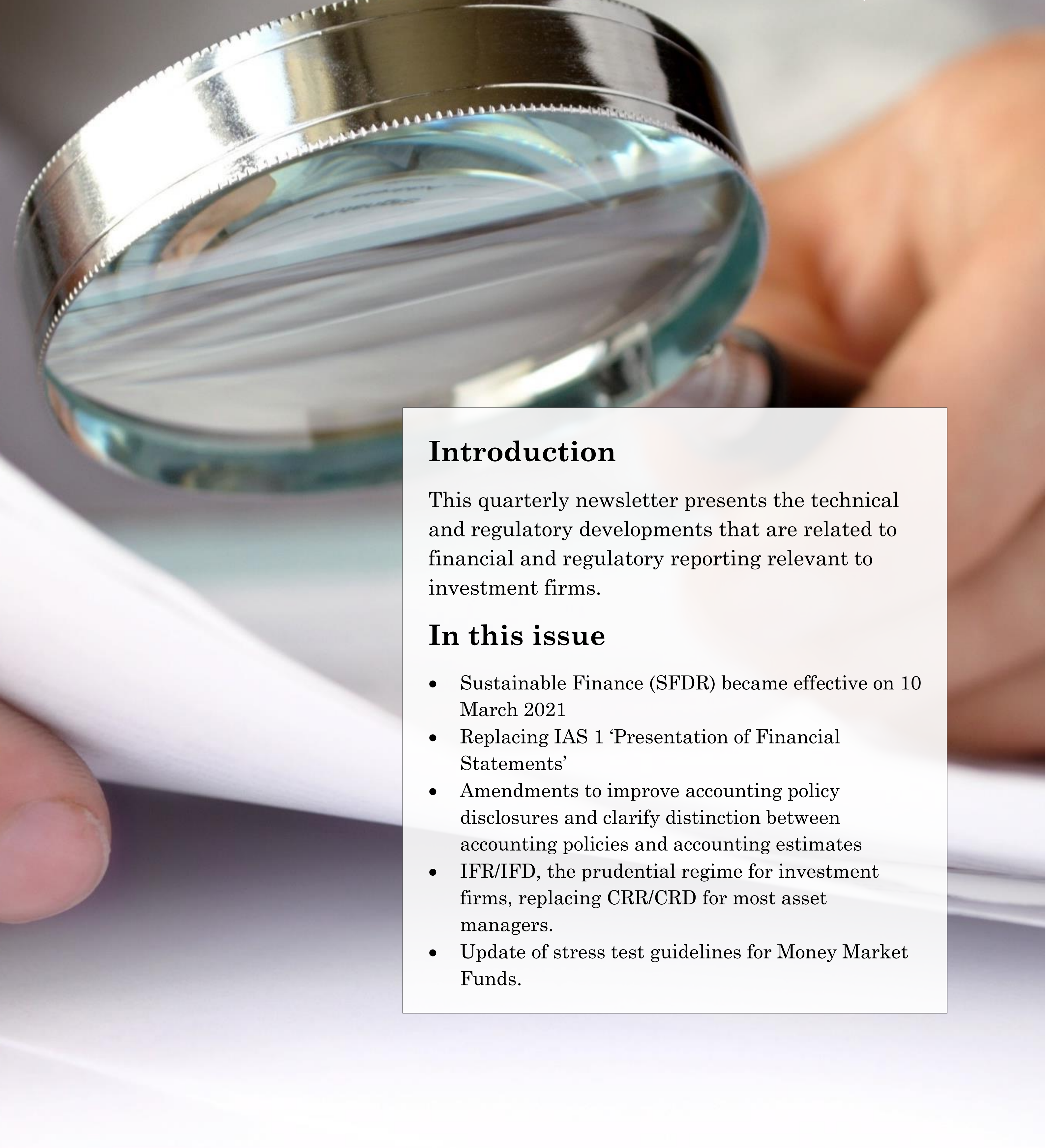
Regulatory Newsletter Solutional

DEVELOPMENTS IN ASSET MANAGEMENT LAWS AND REGULATION | Q1 2021



Introduction

This quarterly newsletter presents the technical and regulatory developments that are related to financial and regulatory reporting relevant to investment firms.

In this issue

- Sustainable Finance (SFDR) became effective on 10 March 2021
- Replacing IAS 1 'Presentation of Financial Statements'
- Amendments to improve accounting policy disclosures and clarify distinction between accounting policies and accounting estimates
- IFR/IFD, the prudential regime for investment firms, replacing CRR/CRD for most asset managers.
- Update of stress test guidelines for Money Market Funds.

General developments

SFDR

As of 10 March 2021 the Sustainable Finance Disclosure Regulation (SFDR) became effective.

The SFDR contains regulations regarding the provision of information about the sustainability of investments. The SFDR consists of two levels of regulation. SFDR Level 1 concerns the main lines of regulation that follows directly from the regulation. SFDR level 2 contains the more detailed technical standards, the "Regulatory Technical Standards" (RTS).

For more details on the requirements for the annual reports we refer to the article 'Sustainable Finance' (February 2021) on our website (link).

AIFMD review ESMA

The Alternative Investment Fund Managers Directive (AIFMD) is under review by the European Commission. To provide input for this review, the European Securities and Markets Authority (ESMA) has published a letter containing their view on the AIFMD regulatory framework, including suggestions and recommendations for possible improvements.

In October 2020 the European Commission published a consultation on the AIFMD which ended at the end of January 2021. Multiple branch organizations, such as AMF, ALFI and Irish Funds took part in the consultation and have published their response and opinion.

In the short term, no changes to the AIFMD are expected. A first draft of the revised AIFMD is expected to be published in Q4-2021 with estimated effective dates for amendments in 2023 (expectation by ALFI).

Brexit

As a result from Brexit, the UK and Northern Ireland are no longer part of the EEA (European Economic Area) and thus should be classified as non-EEA in the regulatory reports where aggregated regional exposure is included or investments are reported based on regional focus. This is applicable as of February 2021.

IFRS

On 26 January 2021, the IASB continued their discussion on the feedback to its Exposure Draft 'General Presentation and Disclosures'. The Exposure Draft sets out proposals for a new IFRS standard on presentation and disclosures in financial statements, with a focus on the statement of profit or loss. This new standard will replace IAS 1 'Presentation of Financial Statements'.

The Board agreed on a plan to redeliberate the project proposals based on the received feedback.

On our website, we recently published the article (link) 'Replacing IAS 1 Presentation of Financial Statements' (March 2021) in which we elaborate on the relevant amendments for investment funds.

Amendments to improve accounting policy disclosures and clarify distinction between accounting policies and accounting estimates

On 12 February 2021, the IASB issued narrow-scope amendments to IFRS standards to improve accounting policy disclosures and distinguish changes in accounting estimates from changes in accounting policies. Below some items relevant to investment firms.

Amendments to IAS 1 'Presentation of Financial Statements' require companies to disclose their material accounting policy information rather than their significant accounting policies.

The amendments to IFRS Practice Statement 2 provide guidance on how to apply the concept of materiality to accounting policy disclosures.

The IASB issued amendments to IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors. These amendments clarify how companies should distinguish changes in accounting policies from changes in accounting estimates. Changes in accounting estimates are applied prospectively only to future transactions and other future events. Changes in accounting policies are generally also applied retrospectively to past transactions and other past events.

These amendments will be effective for periods beginning on or after 1 January 2023.

Education material on Going Concern requirements

On 13 January 2021, the IASB published educational material to support consistent application of IFRS standards with respect to going concern assessments.

In the current stressed economic environment, resulting from the COVID-19 pandemic, going concern assessments may require a greater degree of judgement than usual. The educational material brings together the requirements in IFRS Standards relevant for going concern assessments.

The material does not change or add anything to existing requirements.

Financial instrument with characteristics of Equity

The IASB met on 16 February 2021 to discuss:

- potential refinements to the disclosures an entity would be required to make about the financial instruments it issues; and
- the classification of financial instruments with obligations that arise only on liquidation.

The IASB discussed challenges in accounting for financial instruments with obligations that arise only upon liquidation of an entity. The IASB also discussed potential classification, presentation and disclosure requirements to address those challenges.

The IASB tentatively decided not to change how such instruments should be classified; but instead to develop presentation and disclosure requirements in relation to them.

COVID-19-related rent concessions beyond 30 June 2021

On 28 May 2020, the IASB issued COVID-19-Related Rent Concessions, which amends IFRS 16 'Leases'. The amendment permits lessees, as a practical expedient, not to assess whether particular rent concessions occurring as a direct consequence of the COVID-19 pandemic are lease modifications and to account for those rent concessions as if they were not lease modifications.

One of the conditions is that the practical expedient only applies to rent concessions for which any reduction in lease payments only affects payments originally due on or before 30 June 2021.

The IASB held a supplementary meeting on 4 February 2021 to consider whether to extend the period that the practical expedient in paragraph 46A of IFRS 16 Leases is available. The view of the IASB is that the COVID-19 pandemic is still at its height and the IASB has received information that lessors are providing rent concessions to lessees beyond 30 June 2021. As a result, the IASB decided to extend the application period to 30 June 2022.

EU endorsements

In 13 January 2021, the European Financial Reporting Advisory Group (EFRAG) endorsed the amendments to IFRS 9, IAS 39, IFRS 7, IFRS 4 and IFRS 16 re 'Interest Rate Benchmark Reform' – Phase 2 with effective date 1 January 2021. This is the second part of the two-phase project on 'Interest Rate Benchmark Reform' which the IASB completed in the third quarter of 2020.

Dutch GAAP

RJ 2020 (applicable 1 January 2021)

In Q4 2020, the RJ published their RJ 2020 Standards including all Dutch accounting standards applicable for reporting periods starting on or after 1 January 2021. The below RJ Uiting could be relevant for investment funds and has been processed in the 2020 standards.

RJ-Uiting 2019-15

RJ-Uiting 2019-15 'Draft guidance on Revenue Recognition' was published in November 2019 and because of its importance the RJ decided to fully include process the amendments in the RJ 2020 Standards (270 'De winst-en-verliesrekening' en 221 'Onderhanden projecten'). The amendments will apply for reporting periods starting on or after 1 January 2022.

The RJ has analyzed IFRS 15 'Revenue from Contract with Customers' and does not intend to fully implement IFRS 15 in the Dutch Standards. The main reason for this is that the implementation costs would not be feasible considering the combination of the requirements and the target group. The RJ will include in the amended standards more examples and clarifications and some specific additional requirements. The option will remain for entities to fully apply IFRS 15.

RJ115 amendments

The definition of materiality has been added to RJ115. As a result RJ150 correction of prior period errors has been updated. The purpose of the change is to clarify when a error is material. The following examples have been included in RJ150 as example:

- Incorrect processing
- Incorrect valuation and/or income recognition
- Incorrect classification and presentation
- Incorrect or incomplete disclosures

The following RJ-Uitingen have **not** been processed as they do not contain new requirements, but are meant to give additional guidance for specific topics:

- RJ-Uiting 2018-7 Considerations for the treatment of cryptocurrencies in the financial statements
- RJ-Uiting 2019-17 Considerations for the impact of IBOR-reform on hedge accounting
- RJ-Uiting 2020-5 Impact of the coronavirus on the financial statements 2019
- RJ-Uiting 2020-6 Example of coronavirus disclosures on the financial statements 2019
- RJ-Uiting 2020-7 Temporary law COVID-19 Justice and Security
- RJ-Uiting 2020-7 Impact fiscal reserve coronavirus on the financial statements 2019

RJ Uiting 2021-1

On 14 January 2021, the Dutch Accounting Standards Board ('RJ') issued a new directive RJ Uiting 2021-1 'Clarifying application of combination 3 (the application of IFRS for the consolidated financial statements in combination with application of Title 9 Book 2 of the Dutch Civil Code for the separate financial statements) in the separated financial statements and valuation of property for own use in the separated financial statement at top entity level. RJ-Uiting 2021-1 includes improvements and clarifications on the previously issued RJ-Uiting 2020-11 based on the comments received by the RJ. With the proposed changes, the RJ aims to improve the conceptual framework when applying combination 3. The main changes concern RJ 100 'Inleiding', RJ 213 'Vastgoedbeleggingen' and RJ 214 'Financiële vaste activa'.

RJ Uiting 2021-2

On 1 February 2021, RJ-Uiting 2021-2 was issued. Previously, RJ-Uiting 2019-17 considered the influence of the IBOR-reform in phase 1. RJ-Uiting 2021-2 shows us the conclusion of the RJ that there is no requirement to change the current standards and that with application of hedge accounting, the hedge ineffectiveness as a result of the IBOR-reform will be accounted for according to the current requirements of RJ 290 'Financial Instruments'.

AIFMD Annex IV

In The Netherlands, the Supervision on AIMFD Annex IV Reporting transfer from the Dutch National Bank (DNB) to the Autoriteit Financiële Markten (AFM) as of 1 July 2021. The AFM has started a test project where large asset managers have received specific instructions to perform tests in order to ensure that the transfer to the AFM system will run smoothly. The AFM system will be used for all asset managers with a requirement to issue AIFMD Annex IV reporting.

UCITS

On 6 January 2021, the ESMA launched a Common Supervisory Action (CSA) on the supervision of costs and fees of UCITS across the EU. The CSA will be conducted during 2021. The CSAs aim is to assess the compliance of supervised entities with the relevant cost-related provisions in the UCITS framework, and the obligation of not charging investors with undue costs. For this purpose, the NCAs will take into account the supervisory briefing on the supervision of costs published by ESMA in June 2020. The CSA will also cover entities employing Efficient Portfolio Management (EPM) techniques to assess whether they adhere to the requirements set out in the UCITS framework and ESMA Guidelines on ETFs and other UCITS issues.

Statistical Reporting

BSI (part of DRA)

In October 2020, the DNB has issued a new Balance Sheet Items (BSI) taxonomy, version 2.0.0. The taxonomy is available on the DNB website. The new taxonomy is applicable as of the first quarter of 2022.

SOLVENCY II (TPT/QRT)

No updates during Q1-2021

FTK

On 4 January 2021, DNB issued a letter ('Statenbrief 2021') to notify pension funds on the updated FTK taxonomy. Version 2.1.0 of the taxonomy will be replaced by version 2.3.0. The update only includes technical amendments such as stricter validation rules and adjusted options in the drop down menu's.

The new taxonomy relates to all the FTK reports with a reference period in 2021, the FTK annual statements 2020 and the recovery plan ('Herstelplan').

MMFR

On 16 December 2020, the European Securities and Markets Authority (ESMA) published an update of guidelines on MMF stress tests under the Money Market Funds Regulation (MMFR). The updated guidelines apply from two months after the date of publication of the guidelines on ESMA's website in all EU official languages.

The updates take account of MMFs recent experience during March 2020, particularly in relation to redemption scenarios due to the COVID-19 pandemic. The risk parameters have been modified in light of recent market developments. ESMA, in calibrating the new risk parameters, has worked closely with the European Systemic Risk Board and the European Central Bank.

EMIR

On 28 January 2021, ESMA updated the EMIR Q&A's. The updated Trade Repository (TR) Q&A 3b explains how to report the direction of derivatives in specific cases that are described. A new Q&A for Trade Repositories clarifies the steps to be taken for the due termination of derivatives when the reporting counterparty ceases to exist. It also specifies how to deal with non-terminated reports of inactive (dissolved) counterparties to ensure that accurate information is provided to the authorities.

MIFID

European MIFID Template (EMT) V3.1 has been endorsed by the FinDatEx Steering Group. This is an interim version of the EMT to facilitate compliance with SFDR Level 1 requirements as of 10 March 2021. EMT V3.1 and V3.0 coexist and cannot be merged. In comparison to V3.0, data field 56 has been updated and data fields 95-98 added.

PRIIPS

On 3 February 2021, the European Supervisory Authorities - ESAs (consisting of the EBA, EIOPA and ESMA) submitted the draft Regulatory Technical Standards (RTS) on amendments to the key information document for packaged retail and insurance-based investment products (PRIIPs) to the European Commission.

While some national competent authorities at EIOPA's Board continued to express reservations on the draft RTS, they supported the proposal based on further details provided by the European Commission on their approach to the broader review of PRIIPs Regulation, namely that the review will thoroughly examine the application of the PRIIPs framework, including:

- how to achieve better alignment between PRIIPs, Insurance Distribution Directive and Markets in Financial Instruments Directive II regarding provisions on costs disclosure;
- the scope of products as foreseen by the PRIIPs Regulation;
- how to ensure that the KID contains the key information necessary for retail investors while avoiding too much or too complex information for these investors;
- how to allow the creation of a digitalised KID allowing layered information and reviewing the default paper basis of the KID, taking into account the specific challenges for different types of products (e.g. multi-option products (MOPs));
- the need for a more tailored approach, such as for MOPs, in order to maximise understanding and use of the information, while continuing to allow for comparability of similar products.

IFR/IFD

On 26 June 2021, the new prudential regime for investment firms will become effective. This will replace the current CRR/CRD regime for most of the investment firms that have a license under MIFID II.

Under the new regime, investment firms are classified into the following categories:

Category 1 (remain under CRR/CRD regime)

- Investment firms engaging only in proprietary trading.
- Investment firms that have > € 30 billion in assets (banking license requirement).
- Investment firms that have > € 15 billion in assets (MiFID license and solvency requirements under CRR/CRD).
- Investment firms for which the supervisory authorities use their discretionary power to subject these firms to the CRR/CRD regime.

Category 2

- Investment firms that do not classify for category 1 or 3.

Category 3 (smaller firms; proportionality when applying the IFR/IFD regime)

- Investment firms that have < € 1.2 billion in assets under management/advice.
- Investment firms that do not engage in proprietary trading.
- Investment firms with cash trades < € 100 million/day or <1 billion/day for derivatives.

In order for an investment firm to qualify for category 3, a calculation of the K-factors is required according to article 12 IFR. The K-factor graph by DNB is included below.

The first reporting cycle will take place in Q4-2021 and cover the situation at 30 September 2021. The current reporting templates FINREP/COREP will be adjusted to comply with the IFR/IFD regime.

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