

## ESG Manco Deadline Fast Approaching

Both managers of UCITS and Alternative Investment Fund Managers (“AIFMs”) (together “Fund Mancos”) will be subject from 1st August 2022 to new legislative requirements to take account of sustainability, in terms of both risks and relevant factors in their operations. In practice this will entail a review of relevant existing policies, procedures and documentation and their revision to reflect these obligations.

### Background

The European Commission’s Sustainable Finance Action Plan (the “Action Plan”) was adopted in March 2018 with 3 main objectives: (1) to reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth; (2) to manage financial risks stemming from climate change, environmental degradation and social issues; and (3) to foster transparency and long-termism in financial and economic activity. It is one of the key steps towards implementing the Paris Agreement and the European Union’s agenda for sustainable development. This was further boosted by the “Green Deal” in 2019. Key legislative elements of the Action Plan included the Sustainable Finance Disclosures Regulation (“SFDR”) and the Taxonomy Regulation. Documentation pertaining to both UCITS and AIFs will have already been revised to reflect elements of these, with further requirements becoming applicable this year end. However, impact assessments have shown the need to ensure that sustainability be taken into account by Fund Mancos as part of their duties to investors.

### Legislative Changes

In order to require Fund Mancos to take sustainability into account legislative measures were adopted in April 2021. Specifically, Commission Delegated Directive (EU) 2021/1270 revises the UCITS Directive (Directive 2010/43/EU) while Commission Delegated Regulation (EU) 2021/1255 amends the positions for AIFMs (together the “Revised Measures”). Similar updates apply in both cases.

### Key Definitions

The revised measures contain two key definitions – “sustainability risk” and “sustainability factors”, which are both as defined in the SFDR and

essentially relate to environmental, social or governance matters.

### Practical Implications

The Revised Measures will have a range of implications for the operations of Fund Mancos and will require updating policies and procedures to ensure they are reflected. For example, the Risk Management Policy will be required to comprise procedures necessary to assess the risks posed by sustainability in addition to market, liquidity, counterparty, and operational risks. Similarly, the conflicts of interest policy will need to be updated to ensure it captures those which arise as the result of the integration of sustainability risks in processes, systems, and controls, as required. However, there are also requirements that may entail more fundamental change, for example ensuring that Fund Mancos retain the necessary resources and expertise for the appropriate integration of sustainability risks into their processes, assigning senior management with responsibility for the integration of sustainability risks and ensuring that sustainability risks, or where appropriate principal adverse impacts, are taken into account in investment decisions.

### Timing

The new requirements apply from 1st August 2022. Fund Mancos would be advised to approve revised documentation in advance of that and the boards of UCITS and AIFs should seek confirmations of compliance.

### How Clerkin Lynch Can Help

The Financial Services team at Clerkin Lynch can assist clients with the drafting of appropriate documentation to ensure compliance with the Revised Measures and are well placed to provide advisory and educational support.



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