

Asset Management & Investment Funds

Financial Services Regulation and Compliance - Investment Firms June 2024

At European level, the EBA and ESMA publish a discussion paper on the potential review of the investment firms prudential framework and the Council of the European Union agrees its position on the Retail Investment Package.

18 July 2024

European

EBA and ESMA publish discussion paper on the potential review of the investment firms prudential framework

On 3 June 2024, the European Banking Authority (**EBA**) and the European Securities and Markets Authority (**ESMA**) published a discussion paper on the potential review of the investment firms' prudential framework. This follows the European Commission's (**EC**) call for advice.

The discussion paper examines a variety of topics, including:

- the adequacy of the current prudential requirements
- an analysis of the existing methodology
- risks not covered by the current framework
- the implications of the adoption of the new EU Banking package
- prudential consolidation
- a potential extension to crowdfunding and crypto-assets service providers
- remuneration in relation to investment firms, AIFMs and UCITS management companies

The consultation will run until 3 September 2024.

Council of the European Union agrees its position on the Retail Investment Package

On 12 June 2024, the Council of the European Union (the **Council**) reached agreement on the retail investment package which aims to support consumers who seek to invest in the EU's capital market through insuring further transparency and disclosure in relation to investment products.

The Council have proposed the following changes:

- removal of the proposed ban on inducements received for execution-only sales
- strengthen the safeguards accompanying all inducements with:
 - an inducement test that will apply where there is no ban on inducements

- a new uniform test which specifies the duty for advisors to act in the best interest of the client
- enhanced transparency and disclosures about what payments are considered as inducements
- new concept of 'value for money,' whereby manufacturers and distributors will be required to assess whether the costs and charges related to a product are justified and proportionate

The Council's agreement will enable the commencement of interinstitutional negotiations.

Commission Delegated Regulation (EU) 2024/1771 with regard to RTS specifying the details of the scope and methods for prudential consolidation of an investment firm group published

On 25 June 2024, Commission Delegated Regulation (EU) 2024/1771 supplementing the Investment Firms Regulation (Regulation (EU) 2019/2033) (**IFR**) was published in the Official Journal. The Commission Delegated Regulation (EU) 2024/1771 contains regulatory technical standards (**RTS**) specifying the details of the scope and methods for prudential consolidation of an investment firm group.

The RTS specifies the details for calculating the fixed overheads requirement, the permanent minimum capital requirement, the K-factor requirement on the basis of the consolidated situation of the investment firm group, and the method and necessary details to properly implement Article 7(2) of IFR.

The Commission Delegated Regulation will enter into force on 15 July 2024.

ESAs published Opinion on the assessment of SFDR

On 18 June 2024, the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA; together **the ESAs**) published its opinion on how the Sustainable Finance Disclosure Regulation (**SFDR**) has increased transparency on sustainability features for the benefit of investors in the context of the Green Deal objective (the **opinion**).

Following two consumer testing exercises, the ESAs recognised that the current framework requires improvement and that disclosure to investors, in particular retail investors, under the SFDR are complex in nature and difficult to understand. Therefore, the opinion focuses on the merits of the introduction of a categorisation system for financial products under the SFDR to allow for simplified disclosures that ensure that retail investors better understand the underlying sustainability profile of financial products.

The European Commission is currently analysing stakeholders' responses to improve the European framework for sustainable finance based on the experience on the implementation of SFDR. With that, the ESAs have set out their key recommendations and have signalled their willingness to support the Commission in providing any necessary additional technical assistance related to the disclosure elements in the SFDR.

For more information on these topics please contact any member of A&L Goodbody's [Asset Management & Investment Funds](#) team.

This publication provides an overview of certain legal and regulatory developments that may be of interest to certain entities. It does not purport to provide analysis of law or legal advice and is strictly for information purposes only.