MAPLES GROUP

UPDATE

CSSF Updates SFDR FAQ

On 13 March 2023, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (the "CSSF"), issued an updated FAQ[1] on Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector ("SFDR")[2].

Background

SFDR prescribes mandatory disclosures to be made by financial advisers and financial market participants ("FMPs") relating to, inter alia, the integration of environmental, social and governance ("ESG") factors into investment and risk management processes. On 2 December 2022, the CSSF issued the first iteration of its FAQ in order to provide further clarity on certain aspects of the SFDR.

Updated FAQ

The updated FAQ includes three new questions and answers on:

- the use of ESG and/or sustainability related terminology in fund names (question 7);
- the methodology used to define sustainable investments (question 8); and
- efficient portfolio management ("EPM") techniques (question 9).

a) *Use of ESG and/or Sustainability Related Terminology in Fund Names*

The focus of this new question 7 is to reminds FMPs, whether they are disclosing under articles 6, 8 or 9 of the SFDR, of the CSSF's expectations in respect of funds names, i.e. fund names should not be misleading and must align with the relevant fund's investment objective and policy, as well as the applicable principles-based guidance on fund names set out in the ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management[3] ("Supervisory Briefing").

The Supervisory Briefing clarifies that terms such as "ESG", "green", "sustainable", "social", "ethical", "impact" or any other ESG-related terms should only be used when supported in a material way by evidence of sustainability characteristics, themes or objectives described in the relevant fund documentation.

b) *Methodology Used to Define Sustainable Investments*

The CSSF clarified in this new question 8 that FMPs should make available to all investors the methodology used to determine whether an investment is considered a "sustainable investment" within the meaning of article 2(17) of the SFDR, as well as any thresholds used in this context, e.g. the threshold used when applying a pass-fail approach.

This information may be made available to investors in the mandatory disclosure templates, the prospectus / private placement memorandum of the relevant fund and / or the website disclosures.

[1] https://www.cssf.lu/wp-content/uploads/FAQ_SFDR.pdf

[2] https://eur-lex.europa.eu/eli/reg/2019/2088/oj

[3] https://www.esma.europa.eu/sites/default/files/library/esma34-45-1427_supervisory_briefing_on_sustainability_risks_and_disclosures.pdf

c) *EPM Techniques*

In accordance with Commission Delegated Regulation (EU) of 2022/1288 of 6 April 2022 supplementing SFDR[4], the portfolio of an article 9 fund may also include investments or techniques used for hedging purposes or relating to cash as ancillary liquidity, provided that those are in line with the sustainable investment objective of the relevant fund.

In this context, the CSSF confirmed that (i) when used for hedging purposes, EPM techniques fall within the "remaining portion" of the portfolio of article 9 funds and (ii) FMPs are responsible for assessing the purpose of any EPM techniques used and whether these fall within the "remaining portion" of the portfolio of article 9 funds.

If you would like further information, please liaise with the below or your usual Maples Group contact.

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[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02022R1288-20220725