15/07/2020

*The Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**") brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.SIFMA AMG.org/amg.*

Question 5 additional comments:

SIFMA AMG supports the overall policy aims of the European Green Deal, and recognises the need for action to support the transition to a more sustainable economy.

SIFMA AMG would, however, make two observations in relation to encouraging investors to engage with companies conducting environmentally harmful activities.

First, we believe it is critical that steps are taken to encourage corporates to disclose robust, comparable and reliable data to facilitate engagement with asset managers and investors. At present corporate disclosures of environmental data vary significantly in terms of detail and content, rendering the identification of environmentally harmful activities and engagement difficult for investors. It is the view of the SIFMA AMG that the identification of such activities should be undertaken by the relevant companies themselves (who are best placed to assess the nature of their business operations and their associated environmental impact), rather than on external investors.

Secondly, we would advocate that any regulation requiring greater engagement from investors is brought in gradually, and the detail of any such regulation is fully consulted on. The SIFMA AMG recalls that asset managers are already subject to various regulatory initiatives aimed at promoting greater shareholder engagement, for example the recently introduced obligations arising under the Second Shareholder Rights Directive ("**SRD II**") and the obligation to monitor and mitigate principal adverse impacts in the upcoming Sustainable Finance Disclosure Regulation. In some jurisdictions, voluntary codes set out further objectives in relation to shareholder engagement for asset managers, including in relation to ESG (e.g. the UK Stewardship Code 2020). We therefore believe that any further requirements should be introduced in a manner which is proportionate, targeted, consistent with existing regulatory initiatives, provides flexibility and leaves sufficient time for implementation and fully takes into account pre-existing regulatory and soft law initiatives.

Additionally, SIFMA AMG thinks that further reforms are unnecessary to discourage investors from financing environmentally harmful activities. Prescriptive rules / restrictions will increase the risk of "stranded" investments / companies (which will automatically be devalued to the detriment of their long term / remaining shareholders), will make it difficult for companies to generate financing to support their transition from "brown" to "green" and will also close off access to companies in most non-EU jurisdictions (where the scale of climate change / ESG reform is not moving as fast as in Europe). In our view, existing stewardship rules in SRD II and the upcoming Sustainable Finance Disclosure and Taxonomy Regulations with their concepts of do no significant harm and principal adverse impacts sufficiently address the policy aims of the European Commission in this regard.

Question 6 additional comments:

<u>Challenges</u>

1. The challenge for investors in obtaining access to robust, reliable and comparable ESG data

Investing in a way which takes environmental and other ESG considerations into account is already a priority for many of the members of SIFMA AMG, both due to the desire among an increasing portion of the investment community to invest in a way which promotes ESG outcomes and the need to minimise climate transition risks to investors' portfolios. A significant challenge commonly encountered by members of the SIFMA AMG is the difficulty of obtaining robust, reliable and comparable ESG data on investee companies (either directly or from third-party data providers). Even extensive engagement with investee companies does not always produce this data and SIFMA AMG members are not always able to require its disclosure. SIFMA AMG is therefore strongly supportive of regulatory initiatives aimed at facilitating access to such data (such as the European Commission's review of the Non-Financial Reporting Directive) and would stress that any introduction of ESG obligations aimed at investors will only prove effective should such data first become reliably available. As only EU-27 companies will be in scope of any reforms introduced by the EU, the challenge will however persist with non-EU investee companies and data providers.

2. Ensuring that ESG compliance requirements are calibrated so as to be capable of driving meaningful change and not become merely a compliance burden for firms or lead to "information overload" for investors

SIFMA AMG notes that regulatory initiatives over recent years (e.g. MiFID II) have involved the disclosure of increasing amounts of information to clients of regulated asset management firms, as well as the production and disclosure of increasing numbers of reports. It has been well documented that such regulatory changes have entailed significant compliance costs for firms and that the increased disclosure of information has not in all cases been useful to clients, particularly in wholesale markets. SIFMA AMG believes that ensuring that proposed regulatory initiatives appropriately balance the pursuit of the EU's ESG-related goals against the risk of over-burdening asset managers and investors with reporting or disclosure obligations represents a significant challenge and should be a key focus of the European authorities when formulating and consulting on policy proposals. It will be important to ensure that the level of prescription associated with Level 2 disclosures supports the Level 1 aim of ensuring that investors are provided with clear information which assists with the evaluation of ESG considerations. An approach which is too detailed or prescriptive could undermine this by causing corporates to invest significant time identifying very granular qualitative information, rather than consider the usefulness of their disclosures and a clear articulation of their long term ESG strategy to investors

3. The EC reforms are focussed mainly on the buy-side financial sector and ignore the broader picture – SIFMA AMG is broadly supportive of the Commission's objectives to embed sustainability within the financial sector. However, the reforms proposed to date largely apply to regulated buy-side investors and do not apply to corporates directly or the sell-side when offering products within Europe (other than the limited MiFID II amendments on product governance and suitability, and the proposed EU green bond standards). The Commission's initiatives therefore place the burden largely on the buy-side to drive sustainability reform in the financial sector. To be effective, however, they need to directly capture other market participants as well. The buy-side only focus also poses a particular challenge for smaller asset managers who will find it harder to obtain the relevant ESG information from corporates/the sell side (owing to the disparity in bargaining power).

Question 10 additional comments:

We have indicated "No" in our response to Question 10. SIFMA AMG would like to stress that absent reliable and comprehensive ESG data being made readily available by corporates (both within the EU and outside), it is not clear on what basis institutional investors would be able to effectively and accurately estimate the temperature scenario financed by their portfolios. Proceeding with such a mandatory requirement in the absence of such data could result in inaccurate disclosures being made to the market, which would severely limit their usefulness and comparability, and also increase liability / litigation risk for the disclosing firms. Imposing such a mandatory requirement could also be very disproportionate / restrictive for smaller financial institutions.

Question 29 additional comments:

SIFMA AMG would caution against the creation of labels and believe that applying such labels to investment funds could have unintended consequences, including vague or unclear fund names (since funds may change their names to reflect the label) and the elimination of entrepreneurial efforts that could benefit investors since the introduction of labels with mandatory characteristics could force funds to standardize investment approaches to meet the label’s criteria. SIFMA AMG strongly believes that investors should be offered freedom of choice in relation to the investment strategies employed by the funds into which they invest, and would therefore caution against the introduction of labels which might have the effect of standardizing or limiting the strategies employed by the ESG funds available in the market.

Additionally, we expect that EU labels would entail compliance with a strict methodology akin to the Taxonomy standards – which as we noted above, are pitched at such a high level as to be aspirational (particularly in the absence of an effective ESG framework and data sources within the market). Additionally, the labels may limit firms to the use of ESG objectives covered by the Taxonomy (whereas, as noted by the Commission as well, ESG is much broader in scope and the market should be able to divert investment into E, S or G factors not covered by the Taxonomy). Accordingly, we would discourage the use of similar methodologies to be put in place for labelling funds and would instead encourage the Commission to first see how the Taxonomy Regulation develops in practice.

Additionally, SIFMA AMG considers that the reforms introduced by the Sustainable Finance Disclosure Regulation achieve a number of the underlying policy aims that the Commission is concerned with here, as they will require detailed disclosures’ on the products sustainability aims and credentials and allow investors to draw their own conclusions. Additionally, the MiFID II product governance requirements will set out a clear target market for such funds. We are therefore not in favour of any labels being established for funds within Europe.

SIFMA AMG also queries the utility of such labels for investors – various voluntary labels exist in individual member states today (often issued by private licensing/benchmark companies, with differing standards and generally not third party audited) leading to fragmentation and increasing numbers of “stickers” on fund prospectuses. SIFMA AMG would not be supportive of measures which would further support this trend, and instead would reiterate that the focus should be on clear, understandable disclosures which permit investors to make informed investment choices.

Question 40 additional comments:

Given the difficulty involved in obtaining comparable and reliable data in relation to ESG matters, SIFMA AMG would be opposed to linking a mandatory share of variable remuneration to non-financial performance, for either corporates or financial institutions.

Question 83 additional comments:

We consider that the difficulties in setting up such a taxonomy comprehensively and the risk that it is not kept up to date on a real time basis will far outweigh any benefits” to our additional information document.

Question 91 additional comments:

As SIFMA AMG has stressed in earlier responses to questions in this consultation, at present there is an absence of sufficient ESG data that would permit asset managers to accurately assess the negative externalities of investment decisions. SIFMA AMG would also note that asset managers will already typically owe fiduciary duties to their investors, or duties to act in the best interests of investors. It is not clear how an overarching duty to consider negative externalities would interact with those existing duties and would end up confusing the industry, e.g. would an asset manager be required to favour investments that may generate lower returns (but have strong ESG credentials) where other higher returning investments are available (but where there may be negative externalities)? The existing obligations also rightly require asset managers to consider all relevant interests of their clients – prioritising adverse sustainability impacts over the other best interests of their client could in fact prevent asset managers from acting in their clients' best interests and expose them to undue liability / risks.

SIFMA AMG would also note that investors are today able to negotiate to set investment guidelines and/or parameters for asset managers to follow, and therefore investors who are concerned to avoid investments generating negative externalities are able to instruct their asset managers accordingly. SIFMA AMG would therefore view regulatory intervention in this area as unnecessary and potentially harmful to the interests of investors.

Question 102 additional comments:

SIFMA AMG believes that prudent investors providing financing for long-term projects are already naturally incentivised (by the risk of negative impacts on returns) to consider the risks posed by environmental and climate factors to the projects they finance where relevant. Additionally they are obliged by existing MiFID II, AIFMD, CRR etc. rules to identify, manage and mitigate all applicable risks including ESG risks in their business and investments – and we note that these rules will further be enhanced at an EU level to specifically embed ESG considerations. Accordingly, SIFMA AMG considers that further rules in this area are unnecessary.