

Sustainable investment: Jersey's new anti-greenwashing disclosure requirements

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The Jersey Financial Services Commission (JFSC) has published new disclosure requirements relating to sustainable investment. The requirements aim to address the risk of greenwashing (funds being mislabelled as having a sustainable objective) and will apply to certified funds, certain fund services businesses, Jersey private funds and investment advisers.

Following consultation with relevant industry stakeholders, the disclosure requirements are a proportionate response to changes driven by evolving international standards in environmental, social and governance (ESG).

The requirements will be set out in updated codes of practice applicable, respectively, to certified funds, fund services businesses and investment businesses as well as in the updated Jersey Private Fund Guide.

'Sustainable Investment' is defined as an investment or investments which contribute to either an environmental or social objective. Notably, the requirements do not replicate equivalent provisions of the EU Sustainable Finance Disclosure Regulation (SFDR) and do not depend on the nature and degree of the fund's sustainable objective. Rather, they apply to all funds which are marketed on the basis of investing in a Sustainable Investment as part of their investment objective.

Funds and fund services providers

Where a fund is marketed as such, it will be required to disclose all material information in relation to the sustainable investment strategy and objectives including but not limited to:

- alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy, a statement to that effect;
- the proportion of investments that are sustainable;

- the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and
- any limitation to methodologies and data.

The JFSC has not issued a prescribed template for the disclosures in order to enable funds to meet their obligations utilising existing templates where appropriate.

As far as fund services businesses are concerned (that is, Jersey service providers which are regulated in the conduct of fund services business pursuant to the Financial Services (Jersey) Law 1998 (**Registered persons**)), the obligation to ensure that a fund complies with the disclosure requirements will only apply:

- when the Registered person cannot evidence that the fund has complied with the requirements imposed on the fund under the relevant code of practice; and
- to Registered persons which are the 'governing body' of the fund (self-managed funds, general partners or trustees/managing trustees) or which otherwise accept responsibility for the document in which the disclosures are made, in accordance with Jersey regulatory requirements, in that such persons have responsibility around the investment objective and marketing of the fund.

Registered persons will be required to notify the JFSC in writing within five business days of becoming aware that the fund has not made the requisite disclosures in relation to the sustainable investment strategy and objectives of the fund.

The effective date for the disclosures, which may be made via a website, pre-contractual document, prospectus, or documents in which the terms of investing in the fund are contained (such as a subscription agreement), is 15 July 2021 for new funds. For funds in existence prior to 15 July 2021, a six month transitional period with an effective date of 17 January 2022 will apply.

Investment advisers

The requirement for entities which are regulated in the conduct of investment business pursuant to the Financial Services (Jersey) Law 1998 and which provide investment advice to clients in relation to a fund that is marketed on the basis of investing in a Sustainable Investment is:

- to inform and make available to the client, the appropriate disclosure information in relation to the sustainable investment strategy and objectives of the fund; or
- to inform the client if no such disclosure information is available.

The effective date for the disclosures is 17 January 2022.

Our ESG services

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Using an innovative and integrated approach, we work across the spectrum of asset classes, helping asset owners, asset managers, banks, corporates, investment funds, institutional investors, private wealth, family offices and foundations to transform ESG challenges into opportunities.

Our ESG and impact experts can advise on the construction and integration of an ESG strategy into a fund's investment approach, the managing and measuring of ESG objectives as well as due diligence and regulatory compliance.

For more information about our ESG or fund services, please reach out to one of the listed contacts.

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