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Asset Management & Investment Funds Update

May 2024

Key Dates & Deadlines: Q2 2024

The following are key dates and deadlines in Q2 2024 along with possible impacts and action items arising for fund managers.

Date	Source	Summary	Action/Impact
Q2 (exact date TBC)		AIFMD II RTS and Guidelines AIFMD amending Directive is required to be transposed by 16 April 2026 with transposing measure applied from that date.	ESMA preparing implementing regulations and guidelines on delegation, loan origination and liquidity management tools
Q2 (exact date TBC)		SFDR Level 1 Revisions 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.
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 here for further details.

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29 April		EMIR REFIT reporting rules Delegated measures for reporting under EMIR Refit and associated ESMA Guidelines applicable.	Key changes to TR reporting and regulatory notification of errors include increase in reportable fields, new reporting format, new rules for UTI generation, phased expansion of reconcilable fields and clarifications of the regulatory notification requirements for reporting errors.
1 May		New reporting obligations EU Sanctions Russia. Under Article 5r of the Council Regulation (EU) No 833/2014 of 31 July 2014 EU member states are required to assess the information received in accordance with the reporting requirements to identify transactions, entities and business sectors that indicate a serious risk of breaches or circumvention of, or use of funds for purposes incompatible with the EU sanction framework against Russia.	Any legal person, entity and body established in the EU which is directly or indirectly owned more than 40% by: (i) legal person, entity or body established in Russia (ii) Russian national (iii) natural person residing in Russia will be required to report to its NCA, on a quarterly basis, any transfer of “funds” exceeding €100,000 outside of the EU, directly or indirectly, within two weeks of the end of the relevant calendar quarter in which the transfer was effected, whether the transfer was made in one or several operations
6 May		ESMA Guidelines Money Market Funds ESMA revised guidelines on stress test scenarios under the Money Market Fund (**MMF**) Regulation applicable for quarterly reports.	See here for further details.
24 May		Irish Property Funds Irish property funds must comply with applicable provisions set out in the Central Bank paper 'Macroprudential measures for Irish property funds'.	See here for further details.
27 May		New prudential rules for fund managers with MiFID Top-Up New own funds capital requirements apply to all Irish fund management companies with additional individual portfolio management permissions authorised by the Central Bank on or before 27 November 2023	See here for further details from the Central Bank
28 May		T+1 Settlement US transitions to T+1 settlement cycle.	See here for further details.
31 May		FCA Anti-Greenwashing Rule FCA's anti-greenwashing rules and associated guidance under the UK Sustainability Disclosures Regime (**SDR**) come into effect.	See here for further details.

7 June		Central Bank's Consultation Paper 158 on the revised consumer protection code Deadline for comments on Central Bank's Consultation Paper 158 on its revised consumer protection code.	See here for further details
18 June		FSB consultation report on margin and collateral calls FSB published a consultation report on liquidity preparedness for margin and collateral call	Please see article on topic in this month's update for further details.
25 June		Crypto- Assets ESMA's feedback deadline for third consultation package under the Markets in Crypto-Assets Regulation (**MiCA**).	See here for further details.
30 June		FCA ESG Rules/TCFD First entity-level and (if applicable) public product-level disclosures due for firms with £5-50bn AUM under the UK SDR.	See here for further details.
30 June		SFDR entity-level PAI calculation date Fund management companies which (i) are obliged due to their size or (ii) have chosen to report on the principal adverse impacts of investment decisions on sustainability factors must publish a PAI statement covering the 2023 calendar year on their websites or before this date.	In-scope fund management companies must prepare and publish the relevant PAI statement on their website.
30 June		Central Bank Dear Chair Letter; Revocation of sub fund/funds All fund management companies with funds under management which are either: (i) authorised by the Central Bank of Ireland but never launched (i.e., did not issue any shares within 18 months of authorisation); or (ii) fully liquidated	Funds and Fund Managers to identify any funds which fall into categories 1 or 2 described in the Dear Chair Letter and commence revocation with the Central Bank
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 here for further details.

6 July		National transposition of the Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS) CSRD and the European Sustainability Reporting Standards (ESRS) 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.	See here for further details.

Codification of Yield Buffer for Irish GBP-LDI AIFs

On 29 April 2024, the Central Bank issued a new macroprudential framework for GBP-denominated liability driven investment (**LDI**) funds authorised as alternative investment funds in Ireland (**GBP-LDI AIFs**). The framework codifies the Central Bank's expectation that GBP-LDI AIFs maintain resilience to a 300-400 bps increase in UK yields (**yield buffer**).

The publication of the LDI framework concludes the Central Bank's consultation CP 157 which it undertook in co-ordination with the Luxembourg financial regulator and following the UK gilt market crisis in 2022.

Summary of the LDI framework

- The LDI framework applies equally to all Irish authorised GBP-LDI AIFs being "*any fund whose investment strategy seeks to match the sensitivity of their assets to UK interest rates or information to that of their investors' pre-defined liabilities"*. The framework includes a non-exhaustive list of GBI LDI strategies to assist AIFMs in determining whether AIFs under management are subject to its measures.
- Both Irish and non-Irish AIFMs of Irish authorised GBP-LDI AIFs are in scope of the measures under the framework.
- Irish AIFMs will be required to notify the Central Bank, when seeking authorisation of a new GBP-LDI AIFs, that the fund is in scope of the framework and AIFMs of existing GBP-LDI AIFs will be required to do so if they are captured due to their conditions of authorisation or if they begin to act for a GBP-LDI AIF.
- New GBP-LDI AIFs must comply with the framework from launch while existing funds will benefit from a three-month transition period.
- The framework requires GBP-LDI AIFs to maintain to a minimum yield buffer (defined as the level of increase in UK yields that the fund can withstand before its NAV turns negative) for a 300 bps increase in UK yields, noting that this is a minimum not a target.
- Only assets on the GBP-LDI AIF's balance sheet are included in the calculation of the yield buffer. In keeping with the existing supervisory expectations for yield buffers, any shared pool of assets or other capital of investors that the GBP-LDI AIF may have access to, should not be included in the calculation.
- All exposures are to be considered in calculating the yield buffer however, non-UK rate sensitive assets should only form a limited part of the yield buffer calculation.
- Assets in the yield buffer must be sufficiently liquid and eligible to meet margin or collateral calls or can be transformed into eligible assets with requisite speed under normal and stressed market conditions.
- A monthly average yield buffer must be calculated, based on the yield buffer at the end of each business day of the month and reported to the Central Bank. On a rolling basis over the last four reporting observations, one of the reporting observations may be below 300 bps in exceptional circumstances. AIFMs are only required to notify the Central Bank that their yield buffer has fallen below the minimum 300 bps in real time if the deviation is expected to be prolonged and/or substantial.

Next Steps

The framework is effective immediately for new GBP-LDI AIFs and existing GBP LDI AIFs have three months (i.e., until 29 July 2024) to comply.

ELTIF RTS - ESMA responds to the European Commission

ESMA has responded to the European Commission proposal to make a series of changes to the draft RTS published by ESMA in December last year.

The amending ELTIF Regulation envisages that ESMA will develop regulatory technical standards (RTS) to determine matters such as the circumstances in which the life of an ELTIF is considered compatible with the life-cycle of each of its individual assets, as well as different features of the redemption policy of the ELTIF.

On 19 December 2023, ESMA published its final report setting out draft RTS which were then submitted to the European Commission (EC) for adoption. On 8 March 2024, the EC sent a letter to ESMA outlining its intention to adopt the RTS, with specific amendments, and encouraged ESMA to consider the individual characteristics of different ELTIFs to build a more proportionate approach to the calibration of requirements relating to redemptions and liquidity management tools.

On 22 April 2024, ESMA, in response to the EC, published an opinion which suggests making limited changes to the initial draft RTS. Those changes are described below.

Liquidity

Taking account of the EC's recommendations, ESMA has suggested changes to the minimum percentage of liquid assets that an open-ended ELTIF must hold based on the number of days' notice an investor must provide if it wishes to redeem its units in the ELTIF. Changes have also been proposed to the maximum percentage of liquid assets that can be redeemed on any one dealing day, again based on the ELTIF's redemption notice period. The changes referred to in this paragraph are shown in the table below:

Redemption Notice period	Minimum percentage of liquid assets	Maximum percentage referred in Article 18(2)(d)
Less than 12 months to 6 months (included)	10%	90%
Less than 6 months to 3 months (included)	15%	67%
Less than 3 months to 1 month (included)	20%	50%
Less than 1 month	25%	20%

Redemption Gates

ESMA has proposed that an ELTIF's AIFM may use redemption gates, in particular if the amount of liquid assets is not sufficient to cover a reasonable expected redemption.

Minimum Holding Period

ESMA is still of the view that the setting of a minimum holding period is one of the key aspects of the redemption policy of the ELTIF and has therefore retained its view that the ELTIF AIFM may select the minimum holding period that is best adjusted to an individual ELTIF, based on criteria set out in the RTS.

Material Change to Redemption Policy

ESMA proposes that an ELTIF’s national competent authority should be notified at least one month before a material change is proposed to be made to the redemption policy of an ELTIF.

Liquidity Management Tools

ESMA has conceded that an ELTIF's AIFM should be able to select and implement one or more liquidity management tools (LMTs) from the full list of LMTs included in AIFMD II.

Next Steps

The EC must now consider the revised RTS from ESMA. The EC may adopt the RTS with the amendments it considers relevant or reject it. The European Parliament and the Council may object to an RTS adopted by the EC within a period of three months. Accordingly, the RTS may not enter into effect until Q4 this year.

Individual Accountability Framework Developments

The following summarises certain recent developments for the adoption and implementation of the Individual Accountability Framework (IAF).

Updated IAF Guidance

On 16 April 2024, the Central Bank published an updated version of the Guidance on the Individual Accountability Framework (**IAF Guidance**) with limited amendments including:

- The numbered PCF roles for Head of Material Business Line for Relevant Insurance Undertakings and Head of Material Business Line for Relevant Investment Firms (PCF 54 and PCF 55 respectively) have been inserted in the IAF Guidance.
- There is also a change from the obligation "*to abide by*" the Fitness and Probity Standards (**F&P Standards**) to "*to comply with*" the F&P Standards and some minor word changes to the Prescribed Responsibilities descriptions.

Draft Standards for Business Regulations

On 7 March 2024 the Central Bank provided the awaited further detail on the IAF business conduct standards as part of a separate consultation on proposed updates to the Consumer Protection Code (**Code**).

Whilst common conduct standards and additional conduct standards have been applied to individuals in regulated firms since 29 December 2023, the business conduct standards applicable to firms will not be effective until the revised Code is implemented, which is expected to happen in early 2026.

The business conduct standards, which are set out the draft Standards for Business Regulations published on 7 March last, are applicable to all regulated firms (with specified exceptions including firms providing MiFID services) when dealing with any customer/potential customer in Ireland and require the firm to:

- secure its customers' interests.
- act with honesty and integrity.
- act with due skill, care and diligence.
- act in the best interests of customers and treat them fairly and professionally;
- ensure that all information it provides to customers is presented in a way that seeks to effectively inform the customer;
- control and manage its affairs and systems (including risk management systems, internal control mechanisms and governance arrangements) sustainably, responsibly and in a sound and prudent manner;
- maintain adequate financial resources;
- control and manage its affairs and systems to counter risks to customers of financial abuse (there is a new definition of "*financial abuse*" in the draft legislation); and
- engage and cooperate with the Central Bank and comparable competent authorities in good faith and without delay.

The draft Standards for Business Regulations also include 'supporting standards' which detail how firms can meet each of the above business conduct standards.

SEAR Regulations

On 12 April 2024, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Senior Executive Accountability Regime) Regulations 2024 (**SEAR Regulations**) were signed by the Governor of the Central Bank. SEAR is the last of the four pillars of the IAF remaining to be implemented. The SEAR Regulations will come into operation on 1 July 2024, with provisions relating to Non-Executive Directors becoming operative one year later (1 July 2025), and apply to credit institutions, insurance companies, and certain MiFID firms. Fund managers are not in scope of the first wave of SEAR.

Next Steps

The Central Bank intends issuing the following shortly:

- **IAF Frequently Asked Questions** to assist firms in their ongoing implementation of the Framework; and
- A system **"How To" Guide** for submitting IAF documentation.

Financial Stability Board consultation report on liquidity preparedness for margin and collateral calls

On 15 April 2024, the Financial Stability Board (**FSB**) published a consultation report (**the Report**) on liquidity preparedness for margin and collateral calls. The FSB aim is to enhance market participants' liquidity preparedness to help mitigate the impact of such calls during times of market-wide stress and identifies a need for policy adjustments. The Report highlights several recent episodes of market stress including the September 2022 issues experienced by many pooled liability-driven investment (LDI) funds and how these highlight the importance of margin and collateral calls to financial stability.

The Report outlines eight cross-sectoral policy recommendations to enhance the liquidity preparedness of non-bank market participants for margin and collateral calls in centrally and non-centrally cleared derivatives and securities markets (including securities financing such as repos). The recommendations are proposed to apply proportionately with a focus on non-bank market participants including funds with material exposures to spikes in margin and collateral calls during times of stress.

The eight recommendations in the Report build on existing rules and regulations on liquidity risk management across sectors and jurisdictions and focus on:

- Non-bank market participants' liquidity risk management practices and governance with respect to managing and mitigating exposures to spikes in margin and collateral calls
- Liquidity risk management and governance, stress testing and scenario design for margin and collateral calls during normal market conditions, as well as in extreme but stressed market conditions
- Ensuring sufficient collateral is available, as and when required.

Next Steps

The consultation is open for feedback until the 18 June 2024

Sustainable Finance Developments

ESG Ratings Regulation

On 24 April 2024, the EU ESG Ratings Regulation was adopted by Parliament and now only remains to be formally approved by the Council before it will be published, enter into force and become applicable 18 months after entry into force.

The Regulation targets better comparability and increased reliability of ESG ratings by introducing a common regulatory approach to the authorisation/third-country access, governance, organisational and transparency rules for ESG ratings providers operating in the EU. See our March 2024 update (available here) and July 2023 update (available here) for further details.

Key changes made by Parliament in advance of adoption

The following were incorporated into the Regulation in advance of its adoption by Parliament on 24 April last:

- *Conflicts of interest:* ESG rating providers will not be allowed to offer credit ratings, benchmarks, auditing, insurance, or reinsurance activities under the same entity. Providers of these services will have to create a separate legal entity for their ESG rating services.

- *Transparency:* ESG rating providers will be required to provide separate E, S and G ratings rather than providing an aggregate ESG rating. If a rating provider does use an aggregate rating, they will be required to disclose the rate and weight granted to each component E, S and G.
- *Paris alignment:* If an ESG rating covers environmental factors, information must be provided on whether that rating takes into account alignment with the Paris Agreement and any other relevant international agreements.
- *S and G factors:* If an ESG rating covers social and governance factors, information must be given on whether the rating takes into account any relevant international agreements.
- *Double materiality:* The rating provider must explicitly disclose whether the rating assesses how the rated entity is impacted by and how it impacts ESG factors i.e., the double materiality approach or whether it only takes account of one or the other.

Next steps

The ESG Rating Regulation will now pass to the European Council. If approved, it will come into force at the end of 2025.

Irish Funds review of SFDR Level 2 disclosures in a sample of fund periodic reports

On 16 April 2024, Irish Funds published a review of the Sustainable Finance Disclosure Regulation (**SFDR**) Level 2 disclosures in a sample of fund periodic reports. The review was prepared by the Irish Funds Environmental, Social, Governance Data and Reporting Working Group which analysed the EU SFDR Level 2 disclosures included in a sample of 146 periodic reports issued after 1 January 2023.

Key observations include that:

- 100% of funds reviewed in the sample claim to apply some type of exclusions policies.
- 42% of funds reviewed disclosed specific carbon-related emissions reduction or carbon-related ESG exclusions.
- 69% of funds reviewed disclosed sustainable investment exposure greater than 0%.
- 10% of the Article 9 fund sample that committed to a sustainable investment objective had investments in economic activities that qualify as environmentally sustainable under the EU Taxonomy.
- 90% of funds reviewed did not disclose Taxonomy alignment exposure above 0%.
- Of the sample of Article 8 funds and Article 9 funds reviewed, 95% disclosed whether they considered PAI indicators.
- Of the Article 9 funds, 98% confirmed that they considered PAI indicators in their disclosures.

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