

EU ESG Regulatory Update

An updated joint supervisory statement has been issued by the three European Supervisory Authorities regarding the application of the Sustainable Finance Disclosures Regulation (“SFDR”) on 25th March 2022 (the “Statement”). This includes details of a revised timeline and their expectations in relation to the application of related measures.

Background

The SFDR mandates sustainability related disclosures for financial products, including funds. Initial obligations contained in the SFDR, which were effective from 10 March 2021, and the Taxonomy Regulation (the “TR”) are to be further supplemented by detailed rules contained in Regulatory Technical Standards (“RTS”). Drafts of 13 relevant RTS have now been issued by the European Commission, but these are not yet effective and nor have they been formally approved in final form. For this to occur they must be adopted by the European Commission and both the European Parliament and Council have the right to object to the drafts released before they are effective. Furthermore, the application of the RTS has been delayed to 1 January 2023. Accordingly, there remains some uncertainty as to the requirements until after that date.

The Statement

The European supervisory authorities- being the European Banking Authority (“EBA”, the European Insurance and Occupational Pensions Authority (“EIOPA”) and the European Securities and Markets Authority (“ESMA”) respectively, issued the Statement with the aim of mitigating the risk of divergent application of the relevant legislation across the European Union and to achieve consistent application across member states, thereby ensuring a level playing field.

RTS and Timelines

The RTS will establish a framework of principal adverse impacts by 30 June each year with a reference period to the previous year. While the requirements of the SFDR relating to the entity

level disclosures of principal adverse impacts have generally been applicable since 10 March 2021 on a comply or explain basis the additional detail specified for the sustainability impacts statement as set out in the RTS will apply from 1 January 2023.

The periodic disclosures of financial entities must comply with the SFDR from 1 January 2022. Accordingly, 2022 period reports must comply with the relevant sectoral legislation. However, as the RTS are expected to apply from 2023 the additional detail required by the RTS will only apply from after that date.

Clarification

The Statement clarifies that for periodic disclosures issued during the period 1 January 2022 and 31 December 2022 the draft RTS should be used as a reference although they will not yet be in force.

The Statement recommends that National regulators encourage market participants to use this period to prepare for the full application of the finalized RTS from 2023 and prepare financial statements based on the draft text of the RTS.

How Clerkin Lynch can help

As a part of a firm with a strong emphasis on sustainability, the Asset Management and Investment Funds team in Clerkin Lynch is particularly focused on the implications of the SFDR, the TR and related legislative provisions. As such we are particularly delighted to assist firms to ensure compliance with their obligations in this context.



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