Regulatory Newsletter Solutional

DEVELOPMENTS IN ASSET MANAGEMENT LAWS AND REGULATION | Q2 2021

Introduction

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

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- Proposed changes for IFRS 13 'Fair Value'
- Restructure of RJ400
- MESRAP replacing DRA reporting
- Extension of PRIIPS exemption for UCITS

General

Royal Decree “tax plan”

On 4 June 2021 a Royal Decree was published on the previously announced changes in Dutch tax loss utilization rules. The new rules will become effective as of 1 January 2022. Tax losses are currently set off against taxable profits of the previous fiscal year (carry-back) and the six following fiscal years (carry-forward).

Based on the new decree, tax losses incurred in financial years commencing after 1 January 2022 and losses that are still available for settlement at that time will be carried forward indefinitely. The period for carrying back losses remains one year.

A limitation is applicable. If more than one million Euro taxable profit is reported in a financial year, the offset of tax losses against this taxable profit is limited to one million Euro plus 50% of the taxable profit insofar as this exceeds one million Euro.

IFRS

Disclosure Initiative—Targeted Standards-level Review of Disclosures

On 25 March 2021, the IASB published an exposure draft with proposed changes to IFRS 13 Fair Value and IAS 19 Employee Benefits.

In general, changes to IAS 19 do not impact investment funds as is the case here. The changes to IFRS 13 are relevant and include the following significant items:

- An overall objective to disclose information that enables the user to evaluate the entities exposure to uncertainties with regards to fair value.
- Focus on an appropriate level of detail to reinforce the materiality requirement in IAS 1.
- Refrain from referral to hierarchy levels to avoid any perception that level disclosures have to be included whether they are material or not.
- Require entities to include better information on how instruments are valued even when it is not classified as Level 3. For an investor, it can be significant to understand the level of uncertainty within a level classification. For example, whether an investment in Level 2 is closer to a Level 3 valuation or closer to a Level 1 valuation.
- Require entities to disclose information that enables users of financial statements to understand the significant reasons for changes in the fair value measurements of each class of assets and liabilities measured at fair value.

Primary Financial Statements

The IASB met on 27 April 2021 to redeliberate the proposals in the Exposure Draft ‘General Presentation and Disclosures’.

The Board tentatively decided, in relation to the principles of aggregation and disaggregation, to:

- state the purpose of disaggregation more clearly. Items shall be disaggregated if the resulting disaggregated information is material.
- strengthen the application of that principle by emphasizing that a single dissimilar (non-shared) characteristic between items would be sufficient to require an entity to disaggregate information about those items if that information were material.
- explore developing guidance for entities on how to use characteristics to identify when to aggregate or disaggregate items.

The Board tentatively also decided, in relation to the roles of the primary financial statements, to:

- not reinstate paragraph 29 of IAS 1 in the new IFRS Standard because it is not possible to require an entity to present complete disaggregation of material information in the primary financial statements.
- include a reference to understandability in the description of the role of the primary financial statements. This will clarify that the objective of paragraph 29 of IAS 1 continues to apply.

IFRS Practice Statement 1 Management Commentary

The IASB published an exposure draft on 27 May 2021 with proposals to revise and update IFRS Practice Statement 1 'Management Commentary'.

The Board proposes an objectives-based approach for management commentary.

The objectives cover six areas:

1. The entity's business model – how the entity creates value and generates cash flows;
2. Management's strategy for sustaining and developing that business model, including management of the opportunities that have been chosen to pursue;
3. The resources and relationships on which the business model and strategy depend, including resources not recognised as assets in the entity's financial statements;
4. Risks that could disrupt the business model, strategy, resources or relationships;
5. Factors and trends in the external environment that have affected or could affect the business model, strategy, resources, relationships or risks; and
6. The entity's financial performance and financial position – including how they have been affected or could be affected in the future by the matters discussed for the other areas of content.

EU endorsements

There were no endorsements by the EU during the second quarter of 2021.

Dutch GAAP

RJ-Uiting 2021-8

On 12 May 2021, the RJ proposed to restructure Chapter 400 – Board Reports. The restructuring aims to improve the readability and accessibility of this Chapter.

The preparer will be better facilitated to determine which requirements are applicable given a specific entity. The requirements of the Board Report find their source in a large variety of laws and regulations. As a result of new laws and regulations, numerous paragraphs have been added to Chapter 400 with some applicable to medium-sized and large entities with others only to specific types of entities.

The RJ proposes an effective date of this proposal to reporting periods starting on or after 1 January 2022.

RJ-Uiting 2021-9

RJ-Uiting 2021-9 of 18 May 2021 is the follow-up to RJ-Uiting 2020-12 'Temporary rent and lease reductions due to the corona crisis' which has an end date of 30 June 2021. The primary objective of RJ-Uiting 2021-9 is to extend the end date of RJ-Uiting 2020-12 to 30 June 2022.

The changes from RJ-Uiting 2020-12 were effective for financial years commencing on or after 1 January 2020 and in effect for rent and lease payments until 30 June 2021. With RJ-Uiting 2021-9 the period of RJ-Uiting 2020-12 has been extended for rent and lease payments (initially) due until 30 June 2022.

AIFMD Annex IV

There are no updates on the review of the AIFMD by the European Commission. The first draft of the revised AIFM Directive is expected in Q4 this year (source: Alfi).

ESMA has published an updated Q&A on 28 May 2021. This Q&A includes a clarification of the risk figures CS01, DV01 and the Net Equity Delta. It is indicated that it is mandatory to report these risk figures. If the risk figures are not applicable for the fund or have a zero value, a textual explanation must be included in the appropriate field of the Annex IV report.

As of 1 July 2021, submission of AIFMD reporting to the Dutch regulator will change from DNB to the AFM. This means that reporting has to be submitted through the new AFM portal.

UCITS

ESMA has published an updated Q&A on 28 May 2021. Question 3 'Performance reference period for the benchmark model' has been added. This clarifies how the performance reference period should be set. A minimum of 5 years is recommended for the purpose of compensating underperformance (claw back).

Question 4 'Performance reference period in case of fund's merger' states that in case of a merger with a newly established fund (receiver) with no performance history, the performance reference period should continue to apply in the receiving UCITS.

Statistical Reporting

In July 2020, the monthly DRA reporting for listed securities was replaced with the 'Maandeffectenrapportage' (MER). In April 2021, the DNB sent a letter to fund managers announcing the next step in the reporting landscape, the Macroeconomic Statics Reporting (MESREP). MESREP will replace the current DRA reporting. Monthly MER will remain and current DRA reporting will be replaced with quarterly MESREP as of 1 January 2022.

MESREP will have to be submitted through DLR (Digitaal Loket Rapportages) and not through eLine BB which is done currently. The reporting format will also change, from XML to XBRL. An Excel submission facility will be made available by DNB.

Important changes in MESREP compared to the current quarterly DRA reporting are:

- Classifications of instruments and dimensions.
- The securities forms pertaining to listed shares, debt securities and investment fund shares or units were removed from the current DRA report as per July 2020 as a result of the introduction of the MER. MESREP requires reporting of aggregated data with respect to these securities for a complete and balanced quarterly report.
- MESREP includes a complete profit and loss account instead of separate forms for some items of income and expense.
- MESREP contains an overview form providing a comprehensive overview at the main-item level of the MESREP report.

SOLVENCY II (TPT/QRT)

Resulting from Brexit, the issuer country code for the United Kingdom changed from GB to x115 "United Kingdom after Brexit". For Gibraltar the country code changed from GI to x116 "United Kingdom (Gibraltar) after Brexit". This was applicable for the first time during the 31 March 2021 reporting cycle that took place in the second quarter of 2021.

FTK

For technical reasons, the DNB released a new add-on assertions file for FTK-BEL (version 1.1) on 31 May 2021. This should improve the processing time of FTK reports in DLR. The assertions are the same as the assertions of the 1.0 version, although the formulas have changed.

MMFR

ESMA Public consultation

A number of EU MMFs faced significant liquidity issues during March 2020, a period of acute stress, with large redemptions from investors and a severe deterioration in the liquidity of money market instruments. In light of these difficulties, ESMA is seeking input from stakeholders on potential reforms of the EU MMF regulatory framework through means of a public consultation. This consultation will end on 30 June 2021, after which the ESMA will provide their feedback in the second half of 2021.

We have identified two potential significant changes for MMFR reporting in the consultation paper.

Further harmonize and enhance the international MMF's reporting framework

The current reporting frequency does not appear sufficient in case of a crisis such as the one experienced in March 2020 where Authorities need up-to-date data to assess the shocks and monitor the developments in the money markets. Monthly reporting for larger funds, an increased reporting frequency only during times of crisis, or daily reporting on a number of key items are considered as potential future changes.

Disclose main categories of investors to regulatory authorities.

Further disclosure on the types of investors that invest in money market instruments is considered.

Disclosing information on this may help regulators to understand how different types of investors change their portfolio during crisis times.

EMIR

No relevant updates during the second quarter of 2021.

MIFID

No relevant updates during the second quarter of 2021.

PRIIPS

In May 2021, commissioner Mairead McGuinness stated to the European Commission that the exemption from PRIIPS for UCITS funds and the application of the new RTS requirements is extended by six months and will now end on 1 July 2022.

In the UK, HM Treasury confirmed that the UK will extend the UCITS exemption until 31 December 2026, which gives the UK managers an additional period of five years.

IFR/IFD

The Investment Firm Regulation (IFR) entered into force on 26 June 2021. All investment firms must comply with IFR requirements from 26 June 2021.

The national implementation of the Investment Fund Directive (IFD) in Dutch laws and regulations will be completed later than 26 June 2021. A later implementation date means that the requirements and powers of the IFD, for example on the minimum own funds, governance, remuneration policy and ICLAAP/SREP, will only enter into force later in the Netherlands. Until then, the often similar requirements of the CRD will continue to apply. As a European regulation, the IFR will be directly binding on investment firms as of 26 June 2021.

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