Consultation response

AFME response to FCA CP 20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations

1 October 2020

The Association for Financial Markets in Europe (***AFME***) welcomes the opportunity to comment on the Financial Conduct Authority's (***FCA***) consultation entitled "Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations".

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Responses to questions in CP 20/3

AFME is responding only to questions 7, 13 and 14.

Question 7 - Do you agree that we should introduce the new rule on a 'comply or explain' basis? If not, what alternative approach would you prefer, and why*?*

We have reviewed the City of London Law Society's response to CP 20/3 and agree with its response to this question.

Question 13 - Do you agree that the FCA should not require third-party assurance of issuers' climate-related disclosures at this time? More generally, we welcome views of the role of assurance for ciliate-related disclosures?

See response to Question 14 below.

Question 14 - Do you have any feedback on the interactions between our proposed rule and the role of sponsors in assisting premium listed issuers?

We note that the proposed rule (and therefore the question of the role of sponsors in assisting premium listed issuers) applies to climate change specifically, whereas the draft Technical Note applies to ESG more broadly. We agree with the suggestion in the "Clearly defined scope of disclosure" section of the City of London Law Society's response to this consultation that the market would benefit from additional clarity regarding the other ESG issues that the FCA is asking the issuers to consider. We also agree with the City of London Law Society that it would be helpful to cross reference applicable developments and industry standards, as a way of providing clarity, promoting consistency and comparability. This is particularly important as we note in our response below that ESG matters remain relatively new and evolving.

We note, as discussed in CP 20/3, that the existing rules relating to procedures, systems and controls (referred to collectively as "procedures") and those relating to disclosure already implicitly capture climate change to the extent relevant and/or material to an issuer and that, in the performance of sponsor services, sponsors have existing duties with respect to compliance by issuers with such rules.

We also note that the FCA has consulted on and published a series of Technical Notes[1] which provide guidance to sponsors on how they should approach their work in these areas. Such guidance has provided clarity and consistency in the performance by sponsors of their relevant duties.

There should be similar clarity and guidance on the role of, and services to be provided by, sponsors in connection with climate change including, in particular, in connection with the application of the proposed new rule. This is particularly important as, as acknowledged in CP 20/3 itself, this is a relatively new, evolving and rapidly developing area where there is no established body of precedent or practice from which to easily draw. We would strongly recommend the FCA publishing a Technical Note on how sponsors should approach their work in this area. We would be happy to engage with the FCA in formulating such guidance, which we suggest should cross-reference and be specified as supplemental to the Technical Notes mentioned in the paragraph above.

To assist, we would suggest that the FCA consider the following when developing such guidance:

- The existing rules and guidance acknowledge the importance of the sponsors' role but also acknowledge that sponsors are not experts at everything; sponsors are permitted to rely on the work of third parties provided that they appropriately use their own knowledge, judgement and expertise to review and challenge such work. Such third parties include auditors, reporting accountants and other experts (e.g. competent persons and valuers). Climate change is no different. We would expect third party experts to perform work with respect to, and ultimately provide assurance on, climate change related procedures and disclosures. We would observe that there is, at present, no general understanding or consensus amongst market participants as to what diligence work ought to be performed or what level of comfort ought to be provided; this is the subject of ongoing discussion and debate amongst market practitioners. Whilst in the future we would expect climate change assurance to be provided, we believe that the market should be given time to develop. We are therefore against introducing any mandatory requirement for assurance now, but would be supportive of the FCA proposing a timeframe within which the market should develop assurance standards.

- As noted above, the sponsor, in performing sponsor services, is required to use its expertise. Climate change is a relatively new and a complex subject matter, requiring specific expertise from specialists (as opposed to sponsors, who do not have such expertise). These specialists often reside in boutique firms and, increasingly, within reporting accountants. The outcome of the Brydon review, and the response of the accounting firms to it, may impact by whom and how such expertise is provided. Whilst sponsors will review and challenge the work performed by climate change experts, the nature and extent of their review and their ability to challenge will naturally be impacted by the complexity of climate change analysis and disclosures and the reliance sponsors will, therefore, place on climate change experts. Any assessment of the work undertaken by sponsors will need to reflect this dynamic.

[1] Please see the following February 2019 FCA Technical Notes (TNs): (i) TN on sponsors' obligations on financial position and prospects procedure (available here), (ii) TN on sponsors' obligations on established procedures (available here), (iii) TN on sponsors' obligations on no adverse impact(available here), and (iv) TN on sponsors' duty regarding directors of listed companies (available here).

- Unlike financial procedures and disclosures, which have evolved over time and are supported by a large body of audit and accounting standards and conventions, regulatory guidance and established market practices, climate change procedures and disclosures are relatively recent and, whilst there is a growing body of standards and guidelines, these are still developing. Until practice settles, there is considerable scope for differences of approach and changes in practice. Consequentially, the services performed by sponsors will likely change and adapt as the environment around them changes and adapts. The application of sponsor duties needs to accommodate this.

- We would encourage the accounting profession to explore how the work that they already perform regarding procedures and controls could be extended to accommodate climate change procedures and controls; in particular given that governance and risk management of climate change ought to be integrated into an issuer's overall governance and risk management procedures, systems and controls.

- We note that data included in issuer's disclosures is typically subject to some form of audit or verification. For example, financial information is verified by external or internal audit functions, mineral and resource data by competent persons and property valuations by valuers. Over time we would similarly expect a body of ESG "auditors" to emerge who would audit/verify climate change metrics and targets. As is currently the situation with respect to such other data, sponsors would in the future expect to be able to rely upon (on the basis currently set out in the technical notes) confirmations given by such persons regarding the accurate computation and extraction of such data. Such persons may be different from those providing assurance on governance and risk management.

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AFME contacts

Olu Oluwole, Manager, Equity Capital Markets and MiFID
Olu.Oluwole@afme.eu

Gary Simmons, Managing Director, Equity Capital Markets and High Yield
Gary.Simmons@afme.eu

Tonia Plakhotniuk, Associate Director, Policy division
Tonia.Plakhotniuk@afme.eu