

# Alert

## Public Disclosure of Sustainable Investment and Shareholder Engagement Policies

5 November 2020

The new sustainability-related disclosure obligations are due to come into effect on March 10, 2021 under the EU Regulation on Sustainability-Related Disclosures (“ESG Disclosure Regulation”).<sup>1</sup> When preparing their sustainable investment statements, FCA-regulated managers should also consider revisiting their shareholder engagement policies under the amended Shareholder Rights Directive (“SRD II”). The disclosure obligations under SRD II and the ESG Disclosure Regulation are linked, at least insofar as they relate to the manager’s approach to discharging its stewardship responsibilities and other forms of shareholder engagement aimed at promoting sustainability in portfolio companies. This may mean that some managers will find it helpful to combine those disclosures, as well as the Stewardship Code disclosure (required by the FCA rules), in a single policy statement.

SRD II disclosure obligations came into effect in the United Kingdom on 10 June 2019, mandating publication of a shareholder engagement policy on the manager’s website. At the time, many managers published generic holding statements in anticipation of developing a more tailored policy over time. Annual disclosure obligations under SRD II apply in addition to the website policy statement disclosures. Some managers may have already been prompted to prepare and release annual updates on their shareholder engagement by requests from their insurance company and pension fund investors that are entitled to detailed reporting under the FCA rules.

### Shareholder Engagement Policy

Under the FCA rules implementing SRD II, FCA-authorized managers, including alternative investment fund managers, UCITS management companies and MiFID firms are required to develop and disclose publicly a policy specifying how they integrate shareholder engagement in their investment strategy (“Engagement Policy”).

The requirement to maintain an Engagement Policy applies on a “comply or explain basis” to all managers that invest in publicly traded equities regardless of their investment strategy. Managers who do not consider shareholder engagement relevant to their investment process are required to publish a clear and reasoned explanation of why they have chosen not to have an Engagement Policy. The disclosure must be made freely accessible on the manager’s website.

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<sup>1</sup> See [New ESG Disclosure Obligations to Take Effect in March 2021](#).

The Engagement Policy must explain how the manager:

- Monitors investee companies on matters, including their strategy, financial and nonfinancial performance and risk, capital structure, social and environmental impact, and corporate governance;
- Conducts dialogue with investee companies;
- Exercises voting rights and other rights attached to shares;
- If applicable, cooperates with other shareholders and communicates with relevant stakeholders of investee companies; and
- Manages actual and potential conflicts of interests in relation to shareholder engagement.

### **Annual Public Disclosure**

On an annual basis, managers must disclose publicly how their Engagement Policy has been implemented during the relevant period. The timing for the annual disclosure is not specified in the rules, but managers should consider publishing their first annual disclosure before the end of 2020 given that the disclosure obligations have now been in effect for over a year.

The annual disclosure must include general information on their voting during the prior year, including an explanation of the most significant votes and, if applicable, a report on the use of proxy advisers. The rules give managers discretion in determining what information to publish about their voting, as only the casting of “significant” votes needs to be disclosed. A manager may consider a vote insignificant for these purposes (and omit the disclosure) if the holding in the investee company was small or based on the subject matter of such votes.

### **Reporting to Insurance Company and Pension Fund Investors**

Firms that manage assets of UK or EU life insurers, reinsurers and occupational pension schemes (“SRD Institutional Investors”), either on a separately managed account basis, or in their funds are subject to additional reporting obligations under SRD II.

This reporting is more detailed than the annual public disclosure obligations and is designed to provide further detail of how the manager’s Engagement Policy was implemented and contributed to the longer-term performance of the assets of the SRD Institutional Investor. The report must cover at least the following:

- The key material medium- to long-term risks associated with the investments;
- Portfolio composition, turnover within the portfolio and turnover costs;
- The use of proxy advisers;
- If relevant, the manager’s policy on securities lending and how that policy is applied, particularly at the time of the general meetings of investee companies;

- How the manager makes investment decisions based on evaluation of medium- to long-term performance of investee companies; and
- A discussion of any specific conflicts of interests that have arisen in connection with shareholder engagement activities during the relevant period and how the manager has dealt with those conflicts.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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