1 September 2020

European Securities and Markets Authority
CS 80910
201-203 rue de Bercy
75589 Paris Cedex 12
France

Dear Sir or Madam

Joint Consultation Paper concerning ESG disclosures

The role of the Financial Markets Law Committee (the "FMLC" or the "Committee") is to identify issues of legal uncertainty, or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks, and to consider how such issues should be addressed.

On 22 April 2020, the European Supervisory Authorities (the "**ESAs**") published a joint consultation (the "**Consultation Paper**") on the proposed regulatory technical standards ("**RTS**") under Regulation (EU) 2019/2088 sustainability-related disclosures in the financial services sector (the "**Sustainable Finance Disclosure Regulation**" or the "**SFDR**"). The SFDR sets out the general outline of the sustainability-related disclosure obligations for asset managers, focusing in particular on: (1) disclosure relating to how sustainability risks are incorporated within the asset manager's investment decision making; (2) disclosure relating to the principal adverse impacts of the investments made by the asset manager on external sustainability factors; and (3) technical disclosures for those financial products which promote environmental or social characteristics or have sustainability as an objective ("**ESG-enhanced products**"). The SFDR does not set out the technical detail on the disclosure requirements, but instead mandates the ESAs to develop RTS providing more granular specifics with regard to the content, methodologies and presentation of some of the disclosures.[1] The Consultation Paper includes the draft RTS and seeks feedback from stakeholders on the proposed measures.

Global convergence on standards

The FMLC notes that international standards on sustainability-related disclosure requirements are not aligned or convergent, which creates uncertainty in relation to reporting obligations vis-à-vis cross-border investment activities. The lack of a common global reporting standard for non-financial information gives rise to different and sometimes conflicting requests for information from a range of stakeholders—including regulators across jurisdictions, investors, shareholders, NGOs and rating agencies. The SFDR will add another layer of disclosure requests. Greater global convergence on reporting requirements is desirable. Convergent international standards elevate the effectiveness of the standards themselves, as well as facilitating efficient cross-border transactions and promoting awareness and compliance.

In the aftermath of the global financial crisis, the FMLC initiated a series of seven panel discussions and seminars to examine the inter-jurisdictional aspects of countries' implementation of certain G20 commitments in the field of financial services regulation and the possibility that divergent implementation may give rise to

[1] Articles 2a, 4(6) and (7), 8(3), 9(5), 10(2) and 11(4) of the SFDR empower the ESAs to deliver, through the Joint Committee, draft RTS with regard to the content, methodologies and presentation of sustainability-related disclosures.

+44 (0)20 7601 4286
chiefexecutive@fmlc.org

8 Lothbury
London
EC2R 7HH
www.fmlc.org

uncertainty in the legal framework of the global financial markets. A discussion paper was published by the FMLC providing examples of inconsistences.[2] To avoid the emergence of overlaps, inconsistencies and conflicts between respective national rules, the FMLC would again recommend further work in bilateral and multilateral forums to align E.U. and—at least—U.S. standards in the area of sustainable finance.

Convergence on standards in E.U. legislation

In the E.U., different disclosure obligations under the SFDR, Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (the "**Non-Financial Reporting Directive**" or the "**NFRD**"); and Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (the "**Taxonomy Regulation**") will add to the current fragmentation. The draft RTS in the Consultation paper also diverges, in some areas, from the Taxonomy Regulation, creating uncertainty. Examples of both are listed in the Appendix, below.

In addition, there are requirements in existing E.U. regimes such as those to disclose environmental or social objectives under provided by Article 8 (3)(c)(ii) of Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (the "**PRIIPs Regulation**") and under the principles to make "fair, clear and not misleading" disclosures under Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the "**UCITS Directive**"), Directive 2011/61/EU on Alternative Investment Fund Managers (the "**AIFMD**") and Directive 2014/65/EU on markets in financial instruments ("**MiFID II**"). There is a risk that a new mandatory disclosure under the SFDR will cause confusion and overlap.

The FMLC would therefore urge the ESAs to ensure that the RTS are aligned closely to the objectives set out in the SFDR. In the future, when the E.U. legislation in this area is reviewed, it would be beneficial for the objectives and requirements imposed on financial markets participants by each piece of legislation to be aligned with the others.

I and Members of the Committee would be delighted to meet you to discuss the issues raised in this letter. Please do not hesitate to contact me should you wish to arrange a meeting or if you have any questions.

Yours sincerely,

Joanna Perkins
FMLC Chief Executive[3]

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[2] FMLC, *Coordination in the Reform Of International Financial Regulation*, (February 2015), available at: http://fmlc.org/wp-content/uploads/2018/03/fmlc_g20_discussion_paper.pdf

[3] The FMLC is grateful to Ida Levine (Impact Investing Institute) for her contributions to this letter.

Appendix: Convergence on standards in E.U. legislation

(1) Divergences between the SFDR and the Taxonomy Regulation

	SFDR	**NFDR**	**Taxonomy Regulation**
Environmental objective	an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy (Article 2(17))	as regards environmental matters, details of the current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, on health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution. (Recital 7)	(a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and restoration of biodiversity and ecosystems. (Article 9)

(2) Divergences within the SFDR

	Disclosure Regulation re sustainable investments	**Disclosure Regulation re products which promote environmental or social characteristics**
Good governance practices	"… good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance" (Article 2(17) relied upon for Article 9)	No equivalent detail (Article 8)