

Final SFDR Regulatory Technical Standards Provide Private Fund Managers With Clarity, but Add Obligations

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On 6 April 2022, the European Commission finally adopted the regulatory technical standards (RTS)¹ to supplement the Sustainability-Related Disclosure Regulation (SFDR)² and the EU Taxonomy Regulation (Taxonomy Regulation).³

As noted in our September 2020 client alert “[Private Fund Managers Should Prepare for New ESG-Related Regulatory Obligations](#),” the EU’s introduction of the SFDR and the Taxonomy Regulation imposed a number of ESG-related disclosure obligations on financial market participants (FMP) and financial advisors in Europe, including private fund managers operating in, or marketing to investors in, Europe.

The SFDR and the Taxonomy Regulation set out high-level obligations that were always intended to be supplemented with regulatory technical standards detailing how the obligations should be satisfied. These standards were originally intended to be finalised by December 2020 so they would be available when the regulations came into force in 2021. However, the delay in the standards’ finalisation required in-scope entities to rely only on draft standards and comply on a best-efforts basis using their own interpretation of the rules while publication of the standards was pending.

Now that the RTS are final, and assuming there is no objection from the European Council or the European Parliament, the RTS will apply from 1 January 2023. In light of the detailed nature of a number of requirements, fund managers will need to start preparing soon to ensure they can obtain the requisite data and implement appropriate systems to maintain compliance. Given that the disclosure of principal adverse impacts on sustainability factors (PAIs) requires retrospective reporting — *i.e.* it is explicitly provided in the RTS that the first June 2023 PAI reporting should cover the relevant period of 1 January 2022 to 31 December 2022 (or from the date the sustainability factors were first considered in the course of 2022 until 31 December 2022) — some in-scope entities will need to gather information relating to their current operating period.

In the table following, we summarise some of the key elements of the RTS for private fund managers.

Summary of RTS as Supplement to SFDR

The RTS is comprised of two parts: the Delegated Regulation, with detailed rules and guidelines to supplement the SFDR (together with an Explanatory Memorandum) and the Annexes 1 to 5, which set out the templates for relevant disclosures.

¹ [European Commission Delegated Regulation \(EU\) of 6 April 2022 \(C\(2022\) 1931 final\)](#).

² [Regulation \(EU\) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector](#).

³ [Regulation \(EU\) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation \(EU\) 2019/2088](#).

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SFDR Requirements	Final RTS Requirements
Entity-Level Disclosure	
Entity-Level Disclosure – PAI Statement Website Disclosure	
<p>The SFDR requires under Article 4 that FMPs shall publish and maintain on their website, where a PAI has been considered, a PAI statement on due diligence policies with respect to those impacts, which shall include information about their policies on identification and prioritisation of PAIs and indicators, the descriptions of PAIs and any actions taken or planned.</p>	<p>Disclosure must be made in accordance with the template set out in Annex 1, which includes:</p> <ul style="list-style-type: none"> - A summary section, to be provided in English and one of the official languages of the home Member State of the FMP, and where a financial product is made available in a host Member State, one of the official languages of that host Member State. - Descriptions of the PAIs, which are outlined by way of a variety of environmental and social adverse sustainability indicators. FMPs should tick and complete all relevant fields under the template table, which includes average impact, explanation, actions taken and planned, and targets set for the next reference period. - Descriptions of policies to identify and prioritise PAIs and how these policies are kept up to date and applied, including the date when the governing body of the FMP approved these policies, the allocation of responsibility for policy implementation within the organisation, the methodologies to select additional indicators and the data source used. - Brief summaries of relevant engagement policies to reduce PAIs. - References to international standards and where relevant, the alignment with the Paris Agreement. - A historical comparison of the current reporting period against previous reports.
Product-Level Disclosure	
Article 8 Product’s Pre-Contractual Disclosure	
<p>The SFDR requires under Article 6 that product-level pre-contractual disclosures should include (1) the manner in which sustainability risks are integrated into investment decisions and (2) the results of the assessment of likely impacts of sustainability risks on the returns of the financial products.</p> <p>For a financial product that promotes environmental and/or social characteristics (Article 8 product), the pre-contractual disclosure shall include (1) information on how these characteristics are met and (2) if an index has been designated as a reference benchmark, information on the index’s consistency with these characteristics and the methodology used for the index calculation.</p>	<p>Disclosure must be made in accordance with the template set out in Annex 2, which includes:</p> <ul style="list-style-type: none"> - Descriptions of the environmental and/or social characteristics that are promoted by the Article 8 product, including the sustainability indicators that are used, the investments objectives and a “do no significant harm” statement. - Whether PAIs have been considered. - Descriptions of the investment strategy. - Descriptions of the asset allocation planned for the Article 8 product: (1) for products that promote environmental characteristics, descriptions of the alignment of the environmental objective with the Taxonomy Regulation, which shall be presented in a graphical pie chart, plus a description of the underlying investments that are in environmentally sustainable economic activities, or (2) for products that promote social characteristics, descriptions of the minimum share of socially sustainable investments. - Where applicable, details of the specific index designated as a reference benchmark, including the continuous alignment, any difference from a broad market index and the methodology used for index calculation. - A hyperlink to the webpage for website disclosure.

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SFDR Requirements	Final RTS Requirements
Product-Level Disclosure	
Article 9 Product's Pre-Contractual Disclosure	
<p>While the SFDR Article 6 requirements remain the same as above, for a financial product that has sustainable investment as its objective (Article 9 product) and where an index has been designated as a reference benchmark, the pre-contractual disclosure shall include (1) information on how the designated index is aligned with the objective, (2) an explanation of any difference from a broad market index and (3) the methodology used for the calculation of the index.</p> <p>For Article 9 products that do not have a designated index, the disclosure shall include an explanation on how that objective is to be attained.</p>	<p>Disclosure must be made in accordance with the template set out in Annex 3, which includes:</p> <ul style="list-style-type: none"> - Descriptions of the investment objective of the Article 9 product, including the sustainability indicators that are used and a “do no significant harm” statement. - Whether PAIs have been considered. - Descriptions of the investment strategy. - Descriptions of the asset allocation and minimum share of sustainable investments, to be presented in a graphical pie chart, plus a description of the underlying investments that are in environmentally sustainable economic activities. For Article 9 products that contribute to a social objective, FMPs should also include descriptions of the minimum share of sustainable investments with a social objective. - Where applicable, details of the specific index designated as a reference benchmark, including the continuous alignment, any difference from a broad market index and the methodology used for index calculation. - A hyperlink to the webpage for website disclosure. <p>Moreover, for a financial product offering investment options where one or more of those investment options qualify as a product under either the Article 8 or Article 9 product category, FMPs shall provide a prominent statement with the list of investment options and the annexed information for each category.</p> <p>For underlying investment options that have sustainable investment as their objective but are not themselves financial products, FMPs shall provide a prominent statement including the description of the sustainable investment objective, a list of indicators and a “do no significant harm” statement.</p>

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SFDR Requirements	Final RTS Requirements
Product-Level Disclosure	
Article 8 Product's Website Disclosure	
<p>The SFDR requires under Article 10 that FMPs should publish and maintain on their websites:</p> <ul style="list-style-type: none"> - a description of the environmental or social characteristics or the sustainable investment objective; - information on the methodologies used to assess, measure and monitor the environmental or social characteristics or the impact of the sustainable investments (including its data sources, screening criteria for the underlying assets and the relevant sustainability indicators); - certain information on pre-contractual disclosures; and - certain information regarding periodic reporting on the transparency of the promotion of environmental or social characteristics and sustainable investments. <p>The information disclosed should be clear, succinct and understandable to investors and published in an easily accessible area of the website.</p>	<p>The RTS specify further details that should be included in the website disclosures. An Article 8 product's website disclosure should include the following sections in the following order:</p> <ul style="list-style-type: none"> - Summary, to be provided in English and one of the official languages of the home Member State of the FMP, and where a financial product is made available in a host member state, one of the official languages of that host Member State. - "No sustainable investment objective" statement. - Environmental or social characteristics of the Article 8 product. - Investment strategy. - Descriptions of the proportion of investments, as provided in pre-contractual disclosure, distinguishing between direct exposures in investee entities and other types of exposures. - Descriptions of the monitoring of the environmental and/or social characteristics and sustainability indicators throughout the product lifecycle and the related control mechanisms. - Methodologies to measure how environmental or social characteristics are promoted. - Data sources, measures taken to ensure data quality, data processing and the proportion of data that are estimated. - Limitations to methodologies and data. - Due diligence carried out on the underlying assets of the product, including internal and external controls. - Engagement policies implemented where engagement is part of the investment strategy, including any management procedures applicable to sustainability-related controversies in investee companies. - Where an index is designated as a reference benchmark, descriptions of the designated benchmark and the alignment with environmental or social characteristics promoted by the Article 8 product.

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SFDR Requirements	Final RTS Requirements
Product-Level Disclosure	
Article 9 Product's Website Disclosure	
<p>The SFDR requirements under Article 10 are the same for Article 8 and Article 9 products.</p>	<p>An Article 9 product's website disclosure should include the following sections in the following order:</p> <ul style="list-style-type: none"> - Summary, to be provided in English and one of the official languages of the home Member State of the FMP, and where a financial product is made available in a host member state, one of the official languages of that host Member State. - "Do no significant harm" statement. - Sustainable investment objective of the Article 9 product. - Investment strategy. - Descriptions of the proportion of investments, as provided in pre-contractual disclosure, distinguishing between direct exposures in investee entities and other types of exposures. - Descriptions of the monitoring of the sustainable investment objective and sustainability indicators throughout the product lifecycle and the related control mechanisms. - Methodologies to measure the attainment of the sustainable investment objectives. - Data sources, measures taken to ensure data quality, data processing and the proportion of data that are estimated. - Limitations to methodologies and data. - Due diligence carried out on the underlying assets of the product, including internal and external controls. - Engagement policies implemented where engagement is part of the investment strategy, including any management procedures applicable to sustainability-related controversies in investee companies. - Where an index has been designated as a reference benchmark, descriptions of how that index is aligned with the sustainable investment objective, plus a hyperlink to the administrator of the reference benchmark; where the Article 9 product has carbon emissions reduction as its objective, a statement referring to relevant EU climate benchmarks.

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SFDR Requirements	Final RTS Requirements
Product-Level Disclosure	
Article 8 Product's Periodic Disclosure	
<p>SFDR requires under Article 11 that for Article 8 products, FMPs should include a description in the periodic reports that includes the extent to which environmental or social characteristics are met.</p>	<p>Disclosure must be made in accordance with the template set out in Annex 4, which includes:</p> <ul style="list-style-type: none"> - The extent to which the environmental and/or social characteristics are met, including performance of sustainability indicators, investment objectives and a “do no significant harm” statement. - Whether PAIs have been considered. - List of the top 15 largest investments, including their respective sector, percentage and country. - Details of the proportion of sustainability-related investments, including (1) asset allocation of the proportions of Article 8 products and other investments, (2) descriptions of different investments’ economic sectors or subsectors, (3) where applicable, descriptions of the environmental objective’s alignment with the Taxonomy Regulation, presented in a graphical bar chart of Taxonomy Regulation-aligned investments and other investments, (4) where applicable, descriptions of the share of socially sustainable investments and (5) the purpose of “other” investments and their minimum environmental or social safeguards. - List of actions taken to meet the environmental and/or social characteristics. - Usage of an index designated as a benchmark and the benchmark comparisons against a broad market index and the Article 8 product’s performance, presented in the form of a table or graphical representation.
Article 9 Product's Periodic Disclosure	
<p>The SFDR requires under Article 11 that for Article 9 products, FMPs should include (1) the overall sustainability-related impact of the financial product by means of relevant sustainability indicators and (2) where an index has been designated as a reference benchmark, a comparison against a broader market index through sustainability indicators.</p>	<p>Disclosure must be made in accordance with the template set out in Annex 5, which includes:</p> <ul style="list-style-type: none"> - The extent to which the sustainable investment objectives are met, including performance of sustainability indicators and a “do no significant harm” statement. - Whether PAIs have been considered. - List of the top 15 largest investments, including the respective sector, percentage and country. - Details of the proportion of sustainability-related investments, including (1) asset allocation of the proportions of Article 9 products versus non-sustainable investments, environmentally versus socially sustainable investments, Taxonomy Regulation-aligned versus other investments, (2) descriptions of different investments’ economic sectors or subsectors, (3) where applicable, descriptions of the environmental objective’s alignment with the Taxonomy Regulation, presented in a graphical bar chart of Taxonomy Regulation-aligned investments and other investments, (4) where applicable, descriptions of the share of socially sustainable investments and (5) the purpose of “not sustainable” investments and their minimum environmental or social safeguards. - List of actions taken to meet the investment objectives. - Usage of an index designated as a benchmark and the benchmark comparisons against a broad market index and the Article 9 product’s performance, presented in the form of a table or graphical representation.