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Central Bank of Ireland
Confirms Fast-Track
Process for SFDR Updates

November 2020

On 4 November 2020, the Central Bank of Ireland (“**Central Bank**”) advised Irish Funds that it will put in place a fast-track process to address the volume of prospectus updates due to be filed under the EU Sustainable Finance Disclosure Regulation (“**SFDR**”) by 10 March 2021.

Background – What is the SFDR?

The SFDR requires alternative investment fund managers (“**AIFMs**”) and UCITS management companies (amongst others, but for the purposes of this note, we focus on investment funds and their managers) to consider and disclose in a consistent and harmonised manner how ESG factors are adopted in their decision making processes. It aims to harmonise disclosure standards among EU member states to facilitate the comparability of different financial products and services. Many of the provisions of the SFDR apply to all asset managers, whether or not they have an express ESG or sustainability focus. The SFDR applies different requirements and implementation timeframes in respect of disclosures on websites, in prospectuses and in periodic reports. Certain website and pre-contractual disclosures are required to be made by 10 March 2021. Further detail on the SFDR requirements is available in our briefing note “Sustainable Finance and Investment Funds”, available [here](#).

Delay to Level 2

Under the SFDR, various level 2 measures or regulatory technical standards (“**RTS**”) are mandated in order to provide further detail on the content, methodologies and presentation of sustainability-related disclosures. The European Supervisory Authorities (“**ESAs**”) consulted on these RTS in April 2020. The consultation closed on 1 September 2020, but the ESAs have confirmed that, partly due to disruption caused by the COVID-19 pandemic, the final RTS will not be available by the 31 December 2020 deadline set out in the SFDR. It is likely that they will be available in January 2021. This presented a very challenging timeline for fund managers to comply with the 10 March 2021 deadline.

On 20 October 2020, the European Commission (“**Commission**”) **wrote** to the ESAs stating that the RTS would not apply on 10 March 2021 but would apply “*at a later stage*”. Managers will, however, be required to comply with the level 1 SFDR requirements on a high level, principled basis from the March 2021 deadline.

The Central Bank’s Response

In light of the Commission’s letter and following a submission from Irish Funds to the Central Bank requesting that managers be permitted to self-certify compliance with the SFDR level 1 requirements, the Central Bank has confirmed it will provide a fast-track filing process for prospectus updates based on the level 1 SFDR text. While the details of the fast-track process have yet to be finalised, the known elements of the process are set out below.

- UCITS management companies / AIFMs will be required to certify their compliance with the SFDR.
- It is expected that the disclosures will be permitted to be made either in a stand-alone addendum or as an integral part of the prospectus or supplement, but this is to be confirmed.
- As there will be a substantial number of offering documents to be updated by 10 March 2021, the Central Bank is likely to impose a timetable for filing, so that they can be received in an orderly fashion, so managers may have to make their filing in advance of the 10 March 2021 deadline.
- At this point the Central Bank does not anticipate updating its application forms to reflect SFDR level 1, albeit a specific application form may form part of the fast-track.
- Prospectus updates limited to SFDR compliance will not be subject to post authorisation review by the Central Bank under this process.

Once the RTS become applicable (currently expected to be 1 January 2022), the Central Bank will review prospectus updates and anticipates that the quality of the disclosures and the implementation of the SFDR will increase over time. The date of application of the RTS is uncertain at this time, but, as noted, the general market sense is that the RTS will formally apply from 1 January 2022.

A Note on Fund Classification

The SFDR requires additional disclosures to be made by funds which promote environmental or social characteristics (Article 8, “Light Green” funds) and funds which have sustainable investment as their objective (Article 9, “Dark Green” funds). Managers will therefore have to consider their portfolios and assess whether their funds come within these categories.

In a [speech](#) delivered by Gerry Cross, Director of Financial Regulation at the Central Bank, at Climate Finance Week, the Central Bank clarified that the decision regarding this classification will rest with the relevant manager. The same applies with respect to the disclosures required under article 6 and article 7 which are applicable to all funds – the responsibility rests with the relevant fund manager to ensure that their disclosures are appropriate to their particular funds. The Central Bank may review classifications made by managers at a later stage.

As the Central Bank wishes to pursue a convergence approach with the ESAs, it has confirmed that it does not intend to issue any guidance regarding product classification or any other aspect of SFDR at this time.

Next Steps

A formal communication from the Central Bank on the fast-track filing process is expected in the coming weeks. Matheson partner and head of our Asset Management and Investment Funds practice, Tara Doyle, chairs the Irish Funds working group which drafted the submission to the Central Bank relating to the update process and continues to engage with the Central Bank. We will keep our clients and contacts updated as to further developments.

Please get in touch with your usual Asset Management and Investment Funds contact or any of the contacts listed in this publication should you required further information in relation to the material referred to in this briefing note.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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