered entities with an aggregate average notional amount of non-centrally cleared derivatives greater than €8 billion) subject to the initial margin requirements under EMIR.

This marks the end of the phase-in for initial margin requirements under EMIR. In-scope funds must exchange, on a bilateral basis, initial margin with a threshold not to exceed €50 million and a de-minimis minimum transfer amount not to exceed €500,000. See [here](#) for further details.

## SFDR Level 2 Published

### Commission adopts long-awaited SFDR Level 2 measures

On 6 April 2022, a significant step towards finalising the long-awaited SFDR compliance standards was taken with the Commission's adoption of Level 2 delegated measures based on the two sets of regulatory technical standards (RTS) published by the European Supervisory Authorities (ESAs) in February and October 2021 (SFDR Level 2). It is now up to EU co-legislators to review SFDR Level 2 within the allotted three-month scrutiny period (which they may shorten or extend by an additional three months). If no objections are raised during scrutiny, SFDR Level 2 will enter into force and apply from the scheduled effective date of 1 January 2023.

### SFDR Level 2 versus ESA RTS

Crucially for those in-scope UCITS managers and AIFMs which have progressed compliance plans, SFDR Level 2 does not deviate in any material respect from the ESA RTS published last year and the pre-contractual, periodic report and principal adverse sustainability impact (PAI) disclosure templates appended to SFDR Level 2 effectively mirror those in ESA RTS annexes. Following the Commission's legal review of the ESA RTS, and to ensure consistency, quality and avoid duplication, certain of the ESA RTS provisions have been adapted or deleted. As a result, SFDR Level 2 differs in form but not in substance from the ESA RTS and consists of five chapters: Chapter I on general provisions, Chapter II on reporting entity-level PAIs, Chapter III on pre-contractual disclosures for funds in scope of SFDR Articles 8 and 9, Chapter IV on website disclosures for funds in scope of SFDR Articles 8 and 9, and Chapter V on financial report disclosures for funds in scope of SFDR Articles 8 and 9.

### No clarification of outstanding implementation challenges

While the absence of any material changes to the ESA RTS is undoubtedly welcome, it also means that SFDR Level 2 does not answer any of the myriad open questions on SFDR compliance and implementation. For example, there is no clarification of the thresholds to be met for an investment to qualify as sustainable under SFDR nor any clarification of the requirements for funds in scope of Article 9(3) SFDR. There is also no change to the previously indicated, and significantly challenging, timelines for Level 2 product-level financial report disclosures (required to be included in reports published after the January 2023 SFDR Level 2 effective date) and publication of the first quantitative PAI statement (required by 30 June 2023). The requirement to perform two 'do no significant harm' assessments on Taxonomy-aligned investments under both SFDR and the Taxonomy and the necessity to perform Taxonomy alignment calculations absent necessary investee company data are also carried over from the ESA RTS despite the ESA's specifically highlighting these issues in their cover letter to the Commission enclosing the October 2021 RTS. In the absence of legislative clarifications of these issues, it is hoped that ESMA's promised guidance and Q&As "on a number of

*stakeholder questions...with regard to implementation and timing of SFDR e.g., on scope, definitions, interactions between different pieces of legislation*" will have the intended effect of bringing "greater clarity" for those in scope of SFDR Level 2 and, ideally, in advance of the 1 January 2023 compliance deadline.

### SFDR "not a labelling regime"

Notably, the Commission took the opportunity in the Level 2 explanatory statement to reiterate that SFDR is a disclosures framework for financial products with stated levels of sustainability ambitions and "not a labelling regime". While legislators and regulators have not always been consistent on this point (both the ESAs and the Commission have referred to so-called Article 8 and 9 products), concerns have been raised that fund managers are extensively using Article 8 and 9 designations in the marketing of funds in scope of the regime's product-level disclosure rules. The ESMA Chair, in recent comments, noted this increasing use of "the disclosures categories as product classifications" and that this has led to Article 8 funds being "called out for less ambitious environmental or social characteristics". In ESMA's view this creates a potential investor protection issue which may need to be addressed through the application of "appropriate criteria to ensure that investors who are looking for sustainability features in their financial products are offered products matching their preferences." It appears, therefore, that SFDR Level 2 will not be the final piece of this regime's puzzle and Level 1 amendments could quickly follow the entry into force of the delegated measures.

### Next steps

While SFDR Level 2 is not yet in force, the Commission's adoption of the ESA RTS without substantive amendments indicates that further amendments to these compliance standards are unlikely. As such, in-scope UCITS managers and AIFMs may be confident in progressing compliance plans based on the Commission's adopted Level 2 measures and indeed, given the scheduled compliance deadline of 1 January 2023, would be well advised to do so.

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## ESA Update of SFDR Supervisory Statement

On 24 March 2022, the ESAs issued an updated version of the February 2021 supervisory statement on SFDR with additional guidance for industry and NCAs on the implementation of the SFDR Taxonomy-related provisions in the interim period prior to SFDR Level 2 taking effect on the anticipated date of 1 January 2023 (the **Supervisory Statement**).

With effect from 1 January this year, SFDR Taxonomy-related provisions (SFDR requirements inserted by the Taxonomy Regulation) require funds in scope of SFDR Articles 8 or 9 with environmental characteristics/objectives and which invest in environmental sustainable investments to disclose (i) the environmental objectives under the Taxonomy Regulation (the **Taxonomy**) to which the fund's investments contribute and (ii) how and to what extent the fund's investments comply with the Taxonomy criteria for environmentally sustainable investments i.e., the level of Taxonomy-aligned sustainable investments in the fund's portfolio.

### Requirement for numerical disclosure of Taxonomy alignment

The Supervisory Statement confirms the previously indicated supervisory expectation that compliance with the requirement at (ii) above necessitates disclosure of an explicit quantification, using a numerical percentage, of the level of investment in Taxonomy-aligned investments. This percentage disclosure may, until January 2023, (expected effective date of SFDR Level 2) be supplemented by qualitative disclosures explaining how the level was calculated e.g., by identifying the data sources used. However, any qualitative disclosures should not go beyond what is required under the SFDR Taxonomy-related rules.

### Disclosure of Taxonomy-eligibility not sufficient

The Supervisory Statement also confirms the supervisory expectation that information on Taxonomy-eligible activities should not be disclosed to meet the requirement to disclose the level of Taxonomy-aligned investments in a fund's portfolio. The necessity for this clarification arises from the phased implementation of Taxonomy disclosure obligations for investee companies, which will provide essential data for funds' calculation of the Taxonomy alignment of investments in such companies. Under this phased implementation approach, investee companies must only disclose the eligibility of activities under the Taxonomy i.e., whether activities are covered by the Taxonomy, from January 2022 with the first reports on the Taxonomy alignment of investee companies' activities not due until 1 January 2023. The phase-in of Taxonomy disclosure obligations for investee companies creates a significant and challenging data gap for funds which invest in such companies and the question arose as to whether funds, on terms similar to the phase-in of Taxonomy obligations for investee companies, may also comply with their Taxonomy-alignment disclosure obligations

using the Taxonomy eligibility data published by investee companies in the period to January 2023. The Supervisory Statement clarifies that this is not permitted. The Supervisory Statement further clarifies that estimates should not be used to calculate the level of Taxonomy-aligned investments in a fund's portfolio. However, where data is not available from public disclosures issued by investee companies (which would only be available on a voluntary basis given the above phase-in of investee companies' Taxonomy disclosure obligation), fund managers may use equivalent information obtained direct from investee companies or from third party data providers.

### Next steps

Similar to the February 2021 statement, the recent Supervisory Statement encourages NCAs to refer fund managers to the draft SFDR Level 2 measures when applying SFDR, noting that SFDR Level 2 can be used as a reference for applying the SFDR in the interim period prior to its anticipated entry into effect in January next year.

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## Central Bank Fines Fund Administrator for Outsourcing Breaches

On 22 March 2022, the Central Bank fined an Irish fund administrator €10,780,000 for regulatory breaches relating to the outsourcing of fund administration activities. This sanction, along with the publication by the Central Bank of its immediately effective Cross-Industry Guidance on Outsourcing in December 2021, serve as an important reminder for fund management companies of the Central Bank's laser focus on the management of risks associated with outsourcing.

### Outsourcing breaches

The fund administrator's outsourcing breaches included failing to have in place an adequate outsourcing governance framework and failing to engage openly and transparently with the Central Bank once breaches were identified. The failure to establish an adequate outsourcing framework was found to have impeded the fund administrator's ability to effectively identify and manage the risks associated with outsourcing arrangements which were a central part of its operating model. In particular, the administrator did not have adequate outsourcing control procedures which led to a failure to notify the Central Bank in advance of outsourcing activities as is required under applicable regulatory rules. In addition, the Central Bank found that the administrator failed to monitor and assess the financial performance of outsourcing service providers, failed to submit correct annual outsourcing returns, failed to notify clients prior to commencement of outsourcing arrangements and failed to ensure that its third line of defence functions examined outsourcing arrangements.

In its engagement with the Central Bank, the fund administrator was found to have provided inaccurate, incomplete and delayed notification of its breaches of outsourcing obligations to the Central Bank and that information provided minimised the seriousness and the extent of the reported breaches. The seriousness, frequency and prevalence of the breaches across the administrator's outsourcing framework were held to reveal systemic control weaknesses which were further compounded by its conduct after the breaches were identified. The administrator failed to properly embed several risk mitigation programmes (**RMPs**) issued by the Central Bank which resulted in repeated RMPs being issued, which the Central Bank considered representative of a "*continued theme of governance and operational issues that failed to be properly addressed*" by the administrator.

### Next steps

The Central Bank Cross-Industry Guidance on Outsourcing (the **Guidelines**) set out guidance designed to address weaknesses identified in regulated firms' management of outsourcing activities, including the types of issues which gave rise to the above-mentioned breaches. While the Guidelines were issued with immediate effect on 17 December 2021, the Central Bank has confirmed it will take account of any necessary business model adjustments when supervising firms' compliance with its outsourcing expectations. However, fund management companies should look to operationalise the Guidelines in the near term and, as a matter of priority, consider adopting and documenting an action plan to address the Guidelines, not least so as to be in a position to evidence proactive engagement on a topic which is likely to remain a key focus for Central Bank supervisory engagements.

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## New Beneficial Ownership Filings in Q3 2022

On 31 March 2022, the Central Bank issued guidance on the legislative obligation for ICAVs, CCFs, unit trusts and ILPs to file beneficial owners' PPS numbers with the Central Bank as Registrar of the Beneficial Ownership Register of Certain Financial Vehicles (the **Guidance**). While this legislative filing obligation has been in place

for some time, finalisation of the filing process has been delayed while the Central Bank makes arrangements to accept and hold beneficial owners' PPSNs. The Guidance states that beneficial owners' PPSNs will need to be filed in Q3 this year via the Central Bank's Online Reporting System (**ONR**) once the necessary returns process has been made available by the Central Bank. For any beneficial owner that does not have a PPSN, a Central Bank individual reference number, which may have issued as part of the process for that individual's approval to hold a PCF role, may be filed instead. For beneficial owners that have neither a PPSN nor Central Bank reference number, a declaration of identity, in a form to be published shortly by the Central Bank, should be filed instead.

### Next steps

While no direct action is necessary on foot of the Guidance, fund management companies should begin the process of collating beneficial owners' PPSNs/Central Bank reference numbers/information for beneficial owners which have neither in preparation for the Q3 filing deadline.

## Revised List of PCF Roles Finalised and In Effect

From 5 April 2022, the list of Pre-Approval Controlled Function (**PCF**) roles has been amended on terms set out in the Central Bank's September 2021 notice of intention. Such amendments are as follows:

1. The split of PCF-2 into:
  - a. PCF-2A Non-Executive Directors
  - b. PCF-2B Independent Non-Executive Directors;
2. Discontinuing PCF-15 Head of Compliance with responsibility for Anti-Money laundering and Counter Terrorist Financing (while retaining PCF-12 Head of Compliance) and introducing standalone new PCF in respect of PCF52 (Head of Anti-Money Laundering and Counter Terrorist Financing Compliance);
3. Expanding PCF16 Branch Manager in other EEA countries to include branch managers in non-EEA countries;
4. Amalgamating the PCF-31 role Head of Investment with PCF-30 Chief Investment Officer; and
5. Retitling of PCF-3 to PCF-7 from Chairman to Chair.

### 'In-situ process'

For persons performing PCF2B, PCF16 and/or PCF52 on the effective date of the amended list i.e., 5 April last, an 'in-situ' process will shortly be made available on the Central Bank's Online Reporting System (**ONR**) which is expected to be open from 25 April until 3 June 2022. The in-situ process for each amended PCF is as follows:

PCF	Applicable In-Situ Process for Regulated Financial Service Providers (RFSPs)
<b>PCF-2</b> Executive Director	All PCFs will be re-designated as PCF-2A. RFSPs are required to notify the Central Bank which individuals should be designated as PCF-2B by 3 June 2022.
<b>PCF-3 to PCF-7</b> Chairman (of various)	No action required; title will be automatically amended.
<b>PCF-12</b> Head of Compliance	No action required.
<b>PCF-15</b> Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing	All individuals designated as PCF-15 will have this designation end-dated. RFSPs will be 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 3 June 2022.
<b>PCF-16</b> Branch managers of branches established outside of the State	No action required from RFSPs within which an individual holds an existing PCF-16 designation. RFSPs now captured by the expansion of PCF-16 (i.e., branches outside of the EEA, including the UK)

	are required to submit confirmation of their assessment under the Fitness & Probity Standards in respect of individuals in situ to the Central Bank by 3 June 2022.
<b>PCF-31</b> Head of Investment	No action required – all individuals who are PCF-31 will automatically be redesignated as a PCF-30.
<b>PCF-52</b> Head of Anti-Money Laundering and Counter Terrorist Financing Compliance	Where an RFSP determines that it is appropriate for an individual designated as PCF15 to be redesignated as PCF-52, RFSPs will be required to notify the Central Bank accordingly. In all other cases, an RFSP should review its functions and determine whether any one would meet the Head of Anti-Money Laundering and Counter Terrorist Financing Compliance. Where it is determined by the RFSP that this role does exist, the RFSP will be required to review their assessment under the Fitness & Probity Standards in respect of individuals in situ and submit confirmation of such assessment to the Central Bank. The Central Bank notes that it is possible that an RFSP may not require a specific PCF-52 but reminds RFSPs of their AML/CFT obligations and relevant Central Bank guidance.

## ESMA Finalises Update of MiFID Remuneration Guidelines

On 31 March 2022, ESMA published an updated version of its 2013 MiFID remuneration guidelines (2013 guidelines) which will replace those guidelines and clarify MiFID II remuneration requirements including the:

- **requirement to adopt a remuneration policy** for staff involved in the provision of services to clients which should encourage responsible business conduct, fair treatment of clients and avoid conflicts of interest in client relationships (such requirements are largely based on the 2013 guidelines)
- **conflicts of interest requirements** in relation to remuneration which necessitate the identification and prevention or management of conflicts of interest including those caused by the firm's own remuneration and other incentive structures
- **conduct of business requirements** to ensure firms do not remunerate or assess the performance of staff in a way that conflicts with the duty to act in the best interest of clients and in particular that remuneration arrangements do not provide an incentive to recommend a particular financial instrument to a retail client when an alternative would better suit the client's needs.

The Guidelines are applicable to MiFID firms including UCITS managers and AIFMS with MiFID top-up licences. As a result, in-scope fund managers will be subject to dual remuneration obligations under MiFID, in respect of their MiFID services, and, as applicable, the UCITS and AIFMD regimes, in respect of their collective portfolio management services. In terms of impacted staff, the scope of the Guidelines tracks the scope of the MiFID II remuneration rules which are applicable to a firm's employees as well as any secondees and employees of its delegates involved in the provision of investment services.

As compared to the 2013 guidelines, the updates include:

- the removal of guidelines which have now been incorporated in the MiFID II framework or deemed unnecessary as a result of that process and retention of those 2013 guidelines which were substantially confirmed
- the reorganisation of the guidelines into three sections (i) design of remuneration policies and practices; (ii) governance; and (iii) controlling risks that remuneration policies and practices create
  - section (i) includes guidance on defining appropriate qualitative and quantitative criteria for aligning the interests of relevant persons and clients including in relation to career progression (criteria for which should not encourage actions in conflict with the interests of clients), the use of ex-post adjustments of variable remuneration and linking variable remuneration to product returns, guidance on the remuneration for control functions and management and addressing

the conflicts of interest which may arise from their roles in the design and oversight of the firm's remuneration policy and certain good practices have been elevated to supporting guidelines

- section (ii) includes new guidance on the requirement for periodic and ad hoc review of the remuneration policy and expanded guidance on the need for policy designers to have access to relevant documents
- section (iii) includes new guidelines which were previously good practices (in the 2013 guidelines), reflects NCAs' relevant supervisory experiences and sets out new examples of poor practices

The Guidelines will come into effect six months after the publication of the translated versions on ESMA's website.

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## **WILLIAM FRY**

**DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY**

**William Fry LLP | T: +353 1 639 5000 | E: info@williamfry.com**

**[williamfry.com](http://www.williamfry.com)**

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