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New ESG Requirements Impacting the Financial Services Industry

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In March 2021, a new European Union regime on sustainability-related disclosures in the financial sector will come into force. The Sustainable Finance Disclosure Regulation 2019/2088 ("**SFDR**") contains rules regarding sustainability-related disclosures which will need to be made by financial market participants ("**FMP**s") and financial advisers within the scope of the Regulation ("**FA**s").

It will impact, amongst others, alternative investment fund managers ("**AIFMs**") in the European Economic Area ("**EEA**") and certain AIFMs outside of the EEA ("**Non-EEA AIFMs**") where they market funds in the EEA under the national private placement regime ("**NPPR**").

What new requirements apply from March 2021?

Our previous client briefing summarised the proposals put forward under the SFDR and the Taxonomy Regulation and given the Taxonomy Regulation will not start to apply until 2022, it is the majority of the SFDR provisions that will apply from 10 March 2021.

The SFDR introduces obligations on FMPs, which includes in its definition, certain investors and asset managers. FMPs will be required to disclose how they integrate ESG (i.e, "environment, social and governance") factors into their risk processes and investment decision-making processes, as part of their duties towards investors and beneficiaries.

Firms brought into scope will be required to make disclosures not only at the level of a relevant investment product, but also at the level of the firm. AIFMs brought into scope, for example, would be required to make ESG disclosures on their websites and would need to update certain policies and procedures to take into account the ESG requirements. They would also need to make certain pre-contractual disclosures at the level of the fund (as part of their Article 23 disclosures under the Alternative Investment Fund Managers Directive (2011/61/EU) ("**AIFMD**")) and in the annual reports for their in-scope funds.

Will the UK adopt these requirements, in the context of Brexit?

The Brexit transitional period is due to come to an end on 31 December 2020. The UK Financial Conduct Authority ("**FCA**") indicated that it would *not* be on-shoring the SFDR. Rather, the FCA is expected to consult in 2021 on a UK-specific regime. We will continue to monitor developments on the form these UK requirements will take.

What do Fund Managers need to do now?

Although certain requirements are currently unclear and will likely be settled by further guidance or market practice in due course, fund managers (including non-EEA fund managers that have marketed in the EEA under the NPPR) should already be preparing for the requirements that will apply from March 2021 by:

- carrying out an assessment as to whether they are in scope of the new requirements;
- assessing whether the firm or its products are currently promoted as an ESG driven or sustainable product, which would trigger additional requirements;
- consider how the firm will market funds and products going into 2021, as this will impact the level of disclosure requirements; and
- implementing the disclosure requirements coming into force under the SFDR from 10 March 2021, to ensure compliance with the new regime.

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