

C L I F F O R D
C H A N C E



BUY-SIDE REGULATORY HORIZON SCANNER
SEPTEMBER 2021

CONTENTS

1

Introduction

2

Buy-side regulatory horizon scanner

- a. EU developments:
 - i. Asset management developments
 - ii. ESG developments
 - iii. Cross-sectoral developments
- b. UK developments:
 - i. Asset management developments
 - ii. ESG developments
 - iii. Cross-sectoral developments

3

Glossary



INTRODUCTION



INTRODUCTION

KEY UK CONTACTS AND FURTHER RESOURCES

Key contacts



SIMON CROWN
PARTNER, LONDON

T +44 20 7006 2944
E simon.crown
@cliffordchance.com



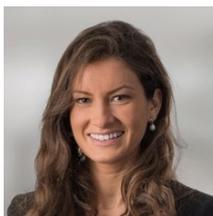
MONICA SAH
PARTNER, LONDON

T +44 20 7006 1103
E monica.sah
@cliffordchance.com



PAUL ELLISON
PARTNER, LONDON

T +44 20 7006 3207
E paul.ellison
@cliffordchance.com



CHARLOTTE CHOPPING
SENIOR ASSOCIATE,
LONDON

T +44 20 7006 8327
E charlotte.chopping
@cliffordchance.com

Our buy-side regulation practice

The investment management industry currently faces unprecedented regulatory change on a global basis. No other law firm is better placed to address these challenges for investment management clients than Clifford Chance.

Our understanding of each part of the investment management industry, coupled with our global network of expertise, allows us to tailor our advice to a client's exact needs while accessing the very latest market thinking and advice from around the world, whether in relation to AIFMD or EMIR or under Dodd-Frank.

Our clients include the world's leading asset management companies, alternative investment funds, private equity funds, insurance companies and private banking businesses. They range in size from household names with a five-continent footprint to start-up or spin-off funds.

Further Clifford Chance resources

The Financial Markets Toolkit

The Financial Markets Toolkit provides the cutting-edge knowledge you need for your business. It brings together, in a "one-stop shop", a wide range of practical, user-friendly resources. The Financial Markets Toolkit comprises a growing collection of web-based videos, publications and other key resources on an expansive range of topics, from regulatory developments to transactional matters: (<http://financialmarketstoolkit.cliffordchance.com>).

Training and events

Sharing know-how is central to our ethos. Our London Perspective series is a seasonal series of talks addressing a wide range of topical issues for financial institutions, from corporate and employment issues to tax and regulatory developments. Our Insights for Asset Managers series is a programme of frequent, short calls on which we share our practical insights on topical developments, from the CBDF to AIFMD2.

Alerter: Finance Industry

Our daily 'Alerter: Finance Industry' email and our weekly 'International Regulatory Update' email keep our clients up-to-date with a comprehensive, up-to-the-minute summary of regulatory and legal developments from around the world as well as links to relevant Clifford Chance publications and contacts.

Briefings

We regularly produce short, practical briefings on regulatory developments and longer, thought leadership pieces on industry and legal trends and issues. These are distributed to our existing clients and collated on our Financial Markets Toolkit.

INTRODUCTION

KEY EUROPEAN CONTACTS



DANIEL BADEA
PARTNER,
BUCHAREST

T +40 216666 101
E daniel.badea
@cliffordchance.com



ANNA BIAŁA
COUNSEL,
WARSAW

T +48 22429 9692
E anna.biala
@cliffordchance.com



LUCIO BONAVITACOLA
PARTNER,
MILAN

T +39 02 8063 4238
E lucio.bonavitacola
@cliffordchance.com



LOUNIA CZUPPER
PARTNER,
BRUSSELS

T +32 2 533 5987
E lounia.czupper
@cliffordchance.com



**VÉRONIQUE DE
HEMMER GUDME**
HEAD OF REGULATORY
AFFAIRS, PARIS

T +33 1 4405 5128
E veronique.dehemmergudme
@cliffordchance.com



GREGOR EVENKAMP
PARTNER,
MUNICH

T +49 89 21632 8800
E gregor.evenkamp
@cliffordchance.com



NATALIA LÓPEZ
COUNSEL,
MADRID

T +34 91 590 9410
E natalia.lopez
@cliffordchance.com



VLADIMÍR RÝLICH
SENIOR ASSOCIATE,
PRAGUE

T +420 222 55 5210
E vladimir.rylich
@cliffordchance.com



ROBERT SMITS
COUNSEL,
NETHERLANDS

T +31 20 711 9356
E robert.smits
@cliffordchance.com



PAUL VAN DEN ABEELE
PARTNER,
LUXEMBOURG

T +352 48 50 50 478
E paul.vandenabeele
@cliffordchance.com



OLIVER ZWICK
COUNSEL,
LUXEMBOURG

T +352 48 50 50 476
E oliver.zwick
@cliffordchance.com

INTRODUCTION

THE BUY-SIDE REGULATORY HORIZON SCANNER

This buy-side regulatory horizon scanner provides a high-level overview of key ongoing and expected EU and UK regulatory developments relevant to investment managers.

The tracker identifies and summarises key legislative and non-legislative developments that are likely to have an impact on investment managers providing services in the EU and UK. Developments are grouped firstly according to whether they are EU or UK developments and, within those categories, into the following three topics:

Asset management developments

Key asset management developments, such as AIFMD2.

ESG developments

Key ESG developments that are relevant to investment managers, such as the SFDR.

Cross-sectoral developments

Key developments that are not specific to asset managers but nonetheless affect asset managers, such as MLD5.

The horizon scanner also sets out projected timelines for the finalisation and implementation of the relevant developments, covering approximately the next 18 months to 2 years.

Further background information and commentary on many of these developments, as well as an overview of the EU legislative process, is available on the [Financial Markets Toolkit](#).

This horizon scanner has been prepared as of September 2021. It does not constitute legal advice and is not intended to provide an exhaustive list of all provisions or requirements applicable to such firms during this period.

INTRODUCTION

THE EU BUY-SIDE REGULATORY LANDSCAPE

The EU angle...



Following the financial crisis, the EU developed a wide-ranging package of new legislation to strengthen, harmonise and improve the stability of the EU financial services sector. Just over a decade later, the enactment of MiFID2, which started to apply in early 2018, as the last major legislative measure of the post-crisis regulatory reforms, means that this project is largely complete.

The EU's current and future workload now has two key angles. Firstly, the EU has turned to reviewing and fine-tuning its existing financial services regulatory framework to ensure that regulation keeps pace with technological and other developments, such as the COVID-19 pandemic. The EU's current programme of work on MiFID2 is a good example of this: simultaneously with conducting its scheduled review of the MiFID2 package, the EU has worked on a series of 'quick-fix' amendments to MiFID2 in order to react to the COVID-19 pandemic.

Secondly, the EU is working on new, post-financial crisis priorities. These include the EU's rapidly-developing ESG programme (covered from an asset management perspective in this tracker) the development of a new, comprehensive approach to AML and CTF and the announcement of a new approach to retail investments, which remains at an earlier stage of development.

INTRODUCTION

THE UK BUY-SIDE REGULATORY LANDSCAPE

The UK angle...



Brexit currently has, and will continue to have, a fundamental impact on investment management regulation in the UK. At present, the UK's investment management regulation remains extremely similar to that of the EU as the UK's most immediate response to Brexit in the investment management sector was to simply onshore EU legislation with minimal changes.

Following Brexit, the UK's approach towards investment management regulation has two lenses. Firstly, the 'micro' lens sees the UK seek to tweak aspects of onshored legislation to better suit the UK markets and to address historic concerns with the original EU legislation. The FCA's proposed amendments to the UK's onshored version of the PRIIPs regime, covered in this horizon scanner, are an example of such a development.

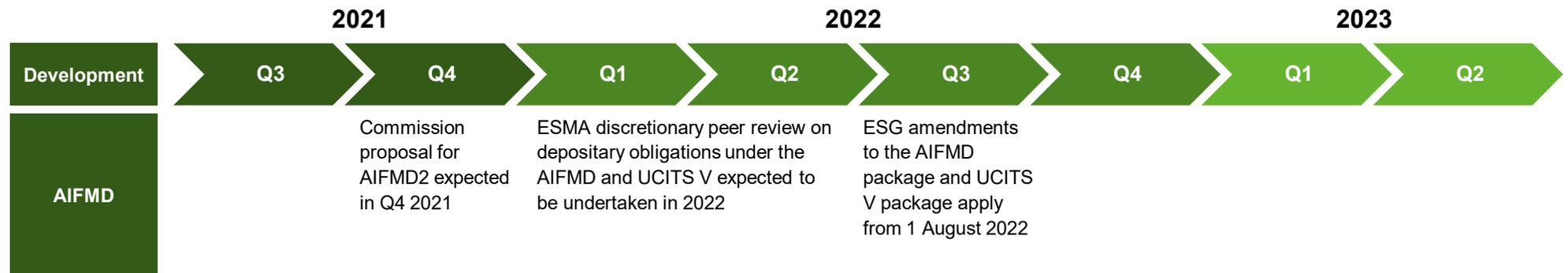
Stepping back, the 'macro' lens sees the UK seek to exercise the legislative freedom afforded by Brexit, with plans for wider-ranging changes to the UK's investment management regulation. HM Treasury's broad review of the UK's fund regime as a whole, which commenced in 2021, and the UK's continuing development of its own ESG regulatory package, are examples of such developments.



HORIZON SCANNER
A. EU DEVELOPMENTS

I. ASSET MANAGEMENT DEVELOPMENTS

EU AIFMD AND AIFMD2



AIFMD

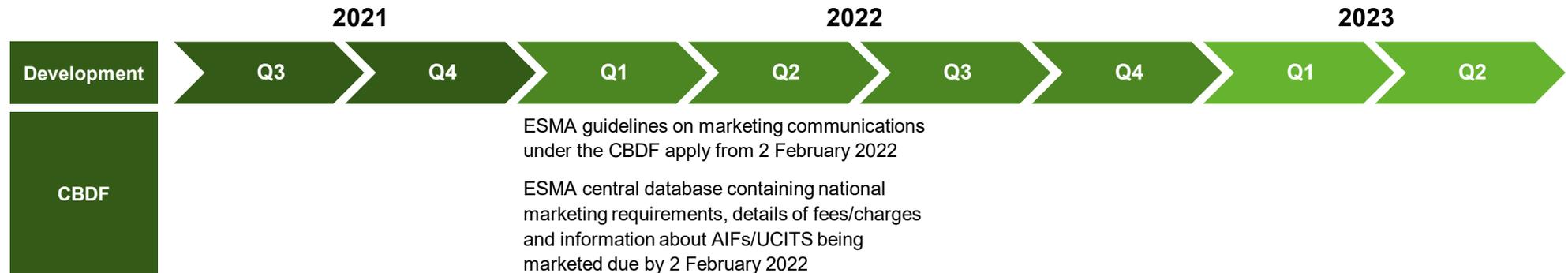
The AIFMD regulates the management, administration and marketing of alternative investment funds in the EU. Key issues covered by the AIFMD include authorisation and operating conditions for AIFMs, remuneration, conduct of business and valuation requirements, transparency and marketing. It also includes requirements for firms acting as a depositary of an AIF.

What's on the horizon?

- The Commission is undertaking a review of the AIFMD, which is expected to culminate in a proposal by the Commission to make amendments to the AIFMD (resulting in the so-called 'AIFMD2'). The proposed amendments to the AIFMD are anticipated to be published by the Commission in Q4 2021.
- ESMA has announced that it expects to undertake a peer review into depositary obligations under the AIFMD and UCITS V in 2022.
- The AIFMD has also been amended to introduce sustainability-related requirements. These will apply from 1 August 2022. Please see slide 20 for further details on this development.

Read our in-depth briefings on each step of the Commission's review into the AIFMD [here](#), [here](#), [here](#) and [here](#).

EU CBDF



CBDF

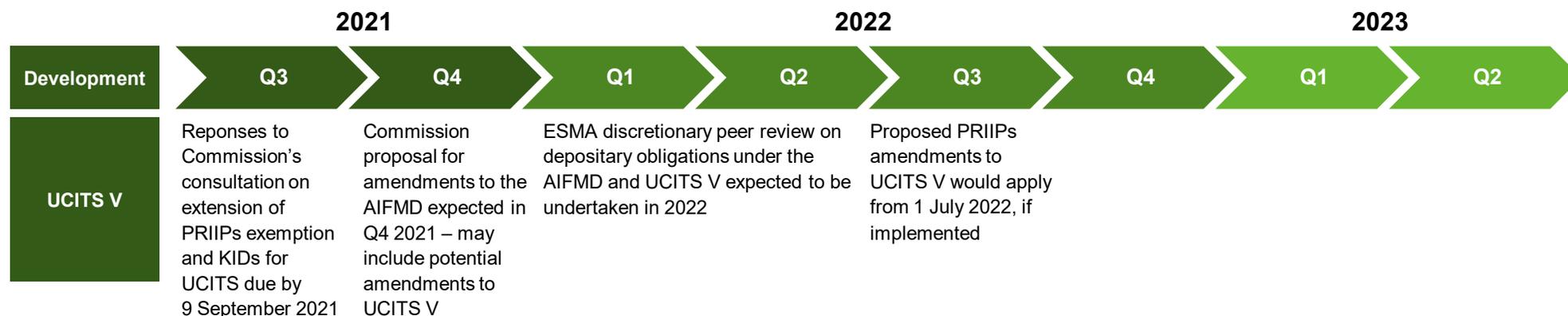
The CBDF amends UCITS V, the AIFMD, EuVECA Regulation, EuSEF Regulation and PRIIPs Regulation with regards to fund marketing. The new requirements aim to improve transparency by aligning national marketing and pre-marketing requirements, amongst other measures. The majority of the CBDF's provisions came into force on 1 August 2019 and 2 August 2021.

What's on the horizon?

- A report by the Commission on reverse solicitation was scheduled to be delivered by 2 August 2021 but has yet to be published.
- The CBDF required ESMA to develop guidelines on marketing communications. The guidelines provide guidance on the requirement for marketing communications to be fair, clear and not misleading, together with guidance on ensuring that marketing communications are identifiable as such and display risks and rewards in an equally prominent manner. The guidelines come into force on 2 February 2022.
- ESMA is required to publish a central database on its website containing information on marketing requirements for AIFs and UCITS across member states by 2 February 2022.

We have produced a comprehensive, multi-jurisdictional guide to the CBDF in conjunction with AIMA and KPMG. Please contact us for further details.

EU UCITS V



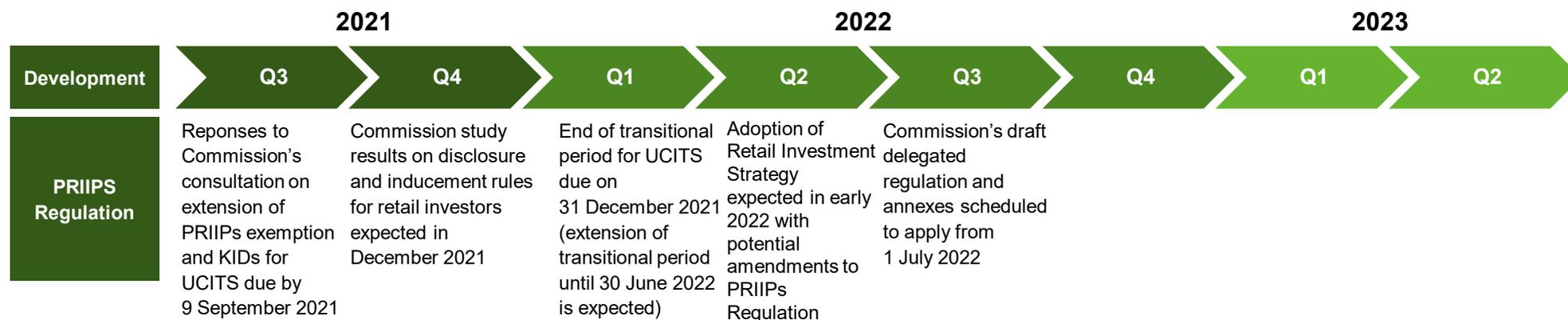
UCITS V

The UCITS Directive provides an EU-wide framework for UCITS (investment funds suitable for marketing to retail investors that meet relevant requirements). Since the first UCITS Directive in 1985, subsequent directives have aimed to expand and simplify the UCITS regime. Following the Commission consultation on the review of AIFMD, potential amendments may be proposed to UCITS V alongside the AIFMD in Q4 2021.

What's on the horizon?

- On 6 August 2021, the Commission launched a consultation with two key proposals: firstly, to extend the current exemption for UCITS from the requirement to prepare a PRIIPs KID until 31 July 2022; and, secondly, to amend UCITS V such that KIDs that comply with PRIIPs are considered to satisfy the requirements for key investor information for UCITS under UCITS V. The deadline for responses to the legislative proposal was 9 September 2021. If implemented, changes to UCITS V would apply from 1 July 2022.
- The Commission is expected to propose amendments to the AIFMD in Q4 2021. Amendments to UCITS V may be proposed alongside those to the AIFMD.
- ESMA has announced that it expects to undertake a peer review into depositary obligations under the AIFMD and UCITS V in 2022.
- UCITS V has been amended to introduce sustainability-related requirements. These will apply from 1 August 2022. Please see slide 20 for further details on this development.
- Certain ESMA workstreams such as follow-up work to its peer review into guidelines on ETFs and other UCITS issues are expected to continue during 2021 and 2022.

EU PRIIPS REGULATION



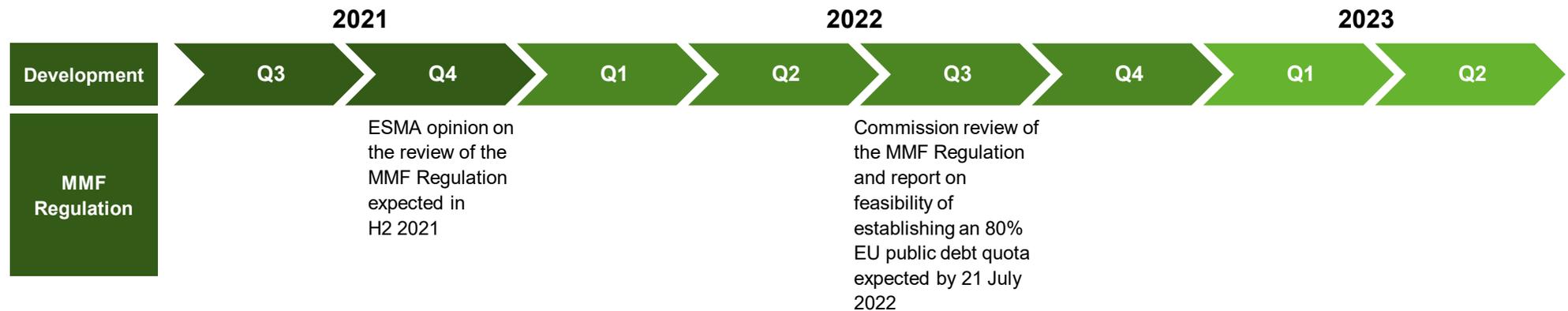
PRIIPs Regulation

The PRIIPs Regulation obliges manufacturers of PRIIPs to produce a concise pre-contractual disclosure document, the KID, where such products are made available to retail investors. It also obliges persons who advise upon or sell PRIIPs to provide investors with the KID. It sets out rules on the content and format of the KID, as well as guidance for its review and timing of delivery.

What's on the horizon?

- On 6 August 2021, the Commission launched a consultation proposing: (i) to extend the current exemption for UCITS from the requirement to prepare a PRIIPs KID until 30 June 2022; and (ii) to amend UCITS V such that KIDs that comply with the PRIIPs Regulation satisfy the requirements for key investor information for UCITS under UCITS V. The deadline for responses to the legislative proposal was 9 September 2021.
- The Commission published a draft delegated regulation and annexes on 7 September 2021, proposing amendments to the PRIIPs Regulation to address a range of PRIIPs issues. If implemented, the delegated regulation is currently scheduled to apply from 1 July 2022.
- The results of a study by the Commission on disclosure and inducement rules for retail investors are expected to be published in December 2021.
- The current exemption from KID requirements for UCITS funds will expire on 31 December 2021; however, as noted above, this is expected to be extended to 30 June 2022.
- The Commission is reviewing the PRIIPs Regulation as part of a wider assessment of the EU's retail investment strategy. The retail investment strategy is expected to be adopted in early 2022 and may propose amendments to the PRIIPs Regulation.

EU MMF REGULATION



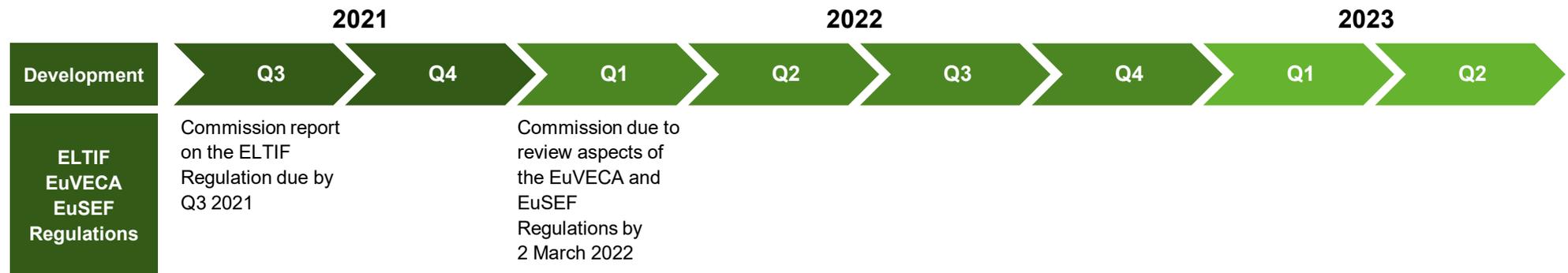
MMF Regulation

The MMF Regulation introduces a regulatory framework that aims to enhance the liquidity and stability of MMFs. It requires funds that meet the definition of an MMF to comply with rules relating to investment policies, internal credit quality assessments, risk management, valuation and transparency requirements. It also grants EU regulators powers to supervise MMFs and their managers on an ongoing basis.

What's on the horizon?

- ESMA plans to publish an opinion on its review of the MMF Regulation in the second half of 2021.
- The Commission is expected to complete a review of the MMF regulation by 21 July 2022 and to propose amendments to the MMF Regulation if the Commission considers this to be appropriate.
- The Commission is expected to present a report on the feasibility of establishing an 80% EU public debt quota by 21 July 2022.

EU ELTIF, EUVECA AND EUSEF REGULATIONS



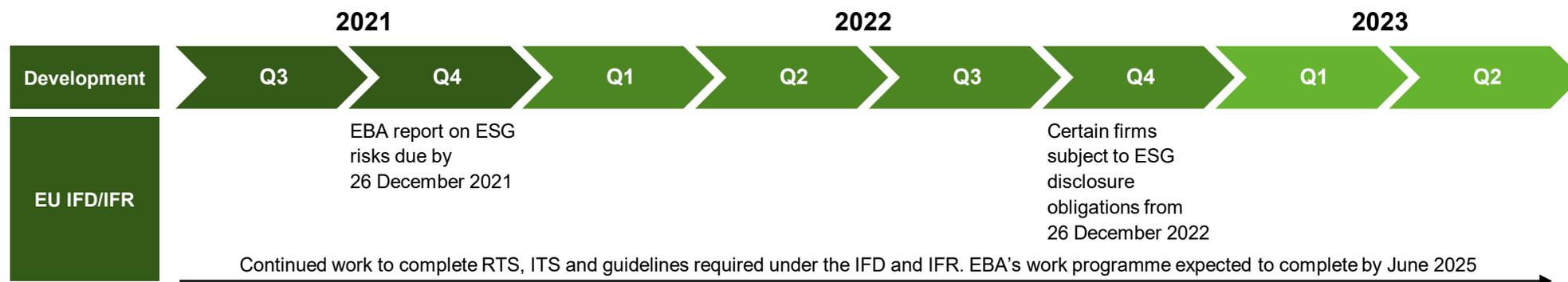
ELTIF, EuVECA and EuSEF Regulations

The ELTIF, EuVECA and EuSEF Regulations each create a regulatory category of funds with specific features. ELTIFs, created by the ELTIF Regulation, are intended to invest in assets that require long-term capital. EuVECAs, created by the EuVECA Regulation, are intended to invest in small and medium-sized businesses. Finally, EuSEFs, created by the EuSEF Regulation, are intended to invest in assets which aim to achieve positive social impacts.

What's on the horizon?

- The ELTIF Regulation requires the Commission to complete a review of the ELTIF Regulation and to propose amendments to that regulation, if appropriate. The Commission indicated that it intended to adopt a legislative proposal in Q3 2021 but has yet to do so.
- The EuSEF and EuVECA Regulations each require the Commission to complete a review of those regulations by 2 March 2022 and to propose amendments to those regulations, if appropriate.

EU IFD/IFR



IFD/IFR

The IFD and IFR created a new harmonised prudential regime for EU investment firms. Certain larger investment firms will now be treated as credit institutions and be subject to the capital regime under CRD4. Other firms will be subject to the new IFD and IFR prudential regime, which includes capital, consolidation, reporting, governance and remuneration requirements. The IFD and IFR will be accompanied by a number of RTS, ITS and guidelines, not all of which have been finalised.

Read our in-depth briefings on this development [here](#) and [here](#)

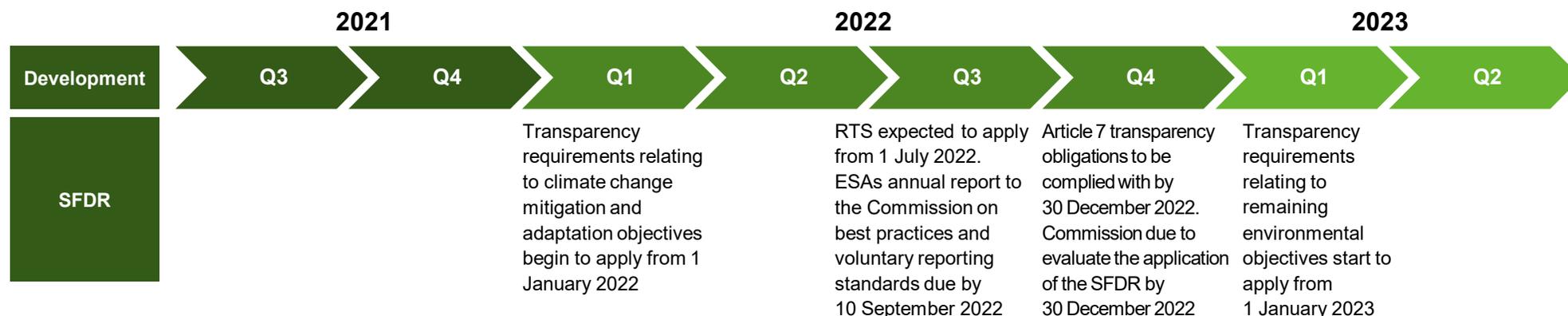
What's on the horizon?

- The EBA is required to report on ESG risks by 26 December 2021. The reports should cover, amongst other things: a description of the processes by which investment firms can identify, assess and manage ESG risks; and whether dedicated prudential treatment of assets exposed to activities associated substantially with environmental or social objectives, in the form of adjusted K-factors or adjusted K-factor coefficients, would be justified from a prudential perspective.
- Certain smaller investment firms will be subject to ESG disclosure obligations from 26 December 2022.
- In June 2020, the EBA published a roadmap setting out its proposed approach to completing IFD- and IFR-related items for which it has responsibility. The EBA's proposed timetable for completing those mandates was divided into four phases: (i) items for delivery by December 2020 (mainly items relating to thresholds, capital requirements, reporting and remuneration and governance); (ii) items for delivery by June 2021 (mainly items relating to supervisory convergence and SREP); (iii) items for delivery by December 2021 (mainly items relating to remuneration and ESG); and (iv) items for delivery between December 2021 and June 2025 (mainly items relating to supervisor convergence, SREP and ESG). Due to the number and uncertainty of timing of many of these measures, they are not indicated individually on the timeline.
- The Commission is required to report on the IFD and IFR, with legislative proposals to amend the package if it considers this to be necessary, by 26 June 2024.



HORIZON SCANNER
A. EU DEVELOPMENTS
II. ESG DEVELOPMENTS

EU SFDR



SFDR

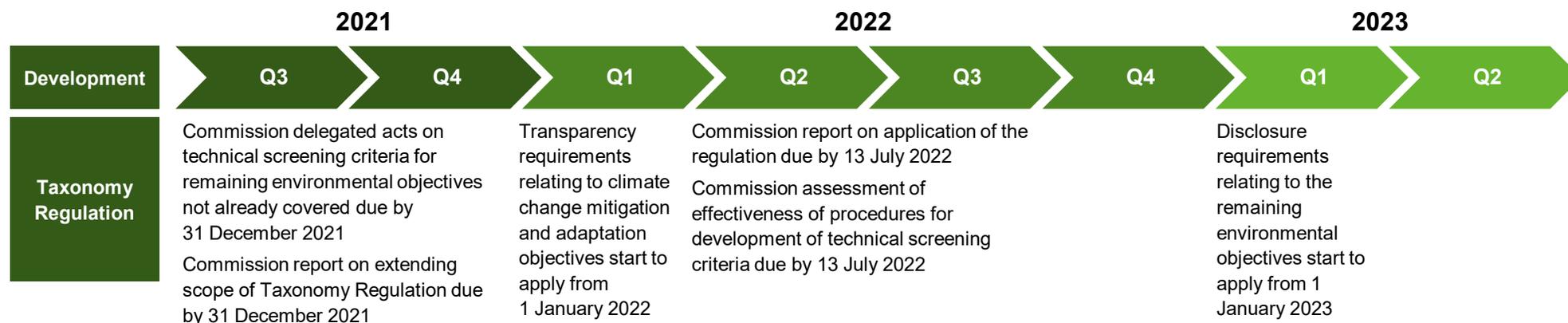
The SFDR sets out harmonised rules on disclosures to investors regarding the integration of sustainability risks and the consideration of adverse sustainability impacts in investment decision-making and investment advice. The rules apply to investment managers, investment advisors and certain other financial market participants. Most of the SFDR’s provisions have applied since 10 March 2021. Certain others will apply from 1 January 2022; and others from 1 January 2023.

Read our in-depth briefing on this development [here](#)

What’s on the horizon?

- Many of the SFDR’s transparency requirements will begin to apply from 1 January 2022. RTS, which will contain detailed provisions relating to these transparency requirements, were due to apply from 1 January 2022. The RTS have been delayed and are now expected to apply from 1 July 2022.
- The ESAs will provide their first report to the Commission on best practices relating to voluntary disclosures under the SFDR by 10 September 2022, with further reports by the ESAs on this topic due annually thereafter.
- Article 7 transparency obligations, which set out product-level disclosure requirements, should be complied with by 30 December 2022.
- The Commission is due to evaluate the SFDR by 30 December 2022 and to consider whether any amendments to the SFDR should be adopted.
- Transparency requirements relating to additional environmental objectives will begin to apply from 1 January 2023.

EU TAXONOMY REGULATION



Taxonomy Regulation

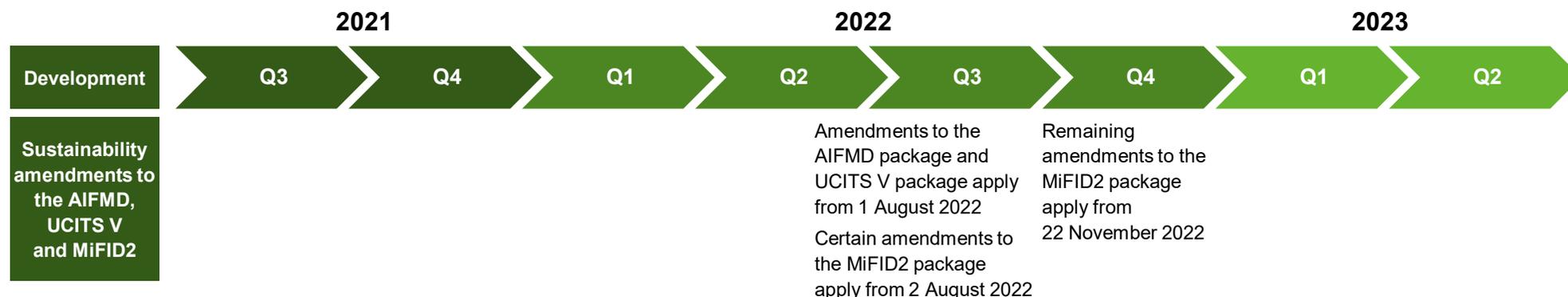
The Taxonomy Regulation sets out criteria that an activity must satisfy to be referred to as ‘environmentally sustainable’. Two such criteria are that the activity must contribute substantially to at least one ‘environmental objective’ and that the activity must not significantly harm an ‘environmental objective’. The six ‘environmental objectives’ are set out in the Taxonomy Regulation. The Taxonomy Regulation also creates disclosure obligations for certain products that are within the scope of the SFDR.

Read our in-depth briefing on this development [here](#)

What’s on the horizon?

- Commission delegated acts containing screening criteria for those of the environmental objectives for which technical screening criteria have not yet been adopted are expected to be adopted by 31 December 2021. The technical screening criteria will contain detailed criteria for determining the conditions under which a specific activity is deemed to ‘contribute substantially’ or to cause ‘significant harm’ to the environmental objectives.
- A Commission report describing the provisions that would be required to extend the scope of the Taxonomy Regulation beyond environmentally sustainable activities, e.g. to other sustainability objectives such as social objectives, is due by 31 December 2021.
- The transparency requirements that apply to climate change mitigation and adaptation will apply from 1 January 2022.
- A Commission report on the application of the Taxonomy Regulation and a Commission assessment of the effectiveness of the procedures for the development of technical screening criteria are due by 13 July 2022.
- The remaining transparency requirements will apply from 1 January 2023.

SUSTAINABILITY AMENDMENTS TO EU AIFMD, UCITS V AND MIFID2



Sustainability amendments to AIFMD, UCITS V and MiFID2

Delegated legislation integrating sustainability into the AIFMD, UCITS V, MiFID2, the Insurance Distribution Directive and Solvency II will begin to apply in 2022. Amendments include the requirement for managers to take into account sustainability risks when conducting investment due diligence and for investment firms that provide portfolio management to carry out a mandatory assessment of sustainability preferences of clients.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- The amendments to the AIFMD package apply from 1 August 2022.
- Member states are required to transpose the amendments to the UCITS V package apply by 31 July 2022 and to apply those measures from 1 August 2022.
- Certain amendments to the MiFID2 package will apply from 2 August 2022.
- Member states are required to transpose the remaining amendments to the MiFID2 package by 21 August 2022 and to apply those measures from 22 November 2022.

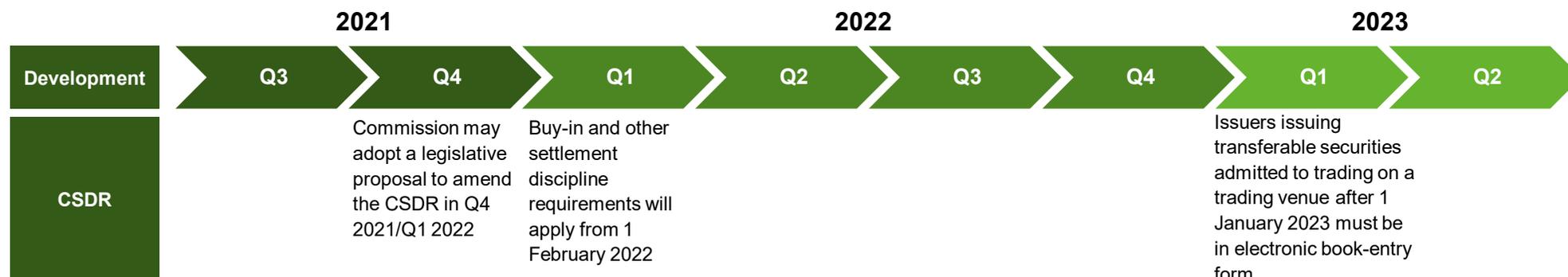


HORIZON SCANNER

A. EU DEVELOPMENTS

III. CROSS-SECTORAL DEVELOPMENTS

EU CSDR



CSDR

CSDR aims to harmonise certain aspects of securities settlement, such as the timing of settlement and an authorisation process for EEA CSDs. The next major phase of implementation relates to the settlement discipline regime, with measures being introduced to prevent and address settlement fails. This will apply from 1 February 2022. The new rules will apply to certain types of financial instruments (e.g. shares, bonds, units in funds) that are settled through an EEA CSD.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- Following the completion of its impact assessment and CSDR review, the Commission has indicated that it may adopt a legislative proposal to amend the CSDR in Q4 2021/Q1 2022.
- The settlement discipline regime, originally intended to apply from 13 September 2020, will apply from 1 February 2022.
- From 1 January 2023, any EU issuer that issues transferable securities that are admitted to trading or traded on trading venues must arrange for the securities to be represented in electronic book-entry form.

EU MIFID2



MiFID2

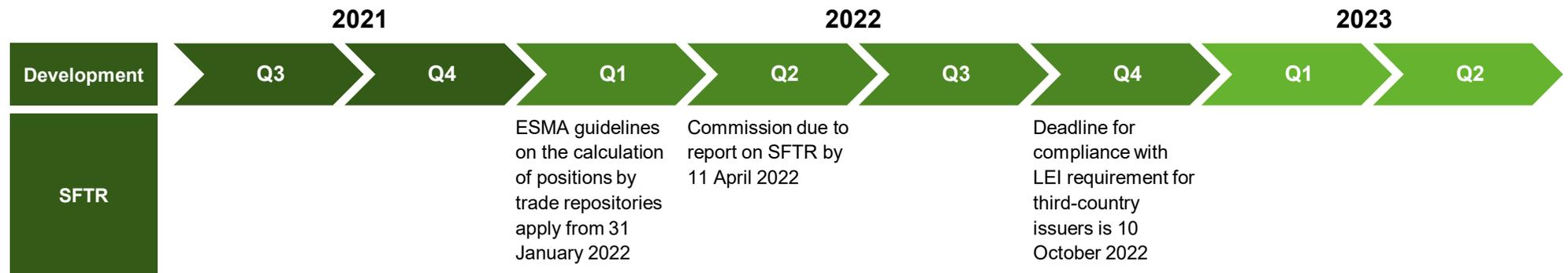
MiFID2 introduced important changes to the regulation of financial markets in Europe, including increased transparency and reporting requirements and heightened conduct of business requirements. The Commission was due to report on its review of MiFID2 during 2020. However, ESMA has proposed a revised timetable for delivery of its reports. The Commission is now expected to publish MiFID2 review proposals by end of 2021 (or shortly thereafter). In the interim, certain 'quick fix' amendments have been made to MiFID2, which aim to support the EU's economic recovery from the COVID-19 pandemic.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- Member states must adopt and publish provisions to implement the MiFID 'quick fix' directive by 28 November 2021.
- The Commission is expected to adopt a legislative proposal relating to the review of MiFID2 by the end of 2021.
- The 'quick fix' amendments will apply from 28 February 2022.
- The Commission is expected to report on the adequacy of reporting requirements under Article 27 of the MiFID2 Directive by 28 February 2022.
- Certain ESG amendments to the MiFID2 package will apply from 2 August 2022, with the remainder applying from 22 November 2022.

EU SFTR



SFTR

SFTR aims to increase transparency and reduce perceived “shadow banking” risks by requiring counterparties to report securities financing transactions (SFTs) to a trade repository, requiring UCITS managers and AIFMs to make pre-contractual and periodical disclosures to investors about their use of SFTs and total return swaps and imposing conditions on the ‘reuse’ of financial instruments that have been provided as collateral.

What’s on the horizon?

- ESMA’s guidelines on the calculation of positions by trade repositories apply from 31 January 2022.
- The Commission is due to report on the SFTR by 11 April 2022.
- The SFTR prescribes the use of LEIs to identify entities in SFT reporting. In January 2020, in recognition of the fact that many securities issued by non-EU issuers did not yet have an LEI, ESMA allowed for a transitional period during which reports without the LEI of third-country issuers that do not have an LEI would be accepted. That transitional period is due to expire on 10 October 2022.

Read our in-depth briefing on this development [here](#)

EU SRD2



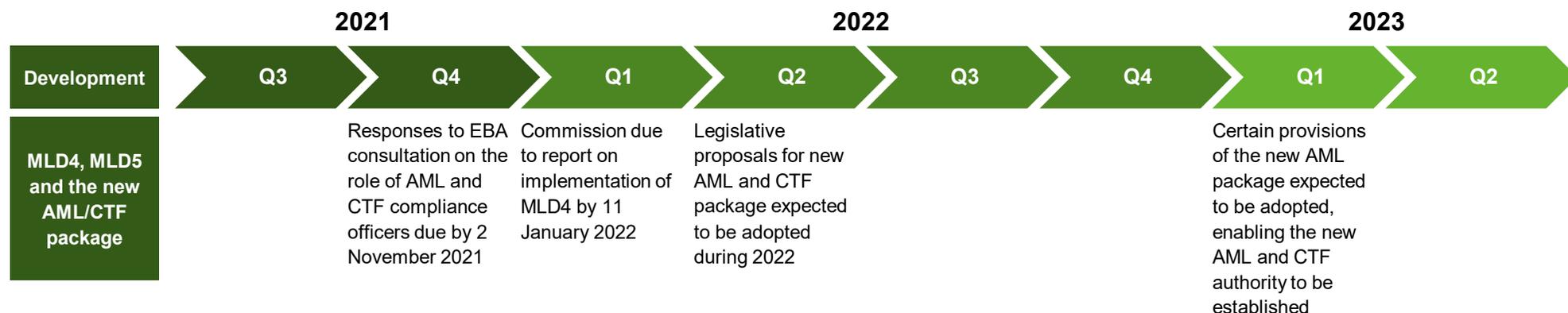
SRD2

SRD2 seeks to enable shareholders to exercise voting and information rights in EU companies traded on regulated markets across the EU. Amendments to the SRD address perceived shortcomings relating to transparency and a lack of shareholder engagement. The amendments relate to the link between directors’ pay and performance, related party transactions, advice given by proxy advisers and facilitation of the cross-border exercise of voting and information rights.

What’s on the horizon?

- The Commission is due to report on and, if appropriate, propose amendments to provisions on institutional investor and asset manager engagement policies, institutional investors’ investment strategy and arrangements with asset managers and transparency of asset managers by 10 June 2022.
- The Commission is due to report on and, if appropriate, propose amendments to provisions on shareholder identification, transmission of information and facilitation of exercise of shareholder rights and transparency of proxy advisers by 10 June 2023.

EU MLD4, MLD5 AND THE NEW AML AND CTF PACKAGE



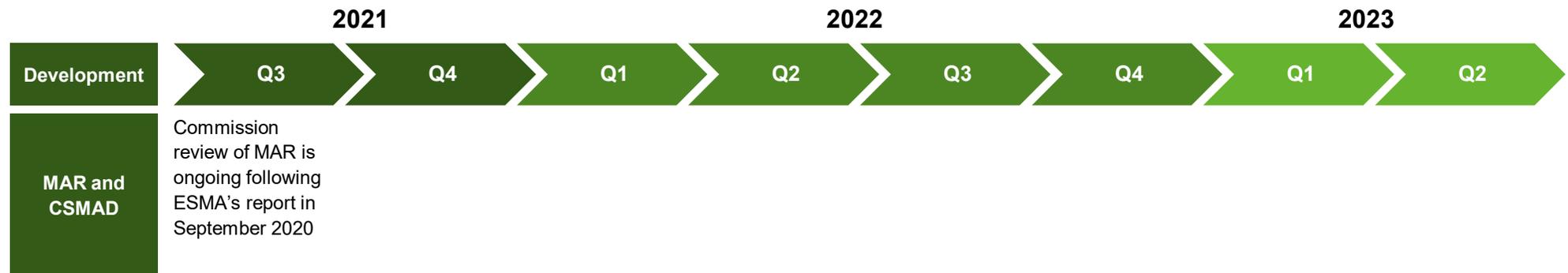
MLD4, MLD5 and the new AML/CTF package

MLD4 contains the EU’s anti-money laundering framework. MLD5 made targeted amendments to MLD4 to increase transparency around owners of companies and trusts through the establishment of public beneficial ownership registers, prevent risks associated with the use of virtual currencies for terrorist financing, restrict the anonymous use of pre-paid cards, improve the safeguards for financial transactions to and from high-risk third countries and enhance Financial Intelligence Units’ access to information.

What’s on the horizon?

- The EBA has launched a consultation on draft guidelines on the role of anti-money laundering and countering the financing of terrorism (AML/CTF) compliance officers under Article 8 and Chapter VI of MLD4. Comments are due by 2 November 2021.
- The Commission is due to report on implementation of MLD5 by 11 January 2022, and to make legislative proposals for amendments to MLD5 if the Commission considers this to be appropriate.
- In July 2021, the Commission adopted a package of legislative proposals including a regulation establishing a new EU AML and CTF authority, a new regulation on AML and CTF and a sixth directive on AML and CTF. The legislative proposals are expected to be adopted during 2022, with most of the regime coming into force three years later. The provisions relating to the creation of the new AML and CTF authority are expected to come into effect earlier, in 2023.

EU MAR AND CSMAD



MAR and CSMAD

An EU-wide framework for tackling market abuse and market manipulation was first introduced in 2005. MAR and CSMAD aimed to update and strengthen this framework. MAR extended the scope of the market abuse regime and introduced new requirements including in relation to insider lists, disclosure of inside information and reporting of suspicious orders and transactions. CSMAD sets minimum requirements for Member States' criminal sanctions regimes for market abuse.

What's on the horizon?

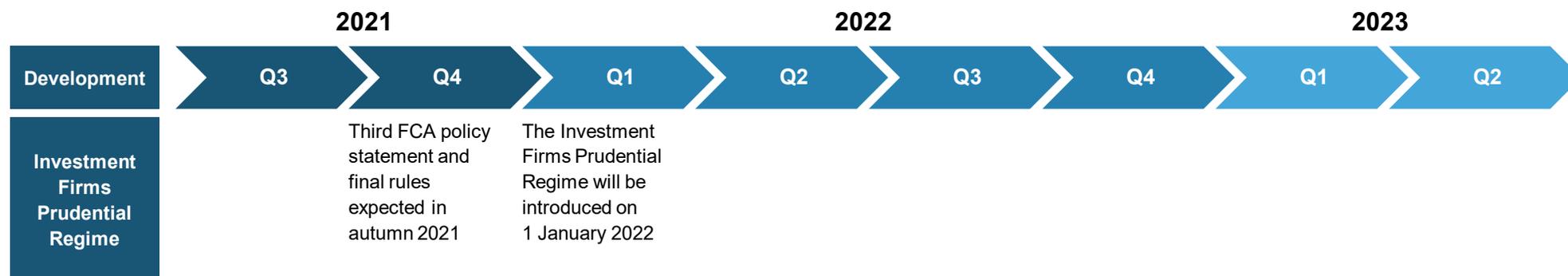
- MAR required the Commission to submit a report on MAR and, if the Commission considered this to be appropriate, a proposal for amendments to MAR, by 3 July 2019. The Commission is currently undertaking its review of MAR. It has not yet published its report.



HORIZON SCANNER
B. UK DEVELOPMENTS

I. ASSET MANAGEMENT DEVELOPMENTS

INVESTMENT FIRMS PRUDENTIAL REGIME



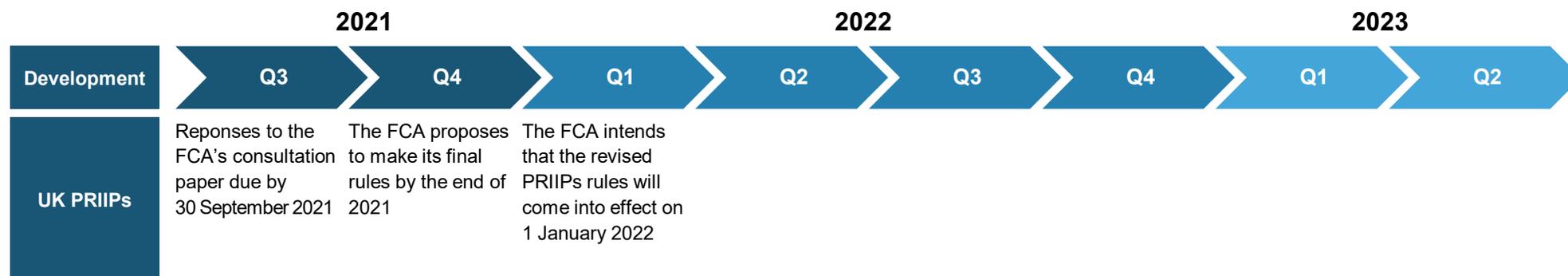
Investment Firms Prudential Regime

The UK will introduce a revised prudential regime for FCA-authorized investment firms on 1 January 2022. The regime will be based on, but not identical to, the EU IFD and IFR package. It will incorporate key concepts from that package, including the calculation of capital using the so-called ‘K-factors’, governance and risk management requirements and a new remuneration code. The UK regime will apply to significant number of FCA-authorized firms including, in addition to MiFID investment firms, to collective portfolio management investment firms (so-called ‘CPMI firms’), i.e. UCITS managers and AIFMs that, in either case, have MiFID top-up permissions.

What’s on the horizon?

- The FCA’s third policy statement, and final rules for the whole Investment Firms Prudential Regime, are expected in Autumn 2021. The policy statement will cover the matters consulted upon in the FCA’s third consultation paper on the regime, including certain disclosure requirements, excess drawings by partners in partnerships and members in limited liability partnerships, certain depositary requirements and the removal of FCA investment firms from the UK’s resolution regime.
- The Investment Firms Prudential regime will become live on 1 January 2022. It will include a number of transitional provisions which allow firms to gradually increase their capital over a period of years.

UK PRIIPS



UK PRIIPs

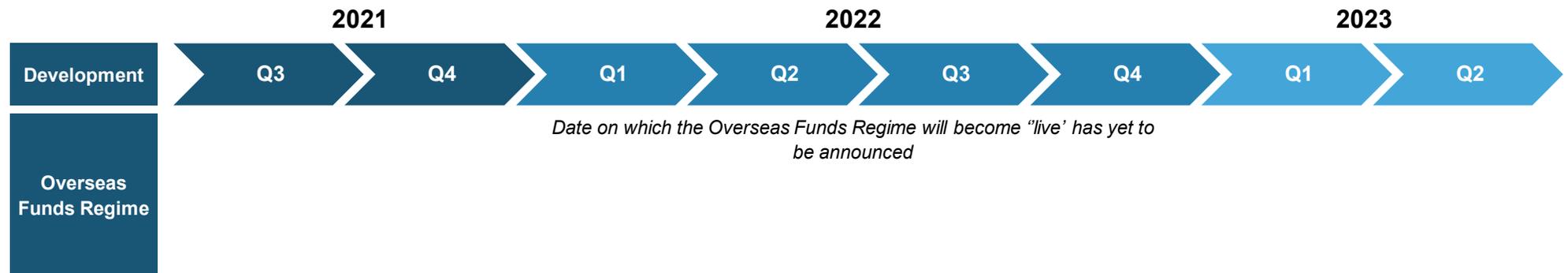
The UK has onshored the PRIIPs Regulation into the UK, the result of which is that the UK is able to amend the UK PRIIPs regime. In June 2021, HM Treasury confirmed that it intends to extend the current UCITS exemption (under which UCITS are exempt from the requirement to produce a PRIIPs KID) by a further 5 years, such that it lasts until 31 December 2026. In July 2021, the FCA published a consultation paper (CP21/23) in which it proposed to make further amendments to the UK PRIIPs regime.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- The FCA's July 2021 consultation paper proposed to: (i) clarify the scope of the UK PRIIPs regime; and (ii) improve the information that is provided within the KID. Responses to the consultation paper were due by 30 September 2021.
- The FCA intends to make its final rules on amendments to the UK PRIIPs regime by the end of 2021.
- The FCA intends that the revised UK PRIIPs regime will come into effect on 1 January 2022.
- The current exemption from producing a PRIIPs KID that applies to UCITS schemes will be extended to 31 December 2026.
- The Government announced in June 2020 that it intends to conduct a holistic review of the disclosure regime for UK retail investors which will include a review of how to harmonise the PRIIPs regime with MiFID2 disclosure requirements. Thus far there is no firm date for the outcome of this review.

OVERSEAS FUNDS REGIME



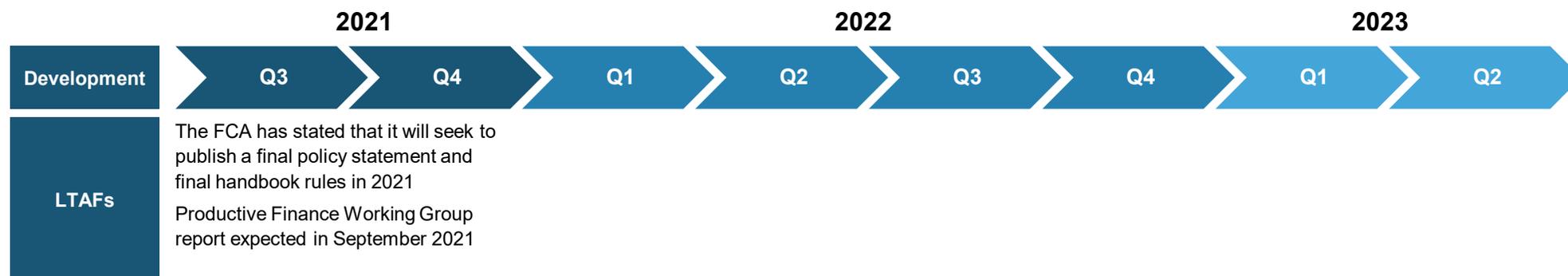
Overseas Funds Regime

The Overseas Funds Regime is a new UK regime for the marketing of non-UK retail and non-UK money market funds to UK investors. Introduced to simplify the process through which these funds must pass to be marketed to UK investors, the regime will centre on equivalence determinations. HM Treasury will have the power to determine that other jurisdictions' regimes for investment funds are equivalent to that of the UK, following which retail and money market funds domiciled in an 'equivalent' jurisdiction will be able to use a simplified process to apply to the FCA for the recognition needed for the fund to be marketed to applicable UK investors.

What's on the horizon?

- While the legislation that introduces the regime has been passed, the regime itself is not yet 'live'. The legislative provisions that introduce the regime will enter into force on a date yet to be specified by HM Treasury. It is expected that the regime will become live in time to ensure that firms that are currently in the FCA's temporary marketing permissions regime will be able to use the Overseas Funds Regime to transition out of the temporary marketing permissions regime before it ceases to exist.

LTAFS



LTAFs

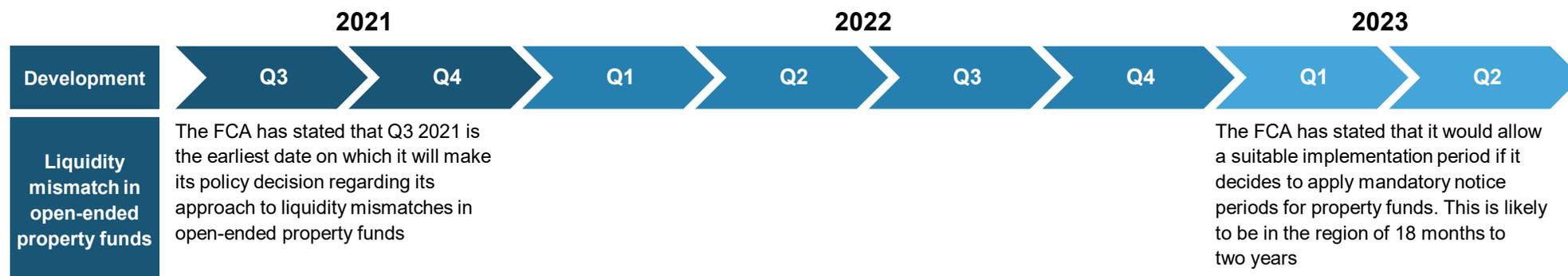
In May 2021, the FCA consulted on proposals to create a new, authorised fund regime for investment into long-term assets. Funds subject to the regime will be called LTAFs and able to invest mainly in assets that are long-term and illiquid in nature, or in other funds that invest in such assets. The FCA proposes to limit investment in LTAFs to professional investors and certain sophisticated retail investors.

In a related development, HM Treasury announced the creation of an industry-led Working Group on Productive Finance in November 2020. The Working Group agreed to prioritise the development of the LTAF. It is due to publish a report in September 2021.

What's on the horizon?

- The FCA has stated that it will seek to publish a final policy statement and final handbook rules for the LTAF in 2021.
- The Working Group on Productive Finance is expected to publish a report in September 2021. It is expected that the report will contain recommendations grouped into four buckets: (i) focus on long-term value for defined contribution pension scheme members; (ii) building scale in the defined contribution market; (iii) a new approach to liquidity management; and (iv) widening access to less liquid assets to a broader set of investors. It is expected that the latter point will result in the FCA consulting on changing its rules for investment in less liquid assets through unit-linked funds and reviewing its rules for distribution to appropriate retail clients.

LIQUIDITY MISMATCH IN OPEN-ENDED DAILY DEALT PROPERTY FUNDS



Liquidity mismatch in open-ended daily dealt property funds

In August 2020, the FCA consulted on proposals to address liquidity mismatches in authorised open-ended property funds. The FCA published its feedback to this consultation paper in May 2021. Many respondents to the FCA's consultation paper defended the utility of open-ended property funds, although responses were broadly evenly balanced in response to the question of whether to introduce notice periods for UK authorised property funds.

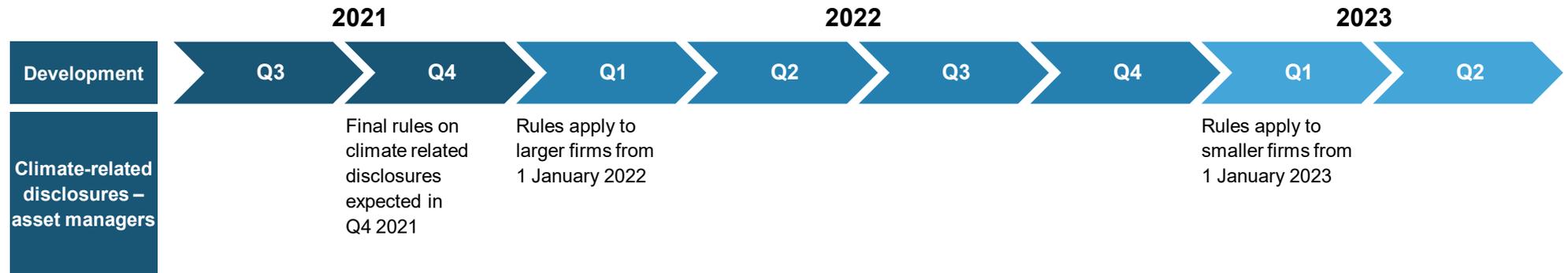
What's on the horizon?

- The FCA has stated that it will not make a final decision on its policy position with regards to liquidity mismatches in open-ended property funds until Q3 2021, at the earliest.
- To the extent that it does apply mandatory notice periods for property funds, the FCA has stated that it will allow a suitable implementation period before the rules come into force, likely to be in the region of 18 months to two years.



HORIZON SCANNER
B. UK DEVELOPMENTS
II. ESG DEVELOPMENTS

CLIMATE-RELATED DISCLOSURES – ASSET MANAGERS



Climate-related disclosures – asset managers

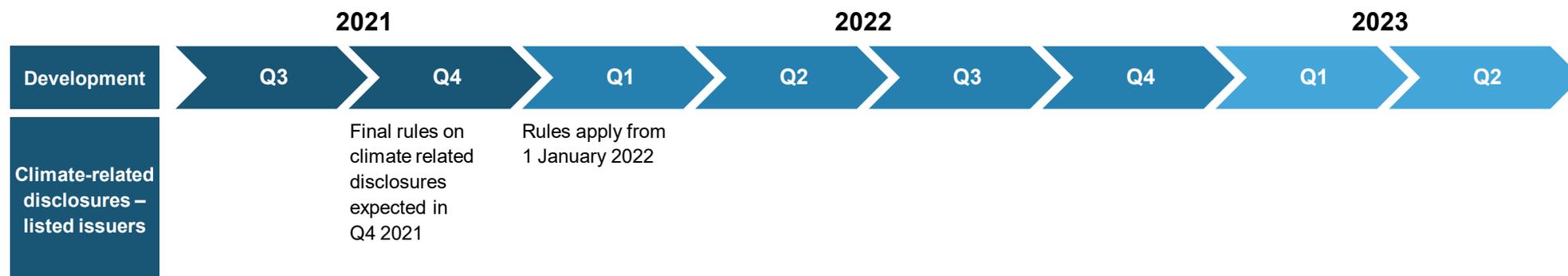
On 22 June 2021, the FCA published a consultation paper (CP21/17) proposing mandatory climate-related disclosure requirements for asset managers, life insurers and FCA-regulated pension providers. The proposals would integrate the Task Force on Climate-related Financial Disclosures recommendations. Under the proposals, in-scope firms would need to produce two types of disclosures: entity-level disclosures; and product-level disclosures in respect of in-scope products.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- A policy statement containing the FCA's final rules is expected in Q4 2021.
- The rules are expected to 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.
- The rules would apply to other in-scope firms from 1 January 2023.

CLIMATE-RELATED DISCLOSURES – LISTED ISSUERS



Climate-related disclosures – listed issuers

On 22 June 2021, the FCA published a consultation paper (CP21/18) proposing to extend the application of its climate-related disclosures listing rules from equity issuers with a premium listing to issuers of standard listed equity shares. The consultation paper also sought feedback on extending the rules to issuers of debt and debt-like instruments and views on broader environmental, social and governance topics in capital markets.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- A policy statement containing the final rules is expected in Q4 2021.
- The new rules would take effect for accounting periods beginning on or after 1 January 2022.

CLIMATE-RELATED DISCLOSURES – CORPORATE VEHICLES



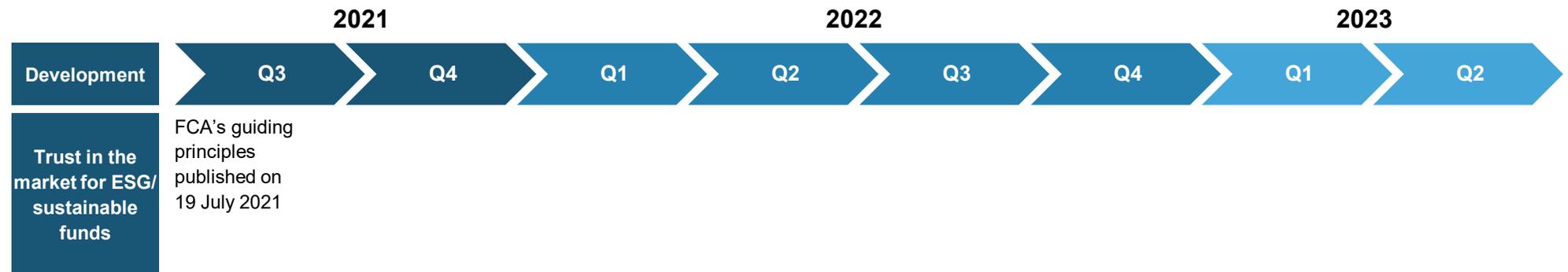
Climate-related disclosures – corporate vehicles

In March 2021, the Department for Business, Energy & Industrial Strategy (BEIS) issued a consultation paper on proposed requirements for mandatory climate-related financial disclosures by publicly quoted companies, large private companies and limited liability partnerships. The proposed requirements are based on the Task Force on Climate-Related Financial Disclosures' recommendations, with adjustments to make the requirements coherent with UK company law.

What's on the horizon?

- Regulations are expected to be made by the end of 2021.
- The regulations are expected to come into force on 6 April 2022 and to be applicable for accounting periods starting on or after that date.

TRUST IN THE MARKET FOR ESG/SUSTAINABLE FUNDS PRODUCTS



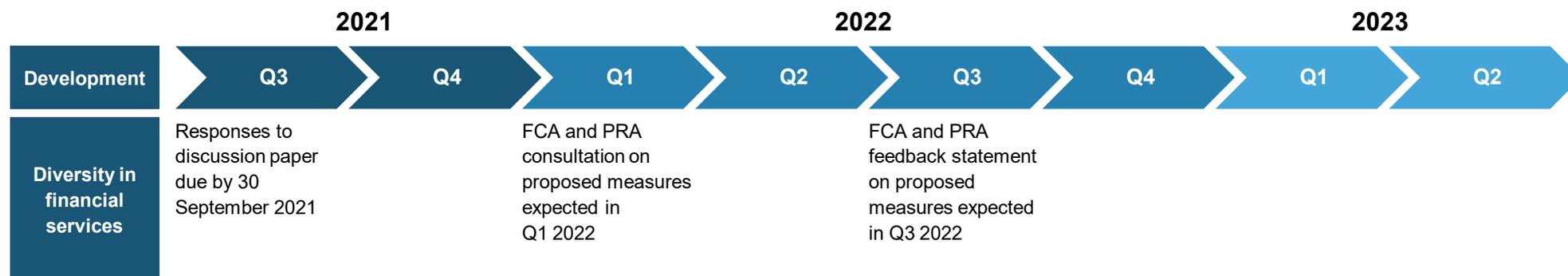
Trust in the market for ESG/sustainable funds

On 19 July 2021, the FCA published a letter to the chairs of authorised fund managers setting out the FCA's expectations on the design, delivery and disclosure of ESG and sustainable investment funds. The letter contained a set of 'guiding principles' for firms to take into account when an FCA-authorised investment fund pursues (or claims to pursue) a responsible or sustainable strategy. The guiding principles are accompanied by key considerations that should be taken into account when considering whether a particular fund achieves the overarching guiding principle.

What's on the horizon?

- There is no fixed deadline within which firms must ensure that they comply with the guiding principles; however, the FCA is likely to expect firms to integrate the principles as soon as possible in 2021.

DIVERSITY IN FINANCIAL SERVICES



Diversity in financial services

On 7 July 2021, the FCA, PRA and Bank of England published a joint discussion paper (DP21/2) on diversity and inclusion in the financial services sector. The discussion paper seeks views on how to accelerate the rate of change in diversity and inclusion in the financial services sector. It sets out the roles of the regulators in this context, steps that the regulators have taken to promote diversity and inclusion, the regulators' existing requirements and expectations, and a series of questions intended to seek views on ways of improving diversity and inclusion measures.

Read our in-depth briefing on this development [here](#)

What's on the horizon?

- The deadline for responses to the consultation is 30 September 2021.
- A joint FCA-PRA consultation on draft measures is expected to be published in Q1 2022.
- Feedback on the FCA-PRA consultation on draft measures is expected to be published in Q3 2022.

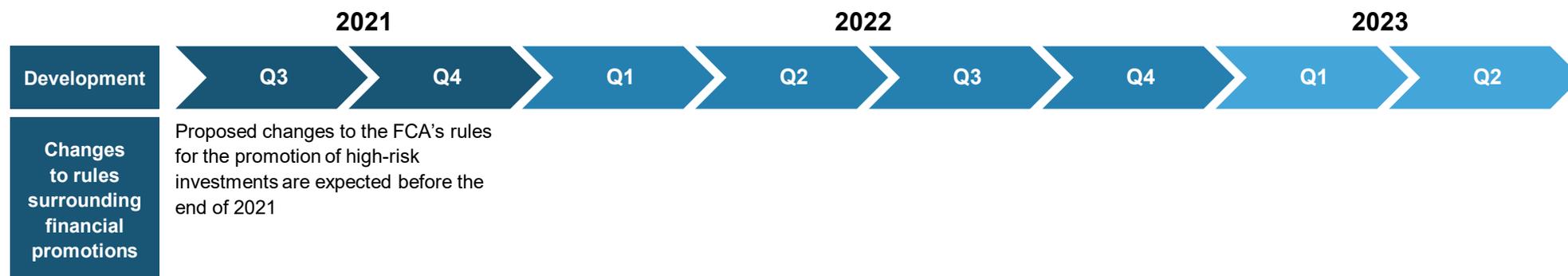
The background of the slide is a blurred image of a financial market display. It features a dark blue background with various numbers and symbols in a lighter blue, pixelated font. Several large, semi-transparent triangles are overlaid on the image: a red triangle pointing downwards in the upper center, and two green triangles pointing upwards, one in the lower center and another slightly above it. The overall aesthetic is that of a digital financial dashboard or stock market feed.

HORIZON SCANNER

B. UK DEVELOPMENTS

III. CROSS-SECTORAL DEVELOPMENTS

CHANGES TO RULES SURROUNDING FINANCIAL PROMOTIONS



Changes to rules surrounding financial promotions

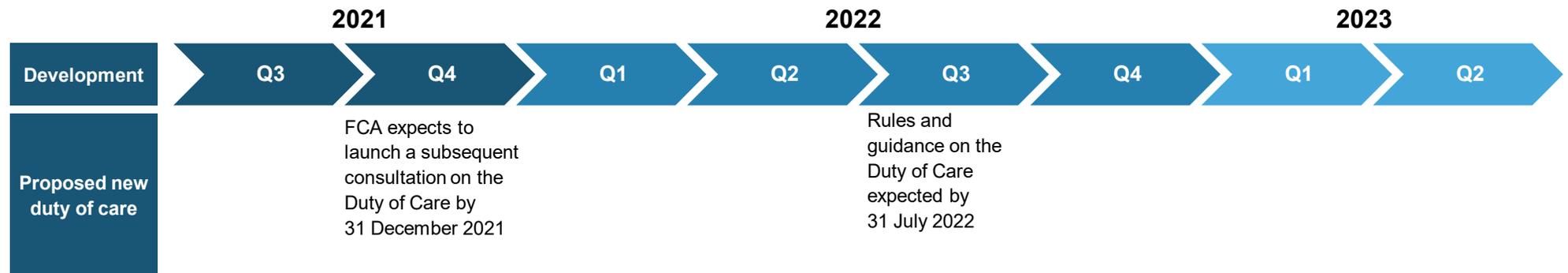
In July 2020, HM Treasury issued a consultation on the regulatory framework for approval of financial promotions. In the consultation, the government proposed to establish a regulatory gateway through which a firm must pass before it is able to approve financial promotions issued by unauthorised firms.

Separately, in April 2021 the FCA issued a discussion paper on strengthening the rules for the financial promotion of high-risk investments (including non-mainstream pooled investments, e.g. unregulated collective investment schemes).

What's on the horizon?

- The government has stated, in response to HM Treasury's consultation on the regulatory framework for approval of financial promotions, that it intends to bring forward legislation to implement a regulatory gateway through which a firm must pass before it is able to approval financial promotions issued by unauthorised firms 'when parliamentary time allows'.
- The FCA expects to make proposals for changes to its rules surrounding the promotion of high-risk investments by the end of 2021.

PROPOSED NEW DUTY OF CARE



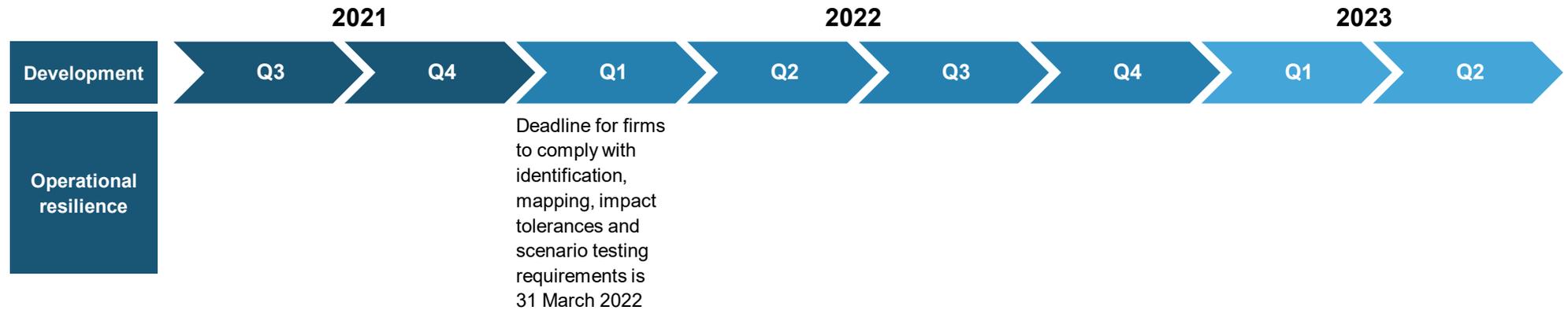
Proposed new duty of care

On 14 May 2021, the FCA published a consultation paper proposing to introduce a new ‘Consumer Duty’. The FCA states that the purpose of the new Consumer Duty would be to set higher expectations for the standard of care that firms provide to consumers. The Consumer Duty would consist of a package of measures, comprised of a new ‘Consumer Principle’ supported by rules and outcomes. The Consumer Duty would apply to products and services sold to retail clients and would extend to firms that are involved in the manufacture or supply of products and services to retail clients even if they do not have a direct relationship with the end customer.

What’s on the horizon?

- The FCA expects to launch a subsequent consultation on proposed rules and guidance by 31 December 2021.
- The FCA expects to make new rules by 31 July 2022.

OPERATIONAL RESILIENCE



Operational resilience

On 29 March 2021, the FCA and PRA each published policy statements setting out their final rules on how regulated firms are to approach their operational resilience arrangements. These statements followed consultation papers issued in December 2019.

Firms in scope will be required to:

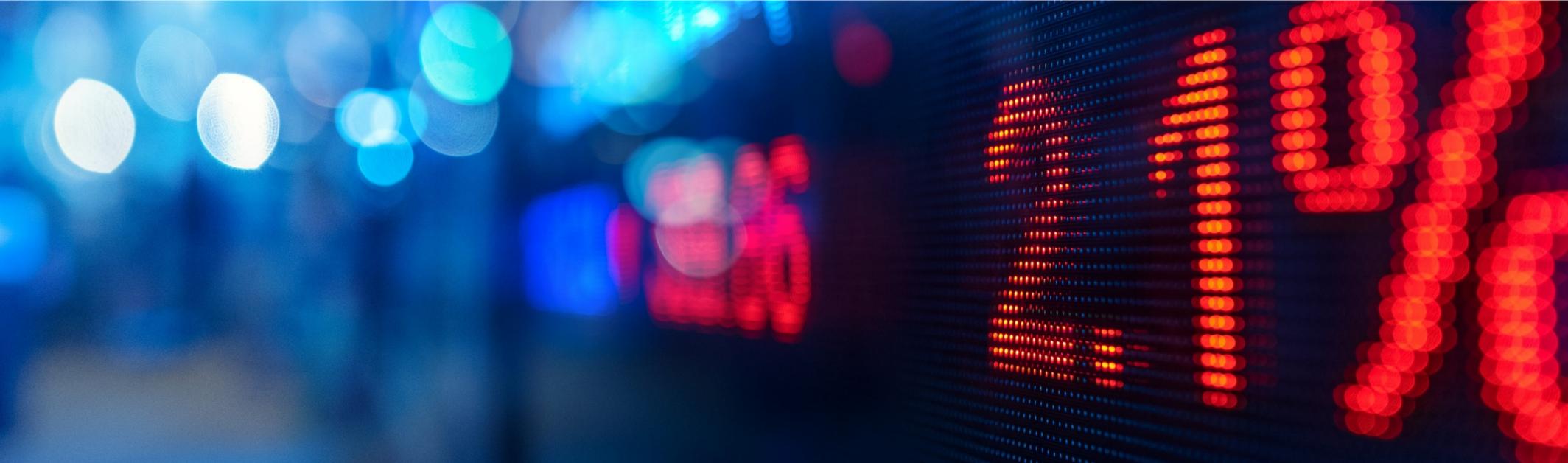
- identify and map important business services;
- set impact tolerances;
- conduct scenario testing;
- produce self-assessments; and
- ensure appropriate governance arrangements.

What's on the horizon?

- Firms will have until 31 March 2022 to identify and map important business services, set impact tolerances for disruptions to these services and commence a programme of scenario testing.
- Firms will then have until 31 March 2025 to implement strategies, processes, and systems that enable them to address risks to their ability to remain within their impact tolerance for each important business service in the event of a severe but plausible disruption.



GLOSSARY



GLOSSARY

Term	Definition
AIF	Alternative investment fund
AIFM	Alternative investment fund manager
AIFMD	Alternative Investment Fund Managers Directive (Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EU and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010)
AIFMD2	The anticipated revised version of the AIFMD
AML	Anti-money laundering
Commission	The European Commission
CBDF	Cross-border Distribution of Funds Directive and Regulation (Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings and Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014)
CSD	Central securities depository
CSDR	Central Securities Depositories Regulation (Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012)
CSMAD	Criminal Sanctions for Market Abuse Directive (Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse)
CTF	Counter-terrorist financing
EBA	European Banking Authority

GLOSSARY

(CONTINUED)

Term	Definition
ELTIF	European long-term investment fund
ELTIF Regulation	European Long-Term Investment Fund Regulation (Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds)
EMIR	European Market Infrastructure Regulation (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories)
ESAs	European Supervisory Authorities
ESG	Environmental, social and governance
ESMA	European Securities and Markets Authority
ETF	Exchange-traded fund
EuSEF	European social entrepreneurship fund
EuSEF Regulation	European Social Entrepreneurship Fund Regulation (Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds)
EuVECA	European venture capital fund
EuVECA Regulation	European Venture Capital Fund Regulation (Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds)
FCA	The UK's Financial Conduct Authority
IFD	Investment Firms Directive (Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU)

GLOSSARY

(CONTINUED)

Term	Definition
IFR	Investment Firms Regulation (Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014)
Insurance Distribution Directive	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)
ITS	Implementing Technical Standards
KID	Key information document
LEI	Legal entity identifier
LTAF	Long-term asset fund
MAR	Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC)
MiFID2	Second Markets in Financial Instruments Directive (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU)
MLD4	Fourth Money Laundering Directive (Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC)

GLOSSARY

(CONTINUED)

Term	Definition
MLD5	Fifth Money Laundering Directive (Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU)
MMF	Money market fund
MMF Regulation	The Money Market Funds Regulation (Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds)
PRA	The UK's Prudential Regulation Authority
PRIIPs	Packaged retail and insurance-based investment products
PRIIPs Regulation	The Packaged Retail and Insurance-based Investment Products Regulation (Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products)
RTS	Regulatory Technical Standards
SFDR	Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector)
SFTR	Securities Financing Transactions Regulations (Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012)
Solvency II	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)
SRD2	Second Shareholder Rights Directive (Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement)

GLOSSARY

(CONTINUED)

Term	Definition
SREP	Supervisory Review and Evaluation Process
Taxonomy Regulation	Taxonomy Regulation (Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088)
UCITS	Undertaking for collective investment in transferable securities
UCITS V	Fifth Directive on Undertakings for Collective Investment in Transferable Securities (Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions)

C L I F F O R D
C H A N C E

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2021

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

WWW.CLIFFORDCHANCE.COM