ARE YOU A SUSTAINABLE INVESTMENT OR NOT?

TONBOFA

Sustainable investing has become the new investing mantra. With global investors demanding that their money be invested in companies or projects that employ sustainable practices as regards the environment, financial services providers define their products as sustainable or ethical to attract capital. Investors have been put in a difficult position of determining which financial products are sustainable or which are simply claiming to be so sans substance “green washing”.

Preventing Green Washing

Global regulators have embraced different ways of protecting investors from “green washed” financial products by directing the financial services companies to ensure their sustainable claim is the truth to trying to give guidance on the definition of sustainable. The European Union “EU” Commission and European Parliament have taken the lead in investor protection as regards sustainable investment by defining sustainable investment and providing disclosure requirements for financial market participants in the EU to meet whenever they claim a product to be a sustainable investment through the European Union Sustainability Related Disclosures in the Financial Services Sector Regulation (SFDR). The SFDR was published on 9 December 2019 but became applicable in the EU on 10 March 2021.

EU Sustainability Related Disclosures

The SFDR lays down disclosure obligations for financial markets participants that manufacture financial products or advise on financial products claiming to promote sustainable practices or Environmental, Social or Governance “ESG” goals. The SFDR requires Financial Market Participants to:

TONBOFA
Law Practice
CONSULTING | LEGAL ADVISORY | LEGAL REPRESENTATIVE

- Publish on their websites information on their policies regarding sustainability risks in making investment decisions (Article 3)
- Publish on their website a statement on their due diligence policies where they consider negative externalities on environment and social justice of the investment decisions/advice and, if so, how this is reflected at the product level or where they do not consider such negative externalities, their reasons for doing so (Article 4)
- Include how sustainability risks feature in their remuneration policies (Article 5)
- Include in pre-contractual disclosures, the manner in which sustainability risks are includes in their investment decisions or the reasons for not considering sustainability risks (Article 6)
- Include in pre-contractual disclosures, information on how ESG characteristics are met, for ESG investments (Article 8)
- Include in pre-contractual disclosures, information on how designated sustainability investment index align with the investment objective for sustainable investments that reference a benchmark index (Article 9)
- Publish all required information on their websites and in periodic reports (Article 10 &11)

TONBOFA
Law Practice
CONSULTING | LEGAL ADVISORY | LEGAL REPRESENTATIVE

The EU have also published Regulatory Technical Standards (RTS) on the content, methodologies and presentation of the relevant information to be disclosed under SFDR which are proposed to apply from 1 January 2022.

Effect of SFDR

The effect of this SFDR is that financial market participants must decide whether indeed their products are sustainable investments or not. Where they describe these products as sustainable or with ESG objectives, then they must meet the disclosure requirements stated in the SFDR. These disclosure requirements will be developed into standards once the RTS are passed that the financial market participant must meet. Where, on the other hand, the financial market participant or adviser describes their products as not being sustainable or with ESG objectives, then they must disclose the reasons why and indicate a plan to be sustainable product. The financial market participant or adviser with non-sustainable products will not have to worry about meeting the RTS.

The risk the financial market participant promoting a “green washed” product faces is having to review their product as not being sustainable when the RTS becomes applicable, and they cannot meet the required standards. This will affect the reputation of the financial market participant.

TONBOFA
Law Practice
CONSULTING | LEGAL ADVISORY | LEGAL REPRESENTATIVE

The SFDR disclosure obligations might become the guide for financial market regulators globally in ensuring sustainable investments are not green washed. It may also serve as a guide for best practices amongst financial market participants even where their regulators do not require it.

It is important to note that the EU SFDR will affect financial markets participants globally as promoters seeking capital from Europe will need to ensure compliance with the SFDR in describing their activities and the purpose to which the capital raised will be put.

Kindly reach us on E: lawyers2021@tonbofa.com; T: +234(0)1-2954080

TONBOFA
Law Practice
CONSULTING | LEGAL ADVISORY | LEGAL REPRESENTATIVE