Report

New in RegTech:

November 2023: ESG reporting and ratings, SEC's new reporting rules and 13D-G amendments

by:

Greg Hotaling
November 17, 2023

ESG Reporting Update: Waiting for the Other Shoe to Drop

The global investment community awaits significant changes to ESG regulation, across many areas. In the US — where the SEC recently finalized its Investment Company Names rule to further tackle deception in fund names including greenwashing – significant ESG reporting regimes for both issuers and investment firms were expected to be adopted in October but could be pushed back to 2024. (In the meantime, see our detailed analyses of these frameworks as proposed, here and here.)

Meanwhile in the EU, investment managers – who are just starting to get a grip on SFDR disclosures that began in earnest this year — are likely to face modified technical reporting standards for that regulation in the near term (proposed jointly by ESMA, EBA and EIOPA) as well as a substantial overhaul at the legislative level (as announced recently by the European Commission).

And in the UK — where financial firms began to report this year under the TCFD regime — the much-anticipated effective date for a significant and overlapping ESG reporting framework, SDR, has been delayed until Q4 2023.

As authorities put their finishing touches on these various new reporting rules, the time is now for compliance, operations and data departments across the financial sector to anticipate and prepare for them. (For, according to Murphy's Law, they will hit unprepared firms all at once, naturally).

- Greg Hotaling, Regulatory Content Manager at Confluence

"Since the Sustainable Finance Disclosures Regulation (SFDR) was proposed in 2018, a lot has changed in the world of sustainable finance. . . We want to know if our rules meet their needs and expectations, and if it is fit for purpose."

- Mairead McGuinness, Commissioner for Financial Services, Financial Stability and Capital Markets Union, 14 September 2023.

Compliance Dates Begin to Stack Up Under SEC's New Reporting Rules

With its packed rulemaking agenda, the SEC reminds us of one of its top priorities since the day that the agency was created in 1934: the investor. Let's take a look at a few of the recently adopted rules that impact reporting, which should feature strongly on the compliance calendars of investment firms.

First on the calendar among these particular rules are the amendments to Form PF (the template for private fund advisers that was adopted in the wake of the 2008 financial crisis, to help monitor systemic risk). Under the amendments, "event reporting" will be required of large hedge fund advisers starting on 11 December 2023. Meaning that events such as extraordinary investment losses, large withdrawal and redemption requests, and significant margin and default events will need to be disclosed within 72 hours. That same compliance date of 11 December 2023 will also require private equity fund advisers to begin reporting, on a quarterly basis, certain events including adviser-led secondary transactions, and investors' elections to remove a fund's general partner or terminate a fund's investment period. Then on 11 June 2024, large PE fund advisers will assume additional annual reporting obligations related to general partner or limited partner clawbacks.

Only two weeks after that, starting on 24 July 2024 the SEC's Tailored Shareholder Reporting rule will begin requiring open-end investment companies (mutual funds and ETFs) registered on Form N-1A to transmit "concise and visually engaging" annual and semi-annual reports to shareholders, with Inline XBRL tagging. Meanwhile certain in-depth information will move from these reports to websites. The SEC has estimated that this rule will impact 12,000 funds and ETFs, and 32,000 share classes.

Less than two months later, 14 September 2024 marks the first compliance period for new rules under the SEC's Private Fund Adviser Reforms. Private fund advisers with at least $1.5 billion in AUM would thenceforth need to comply with the provisions on adviser-led secondary transactions (applying to registered advisers only), preferential treatment, and restricted activities. Then starting on 14 March 2025, remaining obligations kick-in:

– registered private fund advisers' quarterly statements to investors, and audit requirements for their funds

– smaller advisers' (<1.5 billion AUM) compliance with the provisions on adviser-led secondary transactions, preferential treatment, and restricted activities)

These SEC initiatives, among others, should ultimately help the investor stay informed and engaged. But as always, the price is a compliance burden that affected firms must face in the near-term, particularly in their efforts to harness the necessary regulatory and reporting data. For a look at how this could play out in 2024 and beyond, see this interesting read by Confluence President and COO Todd Moyer on "Unstructured Data vs. Rising Regulation".

"Private funds today are ever more interconnected with our broader capital markets. They also nearly have tripled in size in the last decade. This makes visibility into these funds ever more important."

- SEC Press Release, 3 May 2023.

Beneficial ownership reporting modernized in the US, as the SEC adopts amendments to Regulation 13D-G

For filers of Schedule 13D or 13G, the SEC's adoption of amendments to "beneficial ownership" reporting rules is big news, impacting investors worldwide that hold at least 5% of issuers on US markets. The changes include stricter filing deadlines, cash-settled derivatives brought in-scope for holding calculations, new circumstances under which a "group" is bound by reporting obligations, and the required use of a structured, machine-readable data language for making filings.

Compliance dates vary depending on the particular requirement, which our Aspasia Latsi covers in more detail in her latest blog on these amendments. For background on how firms qualify for 13G, and the current variety of deadlines involved, see our Greg Hotaling's video "When Opposites Attract: Valentine's Day and Eligible 13G Filers".

"Frankly, these deadlines from half a century ago feel antiquated. In our fast-paced markets, it shouldn't take 10 days for the public to learn about an attempt to change or influence control of a public company."

- Gary Gensler, SEC Chair, 10 October 2023.

ESG Ratings Face the Music

The ESG ratings business is facing broad regulation for the first time, stemming from well-established concerns about that industry. In the EU, the Commission's proposed regime for ESG ratings providers currently faces scrutiny from the European Parliament's Committee on Economic and Monetary Affairs, which contends that the new rules must go further (notably by ensuring that ESG ratings reflect societal impacts and not just a rated company's financial bottom line).

Meanwhile in the UK, HM Treasury earlier this year proposed a framework for regulating ESG ratings providers, which likewise awaits finalization and eventual entry into force.

A side note about company ESG data in the EU, for investment firms that rely on it. The Commission has recently redefined the sizes of companies, for their reporting purposes including under CSRD. In essence, more companies subject to the Accounting Directive (and its amending Directive the CSRD) will be classified as micro-, small- and medium-sized. Which means that more companies will benefit from the less onerous reporting obligations for those smaller firms under CSRD. For investment firms, this will likely mean having less ESG data about some of those companies, than perhaps they were anticipating. The redefined size thresholds (based on companies' net turnover and balance sheet numbers) must apply across the EU to reporting for financial years that start in 2024. But note that any EU country may apply them a year earlier if it chooses (reporting for financial years that start in 2023).

Financial firms relying on ESG ratings and data will benefit from analyzing these various developments as they come to fruition in the EU and the UK.

"The scores are not designed to measure corporate performance on carbon emissions or pollution. Instead, the raters measure how well a company is managing environmental, social and governance risks to their own bottom line..."

- Kenza Bryan, Financial Times, 3 October 2023.

About Confluence

Confluence provides regulatory and investor communications solutions powered by data and analytics that make it easier to create, share and operationalize mission-critical reporting essential to the investment management industry.

Contact us here and explore our solutions here. Don't miss out on future monthly editions; subscribe to our newsletter!

Contact Us

confluence.com
info@confluence.com
+1 412 802 8632
@Confluence_News
@confluence-technologies