

Hello. I'm Amanda Hale from Citi's Global Trustee and Fiduciary Services Regulatory team.

And joining me to provide an update on the latest regulatory highlights are my colleagues,

Andrew Newson and Matthew Cherrill.

So what do firms need to be aware of this month?

MATT: An issue high on the regulatory agenda is digitalisation.

ESMA has published a Discussion Paper on 'MiFID II investor protection topics linked to digitalisation' in which it explores the evolving landscape for retail investments.

This includes examining the recent surge in the adoption of digital tools and social media by firms, and retail investors, following the Covid-19 pandemic, and an exploration of how technology impacts retail investor behaviour and decision-making.

Based on the supervisory experience of European Regulators and relevant academic literature, ESMA assesses both the opportunities and the potential risks linked to digitalisation.

ESMA's recommendations cover topics such as:

- Layering and accessibility of information;
- Digital marketing communications and practices;
- The use of influencers;
- Social features of investment apps;
- Gamification;
- Nudging techniques; and
- Dark patterns.

ESMA would like responses to its discussion paper by the 14th of March and it will use the feedback to support its work of investor protection while harnessing the benefits of innovation.

ANDY: Mandy, as ESG topics continue to dominate the agenda, what do you have for us?

MANDY: For my last pick of 2023, I've turned to Singapore.

The Monetary Authority of Singapore (or MAS) formally launched the Singapore-Asia Taxonomy at COP28.

The Singapore-Asia Taxonomy is understood not to be an exhaustive or mandatory list of activities or projects for investment

but rather aims to act as a reference point for policymakers, as well as providing stakeholders with, amongst other things, definitional clarity and a common language.

The Singapore-Asia Taxonomy sets out detailed thresholds and criteria for defining –

- 1) “green” activities
(being activities and projects which contribute to at least one environmental objective whilst not causing any significant harm to other environmental objectives),
- 2) transition (or “amber”) activities, and
- 3) what activities may then be considered ineligible.

Further details of the focus sectors and environmental objectives can be found in our accompanying Bite-sized publication.

It is also worth noting that the MAS have discussed:

- Hard-to-abate sectors;
- An early phase-out of coal-fired power plants; and
- Interoperability with global taxonomies.

The Singapore-Asia Taxonomy is expected to be updated over time, with future iterations being coordinated by the Singapore Sustainable Finance Association, which was convened by the MAS.

MATT: Fund liquidity is another hot topic, what’s the latest?

ANDY: Last month the FSB and IOSCO simultaneously published policies aimed at addressing vulnerabilities from liquidity mismatch in open-ended funds. Together they aim to achieve a significant strengthening of liquidity management by managers of open-ended funds compared to current practices.

Firstly, the FSB’s ‘Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds’ are addressed to financial regulatory and supervisory authorities.

The Revised FSB Recommendations provide greater clarity on the redemption terms that funds can offer to investors, based on the liquidity of the fund’s asset holdings. This would be achieved through a categorisation approach, where funds would be grouped depending on the liquidity of their underlying assets (for example liquid, less liquid, and illiquid). funds in each category would then be subject to specific expectations in terms of their redemption terms and conditions.

The FSB says that regulators should set expectations for fund managers to use a mixture of quantitative and qualitative factors when determining the liquidity of fund assets in normal and stressed market conditions within the context of their domestic liquidity frameworks.

On the same day IOSCO published 'Anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes'

The IOSCO LMT Guidance sets out key operational, design, oversight, disclosure and other factors and parameters that responsible entities should consider when anti-dilution tools are used, to promote greater, more consistent, and more effective use of these tools.

Furthermore, anti-dilution tools used by responsible entities should impose on subscribing and redeeming investors the estimated cost of liquidity. IOSCO says this should encompass the 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.

Looking ahead, IOSCO will consider how to further operationalise the Revised FSB Recommendations through amendments to its 2018 IOSCO Recommendations and supporting good practices, as needed.

MANDY: Is there anything else fund operators should be aware of?

MATT: The UK FCA published a consultation paper (CP23/26) setting out its proposals for how the new Overseas Funds Regime should operate.

Known as the OFR, the regime has been designed by the UK Parliament to provide a streamlined process that aims to allow funds from jurisdictions approved by the UK Government to market to UK retail investors.

The FCA is consulting on changes to its rules that will allow overseas schemes to be recognised under OFR, should the UK Government decide on jurisdiction equivalence.

The FCA has proposed the categories of information that overseas schemes will need to submit to become recognised by the FCA under the OFR such key information about the scheme's investment objective and policy, and the main categories of assets that it invests in.

The FCA has also put forward new measures to make sure investors are aware of the protections they have, such as access to the Financial Ombudsman Service and the Financial Services Compensation Scheme, and overseas fund operators will need to make it clear when these customer protections are not available.

This should help consumers to make informed decisions about which funds best meet their needs.

The consultation period ends on 12 February 2024.

MANDY: Thanks Matt, and before we conclude our latest episode,

I thought now would be a good time to project forward to what we might expect in the ESG space for 2024.

Despite the deluge of sustainable finance rules and requirements in the past year, 2024 could prove to be just as busy.

Looking at investment funds and firms:

- In the first half of 2024, the European Commission could endorse the ESAs' Final Report amending the draft RTS to the delegated regulation supplementing the SFDR (which would make amendments and technical revisions including amendments to sustainability disclosures).
- ESMA is expected to adopt guidelines on the use of ESG and sustainability-related terms in fund names.
The original timeline for the guidelines has changed, with adoption of the guidelines now expected to be delayed until Q2 2024, to ensure the outcome of the AIFMD/UCITS reviews are fully considered.
It has been outlined that ESMA plans to adopt the guidelines shortly after entry into force of the AIFMD/UCITS legal texts.
- The European Commission also anticipates issuing SFDR amendment and enhancement proposals during the first half of 2024.
- Following on from their progress reports in 2023, the ESAs are expected to follow up by publishing their final reports on greenwashing in May 2024 (and it is expected that these final reports may propose possible EU rule changes).
- ESMA's common supervisory action that started in 2023, which is focused on assessing the asset management sector's compliance with sustainability disclosure rules and the integration of sustainability risks, is expected to continue until Q3 2024.
- Then finally regarding MiFID, ESMA is expected to conduct a separate common supervisory action during 2024 to assess the progress made by intermediaries in the application of key sustainability requirements that entered into application in 2022 following the amendments made to the MiFID II delegated acts (which is expected to cover, amongst other things, how firms collect information on clients' sustainability preferences).

ANDY: If you would like to learn some more about the topics we discussed today, as well as other regulatory developments, you can follow the relevant links in our Bite-Sized publication.