

Sustainable Financial Disclosures: Key Deadlines for Global Investment Managers

We are now less than six months away from a major regulatory deadline (**10 March 2021**) which will impact EU managers and also global managers with affiliates in the EU or marketing funds in EU Member States.

This update will provide clarity on:

- What you need to do
- When it needs to be completed
- How the Maples Group can assist

Executive Summary

As part of the EU's "Sustainable Action Plan"¹ a sustainable finance disclosures regulation ("SFDR"²) will come into effect from 10 March 2021.

SFDR prescribes mandatory disclosures to be made by managers and investment funds³ relating to sustainable investments and sustainability risks.

It aims to harmonise information available to investors in this regard; promote the sale of sustainable products; and eliminate the risk of 'greenwashing'.

As a result, SFDR provides significant opportunities for managers seeking to raise capital in this area. However, it also provides challenges in terms of compliance or navigating

the disclosure of risks where funds and financial products do not have sustainable investment strategies.

Scope of SFDR

SFDR applies both at the level of the manager and also the investment funds or financial products they manage.

It introduces requirements for a wide range of entities providing investment management and advisory services to clients, including AIFMs, UCITS management companies, investment firms authorised under MiFID providing *portfolio management* services (collectively referred to as "financial market participants") and firms providing *investment advice* services under MiFID ("financial advisers").

The scope is extremely broad and managers of all major strategies and funds will be caught (e.g. hedge, private equity, credit, real estate, infrastructure and funds of funds). It also applies where these managers are acting as delegates and if managing segregated accounts.

Extraterritorial Effect

The principal impact is on EU asset managers and their UCITS, AIFs or MiFID products.

However, SFDR may also have implications for non-EU asset managers, particularly where they

¹ See our resource centre for further details.
<https://maples.com/en/Services/Specialty-Services/ESG>

² EU/2019/2088, as amended.

³ SFDR applies to an extremely broad category.

have EU affiliates or market their funds or financial products into the EU.

For example, a US manager of a Cayman fund marketed in the EU on a private placement basis (under the National Private Placement Regime) will be in scope for certain aspects of SFDR.

Does it only apply to ESG-Focussed Funds?

No. SFDR contains requirements that apply specifically to funds that have a sustainable finance focus or objective (see below).

However, other aspects apply to all in-scope managers and investment funds, meaning firms with no particular focus or agenda on ESG / sustainable finance are still required to consider the impact of SFDR and make appropriate disclosures.

The specific requirements which apply to certain types of 'ESG-Focussed Funds', can be summarised as follows:

- (i) ESG-labelled investment funds, i.e. investment funds which promote environmental or social characteristics
- (ii) Sustainable investment funds, i.e. investment funds with a sustainable investment objective
- (iii) Carbon reduction investment funds, i.e. investment funds that aim to reduce carbon emissions

Key Points

There are three key elements of SFDR that managers will need to consider:

- **Website disclosures** – to include disclosure on: (i) how the firm integrates sustainability risk into the investment process; (ii) how the firm integrates sustainability risk into its remuneration policy; and (iii) for any ESG-Focussed Funds it manages, details on the ESG objectives of these funds and how they are measured.

- **Offering documentation / pre-contractual disclosures** – to include disclosure on (i) how sustainability risks are factored into investment decisions; (ii) the adverse sustainability impact of the investment decisions; and (iii) for any ESG-Focussed Funds it manages, details on the ESG objectives of these funds and how they are measured.
- **Annual report disclosures** – the annual report of an ESG-Focussed Fund will need to provide details of how the relevant ESG objectives are being met.

Timing – New Two Phase Process

SFDR provides for high-level or 'Level 1' legal and regulatory principles on sustainable disclosure requirements.

However, much of the specific detail on form and precise content are yet to be agreed in 'Level 2' or 'Level 3' measures, guidance and regulatory technical standards.

The timetable for agreement and publication was very tight, even before COVID-19 and the delays it has understandably caused to the regulatory process.

These delays led to strong industry calls to push back the March 2021 deadline and set out a revised timetable for implementation.

The European Commission has listened to some of these arguments but, at the same time, wishes to continue to strongly advance the sustainable finance agenda.

A phased approach is now proposed where relevant entities proceed to:

- (a) Firstly, comply with the high level and principle-based requirements in SFDR within the existing timeframe, i.e. by 10 March 2021 ("Phase 1"); and

- (b) Subsequently, comply with the more detailed requirements once the final regulatory technical standards are published, now expected to be 1 January 2022 ("Phase 2").

How can the Maples Group help?

We can advise both EU and non-EU asset managers on the scope of SFDR and the practical and legal steps required to ensure compliance.

In terms of immediate steps, this will involve consideration of the Phase 1 obligations and how these disclosure requirements can be met before the 10 March 2021 deadline.

The Maples Group has also produced a Guide to the Sustainable Finance Disclosures Regulation in conjunction with AIMA and members of the European Technical Expert Group. This is available on request from us or, (for AIMA members), from [here](#).

Additional materials are available at our [ESG resource hub](#).

Further Information

Should you have any queries or comments on the implications of SFDR or the impact of the European Commission's Sustainable Action Plan on your business, please feel free to contact any of the team below or your usual Maples Group contact.

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