

FCA Proposes New Rules on Climate-Related Disclosures by Listed Issuers

The FCA is moving towards formalising issuers' compliance with the TCFD recommendations.

Key Points:

- The FCA is proposing that premium listed commercial companies will need to disclose how they have implemented the recommendations of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures, on a comply or explain basis.
- The FCA is also proposing new guidance regarding how issuers should comply with existing obligations that may require them to make climate-related disclosures.
- The new disclosure rule, if implemented, would take effect for accounting periods beginning on or after 1 January 2021.
- Comments are requested by 5 June 2020; the FCA plans to publish its final rules later in the year.

On 6 March 2020, the FCA published a [Consultation Paper](#) (CP20/3) on its proposals to enhance climate-related disclosures by listed issuers, and to clarify existing disclosure obligations. This is one of the key next steps in the FCA's work on climate change and green finance, as outlined in its October 2019 [Feedback Statement](#).

The FCA is proposing to introduce a new rule for premium listed commercial companies, requiring them to state whether they comply with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD) and the supporting recommended disclosures, to explain any non-compliance, and to explain where any such disclosures can be found in their reporting documentation. The FCA is not proposing to make commercial companies with a standard listing, as well as open ended / closed ended listed funds, subject to the new rule.

The FCA is also proposing to set out new guidance on existing obligations that already require all listed issuers to disclose information on climate-related and wider environmental, social, and governance (ESG) matters under certain circumstances. The purpose of the new guidance will be to clarify the FCA's expectations in relation to these current requirements.

Background

Green finance is gaining ever more traction, with various global, EU, and UK measures afoot. While many of the first initiatives in this area took the form of non-binding global standards, regulators in the EU and the UK are now starting to set out concrete policy changes underpinned by binding regulatory requirements. These take the form of both stand-alone initiatives, and measures that promote or mandate the adoption of existing voluntary standards. (See [Sustainable Finance and Climate Change Risk in Financial Services](#))

The TCFD recommendations were published in June 2017, and set out information that issuers should disclose to enable investors, lenders, and insurance underwriters to better understand how they oversee and manage climate-related financial risk. For disclosures in this area to be effective, they need to be sufficiently granular, consistent, and comparable across different issuers. The TCFD recommendations therefore aim to set the bar for such disclosures and promote consistent standards.

Overview of the TCFD recommendations

The TCFD recommendations focus on four key themes:

- **Governance:** Disclose the organisation's governance around climate-related risks and opportunities.
- **Strategy:** Disclose the actual and potential impacts of climate-related risks and opportunities on the organisation's businesses, strategy, and financial planning where such information is material.
- **Risk Management:** Disclose how the organisation identifies, assesses, and manages climate-related risks.
- **Metrics and Targets:** Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.

The TCFD has also produced 11 specific recommended disclosures across these themes that issuers should include in their financial filings, along with guidance that provides context and suggestions for how to develop the recommended disclosures.

Further, the TCFD has produced a set of Fundamental Principles for Effective Disclosure, which provide general guidance on the approach to disclosures (for example, disclosures should be specific and complete, disclosures should be consistent over time).

The recommendations have emerged as the leading framework for climate change reporting, and there has been significant buy-in for the recommendations both in the UK and internationally. The UK government has already announced in its Green Finance Strategy that it expects all listed issuers to follow the TCFD recommendations by 2022. Therefore, it comes as no surprise that the FCA is taking formal steps to help accelerate widespread adoption.

The FCA explains that greater transparency concerning how listed issuers may be impacted by climate-related risks and opportunities will help to ensure that securities are more accurately priced, playing into the FCA's objective of ensuring that markets function well. According to the FCA, this in turn will allow investors to allocate capital more effectively and will help accelerate the transition to a greener economy.

Feedback received by the FCA to its initial discussion on green finance indicated that market participants would like to see a more consistent approach to the disclosure of climate-related risks, and that the TCFD recommendations already provide a helpful and widely accepted framework for doing so. Consequently, the FCA considers that basing its rules upon this existing framework is likely to be the most effective solution.

Proposed disclosure rule

The FCA is proposing that the new disclosure rule will apply to premium listed commercial companies, including sovereign controlled companies (those subject to chapters 9 and 21 of the Listing Rules). The FCA states that this will capture 480 issuers out of 1,140 admitted to trading on the Main Market of the London Stock Exchange. The FCA stresses that the new rule would apply to companies by virtue of their listed status and therefore would only apply to financial services firms to the extent that they are listed.

Specifically, premium listed commercial companies would be required 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
- If they have not made disclosures consistent with some or all of the TCFD's recommendations or have included some or all of the disclosures in a document other than their annual financial report, an explanation as to why
- Where in their annual financial report (or other relevant document) the disclosures can be found

The FCA notes that disclosures relating to governance and risk management should always be included in annual filings, regardless of any materiality assessment. Consequently, the FCA expects that non-disclosure of these elements would occur only on an exceptional basis. The FCA does not plan to include any guidance setting out this view, so premium listed commercial companies should note the FCA's expectations. The FCA also does not propose that climate-related disclosures should be subject to verification by auditors at this stage, although it does envisage that verification of such disclosures will be required in time. However, the FCA is consulting on requiring sponsors (under the Listing Rules) to include a premium listed commercial company's procedures to comply with the new rule as part of their sponsor declarations in relation to directors' understanding of the Listing Rules and the premium listed commercial company's established procedures (on an IPO and a significant transaction).

The FCA intends to reference the June 2017 version of the TCFD recommendations in the new rule, and states that it would consider and consult on whether to reference any future versions should the recommendations be revised in future.

Many of the TCFD recommendations and disclosures are high-level in nature, and so the FCA plans to reference relevant TCFD guidance materials. The FCA is not proposing to develop its own guidance at this stage, as it does not wish to deviate from the global standard and does not want to pre-empt further guidance produced by the TCFD. However, the FCA states that it may add further detail to the new Handbook provisions over time.

The FCA also highlights that the TCFD sets out a specific approach for asset managers to take to their disclosures, considering both the obligations owed to their shareholders and those owed to their clients. However, for the time being the FCA expects those asset managers caught by the new rule (by virtue of being a premium listed commercial company) only to comply with the new rule in the same way as other

premium listed commercial companies. While the FCA encourages asset managers to make disclosures in line with the TCFD framework for asset managers, this is not mandatory, and the FCA plans to clarify its approach to disclosures by asset managers (in their capacity as authorised firms, rather than premium listed commercial companies) separately.

Proposed new guidance

The FCA is also consulting on new guidance in the form of a new Technical Note regarding existing obligations that already require issuers and others to make disclosures regarding climate-related matters, usually when such matters have material financial implications. The Technical Note will provide guidance on existing provisions in the Listing Rules, Prospectus Regulation, Disclosure and Transparency Rules, and Market Abuse Regulation (MAR). The FCA stresses that this will not introduce any new obligations, but rather will clarify how the FCA expects issuers to apply the existing requirements.

The guidance focuses on explaining how ESG matters might be relevant to particular elements of the above rules, and how market participants might approach determining materiality in this context. For example, the draft Technical Note explains that in order to comply with the requirement under Article 17 of MAR to disclose inside information that directly concerns them, an issuer needs to consider any information that relates to climate change and other ESG matters. An issuer also needs to consider whether any disclosures concerning climate change or other ESG matters could breach the prohibition on market manipulation if, for example, they are inaccurate and therefore give false or misleading impressions regarding a financial instrument.

Next steps

The FCA is proposing that the new disclosure rule would take effect for accounting periods beginning on or after 1 January 2021. The FCA states that it will consider consulting on extending this rule to a wider scope of issuers in future, including standard-listed issuers. The new guidance in the Technical Note will apply once finalised. Comments are requested by 5 June 2020, and the FCA plans to publish final rules and the final Technical Note “later” in 2020.

The FCA states that it is not planning to mandate disclosures in line with TCFD standards at this stage, as it does not want to set binding requirements that may not yet be fully achievable, particularly given that directors may be liable for the disclosures made by their companies. The FCA also does not wish to be overly prescriptive, given that standards for disclosure and modelling are still evolving. However, it hopes that introducing a comply or explain approach will encourage issuers to engage with the question of what climate-related disclosures they can and should be making.

According to the FCA, these proposals are a first step towards adoption of the TCFD recommendations more widely within its rules, both as they apply to listed issuers and as they apply to financial services firms more broadly. The FCA expects to consult in future on both strengthening its expectations as regards compliance with the TCFD recommendations, and in terms of expanding the scope of its requirements. The FCA states that it is also currently considering how best to enhance climate-related disclosures by regulated firms, in particular asset managers and life insurers, and so financial services firms should be prepared for further developments in this area.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

M. Ryan Benedict

ryan.benedict@lw.com
+44.20.7710.4669
London and Milan

Stuart Davis

stuart.davis@lw.com
+44.20.7710.1821
London

Lene Malthasen

lene.malthasen@lw.com
+44.20.7710.1186
London

David Berman

david.berman@lw.com
+44.20.7710.3080
London

Carl Fernandes

carl.fernandes@lw.com
+44.20.7710.4777
London

Anna Lewis-Martinez

Knowledge Management Lawyer
anna.lewis-martinez@lw.com
+44.20.7710.1025
London

Connor Cahalane

Knowledge Management Lawyer
connor.cahalane@lw.com
+44.20.7710.4554
London

Nicola Higgs

nicola.higgs@lw.com
+44.20.7710.1154
London

Rob Moulton

rob.moulton@lw.com
+44.20.7710.4523
London

Charlotte Collins

Knowledge Management Lawyer
charlotte.collins@lw.com
+44.20.7710.1804
London

Chris Horton

chris.horton@lw.com
+44.020.7710.4539
London

Victoria Sander

victoria.sander@lw.com
+44.20.7710.5814
London

Paul Davies

paul.davies@lw.com
+44.20.7710.4664
London

James Inness

james.inness@lw.com
+44.020.7710.3019
London

Oliver Seiler

oliver.seiler@lw.com
+49.69.6062.6510
Frankfurt

You Might Also Be Interested In

[Sustainable Finance and Climate Change Risk in Financial Services](#)

[FCA Calls on Firms to Develop a Purposeful Culture](#)

[MiFID Refit — Commission Consults on Review of MiFID II Framework](#)

[AMF Proposals to Revive the Research Industry in France](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <https://www.sites.lwcommunicate.com/5/178/forms-english/subscribe.asp> to subscribe to the firm's global client mailings program.