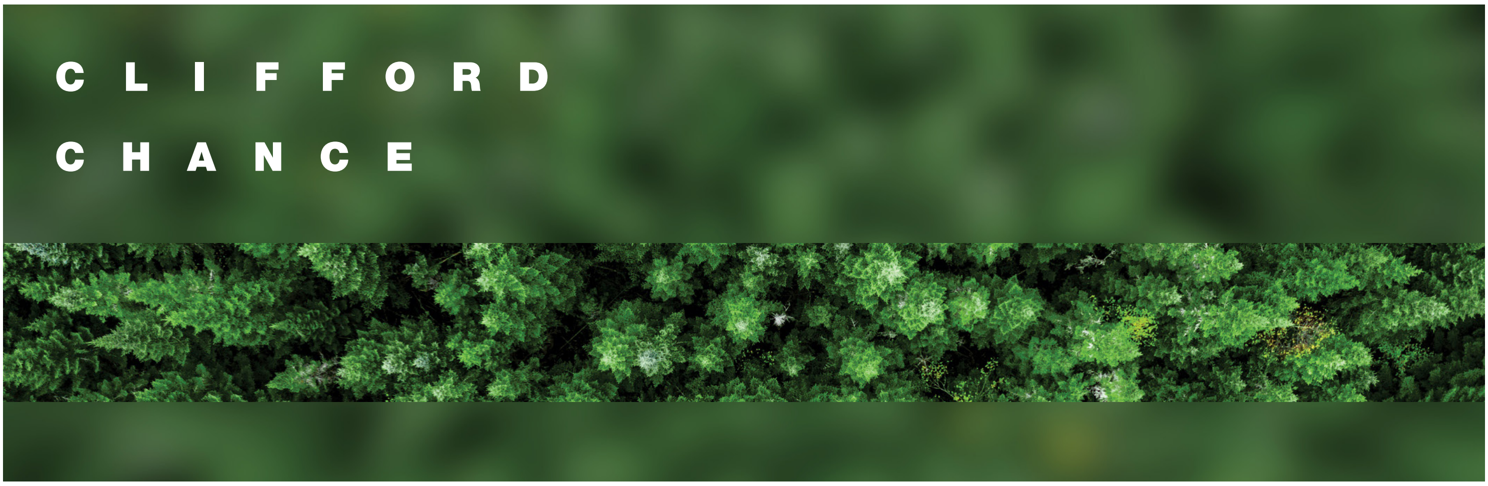

FCA PROPOSES MANDATORY CLIMATE-RELATED DISCLOSURES FOR ASSET MANAGERS, LIFE INSURERS AND FCA-REGULATED PENSION PROVIDERS

On 22 June 2021, the UK's Financial Conduct Authority published a consultation proposing climate-related disclosure requirements for asset managers, life insurers and FCA-regulated pension providers. The proposals reflect one of the UK government's ESG aims of introducing mandatory climate-related disclosures across the UK economy and would integrate the Task Force on Climate-related Financial Disclosures recommendations. With a relatively short turnaround time, larger in-scope firms would be required to produce their first entity-level disclosures by 30 June 2023, while smaller in-scope firms would be required to produce their first entity-level disclosures by 30 June 2024.

Here are our key takeaways on the proposals.

What is the background to these proposals?

- In December 2015, the Financial Stability Board established the 'Taskforce on Climate-related Financial Disclosures' (the "**TCFD**"). Its role was to develop a set of international, voluntary climate-related disclosure recommendations.
- The TCFD published its recommendations in a final report in June 2017. Additional guidance and technical supplements were subsequently published.
- In its 2019 'Green Finance Strategy', the UK Government set an expectation that all listed issuers and large asset owners would make disclosures in line with the TCFD's recommendations by 2022.
- The UK Government subsequently announced that it intended to make TCFD-aligned disclosures mandatory across the economy by 2025. It set out an indicative pathway for the introduction of these requirements in an accompanying Roadmap. The Roadmap outlined steps that the UK Financial Conduct Authority ("**FCA**"), amongst other bodies, should take with regards to climate-related disclosures.
- Publication by the FCA of its consultation paper 'Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers' ("**CP21/17**") represents one of the FCA's steps towards introducing TCFD-aligned disclosures for certain FCA-regulated firms.
- As the TCFD is in the process of consulting on certain issues, the FCA confirms in CP21/17 that it will require firms to consider the updated versions of the relevant TCFD report and related documents, if they are amended.

Key issues

- The FCA proposes to require FCA-regulated asset managers, life insurers and pension providers to produce mandatory climate-related disclosures.
- In-scope firms would need to produce two types of disclosures: entity-level disclosures and product-level disclosures.
- Entity-level disclosures would be annual, published reports on how firms take climate-related risks and opportunities into account when managing or administering investments.
- Product-level disclosures would vary according to the product in question: in some instances, the disclosures would need to be published publicly; in others, the disclosures would need to be available to clients upon request.
- The FCA proposes to apply the requirements to larger in-scope firms from 1 January 2022 and to smaller firms from 1 January 2023.

What are the FCA's proposals?

The FCA proposes to require in-scope firms to produce two types of disclosures: (i) entity-level disclosures; and (ii) product-level disclosures.

(I) Entity-level disclosure	
What is it?	• Firms will be required to make an annual, entity-level disclosure referred to as a 'TCFD entity report'. This must explain how the firm takes climate-related risks and opportunities into account when managing or administering assets on behalf of its clients and consumers.
When and how must it be published?	• The TCFD entity report must be produced and made available on the firm's main website by 30 June each year.
What must be included in the disclosure?	• The content of the report must be consistent with the TCFD recommendations. As a result, items that must be disclosed in the report include the relevant firm's: - governance around climate-related risks and opportunities; - strategy relating to climate-related risk; - climate-related risk management; and - metrics and targets used to assess and manage climate-related risks.

(II) Product-level disclosure	
What is it?	• In addition to the TCFD entity report, firms will be required to produce TCFD product reports. These will require firms to make disclosures in respect of the individual products or portfolio management services that they offer.
When and how must it be published?	• Depending on the type of firm and product/portfolio, these disclosures would either be: - published in a TCFD product report in a prominent place on the main website for the firm's business, while also being included, or cross-referenced and hyperlinked, in an appropriate client communication. Products in respect of which this requirement would apply include authorised funds and unauthorised alternative investment funds ("**AIFs**") that are listed on a recognised investment exchange. - made upon request to certain eligible institutional clients. The FCA states that this requirement would apply to investment managers in respect of discretionary portfolio management services, and to full-scope or small authorised UK alternative investment fund managers ("**AIFMs**") in respect of non-listed unauthorised AIFs.
What must be included in the disclosure?	• The TCFD product reports would comprise a baseline set of core, mandatory, carbon emissions and carbon intensity metrics, additional metrics where possible, and scenario analysis. They may also include additional, tailored detail on the disclosures made at an entity level if appropriate.

To whom do the proposed requirements apply?

The proposed requirements would apply to, broadly:

- **FCA-regulated asset managers** (including FCA-regulated firms that carry on portfolio management; UK UCITS management companies; ICVCs; full-scope UK AIFMs and small authorised UK AIFMs). Firms operating in the private equity sector should note the FCA's comment that it proposes to bring 'portfolio management as defined more broadly' into scope, such as investment advice provided by a UK entity to institutional clients within a group where investment decisions are based on that advice. The FCA states that it aims to bring into scope 'asset management activities conducted by private equity and other private market firms';
- **FCA-regulated life insurers** in relation to insurance-based investment products and defined contribution pension products and at an entity level, with pure reinsurers subject to disclosure requirements at an entity level. For life insurers, the scope of product level disclosure requirements will be largely dependent on the role the firm plays as a manager or administrator of the underlying assets for clients and consumers, with in-scope assets including insurance-based investment products and defined contribution schemes; and
- **Non-insurer FCA-regulated pension providers**, including platform firms and Self-invested Personal Pension (SIPP) operators, to the extent that the SIPP operators provide a ready-made selection of investments.

The entity-level disclosure requirements would apply to the above firms with respect to assets managed or administered from the UK, irrespective of where the firms' clients, products or portfolios are based. The level of detail required in this report would be largely dependent on the extent to which the asset owner takes an active role in investment decisions and product design.

There is a carve-out of the requirements for firms if (and for so long as) the relevant assets that they administer or manage amount to less than £5 billion, calculated as a 3-year rolling average on an annual assessment.

The proposals would not apply directly to overseas firms, including firms that are currently within the UK's temporary permissions regime.

What about overlap with other climate-related reporting requirements to which the firm or its group may be subject?

The FCA has introduced provisions to reflect the fact that firms may be subject to other climate-related disclosure obligations or may sit within groups that produce other climate-related disclosures. In particular:

- when a firm that is producing its TCFD entity report sits within a wider group, the firm will be able to rely on climate-related disclosures made by its group or a member of its group, if those disclosures are consistent with the TCFD recommendations and certain other conditions are satisfied.

- the FCA states that where disclosure requirements under EU rules (such as the EU Sustainable Finance Disclosure Regulation ("**SFDR**")) cover matters similar to those in the TCFD recommendations, the FCA aims to ensure consistency with the EU rules as far as possible. The FCA proposes that where prescribed calculation methodologies differ between the TCFD's recommendations and the final report on draft Regulatory Technical Standards for the SFDR, reporting should be conducted under the formulae for both regimes.

What are the next steps?

- The deadline for responses to CP21/17 is 10 September 2021, with a policy statement expected in Q4 of 2021. Responses can be submitted on the FCA's website www.fca.org.uk/cp21-17-response-form or by email to cp21-17@fca.org.uk.
- The FCA proposes that the rules would apply to:
  - larger firms (asset managers with AuM of more than £50 billion and asset owners with £25 billion or more in AuM or assets under administration) from 1 January 2022. Firms' first TCFD entity reports will be reports due by 30 June 2023.
  - smaller firms from 1 January 2023. Firms' first TCFD entity reports will be due by 30 June 2024.
- As a result, firms, particularly larger firms, will need to consider their implementation plans as soon as possible.

CONTACTS

Charlotte Chopping
Senior Associate
London
T: +44 207006 8327
E: charlotte.chopping@
cliffordchance.com

Michael Coxall
Knowledge Director
London
T: +44 207006 4315
E: michael.coxall@
cliffordchance.com

Simon Crown
Partner
London
T: +44 207006 2944
E: simon.crown@
cliffordchance.com

Paul Ellison
Partner
London
T: +44 207006 3207
E: paul.ellison@
cliffordchance.com

Nigel Howorth
Practice Area Leader
Real Estate London
London
T: +44 207006 4076
E: nigel.howorth@
cliffordchance.com

Amy Watt
Senior Associate
Knowledge Lawyer
London
T: +44 207006 1987
E: amy.watt@
cliffordchance.com

Cheng Li Yow
Partner
London
T: +44 207006 8940
E: chengli.yow@
cliffordchance.com

CLIFFORD

CHANCE

2106-001965