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Asset Management & Investment Funds Update

January 2024

Key Dates & Deadlines: end-Q4 '23 & Q1 2024

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

Date	Source	Summary	Action/Impact
20 December 2023	FSB	Revised Recommendations for Liquidity Mismatch FSB published Revised Policy Recommendations, addressed to regulatory and supervisory authorities, to Address Structural Vulnerabilities from Asset Management Activities.	Revised FSB Recommendations will be operationalised by IOSCO through revisions to its 2018 Recommendations for Liquidity Risk Management for Collective Investment Schemes. See article on topic in this month's update for further details.
20 December 2023		IOSCO Liquidity Management Tools Guidance (LMTs) IOSCO published guidance on the use of anti-dilution liquidity management tools by fund managers of open-ended funds, other than ETFs and MMFs.	Fund managers are expected to implement guidance on the design, use and governance of LMTs. See article on topic in this month's update for further details.
21 December 2023		CSRD Scope Revisions Thresholds for determining the size category of a company adjusted in line with 2023 proposals to reduce the number of companies in scope of CSRD.	Fund managers should assess 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.
21 December 2023		Commission Taxonomy FAQ Guidance on Taxonomy-alignment reporting obligations for financial-sector companies in scope of Taxonomy Article 8 disclosures published.	From 1 January 2024, financial-sector companies must report their green assets ratio (GAR) and other KPIs under Taxonomy transparency rules.

Q1 (exact date TBC)		Individual Accountability Framework (IAF) Consultation on updated business conduct standards was due to be published in December 2023 and is now expected imminently as part of the Central Bank's review of the Consumer Protection Code.	See our dedicated IAF & SEAR site for further details.
Q1 (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, following publication of the final compromise texts on 13 November 2023.	Fund managers may prepare for an application date of Q1 2026 assuming retention of the proposed two-year transposition period. See here for further details.
January (exact date TBC)		ESG Ratings Regulation Interinstitutional negotiations to begin following agreement of negotiating mandates by the Council and the Parliament in December 2023.	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.
January (exact date TBC)		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		CBI Portal open for existing (pre-1 January 2023) funds' PRIIPs KID filings On 27 November 2023, the CBI issued revised PRIIPs Guidance to confirm that UCITS and AIFs authorised pre-1 January 2023 can begin filing PRIIPs KIDs via the CBI portal from 1 January 2024.	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		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		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.

4 January		**EMIR – single-stock equity and index options exemption** End of EMIR bilateral margining exemption for equity options subject to ESA recommendation for further two-year exemption and no supervisory action be taken until exemption is finalised/long-term solution is adopted by EU legislators.	Long-term solution to margining requirements for equity options forms part of 'EMIR 3' proposals which are currently progressing through the EU legislative process.
10 January		**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		**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		**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		**Filing deadline for annual confirmation of ownership** Deadline for fund managers to file annual return with the CBI.	Standard annual item for fund managers.
12 February		**FCA consultation on Implementing the Overseas Funds Regime (OFR) ends** The OFR will provide a streamlined process for marketing non-UK funds to UK retail investors.	See article in this month's update for further details.
20 February		**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		**Filing deadline for annual CBI fund profile return** On an annual basis, each sub-fund's Fund Profile V2 return must be	Standard annual item for sub-funds. See here for further details.

		reviewed to confirm the profile details and updated to reflect the change(s). The annual Fund Profile V2 return is made through the CBI's Portal.	
29 February		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.
March (exact date TBC)		BMR REFIT proposals Proposals to limit the application of the BMR to significant and climate benchmarks and preclude non-EU administrators from using PAB/CTB labels are planned for adoption by end-March 2024.	Both administrators and users of benchmarks are expected to benefit from the REFIT proposals. See here for further details.
4 March		SFDR Level 2 Revisions End of EU legislative scrutiny period for SFDR Level 2 revisions published by the ESAs on 4 December 2023. If no objections are raised/scrutiny period is not extended, the RTS will adopted as revised SFDR Level 2 measures.	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.
Q2 (exact date TBC)		ESMA Funds' Names Guidelines Guidelines on the use of ESG terms in the names 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.	Guidelines are expected to include qualitative and quantitative investment thresholds for funds' use of ESG terms in the fund name. See article on topic in this month's update for further details.
Q2 (exact date TBC)		SFDR Level 1 Commission expects to adopt SFDR proposals taking account of feedback from Q4 2023 industry consultation on compliance issues, alignment with other sustainable finance measures and reform proposals.	See here for further details.
End-Q2		CSA Asset Valuation Deadline for completion of review of asset valuation frameworks by fund managers, as required by the Central Bank in its 'Dear Chair' letter detailing findings from the CSA on Asset Valuation.	The Central Bank expects fund managers to evaluate the adequacy of their asset valuation control frameworks, take any necessary steps to strengthen arrangements where weaknesses are identified following a review of the Central Bank's CSA findings published on 14 December 2023. See article on topic in this month's update for further details.

FSB Revised Recommendations on Liquidity Mismatch in Funds

On 20 December 2023, the Financial Stability Board (**FSB**) published Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds (**Revised Recommendations**).

The Revised Recommendations, which update the FSB's 2017 Recommendations following an industry consultation last year, are addressed to regulatory authorities which are expected to update regulatory and supervisory frameworks to the extent not already consistent with the Revised Recommendations. The FSB notes that the Revised Recommendations should be read in conjunction with the IOSCO Guidance on Anti-Dilution Liquidity Management Tools (**LMTs**), which were also published on 20 December 2023 (see article on topic in this month's update for further details) and that IOSCO will also undertake operationalisation of the Revised Recommendations through forthcoming revisions to its 2018 Liquidity Risk Management Recommendations.

Revised FSB Recommendations on Liquidity

The Revised Recommendations focus on reducing liquidity mismatch (between the redemption terms on offer to fund investors and the liquidity of the fund's underlying assets) and promoting greater use of LMTs to mitigate potential fist-mover advantage arising from any such mismatch. In addition to those detailed below, the Revised Recommendations require clearer disclosures from fund managers on the availability and use of LMTs and clarify that the Revised Recommendations do not apply to exchange-traded funds.

FSB Revised Recommendation 3*: In order to reduce material structural liquidity mismatches in open-ended funds, authorities should have requirements or guidance on funds' liquidity risk management. Such requirements or guidance should state that funds' investment strategies and the liquidity of their assets should be consistent with the terms and conditions governing fund unit redemptions both at the time of designing a fund and on an ongoing basis. The redemption terms that open-ended funds offer to investors should be based on the liquidity of their asset holdings in normal and stressed market conditions. In this regard, IOSCO should review its 2018 recommendations and, as appropriate, enhance them.*

- **Comment**: FSB guidance for recommendation 3 provides for a bucketing approach, whereby funds would be grouped into three main categories of 'liquid, illiquid or less liquid', depending on the liquidity of underlying assets. Each category would be subject to specific expectations in terms of redemption terms and conditions. For example, funds in the liquid category (>50% in liquid assets) could be daily dealing, those in the illiquid category (>30% in illiquid assets) could be daily dealing subject to implementation of anti-dilution LMTs and/or longer notice/settlement periods, and those in the less-liquid category (>50% in less liquid assets) should deal at a lower frequency than and/or require longer notice/settlement periods.

FSB Revised Recommendation 4*: Authorities should ensure that a broad set of liquidity management tools and measures is available for use by managers of open-ended funds in normal and stressed market conditions as part of robust liquidity management practices. Authorities should also reduce operational and other barriers that prevent the use of such tools and measures. In this regard, IOSCO should review its 2018 recommendations and, as appropriate, enhance them.*

FSB Revised Recommendation 5*: Authorities should ensure that anti-dilution liquidity management tools are available to managers of open-ended funds. Authorities should also ensure that managers of open-ended funds consider and use such tools to mitigate potential first-mover advantage arising from structural liquidity mismatch in open-ended funds they manage, to ensure that investors bear the costs of liquidity associated with fund redemptions, and to arrive at a more consistent approach to the use of liquidity management tools. Such tools should impose on redeeming investors the explicit and implicit costs of redemptions, including any significant market impact of asset sales to meet those redemptions. In this regard, IOSCO should review its 2018 recommendations and, as appropriate, enhance them as well as to prepare guidance on the design of anti-dilution liquidity management tools.*

FSB Revised Recommendation 8*: While asset managers have the primary responsibility to consider and use quantity-based liquidity management tools and other liquidity management measures, authorities should provide guidance on their use particularly in stressed market conditions. In this regard, IOSCO should review its 2018 recommendations and, as appropriate, enhance them. Where jurisdictions consider it appropriate, authorities should also provide direction in stressed market conditions regarding open-ended funds' use of such tools and measures, taking into account the costs and benefits of such action from a financial stability perspective.*

- **Comment**: The 2017 FSB Recommendations 4, 5 and 8 have been strengthened to achieve greater inclusion in funds' constitutional documents of anti-dilution LMTs designed to pass on to redeeming investors the explicit and implicit costs of redemptions, including any significant market impact of asset sales to meet those redemptions, to achieve greater use, and consistency in use, of anti-dilution LMTs in both normal and stressed market conditions.

Next Steps

The FSB will review regulatory authorities' progress in implementing the Revised Recommendations and plans completion of a stocktake exercise by end 2026 with an assessment of the effectiveness of the measures by 2028.

IOSCO Guidance on Fund Managers' Use of Liquidity Management Tools

On 20 December 2023, IOSCO published Guidance on the use of anti-dilution liquidity management tools (**LMTs**) by fund managers of open-ended funds (**OEFs**) (**LMT Guidance**). The LMT Guidance is addressed to OEF managers, other than managers of exchange traded funds and money market funds which are not in scope of the LMT Guidance.

The LMT Guidance supports implementation of the IOSCO 2018 Liquidity Risk Management (**LRM**) Recommendations and covers the design and use of LMTs, including types of LMTs, calibration of liquidity costs, and appropriate activation thresholds; governance measures; investor disclosures; and overcoming barriers to effective implementation. Use and calibration of specific tools remains at the discretion of fund managers, however, the LMT Guidance promotes greater, more effective, and more consistent use of LMTs.

IOSCO LMT Guidance

According to the LMT Guidance:

1. OEF managers should have appropriate internal systems, procedures, and controls in place at all times in compliance with applicable regulatory requirements for the design and use of anti-dilution LMTs as part of the everyday LRM of their OEFs to mitigate material investor dilution and potential first-mover advantage arising from structural liquidity mismatch in OEFs.
2. OEF managers should consider and use appropriate anti-dilution LMTs for OEFs under management as part of LRM processes to mitigate material investor dilution and potential first-mover advantage arising from structural liquidity mismatch in OEFs.
3. Anti-dilution LMTs used by OEF managers should impose on subscribing and redeeming investors the estimated cost of liquidity, i.e., explicit and implicit transaction costs of subscriptions or redemptions, including any significant market impact of asset purchases or sales to meet those subscriptions or redemptions.
4. Independently of the anti-dilution LMT used, OEF managers should be able to demonstrate to authorities (in line with the authorities' supervisory approaches) that the calibration of the tool is appropriate and prudent for both normal and stressed market conditions.
5. If OEF managers set thresholds for the activation of anti-dilution LMTs, those thresholds should be appropriate and sufficiently prudent so as not to result in any material dilution impact on the fund.
6. OEF managers should have adequate and appropriate governance arrangements in place for their LRM processes, including clear decision-making processes for the use of anti-dilution LMTs.
7. OEF managers should publish clear disclosures of the objectives and operation (including design and use) of anti-dilution LMTs to improve awareness among investors and enable them to better incorporate the cost of liquidity into their investment decisions and mitigate potential adverse trigger effects.

Next Steps

In a speech delivered on 30 November 2023, the Central Bank of Ireland's Deputy Governor, Derville Rowland, noted the (at the time) ongoing work at IOSCO (and the FSB, per related article in this month's update) on updating the international regulatory framework for fund liquidity and that national policy makers would need to consider how to implement the outputs from that work once concluded. Further updates from the Central Bank in this regard are awaited.

Update on ESMA Guidelines on Funds' Names

On 14 December 2023, ESMA issued an update on the publication of its Guidelines on Funds' Names with ESG or sustainability-related terms (the **Guidelines**). Draft Guidelines were published for consultation in November 2022 and set out quantitative and qualitative criteria for the use by UCITS managers and AIFMs of ESG or sustainability-related terms in the names of funds under management.

Final Guidelines were expected to issue in Q2/3 2023, however, ESMA decided to postpone adoption of the Guidelines pending finalisation of the ongoing AIFMD/UCITS Review which is expected to empower ESMA to adopt guidelines on fair, clear and not misleading fund names. ESMA expects to adopt the Guidelines in Q2 2024, subject to the timing of finalisation of the AIFMD/UCITS Review.

In addition to the clarification on the timing of final Guidelines, ESMA's above-mentioned update also sets out intended changes to the form of Guidelines issued for consultation in November 2022. The following comparison table details the key provisions in the consultation version of the Guidelines and the intended changes as signalled by ESMA in its December update:

Provision	Guideline subject to consultation	Changes signalled by ESMA
Minimum 50% in sustainable investments	If a fund uses a sustainability-related term in the fund name, at least 50% of the fund's assets must be in SFDR-defined sustainable investments.	To be deleted and replaced by a requirement to 'invest meaningfully in sustainable investments…reflecting the expectation investors may have based on the fund's name'.
Minimum 80% investment to meet the environmental/social (**E/S**) characteristics or sustainable objectives	If a fund uses any ESG, impact or sustainability-related in the fund name, at least 80% of investments should be used to meet the E/S characteristics / sustainable investment objectives of the fund.	To be retained in final Guidelines and applicable to use of ESG, sustainability, impact or transition-related term in fund name.
Compliance with exclusion criteria for Paris-aligned benchmarks (**PABs**)	If a fund uses ESG or sustainability-related terms in the fund name, the fund must apply the PAB exclusions.	To be retained with a carve out for funds using transition-related terms, a combination of environmental and transition-related terms, social or governance-related terms in the fund name.
Compliance with exclusion criteria for Climate Transition benchmarks (**CTBs**)	N/A	If a fund uses transition-related terms, or a combination of environmental and transition-related terms, in the fund name, the fund must apply the CTB exclusions.
Requirement to invest with the intention to generate positive, measurable social and environmental impact alongside financial return	Funds with impact-related terms in the fund name should invest with intention to generate positive, measurable social and environmental impact alongside financial return when complying with the 80% minimum investment allocation (see row 2 above).	Application to be extended to funds with transition-related terms, as well as those with impact-related terms, in the fund name.

Next Steps

Once finalised, the Guidelines will apply to new funds three months after the publication of translations on ESMA's website and six months thereafter to existing funds.

Sustainable Finance: what's in store for '24?

Despite last year's onslaught of sustainable finance rules and requirements, 2024 looks likely to dish up more of the same. We look ahead to some of the key sustainable finance developments likely to impact companies, investment funds, investment firms and benchmark users/providers in 2024.

Corporates

1. Finalisation of the Corporate Sustainability Due Diligence Directive (CS3D) – Q1 2024

Following agreement of the as-yet-unavailable compromise text on 14 December 2023, CS3D is expected to be adopted in Q1 2024 with a 2-year transposition period and a first application date of 3 years post entry into force. It will apply, on a phased basis, to EU companies with >500 employees and a global net turnover >€150m, non-EU companies with >€150m net turnover in the EU (irrespective of any EU presence) (together 'large companies'). It will also apply to EU and non-EU companies which are not large companies but have >€40m net turnover (in the EU, in the case of non-EU companies, or globally, in the case of EU companies), at least €20m of which was generated in a high-risk sector (including textiles, agriculture, forestry, fisheries, food & beverage, mineral resources) and, in the case of EU companies, had >250 employees (together 'high-risk sector companies'). CS3D will first apply, 3 years post entry into force, to companies with >1000 employees and >€300m global net turnover and to non-EU companies with >€300m net turnover in the EU. The following year, large companies will be in scope and finally, five years post entry into force, CS3D will apply to high-risk sector companies. Companies' key obligations under CS3D include the due diligence (identification, assessment, prevention, mitigation, ending and remedying) of actual and potential adverse impacts on the environment and human rights of the company's own activities and those of its upstream and downstream chain of activities. CS3D also requires in-scope companies to adopt Paris-aligned climate transition plans. Regulated financial services firms are exempt from the due diligence obligation in respect of downstream (investment) activities but are required to report on own operations, upstream value chains and climate transition plans. UCITS and AIFs are specifically exempt from CS3D.

2. Application of the Corporate Sustainability Reporting Directive (CSRD) & the European Sustainability Reporting Standards (ESRS) – from 1 January 2024

CSRD and the ESRS fist apply for financial year 2024 to companies in scope of CSRD's predecessor, the Non-Financial Reporting Directive (**NFRD**). NFRD companies must publish CSRD sustainability reports from 1 January 2025. National transposition of CSRD is due by 6 July 2024. See our previous briefings for further details of the scope, application, and key obligations of CSRD and the ESRS (here and here).

3. Taxonomy-alignment/eligibility reporting by financial sector companies begins – from 1 January 2024

As well as a tool for classifying economic activities as environmentally sustainable, the EU Taxonomy Regulation (**Taxonomy**) requires reporting (in a company's management report) of the extent to which a company's activities qualify as sustainable activities under the Taxonomy (Taxonomy transparency rules). Companies subject to NFRD/CSRD are also subject to the Taxonomy transparency rules, which are being introduced on a phased basis for financial and non-financial companies. From 1 January 2024, the Taxonomy transparency rules require those financial companies (asset managers, banks, investment firms, insurers) subject to NFRD (i.e., large public-interest entities with >500 employees) to report on their level of sustainable activities, as determined using the Taxonomy's performance criteria for activities that substantially contribute to climate change mitigation or adaptation (Taxonomy-aligned activities). In addition, such companies must report on the extent to which their activities are capable of contributing to non-climate environmental objectives, as determined using the list of activities eligible for assessment as sustainable under the Taxonomy (Taxonomy-eligible activities).

4. Adoption of Guidelines on Enforcement of Sustainability Information – Q3 2024

On 15 December 2023, ESMA launched a consultation on guidelines for supervising compliance by listed issuers with CSRD sustainability reporting rules (the **Guidelines**). The Guidelines are based on, and aligned with, ESMA's Guidelines on Enforcement of Financial Information and are to be used for regulatory enforcement of sustainability information under the Transparency Directive (as amended by CSRD). While targeting regulators, the Guidelines may prove a useful tool for listed issuers (and indeed other entities) in scope of CSRD, as a guide to regulators' approach to the supervision and enforcement of sustainability reporting. The consultation on the Guidelines runs until 15 March 2024 and ESMA expects to publish final Guidelines by Q3 2024.

Investment Funds and Investment Firms

1. Commission to revise SFDR Level 2 – H1 2024

On 4 December 2023, the European Supervisory Authorities (**ESAs**) published regulatory technical standards (**RTS**) amending the existing SFDR delegated measures (**Level 2**). The RTS are now subject to a three-month scrutiny period before being adopted by the Commission as Level 2 revisions. Current estimates are for the revisions to be adopted in H1 2024, with an application date in H1 2025. The RTS include revisions to the principal adverse impact (**PAI**) indicators, disclosures, and calculations; new sustainable investment website disclosures and calculation methodologies; new GHG emission reduction target disclosures; amendments to the mandatory pre-contractual and periodic reporting templates; and new requirements for machine readable disclosures. See our previous briefing (here) for further details.

2. *ESMA to issue rules on the use of ESG terms in fund names – Q2 2024*

In a press release dated 14 December 2023, ESMA confirmed it expects to publish final Funds' Names Guidelines (the **Guidelines**) in Q2 2024, subject to the timing of publication of revisions under the AIFMD and UCITS Review. See article on topic in this month's update for further details.

3. *Commission to issue SFDR amendment and enhancement proposals – Q2 2024*

The Commission's consultation on SFDR revisions and enhancements concluded on 15 December 2023 and the Commission expects to publish proposals, taking account of the feedback received, by Q2 2024. See our previous briefing (here) for further details of this development.

4. *ESAs to advise on prevalence and supervision of greenwashing risk – May 2024*

In May 2022, the Commission tasked the ESAs with investigating and advising on the supervision of greenwashing risks. A progress report was released by each of the ESAs in May 2023, with final reports due to the Commission by May 2024. See our previous briefing ('ESMA Defines and Cites Myriad Examples of Greenwashing' in our June 2023 Update) for further details. On 19 December 2023, ESMA published a report on 'The financial impact of greenwashing controversies' in which it concludes that greenwashing controversies increased between 2020 and 2021 (the period under review), allegations are concentrated in the oil & gas, food & beverage and financial services sectors, there is no clear, systematic negative financial impact on firms from greenwashing controversies but there is a clear need for regulatory guidance and supervision of sustainability-related claims.

5. *ESMA assessment of funds sector's compliance with sustainability disclosure rules – concludes September 2024*

ESMA's Common Supervisory Action (**CSA**) to assess asset managers' compliance with SFDR and the Taxonomy, which launched in July 2023, will conclude in Q3 2024. Asset managers can reasonably expect the standard post-CSA engagement and publication of findings by the Central Bank and/or ESMA. See our previous briefings (here and here) for further details of this CSA.

6. *ESMA to assess MiFID firms' compliance with sustainability preference rules – during 2024*

On 3 October 2023, ESMA launched a CSA to assess intermediaries' application of the sustainability preference rules focussing on how firms collect such preferences, the arrangements firms have in place to understand and correctly categorise products with sustainability features, how firms ensure respect of clients' sustainability preferences and how any sustainability-related objectives a product is compatible are specified as part of a product's target market assessment. The CSA will be conducted throughout 2024 and firms can expect engagement from the Central Bank in this regard.

7. *ESMA considering guidance/revisions to MiFID Guidelines on sustainability preference rules*

Respondents had until 15 September 2023 to respond to a Call for Evidence (**CfE**) by ESMA on firms' application of sustainability preference rules in the suitability assessment and product governance arrangements. Feedback to the CfE may inform the publication of ESMA Q&A and/or changes to the ESMA Suitability and Product Governance Guidelines.

Benchmarks

1. *ESMA to assess benchmark administrators' compliance with ESG disclosure rules – throughout 2024*

On 13 December 2023, ESMA published notice of its intention to launch a Common Supervisory Action (**CSA**) to assess compliance by supervised (EU and non-EU) benchmark administrators with the ESG disclosure rules under the Benchmarks Regulation; specifically, the disclosure of ESG factors in the benchmark statement and in the benchmark methodology and disclosures on climate benchmark methodologies. The CSA will be carried out during 2024 and conclude in Q1 2025.

2. *EU Taxonomy-Aligning Benchmarks proposed for consultation – concludes March 2024*

On 12 December 2023, the EU Platform on Sustainable Finance published, for consultation, a proposal for the establishment of two types of voluntary Taxonomy-aligning benchmarks with risk and opportunity objectives combining to target the greening of CapEx, reduction of greenhouse gas (**GHG**) emissions and transition to a low-carbon economy. The two types proposed are Taxonomy-aligning benchmarks (**TABs**) and, the more ambitious, TABs which exclude specific fossil fuel related activities (**TABex**). The minimum standards for both TABs and TABexs, include at least 7% on average per annum reduction in CO2e intensity until 2050 and at least 5% increase in Taxonomy-aligned CapEx per annum, with a minimum exposure to CapEx Securities is at least equal to equity market benchmark exposure, and an additional minimum set of exclusions for TABExs relating to coal, oil and gas activities. Respondents can submit feedback (here) to the Platform's consultation until 13 March 2024.

Q2 Deadline for Fund Valuation Framework Reviews

The 2022 CSA on asset valuation analysed fund managers' compliance with the UCITS and AIFMD rules on valuation and their adherence to valuation principles (e.g., IOSCO Principles for the Valuation of CIS Principles) in normal and stressed market conditions, including during the pandemic (**Valuation CSA**).

The Valuation CSA was conducted over the course of 2022. ESMA issued its Valuation CSA findings in May 2023 and the Central Bank followed with a 'Dear Chair' letter on 14 December 2023 detailing its observations, which it notes should be read in conjunction with ESMA's findings.

Fund Managers must complete a review of fund valuation frameworks against the regulatory findings from the Valuation CSA by the end of Q2 this year.

Key Valuation CSA Findings

1. *Ongoing review of valuation frameworks and proactive implementation of improvements expected*

The Central Bank expects fund managers to periodically review their asset valuation frameworks and proactively implement improvements where necessary. Fund managers must be able to evidence completion of such reviews, with clear version control and governance processes for their conduct. Board meeting minutes and evidence of version control on policy documents was cited as inadequate as it could lead to the ongoing use of deficient valuation methodologies or models.

Action item: Valuation policies and procedures must provide for proper, well-documented and regular reviews of asset valuation models. This is particularly important for less-liquid assets. The reviews should incorporate validation of the valuation methods used by appropriately knowledgeable and experienced persons who have not been involved in the building of the valuation models used. The reviews should also include assessment of the pricing/market data sources and the soundness of data input to the valuation models. The outcome of such reviews should be documented.

2. *Group valuation policies and procedures must reference Irish operations*

While it is possible for fund managers to rely on group valuation policies and procedures (**P&Ps**), those P&Ps must include Irish-entity specific details including through the reflection of relevant EU and Irish regulatory valuation rules and expectations and the operational roles and responsibilities of those involved in the valuation of the Irish funds' assets. Fund managers must have stand-alone, written group/individual valuation P&Ps and may not rely on fund documentation or operations manuals as a substitute for such policies.

Valuation P&Ps must:

- document the **allocation of roles and responsibilities** for asset valuation ensuring clear segregation of roles, independence within the valuation function, mitigation of conflicts of interest (in particular intra-group and third-party delegates) and prevention of undue influence on relevant employees;
- define the **valuation model** to be applied in both normal and stressed market conditions including monitoring (e.g., bid-ask spreads and/or liquidation costs) and triggers (e.g., reliable market prices not available, valuation of certain assets not possible) for the use of different valuation models (e.g., model-based valuation) and liquidity management tools in stressed market conditions;
- systematically incorporate the outcomes of **liquidity stress testing and scenario analysis**, particularly for less-liquid assets, supporting preparation for stress market conditions through modelling of fair methods for liquidating assets in all extreme but plausible market conditions;
- detail the process for **validation** of the valuation models by knowledgeable, experienced, independent (in particular, of the model and portfolio management function) persons;
- ensure **consistent application** of valuation methodologies for similar assets across all funds under management;
- provide for appropriate **checks, controls and back testing** of pricing from third-party data providers;
- formalise procedures for early detection, senior management-reporting and remediation of **NAV and valuation errors**. Asset valuation error procedures must outline how the fund would revalue, recalculate, and resettle affected transactions and determine and process any necessary payment of investor compensation with strict monitoring of the execution of any such procedures;
- ensure **alignment** of NAV calculation, asset valuation frequency and the availability of up-to-date data in particular for less-liquid funds;
- provide for ex-ante and ex-post **disclosure to investors** of valuation methods/methodologies; and

- provide for regular, at least annual, and documented **review** of the P&Ps, including the asset valuation error procedures, by appropriately knowledgeable, experienced persons with an ability to ensure consistent application of the valuation methodologies and models for similar assets across all funds under management.

3. *Fund managers must ensure that senior management review all information before being submitted to the Central Bank*

As an overarching comment in its Valuation CSA findings, the Central Bank noted deficiencies in the quality and detail of some fund managers' responses to Valuation CSA questionnaires. Fund managers are reminded to ensure that all information submitted to the Central Bank is reviewed in advance by senior management and that the Central Bank will follow up with up with fund managers directly to ensure this is the case.

Template UCITS and AIF Cross-Border Marketing and Management Notifications Published

On 21 December 2023, harmonised templates and regulatory information requirements for the notification of cross-border marketing and management of UCITS and AIFs in the EU were published by the Commission.

The notification templates and information requirements are set out in draft UCITS and AIFMD implementing and regulatory technical standards (**ITS** and **RTS**), which are now subject to a period of scrutiny and, if no objections are raised/the scrutiny period is not extended, will be adopted as UCITS/AIFMD delegated/implementing legislation, enter into force 20 days after publication and apply three months later.

Template notifications

The following templates for use by UCITS managers/AIFMs when notifying the marketing and management of UCIT/AIFs have been published:

For UCITS:

- ***Cross-border marketing:*** Revised notification template for cross-border marketing of UCITS under Article 93(1) UCITS Directive. This revised template is set out at Annex I to the draft UCITS ITS and replaces the existing template in Annex I, Regulation 584/2010. The template UCITS attestation at Annex II, Regulation 584/2010 has also been replaced by that set out at Annex V to the draft UCITS ITS.
- ***Cross-border management:*** New template letter for the provision of documentation in connection with the cross-border management of UCITS under Article 20(1) UCITS Directive. This template is set out at Annex II to the draft UCITS ITS.

For AIFs:

- ***Home State marketing:*** New notification template for marketing by EU AIFMs of EU AIFs in the AIFM's home Member State in accordance with Article 31 AIFMD. This template is set out at Annex I to the draft AIFMD ITS.
- ***Cross-border marketing:*** New notification template for cross-border marketing by EU AIFMs of EU AIFs in accordance with Article 32 AIFMD. This template is set out at Annex II to the draft AIFMD ITS.
- ***Cross-border management:*** New notification template for the management by EU AIFMs of EU AIFs, either directly or by establishing a branch. These templates are set out at Annex III and IV respectively to the draft AIFMD ITS.

Information requirements

In addition to draft UCITS and AIFMD ITS, the Commission published draft UCITS and AIFMD RTS which set out:

For UCITS:

- ***Cross-border management:*** New requirements for the information to be provided by a UCITS manager to its home authority when notifying the intention to manage UCITS on a cross-border basis either directly or through the establishment of a branch in a host Member State. The required information is set out in Article 1 an 2, draft UCITS RTS which elaborates on the requirements of Article 17(2) and 18(2) respectively of the UCITS Directive.

- ***Change to passport notification:*** New requirements for the information to be provided by a UCITS manager when notifying any change to a management passport notification under Articles 17, 18 and 20 UCITS Directive. The required information is set out in Article 4, draft UCITS RTS.

For AIFs:

- ***Cross-border management:*** New requirements for the information to be provided by an AIFM to its home authority when notifying the intention to manage EU AIFs on a cross-border basis either directly or through the establishment of a branch in a host Member State. The required information is set out in Article 1 and 2, draft AIFMD RTS which elaborates on the requirements of Article 33(2) and (3), respectively, of AIFMD.
- ***Change to passport notification:*** New requirements for the information to be provided by an AIFM when notifying any change to a management passport notification under Article 33(2), (3) and (6) AIFMD. The required information is set out in Article 3, draft AIFMD RTS.