

SFDR Level II Finalised

The European Union (EU) has been adopting legislation to assist in progressing the drive towards fund products that acknowledge environmental, social and governance (“ESG”) factors in recent years as part of its action plan on sustainable growth and the EC Green Deal. The relevant primary level legislation such as the Sustainable Finance Disclosure Regulation (“SFDR”) was designed to be supplemented by more granular detail contained in regulatory technical standards and on 25th July 2022 Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 was published in the Official Journal to address this (the “RTS”).

Background

The SFDR and the Taxonomy Regulation were two key pieces of legislation adopted in recent years in the EU relating to ESG considerations for funds as part of the “Action Plan: Financing Sustainable Growth”. Other key legislation included the Climate Benchmarks Regulations. The Taxonomy Regulation sets out a classification system and list of acknowledged environmentally sustainable economic activities. The underlying rationale is that by providing for appropriate definitions under which economic activities can be considered environmentally sustainable it should protect against misleading or false claims in this regard (often referred to as “greenwashing”), facilitate comparisons across sectors and assist companies to become more climate-friendly. The SFDR, whose basic provisions commenced from March 2021, provides for both manager and product level disclosure requirements. These include requirements pertaining to precontractual disclosures, website disclosures, periodic reporting, and marketing. There are specific and heightened requirements pertaining to funds which promote ESG aims, known as “light green” funds (Article 8) and those which have sustainable investment as their objective, known as “dark green funds” (Article 9). Following a final report on related draft RTS (the “Final Report”) being issued by the European Supervisory Authorities (“ESAs”) on 22nd October 2021 the RTS has now been finalised and published.

The RTS

The content of the RTS largely reflects the Final Report. It primarily comprises regulatory technical

standards specifying the details of the content and presentation of the information required for funds following the principle of ‘do no significant harm’ (Article 8 funds), specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives (Article 9 Funds) in precontractual documents, on websites and in periodic reports.

Timelines and Next Steps

It was originally indicated that the application date of the new RTS would be 1 January 2022, and this was then moved out to 1 July 2022. However, in finalised Regulation as published this week the RTS the RTS is stated to apply from 1 January 2023. Given the extensive reporting and documentation requirements inherent in ensuring compliance, asset managers in scope would be advised to focus on addressing the requirements as soon as possible and well in advance of this effective date. Similarly fund boards would be advised to request confirmations that appropriate efforts are being directed towards this in relation to the funds they have responsibility for.

For further information in relation to this topic please contact the relevant members of the Clerkin Lynch team detailed below.



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