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Feedback to the European Commission's consultations on draft Delegated Acts integrating sustainability risks into the UCITS Directive, AIFMD and MIFID II

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1 Feedback on the draft Delegated Act for UCITS

We broadly welcome the draft Delegated Act on integrating sustainability risks and factors into the UCITS Directive and in particular the fact that the general principles-based approach has been maintained. We note that the revised text is broadly aligned with ESMA's technical advice. As the industry navigates the cumulative output of the EU's Action Plan on Sustainable Finance, we would highlight the importance of consistency throughout all of the directives and regulations so that the provisions weave together in way that does not give rise to questions of interpretation or conflicting rules.

We have identified the areas below that we believe require further attention:

Proposed new Article 23 (6)

Article 4 (a) of Regulation (EU) 2019/2088 (the "**Sustainable Finance Disclosure Regulation**") provides for consideration *of size, nature and scale and the types of products* being made available. In additional Article 7 does not mandate the consideration of principle adverse impact at product level as it provides for "*a clear and reasoned explanation of **whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors.***" Accordingly, we would like to see some clarification in the proposed new paragraph 23 (6) to make it clear that requirement to take into account principal adverse impacts to the investment due diligence process is not a product-wide requirement and, in common with the Sustainable Finance Disclosure Regulation, applies only where relevant to the type of UCITS. We have suggested an amendment below:

Member States shall ensure that where management companies, or, where applicable, investment companies, consider principal adverse impacts of investment decisions on sustainability factors as described in Article 4(1), point (a), of Regulation

(EU) 2019/2088, or as required by paragraphs 3 or 4 of Article 4 of that Regulation, those management companies or investment companies take into account such principal adverse impacts when complying with the requirements set out in paragraphs 1 to 4 of this Article to the extent relevant to the particular UCITS."

Risk Management

In its opinion ESMA acknowledged the challenges involved with getting reliable data on sustainability risks and factors and the availability, quality and reliability of ESG data remains lacking today. While hope that changes to the NFRD will bring about an improvement in the availability and reliability of ESG data, this may not be in place in time for these rules to take effect. Effective risk management must be based on reliable information. Therefore, we would welcome the inclusion of a recital clarifying that firms should comply with these provisions to the extent that they can access reliable and accurate data.

Suggested wording:

Firms should ensure that risk management arrangements, including in relation to sustainability risks, are based on sound and reliable data. In the absence of accurate and reliable data on sustainability risks, firms may rely on more qualitative measures to comply with these provisions.

2 Feedback on the draft Delegated Act for AIFMD

We broadly welcome the draft Delegated Act on integrating sustainability risks and factors into the AIFMD and in particular the fact that the general principles-based approach has been maintained. We note that the revised text is broadly aligned with ESMA's technical advice. As the industry navigates the cumulative output of the EU's Action Plan on Sustainable Finance, we would highlight the importance of consistency throughout all of the directives and regulations so that the provisions weave together in way that does not give rise to questions of interpretation or conflicting rules.

We have identified the areas below that we believe require further attention:

Proposed new Article 18 (6)

Article 4 (a) of Regulation (EU) 2019/2088 (the “**Sustainable Finance Disclosure Regulation**”) provides for consideration of *size, nature and scale and the types of products* being made available. In addition Article 7 does not mandate the consideration of principle adverse impact at product level as it provides for “*a clear and reasoned explanation of **whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors.***” Accordingly we would like to see some clarification in the proposed new paragraph 18 (6) to make it clear that requirement to take into account principal adverse impacts to the investment due diligence process is not a product-wide requirement and, in common with the Sustainable Finance Disclosure Regulation, applies only where relevant to the type of AIF. We have suggested an amendment below:

Where AIFMs consider principal adverse impacts of investment decisions on sustainability factors as described in Article 4(1), point (a), of Regulation (EU) 2019/2088, or as required by paragraphs 3 or 4 of Article 4 of that Regulation, those AIFMs shall take into account such principal adverse impacts when complying with the requirements set out in paragraphs 1 to 4 of this Article to the extent relevant to the particular AIF.”

Risk Management

In its opinion ESMA acknowledged the challenges involved with getting reliable data on sustainability risks and factors and the availability, quality and reliability of ESG data remains lacking today. While hope that changes to the NFRD will bring about an improvement in the availability and reliability of ESG data, this may not be in place in time for these rules to take effect. Effective risk management must be based on reliable information. Therefore, we would welcome the inclusion of a recital clarifying that firms should comply with these provisions to the extent that they can access reliable and accurate data.

Suggested wording:

Firms should ensure that risk management arrangements, including in relation to sustainability risks, are based on sound and reliable data. In the absence of accurate and reliable data on sustainability risks, firms may rely on more qualitative measures to comply with these provisions.

3 Feedback on the draft Delegated Acts on MiFID

We broadly welcome the draft Delegated Act on integrating sustainability factors and preferences into the product governance obligations for MiFID firms and the integration of sustainability factors, risks and preferences in the organisational requirements for MiFID firms. We note that the revised text is broadly aligned with ESMA's technical advice and we acknowledge the continued principle-based approach in the proposed amendments.

As the industry navigates the cumulative output of the EU's action plan on sustainable finance, on behalf of our members we must stress the importance of consistency throughout all of the directives and regulations so that the provisions weave together in way that does not give rise to questions of interpretation or conflicting rules. In this regard we welcome the cross reference to Regulation (EU) 2019/2088 (the "**Sustainable Finance Disclosure Regulation**") in the definition of "Sustainability Preferences" to ensure alignment. However, we believe it is important to ensure that investors are offered a broad range of products which are capable of meeting diverse client preferences. We propose the following alternative wording to the definition:

"Sustainability preferences" means a client's or potential client's choice as to whether, and if so, which sustainability factors should be taken into account in his or her investment strategy, including his or her preference for any of the following, or combination thereof:

(a) a financial instrument that has as its objective sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council;*

(b) a financial instrument that promotes environmental or social characteristics as referred to in Article 8 of Regulation (EU) 2019/2088;

(c) a financial instrument that considers principal adverse impact on sustainability factors, as referred to in Article 7(1), point A of Regulation (EU) 2019/2088.