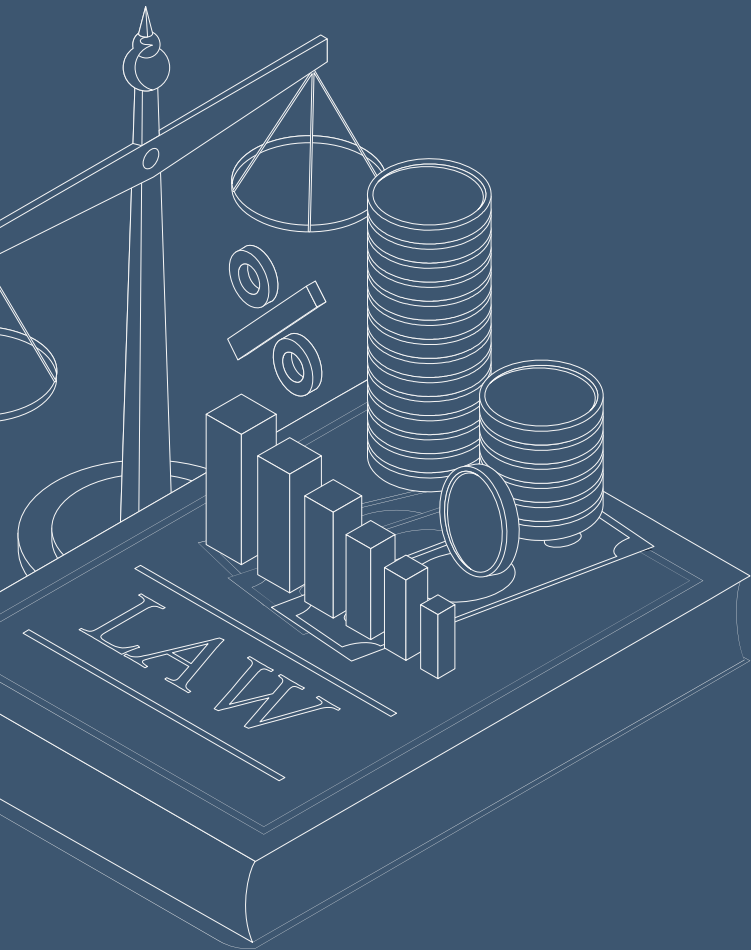


TAKING STOCK OF ESG FUND REGULATION

WHERE ARE WE AND WHAT IS STILL TO COME?

With so much happening in the world of ESG regulation, firms can be forgiven for losing track. In this edition, we take a short look at the latest developments and the future milestones coming up.



Disclosure, disclosure, disclosure...

The main focus for fund managers will remain the implementation of the disclosure obligations under the EU Sustainable Finance Disclosure Regulation (EU SFDR). Further, requirements were added over the summer with the adoption of the EU Taxonomy Regulation (for more information, please see our [briefing](#)).

The various obligations will be phased in over the best part of two years but many will start applying to fund managers from 10 March 2021, including the requirement for firms to have a sustainability risk policy in place and to disclose on sustainability risk considerations both at a firm and fund-level.

Some key details of the new disclosure rules will be set out in so-called “Level 2 rules” that will sit alongside the EU SFDR but that are still being developed by the European Supervisory Authorities. The first set of Level 2 rules were published in draft and [consulted](#) on earlier this

year. A further consultation in the form of a recently launched [survey](#) by the European Supervisory Authorities on the presentation requirements relating to prescribed disclosures for ESG focused products (including funds) is still open for responses with a deadline of 16 October.

The requirements proposed under the Level 2 rules are extensive in scope and have received significant industry pushback. Originally planned to be finalised by the end of this year, it now looks like their final release may slip to the end of January 2021 or even later, leaving asset managers just weeks to ensure that they are in compliance before the 10 March 2021 deadline.

With so many important details still being finalised, it is no surprise that the calls from many fund managers for an extension to the March 2021 implementation date are getting louder and louder.

It is difficult to say where we will end up on this. Any extension of the March compliance deadline is likely to be relatively short and perhaps the more probable outcome will be a limited grace period during which regulators will refrain from taking action against firms as they bring themselves into compliance.

Unsurprisingly, for UK firms there is an added Brexit dimension to contend with as the requirements will only start applying after the end of the Brexit transition period. While the expectation remains that the UK government will “on-shore” the EU’s ESG reforms (that is, convert them into UK domestic law), the details of this remain to be finalised. Current indications are that some or all of the Level 2 rules under the EU SFDR will not be on-shored (whereas the main body of the EU SFDR will be on-shored), potentially opening the door to a whole hotchpotch of approaches where some fund managers will comply with these Level 2 rules (especially if they want to continue raising money in the EU where the rules will apply) while others will not.

...but ESG regulation is about more than just disclosure

It’s important not to lose sight of the other regulatory measures that will be finalised soon and that go beyond mere disclosure on ESG matters.

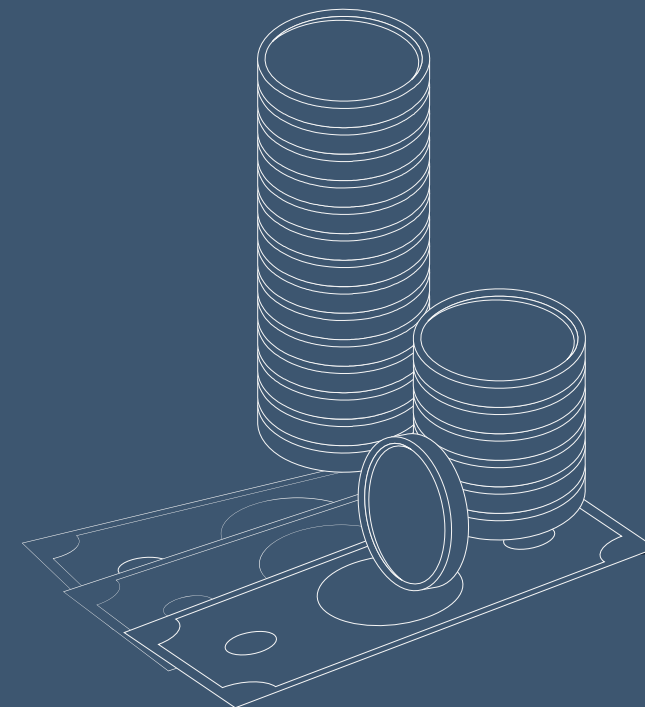
The European Commission is currently finalising ESG related amendments to the AIFMD and MIFID II regimes. These proposals, once adopted, will require fund managers authorised as AIFMs or MiFID firms to re-visit their organisational, risk management, governance and due diligence processes and integrate sustainability considerations. The latest drafts were published in June (see [here](#) and [here](#)).

We expect that the measures will be finalised in the coming months and then will be likely to apply from Q3 or Q4 next year.

Post from ESMA

As discussed elsewhere in this quarter’s publication, ESMA recently [wrote](#) to the EU Commission setting out its extensive wish list for changes to the AIFMD regime as part of the Commission’s formal AIFMD review.

On the ESG side, ESMA in its letter suggests that fund managers should report to national regulators on ESG metrics as part of their AIFMD reporting. Whilst there are no specific suggestions on the content of such ESG reporting, firms will want to follow this closely and liaise with industry associations and policy makers given the complexity involved in defining such metrics and obtaining information.



JAN GRUTER

Legal Director
+44 07784 298011
Jan.Gruter@
addleshawgoddard.com