Svensk Värdepappersmarknad
Swedish Securities Markets Association

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SSMA's comments to ESAs consultation on taxonomy-related sustainability disclosures.

The Swedish Securities Market Association ("SSMA") welcomes the opportunity to provide comments to ESAs consultation on taxonomy-related sustainability disclosures.

1. General comments:

Firstly, the SSMA would like to underline the need for a number of clarifications as regards the application of SFDR to "a portfolio":

- As mentioned in the ESAs letter to the European Commission on 7 January 2021, it should be clarified whether the disclosure-rules in SFDR shall be applied on an individual portfolio level and/or on a model portfolio level. Further, we suggest that tailor made portfolios should be either exempt from the disclosures under article 10 SFDR or be disclosed in manner only accessible to the client. In our opinion, it is very important that firms can apply the requirements in article 10 SFDR, considering that it would be in contravention with bank secrecy rules to publish information regarding individual clients' portfolios on an open website.

- The SSMA understands that for a portfolio, pre-contractual information will be provided in the portfolio management agreement, with accompanying documents. We have no objections per se but note that depending on the mandate from clients and the investment strategy, a portfolio management agreement may actually cover several "portfolios" which from an SFDR perspective need to be treated as separate financial products.

- It is unclear how some of the more detailed information requirements in SFDR are to be applied for a portfolio, considering that investment decisions are made by the manager on a discretionary basis and the underlying investments are not known from the outset. For instance, how are firms expected to obtain necessary data from investee companies and provide information in the pre-contractual information before any investment decisions have been taken e.g. art 16(a)(1)(a)(ii)(iii), art 16(a)(2)(b). Guidance on this point in the final report is important.

Secondly, as regards sustainability regulations on financial products:

- The definition of "sustainability preferences" in article 2 of the delegated regulation to MiFID II refers to financial instruments rather than financial products under SFDR. Since "a portfolio" is not a financial instrument under MiFID II, it needs to be clarified how firms should apply the rules regarding suitability preferences when providing portfolio management services. In our

opinion, since the suitability assessment under MiFID II can be made at a portfolio level,[1] the same must apply for the collection and assessment of a client's sustainability preferences.

- The templates refer to pre contractual information for article 8 and 9 financial products according to SFDR as well as for article 5 and 6 financial products according to the Taxonomy regulation. In the proposed updates of MiFID investment firms are obligated to take the investors sustainability preferences into account when providing investment advice as well as portfolio management of financial instruments. The investors sustainability preferences shall be divided into one of four categories, not completely aligned with the four above mentioned categories of financial products. Since some financial instruments (e.g. UCITS, AIF) also is a financial product it will in our opinion be extremely difficult for an average retail client to understand the sustainability related differences and similarities between different financial products and financial instruments. And the client is likely to be overwhelmed by the different information and categorization required by SFDR, Taxonomy regulation and MiFID. In our view it is important that the ESAs try to simplify as much as possible and follow up the categorizations with additional consumer testing. The SSMA strongly encourages ESAs to have a dialogue with the European Commission in order to ensure a more reasonable implementation of the RTS and mandatory templates together with the implementation of sustainability related updates of MiFID.

Thirdly, the SSMA is concerned with implementation timelines and the risk of information overload for retail clients. In particular:

- Considering the complexity of the rules, the necessary IT changes and the fact that the EU-legislation which ensures the availability of sustainability data is not yet in place (art 8 TR and revision of the NFRD/CSRD), the SSMA strongly encourages ESAs to have a dialogue with the European Commission in order to ensure a more reasonable implementation of the RTS and mandatory templates. The SSMA would support a one-year transition phase where a best effort approach is allowed, noting that this is also in line with the transitional rules proposed for article 8 in the Taxonomy Regulation (see Q 1).

- In our opinion, an average retail client seeking to invest in "a sustainable product" is likely to be overwhelmed by the detailed information required by SFDR and will find it difficult to understand the distinctions between different types and sub-types of financial products. In our view it is important that the ESAs try to simplify as much as possible and follow up the application of the templates with additional consumer testing.

[1] See ESMA Guidelines on suitability, GL 3 point 80, file:///C:/Users/sarmit/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/esma35-43-869-_fr_on_guidelines_on_suitability%20(1).pdf

2. Specific questions:

Question 1: Do you have any views regarding the ESAs' proposed approach to amend the existing SFDR RTS instead of drafting a new set of draft RTS?

The SSMA has no objections towards the proposal to amend the existing SFDR RTS instead of drafting a new RTS. However, if this approach means that the consolidated RTS, following adoption and expiration of the no-objection period of Parliament and Council, will be not be final until October 2021, it seems unreasonable to require that investment firms shall apply all requirements by 1 January 2022. Considering that the delegated acts to the Taxonomy Regulation will apply from that same date, it seems highly unlikely that the investee companies will have made available the necessary data on taxonomy-related alignment.

Considering the complexity of the rules, the necessary IT changes and the fact that the EU-legislation which ensures the availability of sustainability data is not yet in place (art 8 TR and revision of the NFRD/CSRD), the SSMA strongly encourages ESAs to have a dialogue with the European Commission in order to ensure a more reasonable implementation of the RTS and mandatory templates. The SSMA would support a one year transition phase where a best effort approach is allowed, noting that this is also in line with the transitional rules proposed for article 8 in the Taxonomy Regulation.

Question 2: Do you have any views on the KPI for the disclosure of the extent to which investments are aligned with the taxonomy, which is based on the share of the taxonomy-aligned turnover, capital expenditure or operational expenditure of all underlying non-financial investee companies? Do you agree with that the same approach should apply to all investments made by a given financial product?

To our understanding, the ESAs proposal intends to ensure that the same methodology (taxonomy-aligned turnover, capital expenditure or operational expenditure) shall be used per financial product and include all underlying investee companies. Such approach assumes that an investee company makes data for all three methodologies available to investment firms to choose from. The SSMA questions if this is a realistic expectation. Moreover, it should be considered that different methodologies are relevant for different types of financial instruments. We also see challenges for products which invest in other financial products such as fund-of-funds where the choice of one asset manager will be dependent on the choice made by several other underlying asset managers. Based on these considerations, the SSMA believes in a more flexible approach.

Question 3: Do you have any views on the benefits and drawbacks of including specifically operational expenditure of underlying non-financial investee companies as one of the possible ways to calculate the KPI referred to in question 2?

No comment at this stage.

Question 4: The proposed KPI includes equity and debt instruments issued by financial and nonfinancial undertakings and real estate assets, do you agree that this could also be extended to derivatives such as contracts for differences?

The SSMA understands if there is a concern that excluding derivatives from scope could lead to a risk of circumvention. However, the question is complex considering the need to distinguish between derivatives used for investment purposes and derivatives used for risk management. It is probably quite unusual to choose a derivative as an instrument to meet sustainability objectives and it can be questioned if data is available. Moreover, consistency with other EU-rules must be ensured (we note that in the European Commission consultation on Article 8 of the Taxonomy Regulation, it is recommended that derivatives are excluded). If derivatives were to be included, a suggestion would be to solely include derivatives where derivatives are used to attain the environmental or social characteristics or sustainable investment, using the same principles as already applied in the SFDR**.** More guidance is needed in order for the SSMA to have a firm view on the extension to derivatives**.**

Question 5: Is the use of "equities" and "debt instruments" sufficiently clear to capture relevant instruments issued by investee companies? If not, how could that be clarified? Are any specific valuation criteria necessary to ensure that the disclosures are comparable?

No comment at this stage.

Question 6: Do you have any views about including all investments, including sovereign bonds and other assets that cannot be assessed for taxonomy-alignment, of the financial product in the denominator for the KPI?

If sovereign bonds and other assets that cannot be assessed for taxonomy-alignment is to be included in the denominator, SSMA considers that it would be useful with some free space in the template to provide more information to clients, where appropriate. For instance, firms may want to explain to retail clients that some instruments which could be taxonomy aligned cannot be classified as such since the delegated acts on the four remaining objectives will not become applicable until 2023.

Question 7: Do you have any views on the statement of taxonomy compliance of the activities the financial product invests in and whether those statements should be subject to assessment by external or third parties?

Our interpretation of the proposal is that the assessment of a third party is not intended to be a mandatory requirement. This is very important considering the lack of available data. In our view it must be the data provider, i.e. investee company or third party provider, and not the FMP that should obtain a statement and possibly have it assessed as they are the ones having the insight to the data. We note that ESMA uses both "external" and third party" and wonder if any difference is intended.

Question 8: Do you have any views on the proposed periodic disclosures which mirror the proposals for pre-contractual amendments?

As a general remark, the SSMA is concerned with the proposed start of the periodic reporting period in 2022 which in our view is not realistic considering as no data will be available. For portfolio managers this matter is of particular importance considering that the reference to article 25(6) of MiFID II will require periodic reporting either on a monthly or quarterly basis.

Moreover, it would be useful with some guidance how the reference to sectorial legislation in MiFID II is to be understood in the light of MiFID Quick Fix changes.

Question 9: Do you have any views on the amended pre-contractual and periodic templates?

In general, the pre-contractual and periodic templates will be hard to understand for customers; it is too detailed, too long and the meaning of the words used will not be understood by the majority of the customers. We understand that this is also aligned with the conclusions made from the consumer-testing.

As highlighted in the section on General comments, the proposed pre-contractual disclosure seems to be based on the fact that data on the assets of the financial product already exists, e.g. art 16(a)(1)(a)(ii)(iii), art 16(a)(2)(b). However, for some financial products, e.g. portfolio management services, no product exists when the pre-contractual documentation is established. This information can therefore not be provided for.

The fact that a minimum proportion of Taxonomy-aligned investments is set instead of for example a target will lead to FMPs putting very low threshold, considering that data on taxonomy-aligned investments is lacking and the scope of the Taxonomy is currently limited. The disclosure of a minimum proportion will therefore have very limited effect until the data on Taxonomy and the Taxonomy as such is more mature.

We also question the suggestion to divide the minimum proportion into enabling and transitioning for multiple reasons. First, and linked to our argument on minimum proportion described above, this disclosure will have very limited effect until the data on Taxonomy and the Taxonomy as such is more mature. Secondly, a customer will not understand what this means. Thirdly, the Taxonomy is based on three categorises, i.e. enabling, transitioning and sustainable in itself (no dedicated name). By defining only two of these, the third category will not be visible for the customer.

The SSMA questions why the legal identifier (LEI) has to be listed next to the product name at the beginning of the templates. In our view, it would make more sense to disclose the ISIN (If the product manufacturer has to be listed here, this should be done in a separate point after the one with the product name).

Also, considering the Commission's proposal for amendments to the MiFID II delegated acts, it would be more appropriate to include the consideration of PAI right at the beginning in the yellow box of the product information.

Question 10: The draft RTS propose unified pre-contractual and periodic templates applicable to all Article 8 and 9 SFDR products (including Article 5 and 6 TR products which are a sub-set of Article 8 and 9 SFDR products). Do you believe it would be preferable to have separate pre-contractual and periodic templates for Article 5-6 TR products, instead of using the same template for all Article 8-9 SFDR products?

The SSMA supports using the same template for all SFDR products in order to avoid unnecessary complexity.

Question 11: The draft RTS propose in the amended templates to identify whether products making sustainable investments do so according to the EU taxonomy. While this is done to clearly indicate whether Article 5 and 6 TR products (that make sustainable investments with environmental objectives) use the taxonomy, arguably this would have the effect of requiring Article 8 and 9 SFDR products making sustainable investments with social objectives to indicate that too. Do you agree with this proposal?

No comment at this stage.

Question 12: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?

No comment at this stage.

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