NEW EU SUSTAINABILITY-RELATED DISCLOSURE OBLIGATIONS FOR INVESTMENT MANAGERS

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EU Asset Management and Investment Fund Alert

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Following the entry into force of sustainability-related disclosure obligations under the Sustainable Finance Disclosure Regulation (SFDR)[1] on 10 March 2021, a second series of disclosure requirements introduced by the so-called Taxonomy Regulation[2] will become applicable as from 1 January 2022.

These disclosure requirements apply to all financial market participants (FMPs), including investment managers, that make available financial products, including EU and non-EU funds, in the European Union. They will impact the pre-contractual documentation of all such financial products (including Undertakings for the Collective Investment in Transferable Securities (UCITS) and EU and non-EU alternative investment funds (AIFs), whether these are financial products that do not promote environmental or social characteristics (subject to article 6 SFDR), products that promote environmental or social characteristics (subject to article 8 SFDR), or products that invest in companies with good governance practices or products with a sustainable investment objective (subject to article 9 SFDR).

Based on the SFDR categorization of each financial product, the disclosure requirements will be as follows:

Article 5 of Taxonomy Regulation – Financial Products Having a Sustainable Investment Objective Subject to Article 9 of SFDR

Where an article 9 SFDR financial product invests in an economic activity that contributes to an environmental objective within the meaning of point (17) of article 2 SFDR, the information disclosed in the pre-contractual documentation shall include:

- Information on the environmental objective(s) to which the investments underlying the financial product contribute. These environmental objective(s) are (i) climate change mitigation, (ii) climate change adaptation, (iii) sustainable use and protection of water and marine resources, (iv) transition to a circular economy, (v) pollution prevention and control, and (vi) protection and restoration of biodiversity and ecosystems (the Environmental Objectives).

- A description of how and to what extent the investments underlying the financial product are in economic activities that qualify as environmentally sustainable. This description needs to include the proportion of the financial product's investments that are in environmentally sustainable economic activities.

For this purpose, an economic activity qualifies as environmentally sustainable where it: (i) contributes substantially to one or more of the Environmental Objectives, (ii) does not significantly harm any of the Environmental Objectives, (iii) is carried out in compliance with the minimum safeguards detailed in the Taxonomy

Regulation, and (iv) complies with technical screening criteria that have been established by the European Commission.[3]

Article 6 of Taxonomy Regulation – Financial Products Promoting Environmental Characteristics Subject to Article 8 SFDR

Where an article 8 SFDR financial product promotes environmental characteristics, the additional information that will need to be disclosed in pre-contractual documentation is the same as for Article 9 products, as described above.

In addition, the following statement is also required:

> The "do no significant harm" principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.

Article 7 of Taxonomy Regulation - Financial Products Qualifying Under Article 6 SFDR

Where a financial product is not subject to articles 8 or 9 SFDR, the following additional statement is required in pre-contractual documentation:

> The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities.

Related Commission de Surveillance du Secteur Financier (CSSF) (the Financial Regulatory Authority in Luxembourg) Announcement

In its Communication of 2 December 2021, the CSSF reminded all concerned FMPs of the 1 January 2022 deadline for complying with the sustainability-related disclosure obligations under the Taxonomy Regulation.

In order to facilitate the submission, review, and approval of updated prospectuses/issuing documents, CSSF has made available to FMPs a fast-track procedure.

This fast-track procedure is only available until 17 December 2021.

To benefit from the fast-track procedure:

- Updated prospectuses/issuing documents must be submitted to CSSF on 17 December 2021 at the latest.
- Amendments must be limited to modifications related to the Taxonomy Regulation disclosure requirements, which FMPs will have to confirm upon submission of the updates by letter (UCITS) or email (AIFs).

Since the adoption of SFDR and the Taxonomy Regulation, we at K&L Gates have helped our clients navigate the new environmental, social, and governance regulatory framework by providing guidance, thought leadership, and insight.

Should you need any assistance to meet this new deadline, do not hesitate to contact us.

FOOTNOTES

[1] Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector.

[2] Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending SFDR.

[3] The first delegated act concerning the technical screening criteria for economic activities with significant contribution to climate change mitigation and adaptation (the Climate Delegated Act) was adopted on 4 June 2021 (see Commission Delegated Regulation (EU) of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (C/2021/2800 final)). Another delegated act concerning the technical screening criteria for the remaining four environmental objectives will be developed and adopted later.

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