

21 April 2021

Katharine Braddick
Director General, Financial Services
HM Treasury
1 Horse Guards Road
Westminster
London
SW1A 2HQ



Dear Ms Braddick

International Platform on Sustainable Finance (IPSF)

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.

In February 2021, the HM Treasury published a joint statement announcing that the U.K. has joined the International Platform on Sustainable Finance ("IPSF"). It also published the text of the Joint Statement of the IPSF signed by Rishi Sunak (Chancellor of the Exchequer) on 12 January 2021.¹

The FMLC understands that the IPSF is a forum for public authorities in charge of developing sustainable finance policies/initiatives to help investors contribute to climate and environmental objectives. The IPSF aims to provide a forum to allow members to share best practices, compare initiatives and identify barriers to, and opportunities for, sustainable finance. The Committee would like to congratulate HM Treasury on its membership of this forum and supports the coordination efforts made globally to scale up sustainable finance and promote integrated markets internationally.

The FMLC would also like to draw attention to the risk of uncertainty due to divergence which may arise between sustainable finance standards adopted in the E.U. and U.K. after Brexit—particularly in relation to:

- Regulation (EU) 2019/2088 sustainability-related disclosures in the financial services sector (the "**Sustainable Finance Disclosure Regulation**" or the "**SFDR**");
- Directive 2014/95/E.U. 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**").

Certain of the operative provisions affecting firms became applicable from 10 March 2021 and specific periodic disclosure requirements will take effect thereafter from 1

¹ HM Treasury, *Joint Statement on the International Platform on Sustainable Finance (IPSF)* (3 February 2021); available at <https://www.gov.uk/government/publications/green-finance-uk-joins-the-international-platform-on-sustainable-finance-ipsf/joint-statement-on-the-international-platform-on-sustainable-finance-ipsf>

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January 2022. Two further sets of requirements concerned, *inter alia*, with climate mitigation objectives, will come into application in 2022 and 2023 respectively. All of these dates are after the end of the E.U. transition period and so none of those operative disclosure obligations have become E.U. retained law in the U.K. under the European Union (Withdrawal) Act 2018.

The infrastructure of the Regulation, in terms of its definitions and those Level 1 measures establishing the six environmental objectives and the criteria for environmentally sustainable economic activities, was onshored. The substantive disclosure provisions in Articles 4 to 8, however, which are applicable from 10 March of this year, and the further obligations that apply to firms from 1 January 2022 (in relation to the climate change mitigation and climate change adaptation environmental objectives) and from 1 January 2023 (in relation to the other four environmental objectives), have not and will not be onshored. The Financial Services (Implementation of Legislation) Bill would have provided a power for the U.K. to implement and make changes to these E.U. measures but the Bill was not, ultimately, enacted and HM Government has not subsequently clarified its approach.

The challenges facing firms were exacerbated by the publication by the European Commission on 20 October 2020 of a letter to trade associations, stating that the regulatory technical standards (“RTS”) which underpin the SFDR would be delayed.² On 4 February 2021, the European Supervisory Authorities (“ESAs”) developed through the Joint Committee draft RTS with regard to the content, methodologies and presentation of sustainability-related disclosures under the SFDR.³ The ESAs proposed in these draft RTS that the application date of the RTS should be 1 January 2022—but firms were required to comply with the Level 1 SFDR in full from the original compliance date of 10 March 2021. Thus, the detailed disclosure requirements and templates were not made available by the time the regime came into effect in March 2021. Instead, during the initial stages of the regime, firms had to comply with the high-level requirements in the Regulation itself with some flexibility in how they presented their disclosures. The FMLC notes that the current drafts of the technical standards, which are very detailed and onerous in some cases, may be amended or simplified before they come into effect.

Considering the complexity of the existing regulatory backdrop, and the challenges that the firms are facing with respect to disclosure/compliance requirements, the FMLC would urge HM Treasury to provide clarity on the approach it intends to take towards the SFDR and other pieces of legislation post Brexit.

The FMLC suggests using either an approach which takes into account E.U. standards (but potentially enhancing detailed disclosure requirements at Level 2, where appropriate) or an outcomes-based approach which is consistent with the direction of travel in the E.U. and beyond, to avoid regulatory conflict.

² EC, *Letter on Application of Regulation (EU) 2019/2088 on the sustainability-related disclosures in the financial services sector* (20 October 2020); available at https://www.esma.europa.eu/sites/default/files/library/eba_bs_2020_633_letter_to_the_esas_on_sfdr.pdf

³ ESA, JC 2021 03, *Final Report on draft Regulatory Technical Standards* (2 February 2021); available at: <https://www.eiopa.europa.eu/sites/default/files/publications/reports/jc-2021-03-joint-esas-final-report-on-rts-under-sfdr.pdf>

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,

A handwritten signature in black ink, appearing to read 'T Thomas', followed by a period.

Lord Thomas of Cwmgiedd
FMLC Chairman⁴

⁴ The FMLC is grateful for the assistance provided by Ida Levine, (The Impact Investing Institute), in drafting this letter.