



## Sustainable Finance Disclosures Regulation (SFDR): Q&As

*Of particular interest to: Firms marketing in the EU; firms with EU clients*

### In brief

The European Commission has issued a brief set of 'Q&As' which clarify the application of the SFDR disclosures regime and has also confirmed a **delay** in the application of the Regulatory Technical Standards (RTS).

### Summary

The SFDR disclosure regime applies to a variety of firms which the Regulation refers to as a 'financial market participant' and/or a 'financial adviser'. Such firms will include, but not be limited to:

- Alternative Investment Funds Managers
- UCITS Management Companies
- MiFID firms

The disclosures that an impacted firm has to make (which can be at both entity level and product level) essentially relate to how sustainability is, or possibly is not, integrated into its business - please see our Alerts from March and April of last year for further details (see 'Useful Links').

Although the SFDR may **not directly** apply to UK firms, it will:

- Apply to UK firms marketing in the EU
- Be of relevance to UK firms managing assets under delegation e.g. a UK MiFID firm managing the assets of an EU client that is subject to the SFDR.

Additionally, of course, some firms may have decided to voluntarily adopt the SFDR for business reasons.

The Q&As clarify that the SFDR applies to all AIFMs whether above or below the threshold i.e. it also captures **small AIFMs**. It is also explained that where the disclosure medium is not relevant to a small

AIFM then they “should apply those provisions by **analogy**”. By way of example Article 11 concerns disclosures relating to the promotion of environmental or social characteristics. The Regulation instructs AIFMs to make these disclosures in the annual reports referred in Article 22 of the AIFMD. However a small AIFM is not subject to Article 22. The ‘analogy’ approach means that a small AIFM would instead include the disclosure in periodic documentation required under national law rather than simply not complying with the Article.

The Q&As also confirm that **non-EU AIFMs** e.g. UK AIFMs are also subject to the SFDR at the point it **markets** into the EU under National Private Placement Regime (**NPPR**). Note that the disclosure obligations apply to such a non-EU AIFM at both the level of the **entity** and at the level of the **product** (previously there was a school of thought that the disclosure obligations for a small AIFM marketing into the EU would only apply at the product level). One further point of interest is that the Q&A relates to NPPR. It is **assumed**, but remains unclear, that **reverse solicitation** will not trigger the need for compliance with the SFDR by non-EU AIFMs.

The Q&As also address an issue arising under Article 10 which requires website disclosure when a **financial product** promotes environmental or social characteristics. As the SFDR also includes **individually managed portfolios** under the definition of ‘financial product’ – and the disclosures need to be at ‘product level’ i.e. at the level of each portfolio - there was concern that such disclosures could breach client confidentiality. The final Q&A advises that SFDR website disclosure must ensure compliance with both data protection and GDPR. As such where a public disclosure is required in respect of portfolio management services it can be at the level of ‘standardised product solutions’.

Firms are reminded that whilst the SFDR may not directly apply to UK firms that are not marketing in the EU, the FCA will be introducing a climate-related financial disclosure regime for certain asset managers (and FCA-regulated pension providers and life insurers) as mentioned in our June Alert (see ‘Useful Links’).

The European Commission letter (see ‘Useful Links’) confirms that the RTS will **not** be available by 1 January 2022, being the intended date of application, and instead there will be a deferment in the RTS application date to **1 July 2022**. The letter also advises that instead of there being 13 separate RTS documents they will be ‘bundled’ in single delegated act. Firms facing the quandary of needing to make disclosures without the benefit of the necessary RTS can look to an ESA joint statement which advised “The draft RTS can be used as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, and 10 of the SFDR in the interim period”.

## **Useful Links**

['Sustainability Regulation' Alert - March 2020](#)

['Sustainability Regulation: Update' Alert - April 2020](#)

['Climate-related disclosures' Alert - June 2021](#)

[European Commission: Q&As](#)

[Regulatory Technical Standards delay \(to 1 July 2022\)](#)

[Joint ESA Statement](#)

If you have any comments on this article, or any questions in general, then please speak to your usual Optima consultant or contact us at [info@optima-partners.com](mailto:info@optima-partners.com)