MAPLES GROUP

UPDATE

Sustainable Finance – Changes for UCITS Managers and AIFMs

On 1 August 2022, a wide range of new EU legislative measures on sustainable finance (collectively referred to as the "Delegated Acts") are due to become effective. See our previous update *Sustainable Finance: New EU Delegated Legislation*[1] for more background detail.

Designed to complement the obligations in Regulation (EU) 2019/2088[2] ("SFDR") and Regulation (EU) 2020/852[3] ("Taxonomy Regulation"), the Delegated Acts form part of the European Commission's 'ambitious and comprehensive' package of measures to help improve the flow of money towards sustainable activities across the EU.

This update focuses on the UCITS and AIFMD changes and, in particular, the practical implications for UCITS management companies and AIFMs (together "Mancos") in the context of existing SFDR requirements.

UCITS and AIFMD Delegated Acts

From a UCITS perspective, Commission Delegated Directive (EU) 2021/1270[4] ("UCITS Amending Directive") amends Directive 2010/43/EU[5] ("UCITS Management Company Directive").

From an AIFMD perspective, Commission Delegated Regulation (EU) 2021/1255[6] ("AIFM Delegated Regulation") amends Delegated Regulation (EU) 231/2013[7] ("AIFMD Level 2").

These Delegated Acts require Mancos to:

- integrate sustainability risks in the management of funds;
- include a consideration of any conflicts that may arise as a result of the integration of sustainability risks in their conflicts of interest procedures;
- take into account: (i) sustainability risks; and (ii) if relevant, the principal adverse impacts of investment decisions on sustainability factors, as part of the due diligence in the selection and ongoing monitoring of investments; and
- capture details of procedures to manage sustainability risks in the risk management process.

Impact of the Delegated Acts

While many of the changes introduced by the Delegated Acts will broadly align with certain SFDR requirements applicable to financial market participants, Mancos will be required to give specific consideration to 'sustainability risk' and 'sustainability factors', as defined in SFDR.

[1] https://maples.com/en/knowledge-centre/2021/8/sustainable-finance-new-eu-delegated-legislation

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R2088

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32020R0852

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021L1270

[5] https://eur-lex.europa.eu/eli/dir/2010/43/oj

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1255

[7] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32013R0231

Notably, these obligations are mandatory even where the relevant fund being managed falls under Article 6 of SFDR, i.e. is not ESG orientated / categorised as an Article 8 or Article 9 financial product under SFDR.

In addition, any Manco which outsources the day-to-day portfolio management and / or risk management functions to a delegate investment manager will need to assess the investment process for all products for which they are responsible and, if necessary, update processes to ensure sustainability risks are appropriately taken into account.

How the Maples Group Can Help

Our Funds & Investment Management group is advising Manco clients on the incoming changes and how these may impact on and trigger updates to their decision making procedures / organisational structure; resources and expertise; senior management responsibility; conflicts of interest; investment due diligence and risk management policy.

Further Information

For further information, please liaise with your usual Maples Group contact or any of the persons listed below.

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