

Sustainable Finance Update

There are just four months to prepare for 10 March 2021, the date upon which the Sustainable Finance Disclosure Regulation (“SFDR”) will apply throughout the European Union (“EU”). While the European Commission (“Commission”) has responded to industry concerns by confirming that the regulatory technical standards (“RTS”) mandated under the SFDR will have a delayed application date, there are various practical and operational difficulties in relation to this staggered timetable and the need for all prospectuses to be amended by the March deadline.

ESAs Survey on Templates for Pre-contractual and Periodic Disclosures

On 21 September 2020, the ESAs published a [survey](#) seeking public feedback on presentational aspects of product templates for Article 8 (light green) and Article 9 (dark green) funds under the SFDR. The survey was open for comments until 16 October 2020.

Under the SFDR, Article 8 funds are those which promote environmental and / or social characteristics while Article 9 funds are those with a sustainable investment objective, as defined in the SFDR. The ESAs propose to standardise the disclosure of information for these funds by providing mandatory templates. The templates are intended to be included in existing pre-contractual and periodic disclosures provided by AIFMs and UCITS.

The consultation includes three illustrative mock-ups of pre-contractual and periodic disclosure templates for Article 8 funds (specifically, for a fictitious ETF). The ESAs state that the templates for Article 9 funds are very similar and have not been included in the survey. The focus of the ESAs is on the presentational aspects of the templates (eg, whether to include icons or not) as the content of the templates already reflects the draft RTS that were addressed in a consultation on the content, methodologies and presentation of SFDR disclosures that ran from 23 April to 1 September 2020.

The illustrative mock-ups may be accessed here:

[Illustrative mock-up 1 Pre-contractual Promoting E/S With Icons](#)

[Illustrative mock-up 2 Pre-contractual Promoting E/S Without Icons](#)

[Illustrative mock-up 3 Periodic Promoting E/S With Icons](#)

The final content of the templates is subject to the outcome of a concurrent consumer testing exercise and the ESA’s final report on draft RTS under the SFDR.

Irish Funds Submission to the Central Bank on Implementation

On 21 September 2020, Irish Funds, the industry representative association, made a submission to the Central Bank of Ireland (“Central Bank”) in relation to the implementation and application of the EU sustainable finance regime in Ireland. As several thousand Irish domiciled funds will be required to file post-authorisation submissions of updated prospectus documentation with the Central Bank ahead of the 10 March 2021 deadline, Irish Funds has proposed that SFDR-related prospectus updates to UCITS funds be made by way of addendum or supplement and filed on a self-certification basis, similar to the approach in place for alternative investment funds (“AIFs”).

In its submission, Irish Funds suggested that compliance requirements dependent on the finalisation of the RTS would be deferred to 1 January 2022, to align with the application of the EU Taxonomy Regulation. Irish Funds expressed concern that any decision to defer level 2 requirements only and to insist on compliance with the level 1 text by 10 March 2021 would be of doubtful efficacy and utility. The association points out that a high level, principles-based approach absent the RTS would be the intended approach.

Finally, Irish Funds notes that the publication of updated application forms to address SFDR-related prospectus disclosure requirements would be welcome at the earliest opportunity as these will be instrumental in ensuring effective SFDR compliance planning.

European Commission Confirms Delay to SFDR Level 2

In a letter to the a number of industry associations dated 1 October 2020, the Commission confirmed that the application of the Level 2 RTS under the SFDR would be delayed. The Commission’s letter is in response to letters previously sent by trade associations to request a delay to the application of the SFDR.

The letter stated, “*The Regulatory Technical Standards will become applicable at a later stage*”. The Commission does not indicate a specific date. The Commission states that the level 1 regulation will apply from 10 March 2021, as planned. Industry is continuing to engage with the Commission and the Central Bank in relation to the practical and operational difficulties to which this will give rise.

Comment

While the Commission’s decision to defer the level 2 RTS may be seen in some quarters as good news in that it avoids a situation where industry would be required to comply with RTS by 10 March 2021 that would not in fact be finalised until April 2021 (the ESAs had previously indicated that this was the likely timetable to the Commission), the decision may in fact add to the level of updating of fund documentation required to be carried out, with one update required before the March 2021 deadline and a further update required when the level 2 RTS come into effect. This will increase the compliance burden for impacted entities and add to the supervisory workload of national competent authorities. It is hoped that the compliance date for the RTS will be aligned with applicable date of the disclosure requirements set out in the Taxonomy Regulation, which will apply from 1 January 2022, to try to streamline the number of updates to fund documentation that will be required over the coming months.

The deferral of the level 2 RTS, most likely to early 2022, provides industry with a more realistic timeframe to address the detail of the level 2 requirements. It will afford industry an opportunity to properly assess the RTS once finalised and to implement the requirements effectively to assist investors in making fully-informed investment decisions. However, the clear political impetus to press ahead with the sustainable finance agenda and the reluctance of the Commission to deviate from its timetable with respect to the level 1 requirements means that there is still a considerable amount of work to be done to ensure high-level, principles-based compliance by 10 March 2021.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require 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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