New UK Climate Disclosure Rules

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The rules will apply to FCA-authorised asset managers (Authorised Fund Managers, Alternative Investment Fund Managers, UCITS Management Companies) and certain investment advisers, life insurers, certain pension providers and standard listed companies. The new rules echo the disclosure requirements issued by the UK Department of Works and Pensions on the trustees of occupational pension schemes. This post focuses on the requirements applicable to asset managers and standard listed companies.

The rules are principles-based, allowing for variation in the quality and availability of data, as well as innovation and evolution of the disclosure methodologies and the metrics applied to provide information that, over time, becomes more accurate and focused. The FCA recognises that, initially, the limited availability of meaningful data may require the use of assumptions and proxy data, as appropriate.

Disclosure Requirements for Asset Managers

The key disclosure items include entity-level and product-level disclosures. With respect to asset managers, the requirements include an annual manager-level TCFD report on how they take climate-related risks and opportunities into account in managing or administering investments on behalf of clients and consumers. The report must be published on the manager's website; and product-level disclosures which must either be included in the relevant client communications and published on the manager's website, or be made available on request (with respect to discretionary portfolio management arrangements). Asset managers will also be required to produce annually a baseline set of consistent, comparable disclosures in respect of their products and portfolios, including a core set of metrics.

The requirements will not apply on an extraterritorial basis, but the FCA allows disclosures to be made on a group-wide basis where this makes most sense. This means that US and other non-UK managers with UK sub-advisors will need to consider how best to meet the disclosure requirements.

Disclosure Requirements on Standard Listed Companies

The proposals seek to extend to standard listed companies the climate-related TCFD aligned disclosure requirements, which currently apply to premium listed companies (please see our alert on the disclosure obligations of premium-listed companies). While they would apply to issuers of standard listed equity shares (excluding standard listed investment entities and shell companies), the FCA is also seeking feedback on how and whether the rules should be applied to issuers of standard listed debt and debt-like instruments, and issuers of certain other standard listed instruments.

The new rules would require issuers to include a statement in their annual financial report setting out whether they have made disclosures consistent with the TCFD's recommendations and recommended disclosures in their annual financial report, and where in the annual financial report (or other relevant document) the various disclosures can be found. Where an issuer has not made disclosures consistent with some or all of the TCFD's recommendations and/or recommended disclosures, an explanation of why, and a description of any steps they are taking or plan to take to be able to make consistent disclosures in the future and the timeframe within which they expect to be able to make those disclosures, would be required. Where an issuer has included some, or all, of their disclosures against the TCFD's recommendations and/or recommended disclosures in a document other than their annual financial report, it must explain why this is the case.

The FCA will issue guidance to companies to allow them to determine whether their disclosures are consistent with the TCFD's recommendations and recommended disclosures, including guidance on the level of detail in companies' disclosures. The FCA's guidance will also clarify the limited circumstances in which companies may be permitted to explain rather than disclose.

In the context of the consultation, the FCA is also seeking to engage stakeholders on issues related to ESG-oriented debt instruments and the increasingly prominent role of ESG data and rating providers, as it foresees potential need for future policy intervention to ensure the appropriate operation of markets in ESG-oriented debt instruments, and to ensure the ESG data and ratings providers operate in a manner consistent with and conducive to the applicable disclosure regimes.