// ASSET MANAGEMENT & INVESTMENT FUNDS

WILLIAM FRY

GREEN RULES FOR EVERY COLOUR FUND

EU Sustainable Finance Rules: A Compliance Action Plan for Fund Managers

Including **Decision Tree** and **Compliance Checklists** for Fund Managers and all Funds ("Light Green", "Dark Green" and other Funds)

JULY 2020

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THE SUSTAINABLE FINANCE ACTION PLAN - OVERVIEW OF KEY REQUIREMENTS FOR FUNDS/FUND MANAGERS AND TIMING

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The Sustainable Finance Action Plan -

Overview of Key Requirements for Funds/ Fund Managers and Timing

BACKGROUND: AN EU PLAN TO ENCOURAGE PRIVATE INVESTMENT IN SUSTAINABLE ACTIVITIES

In March 2018, the EU, having identified the need for private capital investment to help meet its sustainability goals under the 2030 Agenda for Sustainable Development and Paris Agreement, launched its Action Plan on Sustainable Finance (the **Action Plan**).

The Action Plan comprises several EU legislative measures and aims to:

01. identify the economic activities which will support the attainment of the EU's sustainability goals (**Sustainable Activities**) through the creation of an EU-wide classification system of Sustainable Activities; and

02. ensure investors are aware of how to support Sustainable Activities through investment, by requiring:

    - entities and issuers to assess and disclose their impact on sustainability as determined by their level of engagement in Sustainable Activities; and

    - fund management companies (along with other financial service/product providers) to assess and disclose their impact on sustainability based on the level of fund investments in entities/issuers which engage in Sustainable Activities.

The Action Plan does not mandate investment in Sustainable Activities or prescribe environmental, social and governance (**ESG**) investment strategies. Instead, it requires detailed investor disclosure of whether and how Fund Managers invest in Sustainable Activities. This, it anticipates, will stimulate Sustainable Activity investment by Fund Managers[1] seeking to capitalise on investor demand for products disclosing portfolio alignment with the EU classification of sustainability. Accordingly, although no investment requirements or limitations are directly imposed under the Action Plan, its investor disclosure requirements are expected to have a significant impact on fund portfolio construction and management post-implementation of the Action Plan.

The diagram at page 14/15, entitled 'Fund Manager Compliance Obligations/Options' represents a 'decision tree' which we have created as a starting point to assist Fund Managers in assessing their high-level compliance obligations/options under the Action Plan. This is based on key considerations such as proportionality, the investment objective and strategies (green/non-green) of funds under management and target investors' demand for sustainable investment opportunities. The following summary of Fund and Fund Manager obligations informs this diagram.

1 "Fund Manager" means any UCITS management company, internally managed UCITS or AIFM.

FUND AND FUND MANAGER OBLIGATIONS - OVERVIEW

Sustainability Impact: assessment and disclosure requirements for Fund Managers

Although the Action Plan does not mandate investment in Sustainable Activities it does impose significant sustainability-related obligations on Fund Managers, the most exigent of which comes into effect on **10 March 2021** and requires Fund Managers to assess the impact of each investment of each fund under management on ESG factors and disclose the outcome of such assessment to investors.

The requirement to assess and disclose sustainability impact is applicable to all Fund Managers, irrespective of the objective or investment strategy of the funds under management. Therefore, Fund Managers of 'green' funds and non-'green' funds are equally subject to the requirement to assess and disclose the sustainability impact of fund investments. Furthermore, the requirement applies at the level of the Fund Manager which will necessitate an aggregation of the sustainability impact of each fund under management in order to determine and disclose the sustainability impact of the Fund Manager. A level of proportionality is incorporated, however, as the requirement applies on a comply-or-explain basis for Fund Managers with greater than 500 employees until 30 June 2021 and indefinitely for Fund Managers with less than 500 employees.

The form of impact assessment and disclosure is heavily prescribed under the Action Plan and will require the implementation of detailed investment due diligence processes in order to comply with the extensive disclosure requirements. Assessing the sustainability impact of a fund under the Action Plan requires analysis of each fund investment using a mandated set of 32 performance indicators which have been pre-determined as automatically having a negative impact on Sustainable Activities (**Adverse Impact Indicators**). These include indicators such as the presence of greenhouse emissions, negative biodiversity impacts and lack of adherence with fundamental labour conditions. As the Adverse Impact Indicators are structured as automatically indicative of adverse impact, there are no investment thresholds – rather, where the assessment of an investment results in a value greater than zero (in accordance with the prescribed methodology) for one or more Adverse Impact Indicators, the investment under assessment is automatically deemed and required to be disclosed by the Fund Manager as having a negative impact on sustainability. Once each investment of each fund under management is assessed, the values must be aggregated and disclosed as the Fund Manager's impact on sustainability using the mandatory reporting template (labelled the '**principal adverse impacts statement**') under the Action Plan.

The Action Plan method of assessment may be best illustrated by way of example:

Sample Assessment of Sustainability Impact of a Fund Investment

INVESTMENT: equity holding in company X

INDICATOR 5 (OF 32): Total energy consumption from non-renewable sources and share of non-renewable energy consumption

INDICATOR METRIC: (1) Total energy consumption of investee company from non-renewable energy sources (in GWh) expressed as a weighted average and (2) share of non-renewable energy consumption of investee company from non-renewable energy sources compared to renewable energy sources, expressed as a percentage.

ANALYSIS REQUIRED: Assess company X's use of non-renewable energy consumption and compare its use of renewable and non-renewable energy sources.

RESULT: if company X makes use of any non-renewable energy sources the indicator is triggered and the investment must automatically be disclosed as having a negative impact on the environment, the level of which is determined by reference to the level of company X's use of non-renewable sources expressed as a percentage of its use of renewable energy sources.

One of the key challenges in complying with the sustainability impact assessment requirement will be in applying the Adverse Impact Indicators to non-corporate equity/debt investments. EU policymakers acknowledge that the Adverse Impact Indicators are more appropriate for analysing corporate equity and debt investments but, citing the ambitious nature of the Action Plan, nonetheless expect the Adverse Impact Indicators to be applied to all investments including derivatives, money market instruments, real estate and sovereign debt investments. To the extent an Adverse Impact Indicator is inapplicable, EU policymakers have noted that Fund Managers may record a value of zero in the mandatory reporting template and include a narrative explanation for such designation.

In addition to the 32 mandatory Adverse Impact Indicators mentioned above, there are a further 18 "optional" Adverse Impact Indicators, at least 2 of which must be selected and used in the assessment of the sustainability impact of a fund's investments. Therefore, large Fund Managers (i.e. with more than 500 employees) and small Fund Managers (i.e. with less than 500 employees) who opt to comply with the relevant requirements will be required to assess each investment of each fund under management against at least 34 Adverse Impact Indicators in order to determine and disclose the sustainability impact of the Fund Manager. The full list of mandatory and optional Adverse Impact Indicators is set out in the **Appendix** hereto.

See Part B, Section 1 below for a detailed analysis of the requirement for Fund Managers to assess and disclose the sustainability impact of investment decisions to investors.

Sustainability Risk: assessment and disclosure requirements for Fund Managers

Under the Action Plan, Fund Managers are required to assess the risks to fund returns arising from environmental, social or governance matters (**Sustainability Risks**). The form of assessment of Sustainability Risks adopted by Fund Managers must be reflected in the Fund Managers' policies and procedures, as mandated by its governing regime, and the outcome of the assessment disclosed to investors in accordance with applicable legislative requirements.

See Part B, Section 2 below for a detailed analysis of the requirement for Fund Managers to assess and disclose Sustainability Risks.

Sustainable Funds: assessment and disclosure requirements for funds which promote/ target sustainable investments

Under the Action Plan, funds which promote "among other characteristics, environmental or social characteristics or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices" (colloquially referred to as **Light Green Funds**) and funds which have sustainable investment objectives (including a reduction in carbon emissions) (colloquially referred to as **Dark Green Funds**) are subject to enhanced disclosure requirements. Together, Light Green Funds and Dark Green Funds are referred to throughout this guide as **Sustainable Funds**.

The product-level requirements for Light and Dark Green Funds provide for specific disclosures in respect of the fund's strategy or investment objective including the methodology employed, the data sources used and any screening criteria employed. Both Light and Dark Green Funds are also required to assess and disclose, on an ex-ante and ex-post basis, how and to what extent investments are made in Sustainable Activities and the impact of such investments on ESG factors.

See Part B, Section 3 below for a detailed analysis of the requirements applicable to Light and Dark Green Funds.

TIMING – COVID-19 AND SOUNDINGS FROM EU, ESMA AND CENTRAL BANK OF IRELAND

While the COVID-19 crisis has impacted various regulatory initiatives, it seems only to have galvanised EU policymakers into implementing the Action Plan, with the Commission recently noting that *"the priorities that were set at the beginning of January 2020 remain valid in addressing today's challenges. The Commission remains fully determined to deliver on its flagship initiatives, the European Green Deal [incorporating the Action Plan on Sustainable Finance] and the Digital Strategy, as they are key to relaunching the European economy and building a more resilient, sustainable, fair and prosperous Europe."*.

While ESMA has recently reported a limited delay of one month to the delivery of certain guidance to the Commission mandated under the Action Plan, there has been no formal indication from the EU, ESMA or the Central Bank of Ireland that compliance deadlines under the Action Plan, including that of 10 March 2021 referenced above, will be extended or forbearance forthcoming. Irish Funds will be seeking dialogue with the Central Bank of Ireland on point imminently. Our Partner, Lorena Dunne, is a member of the Irish Funds ESG and Sustainable Finance Working Group working towards this dialogue and we will, accordingly, update you on any progress made in this regard.

We have prepared this guide to assist Funds and Fund Managers in their preparations for compliance with the ambitious and challenging package of measures comprising the Action Plan.

Part B of this guide contains detailed and user-friendly matrices setting out the requirements for Funds and Fund Managers under the various legislative measures underpinning the Action Plan.

Part C contains practical compliance checklists corresponding to these matrices, including relevant compliance deadlines, in order to assist you in co-ordinating compliance planning.

DECISION TREE: FUND MANAGER COMPLIANCE OBLIGATIONS/OPTIONS

Do you have less than 500 employees?
(note: if not then you are a "Large Manager")

No → From 30 June 2021, Large Managers must assess the sustainability impact of investments using the Adverse Impact Indicators (as set out in the Appendix hereto) and must disclose the outcome of that assessment by 30 June 2022 in the template format mandated by the Action Plan.

Additionally, by 10 March 2021, all Fund Managers are required to assess and disclose Sustainability Risks (see Part B, Section 2 below).

Yes ↓

Do you want to opt-in and comply with the requirement to assess and disclose the sustainability impact of your fund(s) e.g. because you wish to market a 'green' fund or disclose a positive impact on sustainability to meet investor demand?

No → From 10 March 2021, opt-out Fund Managers must disclose the reasons for not considering the sustainability impact of investments, including, where relevant, information as to whether and when they intend to consider such adverse impacts.

Additionally, by 10 March 2021, all Fund Managers are required to assess and disclose Sustainability Risks (see Part B, Section 2 below).

Yes ↓

Do you currently/intend to manage ESG/sustainable funds?

No → From 10 March 2021, opt-in Fund Managers must assess each investment of each fund under management using the Adverse Impact Indicators (as set out in the Appendix hereto) and disclose the aggregated outcome of this assessment by 30 June 2022 in the template format mandated by the Action Plan. By 30 December 2022, this disclosure must be made at the level of each fund under management.

Additionally, by 10 March 2021, all Fund Managers are required to assess and disclose Sustainability Risks (see Part B, Section 2 below).

Yes ↓

Does/will your fund have a sustainability investment objective?

No → Your fund will be subject to product disclosure requirements for funds which promote environmental or social characteristics. Such funds are referred to as Light Green Funds and from 10 March 2021, must assess and disclose the level of their investments which comply with the 'do no significant harm principle' (further details provided in Part B, Section 3) and make enhanced disclosures including the methodology, data sources and screening criteria used to achieve the environmental or social characteristics promoted by the fund.

Yes ↓

Your fund is likely a Dark Green Fund. From 10 March 2021, Dark Green Funds must assess and disclose the % of their investment in sustainable investments (as defined under the Action Plan) and make enhanced disclosures including the methodology, data sources and screening criteria used to achieve the sustainable objective of the fund.

→ The key challenge for all funds assessing and disclosing sustainability impact is in accessing adequate, reliable, accurate, and affordable data. Legislative solutions in the form of the Non-Financial Reporting Directive (**NFRD**) and the Taxonomy Regulation are in play but are not sufficiently advanced to be solely relied on to meet disclosure obligations. Fund Managers will likely need to establish third party data sources to ensure compliance with their disclosure obligations.

Detailed Legislative Requirements Matrices

The Action Plan requirements for Funds and Fund Managers are spread across the following legislative measures:

LEGISLATIVE MEASURE	CURRENT STATUS
Disclosures Regulation[2] and corresponding Level 2 measures	Disclosures Regulation in force Draft Level 2 measures published 23 April 2020 – subject of ongoing joint European Supervisory Authorities consultation until 1 September 2020
Taxonomy Regulation[3] and corresponding Level 2 measures	Taxonomy Regulation in force Level 2 measures not yet published (first set to be published by year-end – mandatory timeframe)
Amendments to the UCITS and AIFMD regimes	Draft amending delegated acts published – outcome of European Commission consultation awaited (closed 6 July 2020)

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.

While the Disclosures and Taxonomy Regulations Level 2 measures and proposed UCITS and AIFMD amending delegated acts have yet to be finalised, the following timeline of key events highlights the tight timeframe for compliance.

Pre March 2021	10 March 2021	30 June 2021	1 January 2022	30 June 2022	30 December 2022	1 Janaury 2023
Fund Manager Sustainability Risk Requirements under amended UCITS and AIFMD regimes anticipated to be in effect	Fund Manager Sustainability Impact Requirements under Disclosures Regulation effective	Sustainability Impact Requirements under Disclosures Regulation mandatory for Large Fund Managers	First tranche of Sustainable Fund Requirements under Taxonomy Regulation effective	First Fund Manager-level principal adverse impacts statement under Disclosures Regulation due for publication	First Fund-level principal adverse impacts statement under Disclosures Regulation due for publication	Second tranche of Sustainable Fund Requirements under Taxonomy Regulation effective

The requirements matrices at Sections 1 - 3 set out in detail the sustainability impact, sustainability risk and Sustainable Fund requirements summarised in Part A. These requirements apply equally to UCITS management companies and AIFMs, therefore any reference in the matrices to a fund includes both UCITS and AIFs and any reference to a Fund Manager includes UCITS management companies, internally managed UCITS and AIFMs.

SECTION 1: SUSTAINABILITY IMPACT* REQUIREMENTS MATRIX

Under the Action Plan, Fund Managers are required (on a comply or explain basis for small Fund Managers (<500 employees) (**Small Managers**)), to assess and disclose to investors the impact of their investment decisions on the environment, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters (**Sustainability Factors**). A Fund Manager's impact on Sustainability Factors is assessed by reference to the impact of the investments of its fund(s) under management on Sustainability Factors. Therefore, any Large Manager (>500 employees) and any "opt-in" Small Manager with more than one fund under management must aggregate the impact of the investments of each fund under management and disclose this aggregation as the impact of its investment decisions on Sustainability Factors. As the requirement to assess and disclose sustainability impact is at the level of the Fund Manager, EU policymakers are of the view that no funds under management may be excluded from the assessment and a Fund Manager must assess each investment of each fund under management and disclose the aggregation of such assessments as its impact on Sustainability Factors.

The assessment of each fund portfolio is required to be made using, at a minimum:

› the core, mandatory set of 32 Adverse Impact Indicators (see **Appendix** hereto); and

› a further 18 optional Adverse Impact Indicators, from which Fund Managers are obliged to select at least 2 (see **Appendix** hereto).

Fund Managers will need to operationalise the mandatory and optional Adverse Impact Indicators within their investment due diligence processes and make website disclosures of any sustainability impact of investments, on both a qualitative and quantitative basis, in the form of a mandated 'principal adverse impacts statement', the template for which is appended to the draft Disclosures Regulation Level 2 measures.

(*impact on environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters)

OPERATIONAL REQUIREMENTS

- Fund Managers who (elect/are obliged to) comply with the requirement under the Disclosures Regulation to disclose the impact of their investment decisions on Sustainability Factors must take into account any identified adverse impacts when complying with their existing investment due diligence obligations under governing legislation.

Draft UCITS & AIFMD Amendments

WEBSITE DISCLOSURES

- Fund Managers must, on a comply-or-explain basis for Small Managers, disclose the outcome of their assessment of the impact of their investment decisions on Sustainability Factors, including:
  - information on their policies for the identification and prioritisation of identified adverse sustainability impacts and indicators;
  - where applicable, a description of the adverse sustainability impacts and of any actions taken to reduce the adverse impact of the investment on sustainability;
  - where applicable, brief summaries of engagement policies in accordance with SRD II; and
  - reference to their adherence to responsible business conduct codes and internationally recognised standards for due diligence and reporting and, where relevant, the degree of their alignment with the objectives of the Paris Agreement;

Disclosures Regulation

- Fund Managers must, on a comply-or-explain basis for Small Managers, publish on their website a 'principal adverse impacts statement', which will include:
  - a description of the policies and procedures in place to identify and assess the adverse impact of investments on Sustainability Factors;
  - a summary of the impact of investments on Sustainability Factors;
  - a description of the main or principal adverse impacts of investments on Sustainability Factors using the mandatory and optional Adverse Impact Indicators (see **Appendix** hereto);
  - a description of any actions and engagement policies to mitigate the adverse impacts identified; and
  - a description of any international standards adhered to.

Draft Level 2 Disclosures Regulation

FUND PROSPECTUS DISCLOSURES

- Fund Managers must, on a comply-or-explain basis for Small Managers, disclose in the fund prospectus the impact of investment decisions on Sustainability Factors, including:
  - a clear and reasoned explanation of whether, and, if so, how the Fund Manager assesses the adverse impact of investment decisions on Sustainability Factors; and
  - a statement that information on the main adverse impacts of investments on Sustainability Factors identified is available in the annual reports of the fund.

Draft Level 2 Disclosures Regulation

FUND PROSPECTUS & ANNUAL REPORT DISCLOSURES FOR NON-SUSTAINABLE FUNDS

- A fund that does not have a sustainable objective/element, must disclose a statement in the annual reports and in the fund prospectus that '*The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities*'.

Taxonomy Regulation

SECTION 2: SUSTAINABILITY RISK REQUIREMENTS MATRIX

Under the Action Plan, Fund Managers are required to assess the risks to fund returns arising from environmental, social or governance matters (**Sustainability Risks**). The form of assessment of Sustainability Risks adopted must be reflected in the Fund Manager's policies and procedures, as mandated by its governing regime, and the outcome of the assessment disclosed to investors in accordance with applicable legislative requirements.

OPERATIONAL REQUIREMENTS

- Adapt investment due diligence processes/procedures to provide for the assessment of any Sustainability Risks as part of investment decision-making processes; and
- adapt remuneration structure to ensure it supports sound and effective management of Sustainability Risks while not encouraging excessive risk-taking (with respect to Sustainability Risks).

Disclosures Regulation

- Adapt organisational structure to:
  - provide for the assessment of Sustainability Risks when complying with the general organisational and procedural requirements;
  - ensure the necessary level of resources and expertise are retained for the effective assessment of Sustainability Risks;
  - ensure that senior management is responsible for the assessment of Sustainability Risks;
- incorporate assessment of fund exposure to Sustainability Risks in the risk management framework; and
- assess and identify any conflicts of interest that may arise in relation to the assessment of Sustainability Risks and the existence of which may damage the interests of an underlying fund. The identification process could include, for example, conflicts that could give rise to greenwashing, misselling, misrepresentation of investment strategies or churning. Consideration may also be given to conflicting interests between funds with different investment strategies managed by the same Fund Manager as well as situations where there are other business relationships with investee entities/issuers, conflicting group interests or investments in entities with close links in similar circumstances.

Draft UCITS & AIFMD amendments

WEBSITE DISCLOSURES

- Publish summary details of the investment due diligence procedures for the assessment of Sustainability Risks in the investment decision-making process; and
- publish information on how the remuneration policy supports sound and effective management of Sustainability Risks while not encouraging excessive risk-taking (with respect to Sustainability Risks).

Disclosures Regulation

FUND PROSPECTUS DISCLOSURES

- Disclose how Sustainability Risks are assessed as part of the investment decision-making process and:
  - the likely impact of Sustainability Risks on the fund(s) return; or
  - where Sustainability Risks are unlikely to have an impact on fund returns, a clear and concise explanation of the reasons therefor.

Disclosures Regulation

SECTION 3: SUSTAINABLE FUND REQUIREMENTS MATRIX

The requirements for green funds are split between those applicable to Light Green Funds and those applicable to Dark Green Funds. This split is reflected in the matrix below.

As discussed above, the requirements for Light and Dark Green Funds do not mandate any one form of sustainable investing but rather disclosure of the impact of investments on sustainability. The sustainability impact and sustainability risk requirements set out in Sections 1 and 2 above are equally applicable to Fund Managers of Light and Dark Green Funds as to Fund Managers of non-green funds.

In addition to any Fund Manager-level requirements set out in Sections 1 and 2 above, the product-level requirements for Light and Dark Green Funds provide for specific disclosures in respect of the fund's strategy or investment objective, disclosure of the level of Sustainable Investments (see page 27 for Action Plan definition) and how such investments comply with the 'do no significant harm' principle[4] in the Disclosures Regulation. Both Light and Dark Green Funds are also required to assess and disclose, on an ex-ante and ex-post basis, how and to what extent investments are aligned with the Taxonomy Regulation, based on either the disclosures of the investee entities/issuers or by applying the Taxonomy Regulation metrics and indicators for assessing Taxonomy-alignment.

4 The principle of 'do no significant harm' appears in the definition of 'sustainable investment' under the Disclosures Regulation and is a precautionary principle to ensure that the investment, while sustainable, does not simultaneously significantly harm the environmental nor the social objective of the investment.

The term 'sustainable investment' is defined broadly under the Disclosures Regulation as an investment in:

an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy;

OR

an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities;

PROVIDED THAT SUCH INVESTMENTS:

do not significantly harm any of those objectives;

AND

that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.

Requirements for Light Green Funds – i.e. requirements for funds which 'promote environmental or social characteristics'[5] and invest in entities/issuers which follow 'good governance practices'[6]

5 The term 'promote environmental or social characteristics' is not defined under the Disclosures Regulation. The Disclosures Regulation Draft Level 2 Measures state that these products "can cover various investment approaches and strategies, from best-in-class to specific sectoral exclusions." Recital (21) Level 2 notes that these products include any product which "references sustainability factors that are taken in consideration when allocating the capital invested of the product."

6 The term 'good governance practices' is not specifically defined but examples of good governance practices are listed in the Disclosures Regulation as "sound management structures, employee relations, remuneration of staff and tax compliance". The European Supervisory Authorities have stated that they believe the precondition of investment in entities/issuers which follow good governance practices is mandatory for Light Green Funds.

FUND PROSPECTUS DISCLOSURES

Required disclosures include:

- description of how the environmental or social characteristics of the fund's investment strategy will be met; and
- if an index has been designated as a reference benchmark, information on whether and how this index is consistent with the environmental or social characteristics of the fund's investment strategy and where the index methodology can be found.

Disclosures Regulation

Required disclosures include:

- a graphical representation of the planned proportions of: (i) Sustainable Investments; (ii) investments which form part of the environmental or social characteristics of the fund's investment strategy but don't come within (i); and (iii) the remainder of investments;
- an explanation of how any Sustainable Investments comply with the principle to do no significant harm; and
- the sustainability indicators used to measure the environmental or social elements of the fund's investment strategy.

Draft Level 2 Disclosures Regulation

Required disclosures include:

- details of how and to what extent the fund uses the Taxonomy in selecting its investments e.g. portfolio construction or as the basis for engagement with entities/issuers; and
- confirmation of which of the environmental objective(s)[7] under the Taxonomy the investments contribute to, including any Taxonomy -related targets e.g. 20% of the fund invested in entities/issuers with >50% Taxonomy-aligned turnover or with substantial Taxonomy-related capital expenditure (capex).

Taxonomy Regulation

7 The environmental objectives are (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and restoration of biodiversity and ecosystems.

WEBSITE DISCLOSURES

Required disclosures include:

- a description of the environmental or social characteristics of the fund's investment strategy;
- information on the methodologies used to assess, measure and monitor the environmental or social characteristics of the fund's investment strategy, including data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the environmental or social characteristics of the fund's strategy;
- the fund prospectus disclosures for Light Green Funds (see above); and
- the annual report disclosures for Light Green Funds (see below).

Disclosures Regulation

Required disclosures include:

- a two-page summary focussing on the methodology employed to measure the social or environmental characteristics of the fund's strategy, the data sources used, and any screening criteria employed; and
- an explanation of how Sustainable Investments do no significant harm referencing the Adverse Impact Indicators and whether any investments were excluded due to their significant harm to the fund's sustainable strategy.

Draft Level 2 Disclosures Regulation

ANNUAL REPORT DISCLOSURES

Disclose the extent to which the environmental or social characteristics of the strategy of fund(s) under management have been achieved.

Disclosures Regulation

Required disclosures include:

- the prescribed list of items which focus on the success of the fund in achieving the environmental or social characteristics of the fund's investment strategy; and
- an explanation of how the Sustainable Investments do no significant harm referencing the Adverse Impact Indicators and whether any investments were excluded due to their significant harm to the fund's sustainable strategy.

Draft Level 2 Disclosures Regulation

Required disclosures include:

- how the fund's investment strategies have been implemented in practice; and
- a point-in-time calculation of the proportion of investments that are Taxonomy-aligned, expressed as a percentage of the investment, fund or portfolio using:
  - i) investee entity's/issuer's Taxonomy-alignment disclosure if it is subject to the Taxonomy; or
  - ii) investee entity's/issuer's non-financial disclosures if it is subject to the Non-Financial Reporting Directive (**NFRD**); or
  - iii) if the investee entities/issuers are not subject to the Taxonomy and/or NFRD (e.g. non-EU entities/issuers), assess investee entities/issuers using metrics/indicators in Taxonomy to determine alignment with Taxonomy.

Taxonomy Regulation

Requirements for Dark Green Funds – i.e. requirements for funds with a sustainable investment objective

FUND PROSPECTUS DISCLOSURES

Required disclosures include:

- details of any index designated as a reference benchmark including how the index is aligned with the sustainable objective and an explanation as to why and how the designated index differs from a broad market index and where information on the index methodology can be found;
- if no index is designated, information on how the fund will achieve its sustainable investment objective; and
- where the sustainable investment objective of the fund is the reduction of carbon emissions, disclose how the objective aligns with the long-term global warming objectives of the Paris Agreement.

Disclosures Regulation

Required disclosures include:

- a graphical representation of the planned proportions of Sustainable Investments and the division of those Sustainable Investments between environmental and social objectives;
- how the Sustainable Investments comply with the principle of 'do no significant harm' and whether any investments were excluded due to their significant harm to the sustainable investment objective;
- the sustainability indicators used to measure achievement of the sustainable investment objective; and
- for funds with a sustainable investment objective of reducing carbon emissions, an explanation of how the reference benchmark qualifies as an EU Climate Transition Benchmark or an EU Paris-aligned Benchmark under the EU Benchmarks Regulation. Where no such benchmark is available, this should be explained along with details of how the sustainable investment objective is achieved in view of the long-term global warming targets of the Paris Agreement.

Draft Level 2 Disclosures Regulation

Required disclosures include:

- how and to what extent the fund uses the Taxonomy in selecting sustainable investments e.g. portfolio construction or as the basis for engagement with entities/issuers; and
- confirmation of which of the environmental objective(s) the investments contribute to, including any Taxonomy-related targets e.g. 20% of the fund invested in entities/issuers with >50% Taxonomy-aligned turnover or with substantial Taxonomy-related capital expenditure (capex).

Taxonomy Regulation

WEBSITE DISCLOSURES

Required disclosures include:

- a description of the sustainable investment objective;
- information on the methodologies used to assess, measure and monitor the impact of any Sustainable Investments, including data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the overall sustainability impact of the fund;
- the fund prospectus disclosures for Dark Green Funds (see above); and
- the annual report disclosures for Dark Green Funds (see below).

Disclosures Regulation

Required disclosures include:

- two-page summary focussing on the methodology employed to measure the sustainable investment objective, the data sources used and any screening criteria employed; and
- an explanation of how the Sustainable Investments do no significant harm referencing the Adverse Impact Indicators and how investments that do significant harm to the sustainable investment objective were excluded.

Draft Level 2 Disclosures Regulation

ANNUAL REPORT DISCLOSURES

Required disclosures include:

- the overall sustainability-related impact should be reported regularly by means of indicators relevant for measuring the chosen sustainable investment objective; and
- where an index has been designated as a reference benchmark, the information in the preceding bullet point should be provided for the designated index as well as for a broad market index to allow for comparison.

Disclosures Regulation

Required disclosures include:

- the prescribed list of items which focus on the success of the fund in achieving the sustainable investment objective; and
- an explanation of how the Sustainable Investments do no significant harm referencing the Adverse Impact Indicators and whether any investments were excluded due to their significant harm to the sustainable investment objective.

Draft Level 2 Disclosures Regulation

Required disclosures include:

- how the fund's investment strategies have been implemented in practice; and
- a point-in-time calculation of the proportion of investments that are Taxonomy-aligned, expressed as a percentage of the investment, fund or portfolio using:
    - i) investee entity's/issuer's Taxonomy-alignment disclosure if it is subject to the Taxonomy; or
    - ii) investee entity's/issuer's non-financial disclosures if it is subject to the Non-Financial Reporting Directive (**NFRD**); or
    - iii) if the investee entities/issuers are not subject to the Taxonomy and/or NFRD (e.g. non-EU entities/issuers), assess investee entities/issuers using metrics/indicators in Taxonomy to determine alignment with Taxonomy.

Taxonomy Regulation

Compliance checklists and relevant deadlines

The checklists, which can support co-ordination of Action Plan compliance planning, correspond to the requirements matrices in Part B and include key compliance deadlines under the Action Plan.

1

Checklist of
SUSTAINABILITY IMPACT REQUIREMENTS
(applicable to all Fund Managers)

2

Checklist of
SUSTAINABILITY RISK REQUIREMENTS
(applicable to all Fund Managers)

3

Checklist of
SUSTAINABLE FUND REQUIREMENTS:
(i) Light Green Fund Requirements
(ii) Dark Green Fund Requirements

Compliance Checklist: **Sustainability Impact Requirements**

BY 10 MARCH 2021:

- consider whether to (i) comply or (ii) explain non-compliance with the requirement to assess and make website disclosure of the impact of investments on Sustainability Factors;

(i) if complying:

- › develop and implement investment due diligence policies and procedures for assessing the impact of investments on Sustainability Factors using the mandatory Adverse Impact Indicators and at least 2 of the optional Adverse Impact Indicators (as set out in the **Appendix** hereto);
- › where investment decisions may have an adverse impact on Sustainability Factors, develop engagement strategies including for the exercise of voting rights, where available, with a view to reducing the adverse impact of investee entities/issuers on Sustainability Factors;
- › prepare and publish the required fund prospectus disclosures under the Disclosures Regulation and draft Level 2 measures;

(ii) if explaining non-compliance:

- › prepare and publish the required website statements;

BY 30 JUNE 2021:

- large Fund Managers (>500 group employees) must be in compliance with the requirement to assess and make website disclosure of the impact of investments on Sustainability Factors;

BY 1 JANUARY 2022:

- a fund that does not have a sustainable objective/element (i.e. non-Light or Dark Green Funds), must disclose a statement in the annual reports and in the fund prospectus that 'The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities';

BY 30 JUNE 2022:

- Small Fund Managers who, from 10 March 2021, elected to comply and large Fund Managers (>500 employees) must publish website disclosure of the impact of investments on Sustainability Factors using the template report appended to the draft Disclosures Regulation Level 2 measures (the 'principal adverse impact statement');

BY 30 DECEMBER 2022:

- Small Fund Managers who elected to comply and all large Fund Managers (>500 group employees) must disclose in the relevant fund prospectus whether and if so, how each fund under management assesses the adverse impact of investments on Sustainability Factors and a statement that information on the adverse impacts identified in respect of a fund under management is available in the annual reports.

Compliance Checklist: **Sustainability Risk Requirements**

BY 10 MARCH 2021*:

(*Date subject to finalisation and adoption of UCITS and AIFMD amending delegated acts)

- implement operational requirements for the assessment and consideration of Sustainability Risks as part of the investment due diligence processes, remuneration structures, organisational structures, risk management frameworks and the management of conflicts of interest; ☐
- reflect implementation of operational requirements for the assessment and consideration of Sustainability Risks in applicable policies and procedures of the Fund Manager or the underlying fund; ☐
- prepare and publish website disclosure of the amended policies and procedures providing for the assessment and consideration of Sustainability Risks, in summary format; ☐
- update fund prospectus to disclose how the assessment and consideration of Sustainability Risks forms part of the investment decision-making process and whether or not Sustainability Risks are likely to have an impact on the value of the fund. ☐

Compliance Checklist: **Light Green Fund Requirements**

BY 10 MARCH 2021:

- determine which, if any, funds under management may be classified as Light Green Funds as a result of the investment strategy of the fund incorporating environmental or social characteristics;
- implement investment due diligence processes and procedures to assess the level of investment in Sustainable Investments and analyse compliance of Sustainable Investments with the principle of 'do no significant harm' using the Adverse Impact Indicators (as set out in the **Appendix** hereto);
- update prospectus of Light Green Fund(s) to include disclosures required under the Disclosures Regulation and corresponding Level 2 measures;
- draft and publish website disclosures for Light Green Fund(s) as required under the Disclosures Regulation and corresponding Level 2 measures;

BY 1 JANUARY 2022:

- if the strategy of the Light Green Fund(s) promotes environmental characteristics, update fund prospectus to disclose how and to what extent the strategy uses the Taxonomy and how and to what extent its underlying investments contribute to one or more of the environmental objectives under the Taxonomy;
  - quantitative disclosure should include (i) the percentage of the fund that can be demonstrated to align with the Taxonomy and (ii) the percentage of the fund that is potentially aligned i.e. where the fund has good reason to believe that the underlying investments are aligned, but full compliance has not been demonstrated by the investee entities/issuers;
  - consider whether to include an explanation of the quantitative disclosures under the Taxonomy. This disclosure may be especially useful if the Taxonomy alignment of the fund is low e.g. where a different methodology for determining environmental performance is used. In such a case, it may be useful to explain the strategy, its environmental objectives and main points of variance from the Taxonomy;
- prepare and publish ex-post disclosures on the implementation of the environmental or social characteristics of the investment strategy in the annual report for any fund which is a Light Green Fund as required under the Disclosures Regulation, corresponding Level 2 measures and the Taxonomy Regulation.

Compliance Checklist: **Dark Green Fund Requirements**

BY 10 MARCH 2021:

- determine which, if any, funds under management may be classified as Dark Green Funds as a result of the sustainable investment objective of the fund; ☐
- implement investment due diligence processes and procedures to assess the level of investment in Sustainable Investments and analyse compliance of Sustainable Investments with the principle of 'do no significant harm' using the Adverse Impact Indicators (as set out in the **Appendix** hereto); ☐
- update prospectus of Dark Green Fund(s) to include disclosures required under the Disclosures Regulation and corresponding Level 2 measures; ☐
- draft and publish website disclosures for Dark Green Fund(s) as required under the Disclosures Regulation and corresponding Level 2 measures; ☐

BY 1 JANUARY 2022:

- if the Dark Green Fund has an objective of environmental sustainability, update fund prospectus to disclose how and to what extent the strategy uses the Taxonomy and how and to what extent its underlying investments contribute to one or more of the environmental objectives under the Taxonomy; ☐
  - › quantitative disclosure should include (i) the percentage of the fund that can be demonstrated to align with the Taxonomy and (ii) the percentage of the fund that is potentially aligned i.e. where the fund has good reason to believe that the underlying investments are aligned, but full compliance has not been demonstrated by the investee entities/issuers; ☐
  - › consider whether to include an explanation of the quantitative disclosures under the Taxonomy. This disclosure may be especially useful if the Taxonomy alignment of the fund is low e.g. where a different methodology for determining environmental performance is used. In such a case it may be useful to explain the strategy, its environmental objectives and main points of variance from the Taxonomy; ☐
- prepare and publish ex-post disclosures on the implementation of the environmental or social objective of the fund in the annual report for any fund which is a Dark Green Fund as required under the Disclosures Regulation, corresponding Level 2 measures and the Taxonomy Regulation. ☐

APPENDIX

The following list of mandatory and optional Adverse Impact Indicators is extracted from the joint consultation of the European Supervisory Authorities on Level 2 measures for the Disclosures Regulation dated 23 April 2020.

CLIMATE AND OTHER ENVIRONMENT-RELATED INDICATORS

GREENHOUSE GAS EMISSIONS	1.	Carbon emissions (broken down by scope 1, 2 and 3 carbon emissions - including agriculture, forestry and other land use (AFOLU) emissions - and in total)
	2.	Carbon footprint
	3.	Weighted average carbon intensity
	4.	Solid fossil fuel sector exposure
ENERGY PERFORMANCE	5.	Total energy consumption from non-renewable sources and share of non-renewable energy consumption
	6.	Breakdown of energy consumption by type of non-renewable sources of energy
	7.	Energy consumption intensity
	8.	Energy consumption intensity per sector
BIODIVERSITY	9.	Biodiversity and ecosystem preservation practices
	10.	Natural species and protected areas
	11.	Deforestation
WATER	12.	Water emissions
	13.	Exposure to areas of high water stress
	14.	Untreated discharged waste water
WASTE	15.	Hazardous waste ratio
	16.	Non-recycled waste ratio

SOCAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS

SOCIAL AND EMPLOYEE MATTERS	17.	Implementation of fundamental ILO Conventions
	18.	Gender pay gap
	19.	Excessive CEO pay ratio
	20.	Board gender diversity
	21.	Insufficient whistleblower protection
	22.	Investment in investee companies without workplace accident prevention policies
HUMAN RIGHTS	23.	Human rights policy
	24.	Due diligence
	25.	Processes and measures for preventing trafficking in human beings
	26.	Operations and suppliers at significant risk of incidents of child labour
	27.	Operations and suppliers at significant risk of incidents of forced or compulsory labour
	28.	Number and nature of identified cases of severe human rights issues and incidents
	29.	Exposure to controversial weapons (land mines and cluster bombs)
ANTI-CORRUPTION AND ANTI-BRIBERY	30.	Anti-corruption and anti-bribery policies
	31.	Cases of insufficient action taken to address breaches of standards of anti-corruption and anti-bribery
	32.	Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws

ADDITIONAL CLIMATE AND OTHER ENVIRONMENT-RELATED INDICATORS

EMISSIONS	**1.**	Emissions of inorganic pollutants
	2.	Emissions of air pollutants
	3.	Emissions of ozone depletion substances
	4.	Investing in companies without carbon emission reduction initiatives
WATER, WASTE AND MATERIAL	**5.**	Water usage: Total amount of water consumed and reclaimed, broken down per sector where relevant
	6.	Water recycled and reused
	7.	Investing in companies without water management initiatives
	8.	Land degradation, desertification, soil sealing
	9.	Investing in companies without sustainable land/forestry/agriculture practices
	10.	Investing in companies without sustainable oceans/seas practices
GREEN SECURITIES	**11.**	Share of securities not certified as green

ADDITIONAL INDICATORS FOR SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS

SOCIAL AND EMPLOYEE MATTERS	**1.**	Number/rate of accidents, injuries, fatalities, frequency
	2.	Number of days lost for injuries, accidents, fatalities, illness
	3.	Supplier code of conduct
	4.	Grievance/complaints handling mechanism
	5.	Incidents of discrimination
	6.	Lack of separation of CEO and Chair functions on the boards of investee companies
SOCIAL SECURITIES	**7.**	Share of securities not certified as social

CONTACT US

If you require any further information please contact Lorena Dunne, Nessa Joyce or your usual William Fry contact.

Lorena Dunne
PARTNER
+44 20 79610896
lorena.dunne@williamfry.com

Nessa Joyce
SENIOR ASSOCIATE
+353 1 489 6417
nessa.joyce@williamfry.com