



Alphabet Soup: An overview of AIMA/ACC's work on the EU regulatory agenda for 2021

2 December 2020

Agenda

- AIFMD Review
- Sustainable Finance
- Private credit
- Operational Resilience
- BEPS 2.0
- MiFID Review
- U.S. Elections – what's next?
- Breakout sessions

AIFMD Review

Jennifer Wood

AIFMD Review

- Article 69 process
 - Public consultation: KPMG survey and report
 - Commission Review
 - Commission report to the European Parliament and European Council
 - Consider what if any changes are appropriate
- Make proposals for revisions taking into account the objectives of the Directive and its effects on:
 - Investor protection
 - Market disruption
 - Competition
 - The monitoring of systemic risk
 - Potential impacts on investors, AIFs or AIFMs in the Union and in 3rd countries

Focuses of the Consultation



- Framework, scope and authorisation
- Investor protection
- International relations
- Financial stability
- Investment in private companies
- Sustainability
- Miscellaneous other questions

Preparing a response

- Sub-groups for 10 subsets of questions review and comment on initial drafts of response to their assigned subset of questions
- First full draft of response to be circulated by the end of week of 7 December
- Comments due early January
- Second full draft of response to be circulated by the end of week of 14 January
- Comments due 29 January

AIMA/ACC response



- High-level principles
- Key areas of focus:
 - Delegation
 - National private placement regimes
 - Regulatory reporting
 - Financial stability
 - Sustainability/ESG

Sustainable Finance

Marie-Adelaide de Nicolay

Sustainable Finance – Sound Practices

- AIMA's guides and publications



Guide on ESG considerations at the level of the management company
December 2019



Guide on diversity policies and practices

November 2019



Report on the evolution of investors expectations

February 2020



Paper on short selling and responsible investment

July 2020

→ **Upcoming:**

- A guide on what TCFD means to hedge fund managers
- A paper on impact reporting for hedge fund managers

Sustainable Finance – Sound Practices



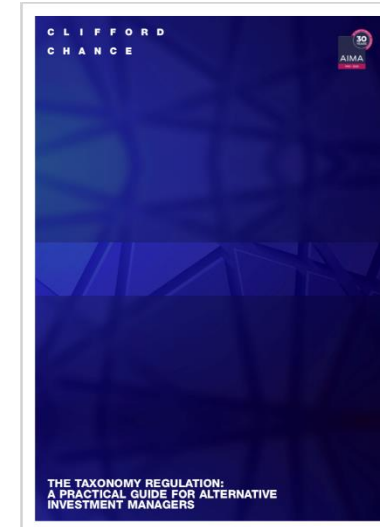
AIMA Guide on SFDR

May 2020



AIMA Q&A on SFDR

October 2020



AIMA Guide on the Taxonomy Regulation

November 2020

→ Main consultations:

- European Commission's consultation on MiFID, UCITS, AIFMD delegated acts integrating sustainability factors (July 2020)
- European Commission's consultation on a renewed sustainable finance action plan (July 2020)
- ESAs consultation on SFDR draft RTS and draft templates (September and October 2020)
- ESMA consultation on Taxonomy Article 8 (December 2020)
- AIFMD review consultation – Section VI Sustainability/ ESG (ongoing)

Sustainable Finance – SFDR



- Short summary of SFDR requirements
- Timeline – absence of level 2
- Scope regarding non-EU players
- Expectations regarding existing clients / contracts and closed ended funds
- Challenges as regards principal adverse impact considerations and reporting
- Article 8 boundaries
- How to deal with “good governance” requirements
- Website disclosure vs commercial sensitivities

Sustainable Finance

The AIMA logo consists of a dark blue square with the word "AIMA" in white, sans-serif capital letters. Below the square is a horizontal magenta bar.

AIMA

For any further questions, please contact:

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Private credit update

Nicholas Smith

Financing European Business

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LENDING
FOR GROWTH

FINANCING EUROPEAN BUSINESS

Non-bank Lending and
the Economic Recovery

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How to boost non-bank lending in Europe

01

Reform the
European
Long-Term
Investment
Fund Regulation
(ELTIF)

02

Enhance the
Securitisation
regime

03

Improve
withholding
tax reclaim
processes

04

Reduce the
Scope of
the Credit
Servicers
Directive

05

Support
responsible
investment
and ESG

Why have ELTIFs failed to succeed?

01

Too prescriptive for investors looking to lend in Europe

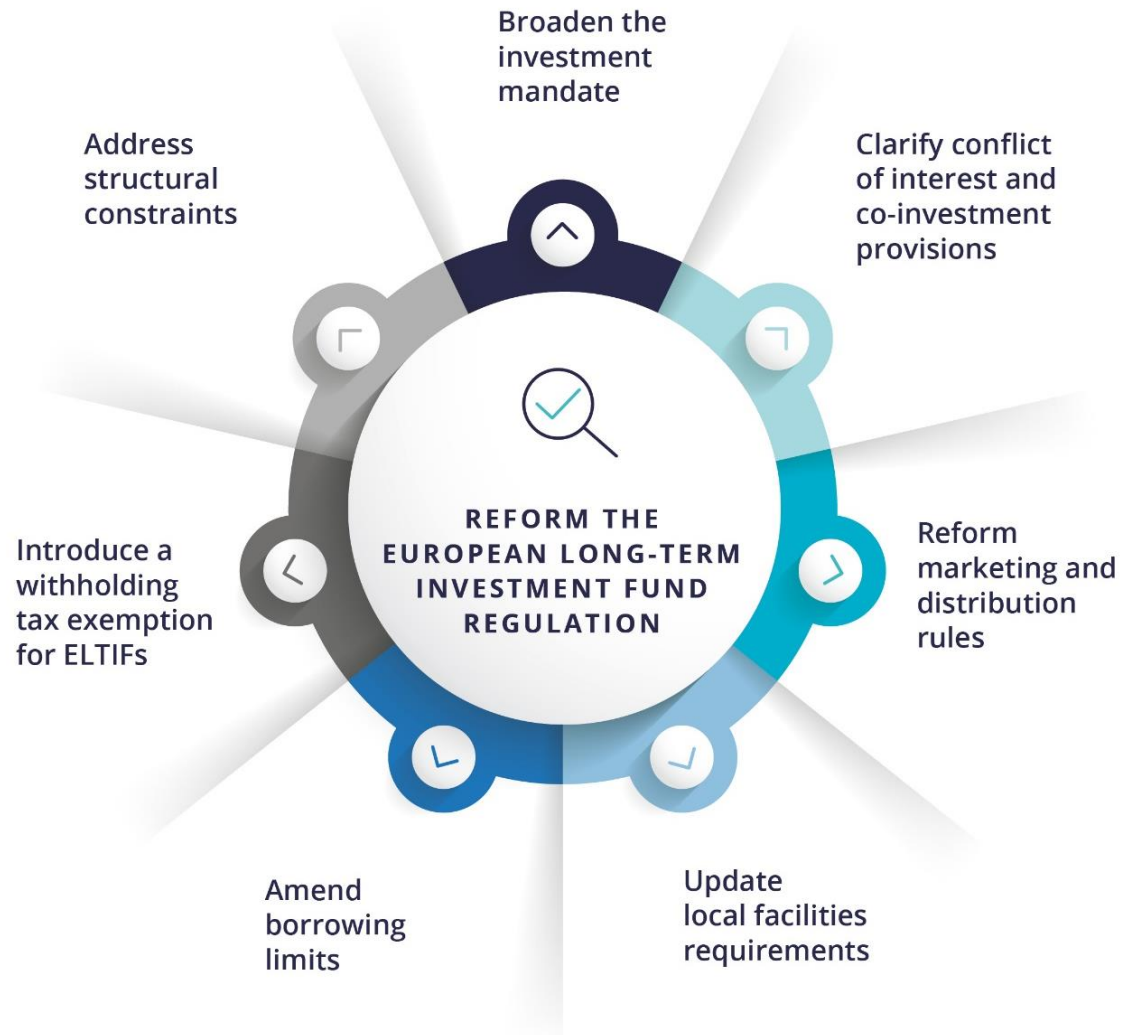
02

Retail investor requirements not conducive to attracting capital

03

Lack of certainty for investors on withholding tax treatment

How to reform ELTIF



Regulatory challenges for non-bank lenders

- Securitisation
- Credit Servicers Directive
- Withholding Tax

Sustainable finance and private credit

- Acknowledge and address the lack of reliable ESG data
- Provide SMEs with better tools and guidance
- Recognise heterogeneity
- Co-operate and co-ordinate with other financial services centres

ACC research

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CREDIT COUNCIL

LENDING
FOR GROWTH

FINANCING THE ECONOMY 2020

The role of private credit managers
in supporting economic growth

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LENDING
FOR GROWTH

lendingforgrowth.org

ALLEN & OVERY

Thank you

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Operational resilience

James Delaney

Operational resilience – overview



Overview

- Operational risk and resilience is expected to be a key regulatory focus over the coming years. As one regulator put it: *“We need to know that you have planned for the worst and are able to continue to deliver your important business services when the worst does happen”*
- Regulators’ aim is to bring about change in how the finance industry thinks about operational resilience – a shift in mindset – in order to build a more resilient financial system
- Specific issues include poor governance and oversight of outsourced functions and third-party service providers, insufficiently resilient legacy IT systems with poor cyber security, and a lack of contingency plans for business disruptions
- AIMA has a working group focused on Operational Resilience – this group provides expertise and insights in relation to any relevant policy or regulatory initiatives on operational resilience matters

Operational resilience – recent international developments

International Organization of Securities Commissions (IOSCO)

- IOSCO is consulting on proposed updates to its principles for regulated entities that outsource tasks to service providers. The **revised outsourcing principles** comprise a set of fundamental precepts and principles – such as due diligence, information security and concertation risk – that set out expectations for regulated entities.

Financial Stability Board (FSB)

- FSB published a discussion paper on regulatory and supervisory issues relating to **outsourcing and third-party relationships**. The paper outlines common challenges associated with outsourcing and third-party risk management.
- FSB published its final toolkit for effective practices to help firms in their **cyber incident response and recovery planning**. It includes 49 practices across seven components – such as governance, analysis, mitigation and recovery.

Operational resilience – recent EU developments



European Securities and Markets Authority (ESMA)

- ESMA is consulting on its draft guidelines on **cloud outsourcing for financial market participants**. In the preparation of this document, ESMA has considered the existing **EBA guidelines on outsourcing** arrangements. The final guidelines are due to be published by Q1 2021.

European Commission (EC)

- EC published a legislative proposal for a new regulation on a **digital operational resilience act (“DORA”)** in the area of financial services. Areas of focus are new requirements around management of ICT risks; business continuity and disaster recovery; the reporting of major ICT-related incidents; digital operational testing; and around management of third-party ICT risk. Proposals are currently being discussed in Council and Parliament.

Operational resilience - AIMA Guides to Sound Practices



Operational Risk Management

- In October 2020, AIMA published its revised **Guide to Sound Practices for Operational Risk Management**

Business Continuity Management

- In October 2020, AIMA published its revised **Guide to Sound Practices for Business Continuity Management**

Cyber Security

- In November 2019, AIMA published the latest edition of its **Guide to Sound Practices for Cyber Security**

Outsourcing

- In May 2019, AIMA published its **Guide to Sound Practices for Outsourcing by Investment Managers**

All of these guides are available to members on www.aima.org

BEPS 2.0

Paul Hale

OECD - Tax Challenges Arising From Digitalisation of the Economy



- The OECD and G20 are undertaking a programme of work which provides a process for a new global agreement for taxing multinational enterprises. This builds on the measures introduced under the BEPS project which were recognised as insufficient to address all the challenges of the digitalisation of the global economy
- The work is constituted by two pillars:
 - potential solutions for determining where tax should be paid and on what basis (nexus), as well as what portion of profits could or should be taxed in the jurisdictions where clients or users are located (profit allocation)
 - a system to ensure that multinational enterprises, in the digital economy and beyond, pay a minimum level of tax, and so provide countries with a new tool to protect their tax base from profit shifting to low/no-tax jurisdictions
- The programme of work now envisages that political agreement on the proposals will be reached in early 2021 and the technical work completed by summer 2022

Impact on Alternative Funds and Managers

- The project has moved beyond the aim of more effectively taxing digital or tech industry companies and takes all consumer-facing activities within its scope.
- Possible consequences for funds and managers include:
 - Will funds and SPVs be within scope in respect of income flows and capital gains from investments and for nexus and profit attribution?
 - Will the minimum level of tax apply to funds and SPVs?
 - How will fund management and other fees paid to managers be taxed where these derive from investors in other jurisdictions?
 - Will proposed global and national threshold exclusions be adequate and avoid compliance burdens?
 - Will proposed multilateral dispute resolution mechanisms be adequate?
- The project was intended to defuse the tension with the US over perceived targeting of US tech businesses by some national and EU digital services taxes. The US has been dissatisfied with Pillar One. Other countries are unwilling to accept Pillar Two. It is not clear how the project will progress in the present global situation

AIMA Actions

- AIMA has submitted observations on the programme of work and responded to OECD public consultations
- We have been engaging with the OECD directly and through HM Treasury in order to explain the concerns of the investment management industry
- We have been working with other industry bodies in this process
- AIMA will respond to the current public consultation (due 14 December 2020).

MiFID Review

Adam Jacobs-Dean

MiFID Review

- Commission launched MiFID Review consultation in February: Focus on consolidated tape; investor protection; research unbundling; commodity markets. Goal: more proportionate regime
- Process is a protracted one: Potential legislative proposals in Q4 2021, which will need to navigate legislative process. 2024-2025 for go live of new rules?
- ESMA provides important input into review process: We have responded to consultations on market data; equity transparency; non-equity transparency; OTFs; transaction reporting. More to come
- Priority areas for AIMA: Tackle market data costs; reduce reporting burden
- Elements being considered in MiFID Review have been cherry-picked and addressed in a Quick Fix legislative proposal. Goal is to support post-Covid recovery, although changes likely to be relatively insubstantial for our members

U.S. election impact on financial services and asset management regulation

Jiří Król

Background

- Congress (likely) split – disruptive legislation related to financial services unlikely
- Agencies will be the core policy battleground
- FSOC likely to play a more active role
- Post-COVID recovery key focus (FS here to help)

Main themes

- Sustainable finance and ESG integration
- Diversity and inclusion in asset management
- Financial stability and non-bank finance
- Private markets (equity and debt)
- Digital assets and fintech
- International issues

Sustainable finance and ESG

- Legislation needed for deeper reforms, but Congress bitterly split on the way ESG agenda is perceived (many US-specific issues, e.g. gun ownership rights, make the debate difficult)
- Agencies have a lot of room to act – climate change top priority
 - Systemic risk
 - Micro-prudential risk management
 - Investor disclosure (e.g. 2010 SEC guidance to corporate issuers on climate-related disclosures)
 - Fiduciary duties (DOL rules, other MiFID/AIFMD-style changes to mandates)
 - Financial utilities regulation
- Big challenge – can an economy-wide price of carbon be established?
- Question marks about taxonomies/methodologies
- Important report : <https://cftc.gov/PressRoom/PressReleases/8234-20>

Diversity and inclusion

- Proposals floated include:
 - Intentional outreach to MWO firms by pension funds and other institutional investors
 - Consideration of institutional investors of at least one MWO business in every asset allocation or search
 - Leadership commitment to diversity
 - Government agencies selection process to consider MWO businesses

Financial stability and non-bank finance

- FSB November 2020 report provides for a core roadmap
 - MMFs – USD non-prime markets hardest hit – possible spillover to the rest of the world
 - Open end bond funds – FED concluded there were problems with runs during March stress
 - Government and corporate bond market structure and liquidity
 - Role of leveraged players in the system
 - Procyclicality of margin
- Personnel note: (Vice) Chair Quarles' mandate ends at the end of 2021

- Current administration focused on two issues:
 - Ensuring attractiveness of public markets to foster capital formation
 - Providing access to private markets to a broader investor universe
- Future administration likely to be more ambivalent
 - Elizabeth Warren's Stop Wall St Looting Act contained a number of disruptive proposals
 - SEC likely to focus on investor protection and disclosure
 - BDC reforms could be slowed down

- OCC guidance a watershed moment for banks' ability to custody digital assets – realization this is potentially a strategic issue for the US financial markets
- SEC yet to approve a crypto-based ETF – lagging behind other ETPs available elsewhere
- DeFi solutions pose regulatory challenges and will need to be addressed
- Strong start for derivatives markets – query whether they'll be able to compete with offshore entities

International issues

- China
 - continued pressure on Chinese-owned companies listed in the US – potential for unintended consequences for investors
- EU
 - potential for tensions regarding derivatives/CCPs/cross-border issues
 - AIFMD review and delegation tightening could create strong backlash
 - Possibility for conflict relating to EU mandated ESG disclosures and US enforcement of disclosure rules
- UK
 - could see more convergence but likely driven by UK action than US (e.g. regulatory reporting)
 - more UK/US openness given the UK's likely liberal approach to equivalence determinations
- Global
 - FSB chairmanship in play if Quarles leaves FED, IOSCO losing Heath Tarbert in FSEG
 - Query about convergence on sustainable finance/ESG issues
 - Continued agency action on data transfer/access issues

Conclusion

- Election result means Biden administration has to lean more to the center
- FTT is (likely) off the table and so is massive disruption of private equity and debt markets
- Financial stability will play an increasing role in the way the SEC/CFTC work and this includes ESG/sustainability considerations
- Sustainability engagement could become a headache if the US adopts its own, divergent set of policies that will conflict with EU rules
- Digital assets are coming of age and their regulation becoming important strategic consideration
- Personnel could be more important than policy in shaping outcomes



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Breakout sessions

- Sustainable finance/ESG
- Private credit, including the ELTIF review
- Operational resilience, including DORA
- MiFID review and the quick fixes