

30 September 2021

The Implementation of the Sustainable Finance Disclosure Regulation (“SFDR”) – Notification on the process to be adopted for the submission of updates to the pre-contractual document (prospectus) by PIFs and De Minimis AIFMs

Introduction

The purpose of this circular is to notify the industry on the process to be adopted with respect to the submission of updates to the pre-contractual document (prospectus) of PIFs and *de minimis* AIFMs following the publication of the previous [circular of 5 August 2021](#) in relation to the Questions and Answers issued by the EU Commission on 14 July 2021.

In particular, this circular outlines the process that will be implemented by the MFSA for the submission of updated offering documentation for PIFs and *de minimis* AIFMs in line with the requirements of the SFDR.

Background

The SFDR requires financial market participants and financial advisers to make pre-contractual and ongoing disclosures to investors regarding the integration of sustainability risks and the impact of adverse sustainability as well as the promotion of ESG characteristics and sustainable investments as applicable.

Such obligations 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.

At the time of implementation, there was still uncertainty on a European level whether registered/sub-threshold AIFMs would be captured by the definition of Financial Market Participants. Following discussions which involved various Member States, on 14 July 2021 the European Commission issued a [Q&A](#) confirming the applicability of the SFDR to registered/sub-threshold AIFMs as referred to in Article 3(2) of the AIFMD.

Applied to the local context, this means that PIFs and *de minimis* AIFMs fall within the scope of the SFDR by virtue of their inclusion in the scope of Financial Market Participants and are required to provide the required disclosures.

Way Forward

Following the clarification provided by the European Commission, the MFSA shall require PIFs and *de minimis* AIFMs to submit the updates to their pre-contractual documents (prospectuses) in line with SFDR.

In this regard, the MFSA will again put in place a fast-track filing process for the submission of updates to the Offering Documents based on the Level 1 text of the SFDR similar to the one adopted previously. Through this process, PIFs and *de minimis* AIFMs will be required 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.

With this in mind, Compliance Officers of the indicated LHs are required to confirm in writing to the Authority whether the respective LH is working on the implementation of the necessary business changes to ensure compliance with the SFDR requirements and clearly state the plans of the entity to implement the required changes. Such confirmation is to reach the Authority by **29 October 2021** on SFDR@mfsa.mt.

It is further worth noting that aiming to determine where PIFs and *de minimis* AIFMs stand in respect of sustainable finance, the MFSA will be issuing a separate formal Request for Information in the form of a questionnaire, similar to the one, published as part of the [Circular](#) dated 30 July 2021. Details will be provided under separate cover.

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 confirmation by the Compliance Officer of the Scheme that the proposed changes are in line with the requirements emanating from SFDR; and

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

² Either the PIF itself if self-managed or the *de minimis* AIFM or the third country AIFM when the AIF is marketed via the National Private Placement Regime.

- the submission of the Scheme's approval of the content of the Offering Memorandum and/ or Offering Supplements/s (as applicable) in accordance with Part B of the Investment Services Rules for Professional Investment Funds.

Submissions should be made to SFDR@mfsa.mt **at the earliest and no later than 31 December 2021**. LHs should note that submissions made after the deadline 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. 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. Moreover, 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.