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## ***Sustainable Finance Disclosure Regulation (SFDR) and its application to asset managers***

### **1. What is the SFDR?**

*SFDR is a set of rules requiring firms in the financial sector to disclose certain sustainability-related information on their business processes and financial products. These rules were introduced by the Regulation (EU) 2019/2088 of 27 November 2019 (SFDR Regulation) and amended and extended by the Regulation (EU) 2020/852 of 18 June 2020 (Taxonomy Regulation).*

### **2. Who is affected by SFDR?**

*Affected are financial market participants and financial advisers.*

*Financial market participants include, inter alia:*

- *investment firms who provide portfolio management;*
- *alternative investment fund managers (AIFM);*
- *management companies of UCITS funds; and*
- *managers of qualifying venture capital funds and social entrepreneurship funds.*

*Financial advisers include, inter alia:*

- *investment firms who provide investment advice;*
- *AIFMs who provide investment advice;*
- *UCITS management companies who provide investment advice.*

*Most of the SFDR rules apply to all asset managers and advisers, regardless of whether they focus on ESG / sustainability or not. The key principle is “comply or explain”, i.e. if sustainability risks are considered not to be relevant, there must be a clear explanation of the reason thereof. Therefore, SFDR requires investment managers/advisers to make strategic policy and business decisions which are then to be disclosed.*

### **3. What is a financial product?**

*For the purposes of SFDR financial products include, among others:*

- *a managed portfolio;*
- *an alternative investment fund (AIF);*
- *a UCITS.*



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#### **4. What kind of disclosures are introduced?**

*There are two levels of disclosures:*

1. *Disclosures at the entity level*
2. *Disclosures at the financial product level*

*Both types of disclosures are explained below in detail.*

#### **5. What are disclosures at the entity level?**

*Financial market participants/ financial advisors must make the following disclosures:*

- *provide information about policies on the integration of sustainability risks in the investment decision-making process/ investment advice;*
- *make a statement on due diligence policies with respect to adverse impacts of investment decisions on sustainability factors, taking into account the size, the nature and scale of the activities and the types of financial products they make available/ advise on; or state reasons for not doing so;*
- *include in their remuneration policies information on how those policies are consistent with the integration of sustainability risks.*

#### **6. What kind of disclosures are required for products?**

*To fulfil the new product disclosure obligations, financial entities have to classify the products they make available or advise on into three categories:*

1. *Products promoting environmental or social characteristics*
2. *Environmentally sustainable investments*
3. *Other financial products*

*Next, for all financial products made available/ advised on the following pre-contractual disclosures will need to be made:*

- *the manner in which sustainability risks are integrated into the investment decision/ investment advice; and*
- *the results of the assessment of the likely impacts of sustainability risks on the returns of the financial products.*

*Where a financial product promotes environmental or social characteristics or has sustainable investment as its objective, additional*



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*disclosures would be required to explain how the declared environmental/social characteristics and objectives are met.*

### **7. Where are the disclosures made?**

*SFDR disclosures will need to be included*

- *on websites: for firm-level disclosures as described above and product disclosures related to ESG characteristics of certain products;*
- *in pre-contractual documents (such prospectus or private placement memoranda, disclosures to investors): for product-level disclosures; and*
- *in periodic reports (such as annual reports of AIFs and UCITS): for product-level disclosures.*

*The information should be clear and understandable to investors and should be regularly updated. It is important to ensure that marketing documents do not contradict the information disclosed pursuant to SFDR.*

### **8. When do the rules enter into force?**

*The main provisions of the SFDR Regulation apply from 10 March 2021. Some of the additional disclosure obligations under the Taxonomy Regulation have applied from 1 January 2022, and the remaining disclosures will come into effect from 1 January 2023.*

*The initial plan was that disclosure obligations should be accompanied by Regulatory Technical Standards (RTS) which would provide guidance on the content, methodology, and presentation of the information to be disclosed.*

*However, the RTS were only finalised on 6 April 2022 and are scheduled to apply from 1 January 2023. In the interim, affected firms were expected to use the draft RTS.*

*Most of the fund jurisdictions have already transposed the EU regulations into their domestic laws. For example, Luxembourg implemented SFDR and the Taxonomy Regulation in a law of 25 February 2022. In Liechtenstein the law implementing SFDR the Taxonomy Regulation has been adopted on 11 March 2022. Malta adopted SFDR and Taxonomy Regulations in an Act of 23 July 2021.*

### **9. How is Switzerland affected?**

*Swiss investment managers and advisors making financial products available to, or advising on financial products for, investors from the EU*



## Newsletter

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*must comply with the disclosure requirements for products, but do not need to comply with entity-level disclosures.*

*It should be noted that Swiss regulators are working on the climate-related reporting legislation that will generally follow the rules already adopted in the EU: <https://www.sif.admin.ch/sif/en/home/finanzmarktpolitik/sustainable-finance.html>*

*At the moment, the legislation only targets large companies: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-91859.html>*

#### **10. What should asset managers do now?**

*Asset managers and financial advisers should be working on the strategic decisions on business risks and policy with respect to ESG/sustainability issues. Managers and advisers will also have to screen and classify all investment products (including funds, managed accounts, advisory mandates) for the purposes of the SFDR and Taxonomy Regulation and ensure that documentation for all financial products is updated to include all mandatory disclosures and/or disclaimers.*

*ESG risks will need to be reflected in the firm's general risk management policies and its management mandate. The risk management function will have to appropriately monitor ESG risks alongside other risks and keep the Board of Directors, which is ultimately responsible for risk, informed of the risk situation through periodic reports and reviews. This also applies for independent asset managers in Switzerland. As generally for risk management, under certain conditions, the company does not need to have a separate person for risk management in house. In this case, the controls can be carried out by an external risk manager.*

*LINDEMANNLAW can help you understand the new requirements in the EU and Switzerland. We can help you integrate ESG risk management into your general risk management policy and mandate and , provide relevant legal assistance in general and for independent asset managers carry out your risk management as external risk managers.*

*A newsletter covering risk management requirements for independent asset managers will follow shortly.*

***Please feel free to contact us for more information, we are happy to help.***