

9 February 2021

The implementation of the Sustainable Finance Disclosure Regulation (“SFDR”) – Process to be adopted with respect to the submission of updates to the pre-contractual document (prospectus) of locally based Collective Investment Schemes applicable as from 10 March 2021 (“SFDR Deadline”)

Introduction

Following the publication of the [MFSA Circular](#) on the EU sustainable finance model dated 11 August 2020, this circular intends to provide further detail on the process that will be implemented by the Malta Financial Services Authority (“MFSA”) for the submission of updated Offering Documentation in line with the SFDR requirements.

Background

The SFDR will require financial market participants and financial advisers, which include *inter alia* Alternative Investment Fund Managers (AIFMs), UCITS management companies and Investment Firms or Credit Institutions providing portfolio management under MiFID II, to make pre-contractual and ongoing disclosures to investors regarding the integration of sustainability risks and impacts of adverse sustainability as well as the promotion of ESG characteristics and sustainable investments (as applicable).

Such obligations will apply to all Financial Market Participants and Financial Advisors within the scope of SFDR, even to those that do not offer products that promote ESG characteristics or have sustainable investment objectives.

Way forward

The MFSA has established a fast-track filing process for the submission of updates to the Offering Documents which are based on the Level 1 text of the SFDR. With this process, UCITS Management Companies, AIFMs and Investment Firms authorised under MiFID II which manage PIF structures by way of delegation will be able to ‘self-certify’ their compliance with SFDR and notify the Authority accordingly.

The MFSA would like to highlight that it is the responsibility of the above-mentioned Investment Services Licence Holders (“LHs”) to ensure compliance with the SFDR requirements as from 10 March

2021 whilst keeping in mind the high-level principles-based approach outlined by the European Commission¹.

Accordingly, LHs will need to ascertain and ensure that the pre-contractual disclosures made are appropriate to the fund in question. In this respect, it is being stressed out that this fast-track process should not be regarded as a means to submit disclosures of a lesser quality than would otherwise be submitted.

Submission of documentation and timing

LHs are required to submit the following documentation with the Authority:

- the updated offering documentation of the relevant Scheme and its Sub-Funds (if applicable) – both in tracked changes and final dated;
- an attestation duly executed by the Board of the respective Financial Market Participant² certifying that the amendments made are in accordance with the requirements emanating from the SFDR and that no other amendments have been made to the Offering Document. The said attestation should include as a minimum that the Offering Documentation of the applicable Scheme conforms to the requirements prescribed by Regulation (EU) 2019/2088 of the European Parliament and of the Council;
- a resolution from the Board of Directors of the relevant Scheme confirming that they have seen and approve the changes made;
- a confirmation by the Compliance Officer of the Scheme that the proposed changes are in line with the requirements emanating from SFDR;
- in the case of AIFs, the submission of the AIFM's approval of the content of the Offering Memorandum and/ or Offering Supplements/s (as applicable) in accordance with R5.05 of the Investment Services Rules for Alternative Investment Funds; and
- in the case of Notified AIFs, the required documentation as per R.11.38 and R.11.39 of Part B III of the Investment Services Rules for Investment Services Providers.

Submissions should be made to SFDR@mfsa.mt by no later than 10 March 2021. LHs should note that submissions made after 3 March 2021 will be processed on a best-effort basis by the Authority before the SFDR Deadline. Furthermore, submissions made after 10th March 2021 will be treated as any other change to an Offering Document and therefore may be subject to comments.

LHs are requested not to file any changes other than the changes required in line with the SFDR Level 1 text within the prescribed fast-track process. Any changes not related to SFDR are to be submitted under separate cover and will be subject to the standard authorisation procedure in this regard.

¹ <https://www.esma.europa.eu/document/letter-european-commission-esas-application-regulation-eu-20192088-sustainability-related>

² In case of UCITS, the UCITS ManCo or the UCITS itself if self-managed; in case of AIFs, the AIFM or the AIF itself if self-managed; or in case of PIFs, the MiFID investment firm being delegated with the discretionary portfolio management activity