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Asset Management & Investment Funds Update

December 2023

Key Dates & Deadlines: Q4 2023 & Q1 2024

The following are key dates and deadlines in Q4 2023 and Q1 2024 along with possible impacts and action items arising for fund managers.

Date	Source	Summary	Action/Impact
Q4 (exact date TBC)		ESMA Guidelines on Fund Names Guidelines on the use of ESG or sustainability-related terms in the name of funds are expected to be finalised and published with an application date of 3 months post-publication and a 6-month transition period for existing fund names.	Draft Guidelines set out quantitative thresholds for investment in E/S aligned or sustainable investments by Article 8 and 9 funds which use ESG / sustainability-related terms in the fund name. See here for further details.
Q4 (exact date TBC)		Individual Accountability Framework (IAF) Updated business standards to be published as part of the Central Bank's review and consultation on updates to the Consumer Protection Code.	Following publication of the IAF Act, Central Bank IAF Guidance, and updated F&P procedures, fund managers should progress compliance plans and work programmes taking account of the timeline for implementation of the IAF. See article on topic in this month's update for further details.
Q4 (exact date TBC)		CSRD Scope Revisions The thresholds for CSRD reporting are set to be increased under proposals published by the Commission in September which aim to reduce the number of companies in scope of CSRD. Final CSRD reporting standards and revisions effecting a two-year delay to the adoption of sectoral and third country	Fund managers should continue to monitor for any impact on existing CSRD scope analysis. Those not in scope of CSRD may be indirectly impacted by a reduced set of available CSRD data. See here for further details.

		standards, are also expected to be finalised.	
Q4 (exact date TBC)		AIFMD/UCITS Review Final AIFMD/UCITS amendments expected to issue on a range of topics including delegation and substance, liquidity management and loan-originating AIFs.	Fund managers may prepare for an application date of Q4 2025 if final legislation enters into force by year-end (assuming retention of the proposed two-year transposition period and immediate application). See here for further details.
Q4 (exact date TBC)		SFDR Level 2 Revisions ESA Final Report on SFDR Level 2 revisions expected to issue to the Commission, following conclusion of the ESAs' consultation on such revisions on 4 July 2023.	Proposed revisions include to the PAI indicators, DNSH disclosure rule, disclosure templates along with technical adjustments and new disclosure obligations for decarbonisation targets. See here for further details.
Q4 (exact date TBC)	FSB &	Revised Recommendations for CIS Liquidity Risk Management FSB to issue revised Recommendations on liquidity mismatch in open-ended funds to be operationalised by IOSCO in revisions to the 2018 Recommendations for Liquidity Risk Management for CIS.	Revised recommendations from IOSCO and FSB will take account of feedback received to their respective consultations concluded earlier this year. See here for further details.
22 November		EU Green Bond Standard (GBS) The EU Green Bond Regulation was signed by the Parliament and Council. It is expected to be published in the Official Journal in the coming days with an application date of 12 months post-entry into force.	The EU GBS will establish a voluntary, harmonised standard for green bonds. It will apply 12 months post entry into force.
28 November		Revised Capital Rules for UCITS managers & AIFMs with IPM licence Amended capital requirements for fund management companies with an IPM licence apply upon authorisation for managers authorised after 27 November and from 27 May 2024, for managers with an existing IPM licence.	Revised requirements stipulate that the own funds of non-small/interconnected fund managements shall not be less than the higher of the current initial capital and own funds requirement and own funds which amount to the Risk to Client K-factor requirement calculated in accordance with the CBI UCITS Regulations/AIF Rulebook. See article on topic in this month's update for further details.
28 November		ESG Ratings Regulation Revisions to the Commission's ESG Ratings Regulation proposal have been published by EU Parliament committee ECON and the legislative advisory body, the Economic and Social Committee.	The ESG Ratings Regulation will provide for the authorisation and supervision of EU and non-EU entities which publicly disclose or distribute ESG ratings and is expected to be finalised in H2 2024 and become applicable in 2025. See here for further details.
1 December		Operational Resilience Guidelines The Central Bank's Cross-Industry Operational Resilience Guidelines were published on 1 December 2021 with a two-year transitional period.	Fund managers are expected to be in a position to evidence actions/plans to apply the Guidelines by 1 December. See here for further details.

13 December		CP 155 – ELTIF chapter in AIF Rulebook End of consultation on the regime for ELTIFs in the AIF Rulebook which include rules on restrictions and supervisory, operational, financial reporting and retail marketing matters.	This welcome development paves the way for Irish-domiciled ELTIFs to be authorised using the full suite of Irish dedicated fund legal structures, such as the ICAV and Investment Limited Partnership. See article on topic in this month's update for further details.
15 December		Commission SFDR consultation End of SFDR (Level 1) consultation which requests feedback on SFDR compliance issues, alignment with other sustainable finance measures and reform proposals.	Commission expects to adopt SFDR proposals, taking account of consultation feedback, by Q2 2024. See here for further details.
15 December		ESMA Call for Evidence on T+1 Impacts Deadline for responding to Call for Evidence prompted by the US move to T+1 by end-May next year.	The Call for Evidence is an opportunity to engage with ESMA on the challenges arising from a lack of alignment across international settlement cycles. See here for further details.
20 December		BMR REFIT proposals Consultation concludes on proposals to limit the application of the BMR to significant and climate benchmarks and preclude non-EU administrators from using PAB/CTB labels.	Both administrators and users of benchmarks are expected to benefit from the REFIT proposals. See here for further details.
29 December		First IAF application date Application date for F&P enhancements and individual conduct standards under the Central Bank's IAF.	Fund managers should progress compliance plans and work programmes taking account of the proposed timeline for implementation of the IAF. See article on topic in this month's update for further details.
Pre-year end		Commission Taxonomy FAQ Guidance on Taxonomy-alignment reporting obligations for financial-sector companies in scope of Taxonomy Article 8 disclosures to issue.	From 1 January 2024, financial-sector companies must report their green assets ratio (GAR) and other KPIs. The Commission has committed to issuing guidance focussed on these obligations by end-2023.
January 2024		Sustainability CSA for Funds Sector Second phase of ESMA-co-ordinated sustainability CSA focussing on compliance with the sustainability disclosure rules to commence.	Further CBI engagement may arise in 2024 as part of phase 2 of the Sustainability CSA. See here for further details.
1 January 2024		CBI Portal open for existing (pre-1 January 2023) funds' PRIIPs KID filings CBI revised PRIIPs Guidance confirms that UCITS and AIFs authorised pre-1 January 2023 can begin filing PRIIPs KIDs via the CBI portal.	UCITS and AIFs can begin filing new and amended PRIIPs KIDs using the 'Investment Funds-Ad Hoc returns' on the Portal from 1 January 2024 onwards. Where both a UCITS KIID, in accordance with the EU UCITS rules, and a PRIIPs KID are prepared, both should be filed via the CBI Portal.

1 January 2024		Taxonomy Environmental Delegated Act Technical screening criteria for assessing activities' substantial contribution to non-climate environmental objectives in effect.	Development of the Taxonomy to yield additional reporting on non-climate environmental objectives. See here for further details.
1 January 2024		CSRD & ESRS first in effect First CSRD effective date for companies already in scope of NFRD which must prepare to report on sustainability matters for financial year 2024 using the ESRS.	Fund managers should continue CSRD scope analysis and, as appropriate, compliance preparations. See here for further details.
10 January 2024		ELTIF enhancements in effect The ELTIF Regulation was amended in April 2023 including to expand the range of eligible assets, relax portfolio composition and diversification restrictions and remove retail investor barriers.	ELTIF enhancements aim to broaden the utility and usability of the long-term fund regime. See here for further details.
18 January 2024		CP157 Macroprudential measures for GBP Liability Driven Investment (LDI) Funds End of consultation on proposals to codify and, in certain cases, augment the existing yield buffer measure in order to strengthen the resilience of GBP LDI funds.	Consultation proposals build on the November 2022 Central Bank letter outlining that GBP LDI funds are expected to maintain enhanced levels of resilience to a 300-400bps increase in yields. Final measures are expected to issue in Q1 2024, following the Central Bank's consideration of consultation feedback. See here for further details.
23 January 2024		Retail Investment Strategy ECON to vote on the Commission's proposal, following which the proposal will move to trilogue negotiations before being voted on by the Parliament and Council and moving to adoption.	The proposal is scheduled for implementation with a start-up period of 2025-2027 followed by full-scale operation. See here for further details.
31 January 2024		Filing deadline for annual confirmation of ownership Deadline for fund managers to file annual return with the CBI.	Standard annual item for fund managers.
20 February 2024		UCITS KIID annual update filing UCITS which continue to prepare a KIID under UCITS rules must file updated KIIDs with the CBI. The CBI has confirmed to William Fry that there will be no annual filing requirement for PRIIPs KIDs.	Standard annual item for UCITS managers with UCITS KIIDs. See here for further details.
28 February 2024		Filing deadline for annual CBI fund profile return On an annual basis, each sub-fund's Fund Profile V2 return must be reviewed to confirm the profile details and updated to reflect the change(s).	Standard annual item for sub-funds. See here for further details.

		The annual Fund Profile V2 return is made through the CBI's Portal.	
28 February 2024		Filing deadline for annual PCF confirmation return Due to be filed via the CBI's Portal. The CBI's website notes in respect of this return that 'new functionality is under development and will be available shortly'.	Standard annual item for sub-funds. See here for further details.

Individual Accountability: Final Framework Standards and Guidance Published

On 16 November 2023, following a consultation process (**CP153**), the Central Bank published final Regulations and Guidance supporting implementation of the Individual Accountability Framework (**IAF**) as set out in the IAF Act, including:

- Regulation and Guidance for the IAF Senior Executive Accountability Framework (**SEAR**)

  Applicable to banks, insurers and in-scope MiFID firms from **1 July 2024** with a 12-month deferral for (Independent) Non-Executive Directors to **1 July 2025**;
- Guidance on the IAF Conduct Standards

  Applicable from **29 December 2023** except for the Business Standards, which will not be effective until the revised Consumer Protection Code is implemented; and
- Regulation and Guidance for the IAF Enhancements to the Fitness & Probity (F&P) Regime

  Applicable from **29 December 2023** with first annual submission of CF/PCF certifications required in **2025, in respect of 2024**.

As set out below, consideration of consultation feedback and engagement at various stakeholder events led the Central Bank to make several technical and clarificatory changes to the consultation version of the IAF Regulations and Guidance. Changes have also been made to the Central Bank's proposed IAF implementation approach, as highlighted below.

The Central Bank continues to emphasise that its approach to the implementation and supervision of the IAF will be based on the principles of proportionality, predictability and reasonable expectations.

SEAR

The IAF imposes an enforceable legal duty on pre-approval controlled function (**PCF**) holders to take reasonable steps to avoid a firm breaching legal obligations relating to activities for which the PCF is responsible.

Fund management companies and corporate funds are not in scope of the first wave of SEAR. However, the Central Bank plans to widen the scope of application of SEAR over time, building on the lessons learnt from phase one. Further details of this pillar of the IAF are available on our IAF & SEAR site.

Conduct Standards

Although the conduct standards applicable to individuals (Common Conduct Standards and Additional Conduct Standards) apply from 29 December 2023, the Central Bank reiterated that the conduct standards applicable to regulated firms (Business Conduct Standards) will not be effective until the revised Consumer Protection Code is implemented. Please see our article here for further information on the Consumer Protection Code review.

Some technical and clarificatory updates to language have been made in relation to conduct standards and the Guidance on the Conduct Standards. See our IAF & SEAR site for further details on conduct standards and the obligations on firms to integrate and embed conduct standards, including through the appointment of responsible individuals accountable for such integration, reporting of relevant MI, adoption of policies and procedures, CF notification and training, and maintenance of relevant records evidencing such integration.

F&P Enhancements

CF due diligence

In a departure from the draft IAF Guidance tabled for consultation, the final IAF Guidance does not require additional due diligence for CFs 3-11. Therefore, the current level of due diligence required of PCFs and CFs remains.

CF certification

All CFs not exempt from the F&P regime, are subject to the new F&P requirement to certify CFs' compliance with the F&P standards. This being in addition to the existing requirement for firms to satisfy themselves of CFs' initial and ongoing compliance with the F&P standards, through appropriate due diligence and obtaining the CFs' agreement to abide by the F&P Standards.

Firms must put in place procedures for certifying CFs pre-appointment, on the uptake of a new CF role and on an annual basis. For new firms, CF certificates must issue within 5 days of authorisation. The form of, and procedures for, certification are a matter for individual firms provided both align with the IAF Regulation and Guidance including that the following be documented in respect of each CF (i) the firm's satisfaction as to the CF's compliance with the F&P standards and the steps taken to be satisfied, (ii) the CF's agreement to abide by the standards, (iii) the relevant CF role(s) held, (iv) an outline of the parts of the business in which the CF will be involved and (v) whether the role(s) is outsourced to an unregulated entity (in which case the firm retains responsibility for F&P compliance).

The final IAF Guidance confirms that, as part of the annual PCF confirmation process, firms are required to confirm certification of each PCF, via the Annual PCF Confirmation Return, and of all CFs, via the Annual Overall Certification Process Return. The first annual submission of certification confirmations will be required in 2025, in relation to the 2024 calendar year.

Disciplinary actions

The IAF Regulation requires a firm to notify the Central Bank if it revokes, or decides not to renew, a CF certification because the CF does not comply with, or fails to agree to abide by, the F&P standards. However, the final IAF Regulation does not include the draft requirement, subject to consultation, for a firm to report to the Central Bank where formal disciplinary action has been concluded against an individual in respect of a breach of the Conduct Standards.

Irish holding companies

Irish holding companies (within the meaning of section 18 of the Central Bank Reform Act 2010) are subject to the F&P regime, including the IAF enhancements to that regime, from 29 December 2023. However, despite the links between the F&P regime and the Conduct Standards, CFs at the level of the holding company only will not be subject to the Conduct Standards, as the holding company is not a regulated firm.

The IAF Guidance contains clarificatory updates and confirms that, in line with current practices when new PCF roles are created, the Central Bank will provide operational guidance for those persons already performing the new roles at implementation, including an automated process and a consolidated in-situ process, so that those persons do not have to submit an Individual Questionnaire.

Other

Three-year review

Three years after the implementation of the IAF, a review will be conducted by the Central Bank to assess the functioning of the IAF, how the benefits and costs are being realised in practice and whether any changes should be introduced.

Outsourcing

The IAF Guidance has been amended to clarify the applicability of elements of the IAF where outsourcing arrangements are in place. A PCF in the regulated firm must be designated with responsibility for outsourcing arrangements and, if there is outsourcing of a PCF role, the role holder should fall under the oversight of a PCF in the regulated firm. In line with current F&P exemptions, F&P certification by the outsourcing firm is not required where PCF or CF roles are outsourced to regulated firms but is required where the role(s) is outsourced to an unregulated entity.

Temporary appointments

The Central Bank has acknowledged stakeholder confusion and updated its draft Guidance to distinguish between temporary PCF appointments, which are subject to the Conduct Standards, and temporary officers appointed to a PCF role in exceptional circumstances, which are not subject to the PCF approval process and therefore only subject to the Additional Conduct Standards if they are also a CF1.

Reasonable Steps

Some minor clarificatory (rather than substantive) changes have been made to the Guidance "reasonable steps".

Next Steps

Following publication of the IAF Act, Central Bank Regulations, Guidance, and updated F&P procedures, fund managers should progress compliance plans and work programmes in advance of the 29 December implementation date for commencement of the application of the Conduct Standards and enhanced F&P regime.

UK Sustainability Disclosures and Labelling Regime Published

On 28 November 2023, the FCA published its long-awaited sustainability disclosures (**UK SDR**) and product labelling regime in policy statement PS23/16. It includes:

- An **anti-greenwashing rule** applicable from **31 May 2024** for all sustainability-related claims to be fair, clear and not misleading**.** The FCA is also consulting on supporting guidance until **26 January 2024**.
- Four **sustainable product labels** of 'sustainability impact', 'sustainability improvers', 'sustainability focus' and 'sustainability mixed goals' available from **31 July 2024**
- **Product-level disclosure rules for labelled products** including:
    - digital retail investor/consumer-facing sustainability disclosures, applicable from **31 July 2024** (or when the label is first used)
    - naming and marketing rules for any use of sustainability-related terms applicable from **31 July 2024** (or when the sustainability-related term is first used)
    - ongoing product-level disclosures targeted at institutional investors, applicable from **31 July 2025** (or 12 months after label is first used/provided to eligible clients from **2 December 2025**)
- **Product-level disclosure rules for non-labelled products** with sustainability-related terms in name/marketing including:
    - digital retail investor/consumer-facing sustainability disclosures, applicable from **2 December 2024** (or when the sustainability-related term is first used)
    - naming and marketing rules for use of sustainability-related terms, applicable from **2 December 2024** (or when the sustainability-related term is first used)
    - ongoing product-level disclosures targeted at institutional investors, applicable from **12 months after sustainability-related term is first used**
- **Entity-level disclosure rules** targeted at institutional investors, applicable for firms with AUM >£50bn from **2 December 2025** and to firms with AUM >5bn from **2 December 2026**
- Targeted rules for distributors of products to retail investors, applicable from **31 July 2024** for labelled products and **2 December 2024** in respect of the required statement for non-UK funds.

Further details in relation to the above are set out below.

Impact of UK SDR for Irish/non-UK managers and funds

- **Non-UK funds/managers not in scope:** The UK SDR and labelling regime is only applicable to UK firms and their UK-domiciled funds, although UK firms are required to capture both UK and non-UK funds under management when complying with the entity-level disclosure rules. And UK distributors must notify investors in non-UK funds marketed in the UK, that such funds are not subject to the UK SDR (as set out below).
- **Intention to extend scope:** While non-UK funds are not currently in scope, the FCA is clear that it intends to extend the scope of the UK SDR and that this is being considered for funds marketed in the UK as part of its work with HMT on the Overseas Fund Regime (**OFR**) which will succeed the Temporary Marketing Permissions Regime, currently set to expire at end-2025.
- **Dual regimes:** The most significant immediate impact is perhaps the need, for those operating in both the EU and the UK, to comply with two forms of sustainability disclosures regimes.

  The FCA states that it has worked to ensure interoperability with the EU SFDR and has published a comparator of the SDR and SFDR in PS23/16. However, the utility of this exercise is somewhat limited by both the fundamental differences between the two regimes and that neither regime is complete; evolutions of both are currently underway and likely to continue for some time.

The UK SDR is fundamentally a labelling regime, from which a substantial portion of the product-level disclosures are derived. The entity-level disclosures build on existing TCFD-based rules and a further consultation is now open on guidance for the anti-greenwashing rule.

The EU SFDR is a transparency regime only (despite its de facto use as a labelling regime) and is part of, and highly interconnected with, a wider sustainable framework including a Taxonomy of environmentally sustainable activities, sectoral sustainability rules, a corporate sustainability disclosures regime and climate benchmark labels. The EU is also consulting on a new sustainable product labelling regime and the ESMA Fund Names Guidelines for use of sustainability-related terms in the names of UCITS and AIF are expected imminently.

The publication of the UK SDR ahead of the ESMA Fund Names Guidelines and well in advance of the introduction of an EU sustainable product labelling regime (not currently expected to be available until 2026/27), will hopefully inform alignment of the regimes in these respects. Although, the ESMA Fund Names Guidelines are expected before year-end and stricter criteria than their UK counterpart rules (set out below) have been proposed, some of which are highly anticipated to feature in the final form guidelines. See our May 2023 update for further details of the ESMA Fund Names Guidelines.

Key Features of Investment Labels

Sustainability Focus label

To use this label, a product must:

- have a sustainability objective to invest in sustainable assets determined using a robust, evidence-based standard of sustainability;
- identify and disclose whether pursuing sustainability outcomes may result in material negative outcomes;
- ordinarily, invest a minimum of 70% of assets in accordance with its sustainability objective and disclose on reasons for holding remaining assets, which must not conflict with the sustainability objective;
- make provision for independent (of the investment process) assessment to confirm the sustainability standard is fit for purpose;
- identify KPIs that measure the sustainability of the whole product/individual assets (discretion allowed in the selection of KPIs);
- identify and disclose a stewardship strategy that supports assets remaining sustainable/delivering long-term value;
- identify and disclose an escalation plan for dealing with assets which do not demonstrate sufficient progress towards the sustainability objective and/or KPIs.

A product with a 'sustainability focus' label may invest according to themes, provided the above requirements are met.

Sustainability Improvers label

To use this label, a product must:

- have a sustainability objective to invest in assets that have the potential to become more sustainable over time, determined by their potential to meet a robust, evidence-based standard of sustainability over time;
- identify and disclose whether pursuing sustainability outcomes may result in material negative outcomes;
- ordinarily, invest a minimum of 70% of assets in accordance with its sustainability objective and disclose on reasons for holding remaining assets, which must not conflict with the sustainability objective;
- make provision for independent (of the investment process) assessment to confirm the sustainability standard is fit for purpose;
- identify the period of time over which assets are expected to meet the sustainability standard, including short and medium-term targets;
- identify KPIs that measure the whole product/individual assets' sustainability improvements (but discretion allowed in the selection of KPIs);
- identify and disclose a stewardship strategy that supports and accelerates improvements in sustainability over time;
- identify and disclose an escalation plan for dealing with assets which do not demonstrate sufficient progress towards the sustainability objective and/or KPIs.

Sustainability Impact label

To use this label, a product must:

- have a sustainability objective to achieve a pre-defined positive measurable sustainability impact;
- identify and disclose whether pursuing sustainability outcomes may result in material negative outcomes;
- ordinarily, invest a minimum of 70% of assets in accordance with its sustainability objective and disclose on reasons for holding remaining assets, which must not conflict with the sustainability objective;
- make provision for independent (of the investment process) assessment to confirm the sustainability standard is fit for purpose;
- specify a theory of change setting out how investment activities and assets achieve the sustainability objective;
- specify a robust method for measuring and demonstrating the positive impact of both assets and investment activities;
- identify KPIs that measure the positive impact of both the assets and the investor's contribution (but discretion allowed in the selection of KPIs);
- identify and disclose a stewardship strategy that supports assets in delivering positive impact;
- identify and disclose an escalation plan for dealing with assets which do not demonstrate sufficient progress towards the sustainability objective and/or KPIs.

Sustainability Mixed Goals label

To use this label, a product:

- Must have a sustainability objective to invest at least 70% in accordance with a combination of the sustainability objectives for the other labels;
- Must identify and disclose the proportion of assets invested in accordance with any combination of the other labels;
- Must adhere to the requirements (including disclosures) of the other labels.

Naming and Marketing Rules – for products with sustainability-related terms in name/marketing

Sustainability-related terms can only be used in the product names if:

- the product has a label, provided that the term 'impact' is only used by those with a 'sustainability impact' label; or
- the following are satisfied:
    a) the product has sustainability characteristics, and the name accurately reflects those characteristics, provided that the terms 'sustainable', 'sustainability', 'impact' and any variation of those terms are not to be used;
    b) the same types of disclosures as required for a labelled product are produced;
    c) a prominent website and product-level disclosure statement clarifies that the product does not have a label and why;
    d) in the case of feeder funds, the product name only includes terms consistent with those used by the master and compliance with (a)-(c) is ensured;

Sustainability-related terms can only be used in marketing materials if:

- the same disclosures and statements as those required when using sustainability-related terms in the name are produced; and
- for feeder funds, the same conditions as when sustainability related terms are used in the name of the product are produced.

Retail investor/Consumer-facing sustainability disclosures – for labelled products and those with sustainability-related terms in the name/marketing

For labelled products and those with sustainability-related terms in the name or marketing materials, firms must produce and keep under review:

- a 2-page (max) clear, concise consumer-facing disclosure on the relevant digital medium used to offer the product, with hard copy available on request
- disclosure must include the product's sustainability objective, label or clarify that it does not have a label; the investment policy and strategy; relevant metrics; where further sustainability information is available; and for 'sustainability mixed goals' labelled products, the proportion of assets invested in accordance with other relevant labels.

Pre-contractual, ongoing product-level and entity-level disclosures targeted at institutional investors

Product-level disclosures for labelled products/those with sustainability-related terms in name/marketing

All labelled products and those with sustainability-related terms in their name/marketing materials must include sustainability information in:

- pre-contractual disclosures, and
- ongoing product-level disclosures in Part B of a sustainability product report annually

For labelled products, the information that must be disclosed is broadly associated with the qualifying criteria for the labels.

For non-labelled products, the pre-contractual and ongoing product-level disclosures must, at a minimum, include information relating to the investment policy and strategy and any relevant metrics.

For the 'Sustainability Mixed Goals' label only, the disclosures must include the proportion of assets invested in accordance with each of the relevant labels, and the information required in relation to those labels.

Entity-level annual disclosures for firms with AUM>£5bn

Firms are required to disclose annually on:

- their governance, strategy, risk management, and metrics and targets in relation to managing sustainability-related risks and opportunities and building from the TCFD entity report;
- where firms use labels or sustainability-related terms in their product names and marketing, their resources, governance and organisational arrangements in relation to those products;

Cross-referencing of disclosures made in a group, parent-level or other relevant report, is permitted provided the information is clearly signposted and other cross-referencing requirements are met.

Distributor rules

UK Distributors must:

- communicate labels and provide access to consumer-facing disclosures to retail investors;
- keep labels and consumer-facing disclosures up to date;
- notify investors that non-UK funds are not subject to the UK SDR and labelling regime, which notice must be in a prominent place on the relevant digital medium and include a link to the FCA webpage setting out more information or communicated via ordinarily used distribution channels.

Next Steps

The UK SDR and labelling regime will enter into effect in accordance with the implementation timeline set out above. The consultation on guidance for the anti-greenwashing rule is open for comment until 26 January 2024.

Revised Capital Rules for Fund Managers with IPM Licence

On 27 November 2023, following an industry consultation process (**CP152**), the Central Bank revised the capital requirements for UCITS managers and AIFMs authorised to provide individual portfolio management (**IPM**) services under, as relevant, Regulation 16(2) Irish UCITS Regulations/Regulation 7(4) Irish AIFM Regulations.

Application timeline

The revised capital requirements, which amend the level of 'own funds' required to be held by fund managers with an IPM licence as a condition of authorisation, are set out in amendments to the Central Bank UCITS Regulations and the AIF Rulebook. Existing fund managers are subject to the revised capital requirements from 27 May 2024 and until that date fund managers remain subject to the own funds requirement imposed as a conditions of their authorisation. Fund managers authorised after 27 November 2023 are subject to the revised capital requirements upon authorisation.

While the revised capital requirements apply from authorisation/27 May 2024, any increase in own funds arising from the application of the new requirements is limited to twice the fixed overhead requirement until 26 June 2026. This is because the rules on which the revised capital requirements are based i.e., those applicable to MiFID firms under the Investment Firms Regulations (**IFR**) are subject to a transitional period until 26 June

2026 and the Central Bank has opted to mirror the transitional arrangements for MiFID firms in its revised capital requirements for fund managers with an IPM licence.

Revised capital requirements

While fund managers were required by the Central Bank, as a condition of an IPM authorisation, to comply with additional capital requirements, such conditions were not previously set down in legislation/governing regime rules. Furthermore, the additional requirements which were applied as a condition of authorisation were not aligned with the latest rules under the IFR for regulated firms carrying out similar services i.e., MiFID firms.

The revised capital requirements for fund managers seek to address the above issues by:

1. amending the Central Bank UCITS Regulations and AIF Rulebook to set out the additional capital requirements applicable to managers with an IPM licence. Save for distinctions as noted below, the revised capital requirements are equally applicable to UCITS managers as to AIFMs with an IPM licence:
2. exempting small and non-interconnected managers from the revised capital requirements. A manager qualifies as 'small and non-interconnected' if they satisfy all of the following, where each are calculated based only a manager's IPM activities and in accordance with prescribed methodologies:
   (i) AUM is less than €1.2 billion;
   (ii) ASA (client assets safeguarded and administered) are zero;
   (iii) CMH (client money held) is zero;
   (iv) on- and off-balance-sheet total of the fund manager is less than €100 million;
   (v) total annual gross revenue from IPM services is less than €30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.

   Small and non-interconnected managers are not required to calculate any additional own funds requirement and continue to be subject to existing CPM capital requirements under, as relevant, Regulation 17 UCITS Regulations/Regulation 10 AIFM Regulations.

   AIFMs with an IPM licence would qualify as **'small and non-interconnected'** if they satisfy (i) – (v) above and, as an additional condition, that the value of client orders handled (COH) is [less than] (i) €100 million/day for cash trades; or (ii) €1 billion/day for derivatives. This additional condition is applied only to AIFMs as UCITS managers can't be authorised to receive and transmit or execute transactions.
3. requiring fund managers that are not small and non-interconnected to hold the higher of (i) the existing CPM capital requirement applicable under, as relevant, the UCITS/AIFM Regulations and (ii) new Risk to Client K-Factor requirement calculated in accordance with revised UCITS/AIF Rulebook requirements. The K-Factor requirement is calculated based only a fund manager's IPM activities by adding together the following (each calculated using the prescribed methodology):
   - K-AUM - assets under discretionary portfolio management (including those subject to delegation, but excluding those managed by the fund manager as a delegate) multiplied by 0.02%
   - K-CMH - client money held on segregated accounts multiplied by 0.4% and on non-segregated accounts by 0.5%
   - K-ASA - assets safeguarded and administered for clients (including those subject to delegation arrangements) multiplied by 0.04%
   - (for AIFMs only) K-COH – value of client orders handled for cash trades multiplied by 0.01% and for derivatives multiplied by 0.01%
4. requiring fund managers " *to have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain an adequate level of internal capital on an ongoing basis and to submit an ICAAP questionnaire to the Central Bank on an annual basis."* In addition, the Minimum Capital Requirement Report has been amended to allow for reporting of compliance with the revised capital requirements for fund managers with an IPM licence.

Next steps

The revised capital requirements are applicable in accordance with the implementation timeline set out above.

Central Bank Fines ICAV for EMIR Reporting Failures

On 28 November 2023, the Central Bank fined the investment fund, GlobalReach Multi-Strategy ICAV (**ICAV**), €192,500 for breach of its reporting obligation under Article 9(1) of the European Markets Infrastructure Regulation (**EMIR**). The fine was reduced by 30% (from €275,000) in line with the settlement discount scheme provided for in the EMIR Regulations Settlement Scheme.

This is the Central Bank's first enforcement case under the EMIR Regulations.

Background

Article 9(1) EMIR provides that counterparties must ensure that details of any derivative contract entered into, modified or terminated is reported to a registered trade repository no later than the working day following the conclusion, modification or termination of the contract. Since June 2020, responsibility for reporting OTC derivative contracts entered into by a fund lies with its UCITS management company or AIFM. This was one of several amendments to EMIR introduced by EMIR Refit.

The Breach

The ICAV failed to report 200,640 of its sub-fund's derivative trades entered into between 16 January 2018 and 24 May 2020 to a trade repository, in breach of Article 9(1) of EMIR. Despite identifying the failure to report the trades in May 2020, the ICAV only notified the Central Bank of this failure on 15 March 2021 following engagement initiated by the Central Bank. Such failure to report was highlighted by the Central Bank as an aggravating factor in the context of the penalty decision.

Next Steps

In publishing notice of the fine, the Central Bank noted that it will continue to focus on data reporting obligations in its supervision of EMIR compliance.

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