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UK SDR:
UK Sustainability Disclosure Requirements and investment labels

December 2023

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Sustainable investing is clearly an area of focus for asset managers around the globe – affecting development of new products but also revisions of existing products and the running of investment strategies generally. With the publication of the FCA's Policy Statement 23/16 at the end of November, we now have details of the UK's specific requirements, including its investment labelling regulation. UK based asset managers can now plan for how to embrace the new UK SDR regime.

The UK SDR regime comprises a range of measures, each element of which needs to be reviewed carefully by firms in the UK market place – and note it is quite different from the EU SFDR regime.

However, before diving into the detail, it is important to note two important points as to where UK SDR fits into the UK regulatory landscape:

- **The new UK SDR provisions sit on top of the pre-existing general obligations including the Principles set out in the July 2021 Dear Chair letter.**

  The new rules introduced under Policy Statement 23/16 are additional to the existing rules on which the FCA have indeed recently been conducting a review. A Dear Chair letter sent to Chairs of AFMs in July 2021 which gave guidance on the existing requirements through a set of Guiding Principles that explained the FCA's expectations in the area. You should not continue to work on the Guiding Principles set out in the Annex to the Dear Chair letter.

  On 16 November, the FCA published its review of the further work required to fully embed the Guiding Principles for ESG and sustainable investment funds. This review sets out findings from supervisory work about how authorised fund managers comply with the *existing* regulatory requirements and expectations on the design, delivery and disclosure of environmental, social and governance (ESG) and sustainable investment funds.

  The Guiding Principles relate to principles and rules which are applicable generally and the FCA are not seeking to impose a higher standard in respect of these rules for ESG matters. They are simply making the point that these Principles apply to ESG matters and implicitly they are indicating that sometimes they think they are not being met in respect of ESG activities. One assumes this essentially links to the ESG -related claims and so potential risk of greenwashing.

  Ironically, the main Principle involved is COB Principle 7 which is to have clear, fair and not misleading communications. This is at the foundation of everything and, in a way, just demonstrates the point that what the FCA are trying to do is quite simple. What might not be quite so obvious is that the FCA think that quite a lot needs to be explained in order to satisfy their expectations for disclosures on ESG matters in a way which is clear, fair and not misleading.

  Further, a clear aim is to have consistency. The Annex to the Dear Chair letter was looking for consistency in design, delivery and disclosure. The findings of the review give considerable attention to what they see as a lack of consistency which ought to flow through to consumer disclosures, and the FCA emphasis on consistency in the recent review should be borne in mind when looking at the PS23/16 changes .

- **Further, the UK SDR's package must be viewed in the context of the FCA's other regulatory initiatives. Notably:**

  – **Actions taken being consistent with the UK regulator's flagship initiative introduced in 2023 - Consumer Duty**

    The FCA indicate in the Policy Statement that while not all firms of this new regime are in scope of the Duty, they expect them to apply the rules and guidance, keeping the aim of the Duty in mind. Consequently, all firms should:

    – act in good faith to deliver sustainability-related products and services taking into account the reasonable expectations of retail customers;

    – avoid causing foreseeable harm, including harm caused through greenwashing and buying unsuitable products; and

    – enable and support retail customers to pursue their financial objectives, including where customers have sustainability-related needs and preferences as part of their investment objectives.

– **With IOSCO, supporting the work of the IFRS Foundation since the International Sustainability Standards Board (ISSB) was first considered**

  The ISSB's Sustainability Disclosure Standard (IFRS S1) should be a helpful reference point for asset managers in determining the scope of these new rules and guidance to determine the extent of their entity-level disclosures.

  Also the FCA intend to consult in 2024 on updating TCFD aligned disclosure rules for listed companies to reference ISSB's standards.

  Overall, the FCA is viewing the ISSB's publications as global baseline standards to provide internationally consistent and comparable sustainability disclosures. Also, the FCA is taking into account various other international initiatives such as IOSCO's November 2021 Recommendations on sustainability-related practices, policies, procedures and disclosures in the asset management industry.

In this Briefing Paper, we look at how the UK SDR package of measures fit into this context and the timing for their introduction.

Scope of the new SDR regime

First, it may be helpful to set out the scope of the regime:

- the anti-greenwashing rule applies to **all FCA authorised firms;**
- additional specific rules apply to **UK asset management firms** – covering all firms managing UCITS and AIFs, specifically:
  – a UK UCITS management company managing a UK UCITS;
  – an ICVC that is a UCITS scheme without a separate management company in relation to managing a UK UCITS;
  – a full scope UK AIFM in respect of managing an AIF; and
  – a small authorised UK AIFM in respect of managing an AIF.
- The specific rules also apply to distributors of UK asset management firms' products.

The overall aim in so regulating UK fund managers and distributors of fund management products is to help consumers navigate the market and make better informed decisions.

The FCA though intend to expand their scope to other investment products in due course. As part of their next steps identified in the Policy Statement, note:

- **portfolio managers**

  The FCA plan to consult early in 2024 on proposals for a similar approach as set out for funds for portfolio management, with a focus on where portfolio management is undertaken for UK retail clients including managed portfolios and discretionary wealth management services.

- **pension products**

  In the medium term, they wish to consider extending the regime to pension products.

- **overseas funds**

  There are various references in the Policy Statement to the FCA continuing to work with HM Treasury on its approach to overseas funds.

  One of their "next steps" is that the FCA wishes to see a level playing field, and its view is that all firms marketing their products in the UK should be subject to the same broad requirements. Consequently, the FCA is continuing to work with HM Treasury to understand the options for extending the UK SDR regime to overseas recognised funds, including those marketing under the Overseas Funds Regime. The extension of UK SDR to overseas funds is however a matter for HM Treasury.

Anti-Green Washing

A general anti-greenwashing rule is introduced under ESG 4, with ESG 4.3 setting out anti-greenwashing provisions in relation to naming and marketing.

Essentially the FCA's proposition is that as the demand for sustainable products and services grows, so does the risk of greenwashing. With increasing sustainability-related claims, concerns that some may be exaggerated, misleading and unsubstantiated may arise.

In the Policy Statement, the FCA clarify that firms including asset managers must comply with the anti-greenwashing rule when it comes into force on 31 May 2024. This anti-greenwashing rule forms the foundation of the naming and marketing rules – those which apply to products made available to retail investors that do not use one of the labels.

Where a UK authorised firm communicates with the client in the UK in relation to a product or service, or communicates a financial promotion to or approves a financial promotion for communication to a person in the UK, then the rule must be followed.

A firm must ensure that any reference to the sustainability characteristics of a product or service is:

- consistent with the sustainability characteristics of the product or service.

  "Sustainability characteristics" are defined in the Glossary as *"environmental or social characteristics".*

  and

- fair, clear and not misleading.

The rule applies to all communications about financial products or services which refer to the environmental and/or social (i.e. sustainability) characteristics of those products or services. Sustainability references can be present in, but are not limited to, statements, assertions, strategies, targets, policies, information and images.

Alongside the introduction of the new rule, there is to be FCA guidance for the anti-greenwashing rules. Alongside the Policy Statement in November, the FCA has published a Guidance Consultation on the Anti-Greenwashing Rule (GC 23/3). The general guidance will be intended to support the implementation of the anti-greenwashing rule.

In practice, the effect of the anti-greenwashing rule and any other rules now being introduced mean that firms should ensure their sustainability-related claims are:

- **correct** and **capable of being substantiated**;
- **clear** and presented in a way that can be understood;
- **complete** – they should not omit or hide important information and should consider the full life cycle of the product or service;
- fair and meaningful in relation to any comparisons to other products or services.

The draft Guidance expands on each of these elements giving examples. Views are requested on the draft Guidance by 26 January 2024 with a view to that Guidance being finalised and coming into force on 31 May 2024.

Labels

This UK SDR regime is a labelling regime.

The labelling product level disclosures and naming and marketing requirements apply for asset managers in relation to authorised unit trusts, open-ended investment companies and ACS and ICVCs, full scope UK AIFMs and small authorised UK AIFMs in relation to their authorised funds and unauthorised AIF products.

A "*sustainability product*" is defined as any of the following:

"*(1) an authorised fund, including where the authorised fund is an umbrella scheme, each sub-fund of the umbrella, or*

(2) an unauthorised AIF that is managed by a full scope AIFM or a small authorised UK AIFM unless it is:

(a) a non-UK AIF;

(b) a closed-ended AIF that makes no additional investments after 22 July 2013 (see Regulation 74(1) of the AIFMD UK Regulation);

(c) a SEF; or

(d) an RVECA."

The relevant provisions are set out in ESG 4.1 and 4.2. The details of the sustainability labels are set out in ESG 4.1.

Firms can start to use labels from 31 July 2024 but note, as explained below, this is only a start date not a deadline.

The FCA have decided to provide for four, not three, labels.

To use a label, products must meet the specific and general qualifying criteria for each label – and make associated disclosures.

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Specific criteria for each label

In addition to retaining the originally proposed labels of

- **Sustainability Impact**

  This is for products with a sustainability objective consistent with an aim to achieve a pre-defined positive measurable impact in relation to an environmental and/or social outcome (and invest at least 70% of their assets in accordance with that aim). Firms will have to specify a theory of change setting out how they expect their investment activities and the product's assets to contribute to positive impact; and specify a robust method for measuring and demonstrating the positive impact of both their investment activities and the product's assets.

  The FCA have kept the name "impact" but, for clarity and simplification, they have removed reference to "real world" impact throughout the criteria, recognising that all labels lead to some form of impact. (They outline the differences between the labels in their Annex 2 text in the Policy Statement.)

  The FCA confirm that firms are not required to invest new capital for their products to qualify for a Sustainability Impact label. They have however made small amendments to the criteria to acknowledge the role that the product's asset may have in contributing to positive impact alongside the investor's contribution.

  There remains the requirement for firms to specify a theory of change but it will be up to the firm to decide whether it is applied at the product or asset level.

  In measuring the impact, the FCA are not being prescriptive as to whether the method of measurement is quantitative or qualitative, provided it is robust and details of the impact achieved are clearly disclosed in the ongoing product-level reporting.

- **Sustainability Focus**

  This is for products with a sustainability objective consistent with an aim to invest at least 70% in assets that are environmentally and/or socially sustainable.

  Some concerns have been raised about the credible standard of sustainability required. The FCA have removed the word "credible" and replaced it with the attributes of the standard. So they now refer to a robust, evidenced-based standard that is an absolute measure of sustainability. This should hopefully remove, some concerns that until common standards appear, verification of standards and comparison of products may be difficult so there may still be greenwashing risks. The FCA maintain though that whatever is put in place must be robust (i.e. stand up to scrutiny) and evidence-based (i.e. derived from, or informed by, an objective and relevant body of data or other evidence). More detail is set out in the FCA's Policy Statement at Annex 2 Box 2 (set out below in the section on the general criteria).

  The FCA have removed the option for a product to qualify for a sustainability focus label on the basis that 70% of its assets align with the sustainability theme alone. Thematic investing approaches may be applied across any of the labels.

- **Sustainability Improvers**

  This is for products with a sustainability objective consistent with an aim to invest at least 70% in assets that have the potential to improve environmental and/or social sustainability over time, and that are determined by their potential to meet the robust, evidence-based standard of sustainability. Firms must identify the period of time in which the product and/ or its assets are expected to the meet the standard, including short and medium-term targets for improvements (commensurate with the investment horizon of the product).

  The FCA agree that this label is an important category for supporting the transition to a more sustainable future. Indeed it should be more appropriate for this to be a useful label whereby asset managers, by way of their fund investments, could help companies who are transitioning. However, the FCA's amendments now set out in the Policy Statement aim to clarify the FCA's expectations and help to mitigate concerns of it becoming a "catch-all" label.

  It requires firms to assess assets on the basis of evidence that they have potential to improve over time and the FCA has added the requirement that firms must develop short and medium term targets for improvements and these should be consistent with the investment horizon for the product. But it is for firms to decide how to treat products or assets that have met their targets for improvement.

It is recognised that stewardship can play a significant role in accelerating transition to a more sustainable future and is important for this label - as well as the other labels. The FCA though has removed the stewardship-related requirements from this label, which instead apply as part of the general criteria. The FCA has also added the requirement for firms to have an escalation plan for products using any label.

there is a fourth label now introduced:

- **Sustainability Mixed Goals**

  This is for products with a sustainability objective to invest at least 70% in accordance with a combination of the sustainability objectives for the other labels mentioned above. Firms must identify (and disclose) the proportion of assets invested in accordance with any combination of the other labels. However, requirements for each of the other labels must be met.

  This last new label is designed to cover products invested in a mix of assets that are already sustainable.

Note that the FCA has amended the names of all labels from "sustainable" in the Consultation Paper to "sustainability" in the Policy Statement so as to better reflect that the labels represent an investment approach.

It is important to note that the labels are not designed to set out a hierarchy. They represent different types of investment objectives and investment approaches.

When using a label, firms must use a graphic prescribed by the FCA. The ability to download the graphic will be connected to the notification process for use of a label.

There will be an online notification and application system to notify the FCA before, or as soon as reasonably practicable after, using a label or revising or ceasing to use a label. Independent verification for using a label is not required but the FCA is to keep this issue under review. The FCA will apply their usual supervisory and enforcement approaches to the regime.

General Criteria for use of a Label

To use a label, the general criteria fall under five key themes:

- **sustainability objective**

  The key features of the labelling regime include that they are for products seeking to achieve positive sustainability outcomes only. Products using strategies such as ESG integration or basic ESG tilts alone do not qualify for a label.

  Products using the labels must have a sustainability objective, the definition of which, in the Glossary term, is a statement of intention to undertake activities with the aim of directly or indirectly improving or pursuing "positive environmental and/or social outcomes".

  To use a label, a product must have an explicit sustainability objective as part of its investment objectives that aligns with one of the specific sustainability labels and is clear, specific and measurable. SASB standards are referenced in FCA Handbook Guidance which may be used to help determine the topics a retail client would associate with environmental and/or social outcomes.

- **investment policy and strategy: the 70% minimum threshold**

  Also, the product must have at least 70% of its assets invested in accordance with the sustainability objective.

  Note that the 70% minimum threshold applies to all of the labels. There are only some limited exceptions to this for products during their "ramp up" phase – and some provisions for circumstances where products fall below the threshold are explained in Annex 2 to the Policy Statement – presumably within the reviews pursuant to use of KPIs and the possible use of escalation plans. Note that the rules do not require disinvestment from assets as part of an escalation plan.

  Note that the 70% reference is a minimum threshold for investing in assets that directly pursue the objective, acknowledging that the product may also invest in some assets for liquidity risk or diversification products. Those other assets may not have the sustainability characteristics or may not pursue the sustainability objective provided they do not conflict with the objective.

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Those assets within the 70% bucket must be selected with reference to a robust, evidence-based standard that is an absolute measure of environmental and/or social sustainability, as applicable for each of the relevant label, as explained in the following text from Annex 2 of the Policy Statement:

Robust, evidence-based standard of sustainability

The general qualifying criteria require that the product's assets be selected with reference to a robust, evidence-based standard that is an absolute measure of environmental and/or social sustainability (referred to in short as the 'robust, evidence-based standard').

Firms should select assets using a methodology or approach that is applied in a systematic way, and that can be used for both determining the environmental and/or social sustainability characteristics of the product's assets and the ability of those assets to contribute to positive environmental or social outcomes.

The methodology or approach may be based on, or determined by, an authoritative body (eg, a government or regulator), industry practice (eg, a third-party data or analytics service provider) or a proprietary methodology (developed in-house by the firm).

The standard must be:

- **robust**, meaning that it will stand up to scrutiny
- **evidence-based**, meaning that it is derived from or informed by an objective and relevant body of data or other evidence.

Other considerations:

The role of the robust, evidence-based standard – and the way it is applied in selecting the product's assets – will differ according to the labelled category:

- For Sustainability Focus, products invest in assets that are environmentally and/or socially sustainable, determined using the standard
- For Sustainability Improvers, products invest in assets that demonstrate their potential, over time, to meet the standard
- For Sustainability Impact, products may, but are not required to, invest in assets with reference to the standard (depending on the investment strategy and theory of change for the particular product).

There are different types of standards that may be used. Non-exhaustive examples include:

- **General environmental and/or social criteria.** For example, the standard may set a minimum threshold for the percentage of revenue, or the percentage of expenditure on operations, capital or research and development associated with environmental or social matters relevant to the product's sustainability objective.
- **Taxonomy-based.** For example, the standard may directly reference an authoritative taxonomy relevant to the sustainability objective of the product, such as the EU taxonomy for sustainable activities, or the forthcoming UK Green Taxonomy.
- **Emissions profiles.** For example, the standard may set a minimum absolute threshold of GHG emissions or carbon emissions intensity for assets.

Products may also be invested thematically, provided that the assets are selected with reference to a robust, evidence-based standard. For example, the standard may set a minimum percentage of revenue associated with activities that seek to improve or pursue positive outcomes relating to environmental and social themes (eg, clean energy, sustainable agriculture, forest regeneration, pollution prevention, water and waste management, social housing or diversity, equity and inclusion) and the firm may develop a proprietary methodology to select assets that meet the standard, in accordance with those themes.

Source: Annex 2 Box 2 of the FCA's Policy Statement 23/16, November 2023 – Box 2.

- **KPIs**

  Annex 2 to the Policy Statement sets out the requirements in relation to KPIs.

  A product with a label much have KPIs that demonstrate progress towards achieving the sustainability objective. They may measure either the performance of the product and/or individual assets towards achieving the objective. It is for firms to devise their own KPIs but firms are encouraged to use industry frameworks and best practice to the extent relevant for the product's sustainability objective.

  In addition, the firm requirements include, in relation to KPIs, that firms must identify and disclose the KPIs that they will use to measure the product's progress towards meeting its sustainability objective.

  – **negative outcomes**

    Firms must determine and disclose whether any material negative environmental and/or social outcomes may arise in pursuing the sustainability objective.

    Firms may also identify negative outcomes that pursuing a positive environmental and/or social objective may result in through their risk management and due diligence processes when selecting the product's assets. Firms should consider what a reasonable consumer would expect in a labelled product in determining whether to invest in assets that they have identified as potentially leading to negative outcomes.

  – **investment policy and strategy**

    Firms must determine the product's investment policy for achieving the sustainability objective; and investment strategy for what the product invests in, including, where appropriate, the timescales by which the product is expected to be fully invested in assets. The strategy should provide sufficient information to enable clients and consumers to understand how the product is invested.

  – **independent assessment**

    Firms must obtain or undertake an independent assessment of the robust, evidence-based standard for sustainability to confirm that it is appropriate for selecting the product's assets. It could be obtained from a third party or undertaken by the firm, provided that it is independent from the investment process, and in either case, that the individuals responsible for carrying out the assessment are appropriately skilled. Firms will have to disclose the basis on which standard is considered appropriate and the function or third party (not naming individuals) that carried out the assessment.

- **assets that do not pursue the sustainability objective**

  Assets that do not pursue the sustainability objective must be identified and disclosed – such as cash and derivatives used for liquidity and risk management purposes (and, as mentioned above, the product must not invest in any assets that conflict with the sustainability objective).

- **escalation plan**

  Finally, there must be an escalation plan in place setting out actions that will be taken if assets do not demonstrate sufficient performance against the sustainability objective or KPIs.

- **resources and governance**

  As you would expect, appropriate resources, governance and organisational arrangements must be in place for all the above - commensurate with the delivery of the sustainability objective. The FCA emphasise the need for adequate knowledge and understanding – which extends to governing bodies so they have sufficient knowledge, skills and experience and commit sufficient time for oversight activities.

- **stewardship**

  To qualify for any label, firms must identify and apply the investor stewardship strategy and resources needed to support achievement of the product's sustainability objective, including the activities the firm expects to undertake and outcomes it expects to achieve. Disclosures may be cross referenced from the UK Stewardship Code or other stewardship-related reporting.

  So a stewardship strategy will also need to be developed – and where stewardship plays a significant role in the sustainability product's investment policy and strategy, the KPIs related to the outcomes achieved or that measure progress towards the product's sustainability objective may be ones to disclose.

Obviously the criteria must be monitored on an ongoing basis. And the FCA expect that firms will need to carry out a review of the use of a label at least every twelve months. Note also that the FCA would expect only minimal deviations from the 70% minimum threshold.

In relation to single funds, the above can be applied. There has been considerable discussion about how to deal with feeder funds and fund of funds, as revealed in the Policy Statement:

The FCA agree that feeder funds, including feeder AIFs, feeder UCITS, feeder LTAFs and feeder NURS, should be able to use the labels that their in-scope master fund uses. The final rules allow feeder funds to use a label where the predominant purpose of the feeder fund is to reflect the sustainability objective of the master fund. The feeder fund can only use the same label as the relevant master fund, and must keep the use of the label up to date with any changes the master fund manager makes. Feeder funds not using a label must only use the same sustainability-related terms in their name and marketing as their master fund and meet certain requirements – including providing access to disclosures produced by the master fund, and adding the relevant statement to clarify that the product does not have a label and why.

There are no specific requirements for a fund of funds. Where a fund in scope of the regime invests in other funds, those funds will be treated as assets. The rules apply as usual to the authorised fund so the firm can apply the labelling regime and must make the associated disclosures, or comply with the naming and marketing requirements.

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Naming and Marketing

Distinct from the anti-greenwashing rule which applies to all FCA authorised firms under ESG 4.3.1, there are specific additional provisions relating to use of sustainability-related terms in relation to a sustainability product applying to UK asset managers under ESG 4.3.

The FCA indicate in their feedback in the Policy Statement that they are aiming to strike the right balance – and have made some amendments to the rules so that firms can continue to use sustainability-related terms in product names and marketing if they use a label or if they meet the product name, disclosure and statement conditions.

Sustainability-related terms can only be used in product names and marketing if:

- they use a label, provided that where the sustainability focus, sustainability improvers or sustainability mixed goals labels are used, the word "impact" is not used in the product name; or
- they do not use a label but comply with the product name and marketing provisions.

The naming and marketing rules are designed to help consumers navigate and differentiate between both labelled and non-labelled products that have sustainability characteristics.

- **naming**

  The name of a product is clearly very important. The FCA have made some amendments to their proposed text that enables firms to continue using sustainability -related terms in their names if certain conditions are met. These include producing certain disclosures in the statement to clarify that the product does not use a label and why.

  Regarding the product name, the product must have sustainability characteristics and the product's name must accurately reflect those characteristics but the term "*sustainable*", "*sustainability*", "*impact*" and any variation of those terms must not be used.

  The non-exhaustive list of sustainability-related terms in the Handbook is retained as a starting point – the list includes "*any other term which implies that a product has sustainability characteristics*".

  It is recognised that ethical investing is a common approach and note that, where an ethical investment product has market sustainability (environmental and/or social) characteristics, it would be within scope of the FCA's naming and marketing requirements.

- **marketing**

  Firms must produce the same disclosures and statement as those required when sustainability-related terms are used in the name of a product (and, in the case of a feeder fund, firms must meet the same conditions as when sustainability-related terms are used in the name of the product).

  Firms using sustainability-related terms in product names and marketing must publish a statement in a prominent place on the relevant digital medium where the product is offered explaining why the product does not have a label. Where firms are not communicating sustainability-related terms in financial promotions via a digital medium, they should nevertheless take reasonable steps to ensure the content of the disclosures and statement required is communicated to retail clients as appropriate.

  The basic requirement is that firms should be accurately describing their products so consumers are able to navigate to those that meet their needs and requirements.

  The FCA have changed the final text so that firms can continue to use sustainability-related terms in marketing if certain conditions are met. These now include producing certain disclosures in a statement to clarify that the product does not use a label and why – and, in addition, firms must comply with the anti-greenwashing rule and other financial promotion rules when using the terms.

  The requirement to clarify that if a product does not use a label and why may be seen as a negative warning but, in a way, it could just be turned into a positive statement?

The key thing to note is that the FCA continue to restrict the use of the word "sustainable", "sustainability" and "impact" to products that use a label.

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Disclosures

All products using a label or using sustainability-related terms in their naming and/or marketing without a label must include sustainability information in:

– pre-contractual disclosures (from the date the label is first used or by 2 December 2024 for products using the term without a label); and

– ongoing product level disclosures annually (after twelve months from either the date the label or terms are used).

There are various layers to the disclosures to be required:

- **consumer-facing disclosures**

  The rules require firms to produce a clear, concise consumer-facing disclosure for:

  – products with a label; and

  – products using sustainability-related terms without a label.

  It must be located in a prominent place in the relevant digital medium through which the product is offered and hard copies must be made available on request – and must not exceed two pages.

  The disclosure must include the following information:

  – either the product's sustainability objective and label or the statement to clarify that the product does not have a label;

  – the investment policy and strategy, including what the product will and will not invest in;

  – relevant metrics;

  – details of where a consumer can access other relevant sustainability and non-sustainability information; and

  – for the sustainability mixed goals label only, the proportion of assets invested in accordance with each of the other relevant labels.

  This must be in a *standalone document* presented in a prominent place on the product webpage, app or other digital medium alongside the other key investor information. This conclusion therefore means that there will remain a separate document, and it will not be aligned to the broader HMT review of the UK Retail Disclosure regime. It could though be by co-locating the documents on product pages and ensuring clear signposting from the consumer-facing disclosure to the relevant document.

The FCA acknowledge that it may not be proportionate at this stage for products not using sustainability-related terms in their names and marketing to have consumer facing disclosures. So the final rules now published only require consumer facing disclosures for labelled products and products using sustainability-related terms in their naming and marketing (with the exception of where terms are used to make short, factual, non-promotional statements in marketing materials).

Consumer-facing disclosures for products not using labels but with sustainability-related terms in their names or marketing must include a statement to clarify that the product does not have a label.

Minimum information required is specified for a product without a label using sustainability-related terms in naming and/or marketing in Annex 2 to the Policy Statement.

Consumer-facing disclosures must include the following information:

Table 25

L NL	Basic information	Firm and product name, ISIN or other unique identifier, date of the disclosure
L	Label	The label and the relevant descriptor for the label
NL	Statement	Statement clarifying that the product does not have a label and why
L	**Sustainability goal**	A summary of any material effect (or expected effect) on the financial risk and return as a result of the investment strategy to pursue the sustainability goal; progress towards achieving the goal; and where pursuing that goal may result in material negative environmental and/or social outcomes
L NL	**Sustainability approach**	The key sustainability characteristics of the assets that the product will and will not invest in
		The types of assets held in the product for reasons other than to pursue the sustainability objective and why, and a summary of the investor stewardship approach in relation to the product. Mixed goals products must also disclose the proportion of assets invested in accordance with each sustainable investment category
L	**Sustainability metrics**	KPIs that demonstrate performance towards the objective, and contextual information
L NL		Any other metrics that a consumer might find useful in understanding the investment policy and strategy for the product, and contextual information
L NL	Further details	Details as to where consumers can access pre-contractual disclosures, ongoing product-level disclosures, entity-level disclosures and non-sustainability-related information

Source: FCA Policy Statement 23/16, Table 25, Annex 2. (In Table 25, disclosure items marked 'L' must be included in the disclosures for products using labels and those marked with 'NL' are the minimum information requirements for products using sustainability-related terms without a label. However disclosures for products not using labels may include other disclosure items above as appropriate.)

Disclosures must be reviewed and updated at least every twelve months. Firms using labels must notify clients of any changes, e.g. revising or ceasing to use a label (and update consumer-facing disclosures as soon as reasonably practicable).

There is no template but the FCA wish to encourage development of industry-led template and industry collaboration on best practice.

- **product level disclosures**

  All products using a label or using sustainability-related terms in their naming and/or marketing without a label must include sustainability information in pre-contract disclosures (from the date the label is first used or by 2 December 2024 for products using the terms without a label).

  – **pre-contract disclosures**

  The first of the detailed product-level disclosures is pre-contract disclosures made in either a fund prospectus, prior information document, or Part A of a sustainability product report, as relevant.

  The provisions are generally implemented as per the Consultation Paper text, with some amendments to reflect changes to the requirements and wording of the qualifying criteria for the finalised labels.

  Firms are able to cross-reference to relevant information from ongoing product-level disclosures such as Stewardship Code reporting, provided that the information is relevant and clearly signposted.

  The FCA is no longer requiring disclosures relating to the investment policy and strategy to be in a separate section of the pre-contractual materials, provided that the disclosures are clearly identifiable.

  The pre contractual disclosures must include:

L	Label	The label used for the product
NL	Statement	Statement clarifying that the product does not have a label and why
L	Sustainability objective	The sustainability objective; where the investment strategy to pursue the objective may result in a material effect (including expected effect) on the financial risk and return; the link between the objective and positive environmental and/or social outcome; and where pursuing that objective may result in material negative environmental and/or social outcomes.
L NL	Investment policy and strategy	Details of the investment policy and strategy for the product, including how the manager determines the assets the product invests in (eg, the criteria it applies to determine sustainability characteristics)
L		The robust, evidence-based standard of sustainability, including the basis on which the standard is considered appropriate and the function or third party that carried out the independent assessment (without naming individuals)
L		The proportion of assets invested in accordance with the sustainability objective and the types of assets that are held for other reasons, and why.
L		How the index providers' methodology aligns with the product's sustainability objective (where relevant)
L	Sustainability metrics	Details of the policies and procedures, and the KPIs, that the firm will use to monitor and demonstrate performance towards the sustainability objective
NL		Details of any other metrics a consumer may find useful in understanding the investment policy and strategy for the product
L	Investor Stewardship	Details of the investor stewardship strategy and resources to support achievement of the sustainability objective, including how that strategy will be applied and, where relevant, whether the firm is a signatory to the UK Stewardship Code
L	Escalation plan	Any actions the firm will take in accordance with its escalation plan
L	Category-specific disclosures	Specific disclosures associated with the relevant labels: • Sustainability Improvers (eg, expected timescales for improvement and the types of evidence relied on), • Sustainability Impact (eg, the theory of change and method to measure and demonstrate impact) and • Sustainability Mixed Goals (eg, the proportion of assets invested in accordance with each sustainable investment category and the specific disclosures associated with each category)

Source: FCA Policy Statement PS23/16, Table 26 Annex 2. (In Table 26, disclosure items marked "L" must be included in the disclosures for products using labels and those marked with "NL" are the minimum information requirements for products using sustainability-related terms without a label. However, disclosures for products not using labels may include other disclosure items above as appropriate.)

  These pre-contractual materials do not need to be updated annually but must be updated as soon as reasonably practicable when revising or ceasing to use a label.

  – **ongoing product-level disclosures**

  All products using a label or using sustainability-related terms in their naming and/or marketing without a label must include sustainability information in ongoing product level disclosures annually (after twelve months from either the date of the label or terms are used).

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Ongoing product-level disclosures must include:

L NL	Basic information	Date of the report
L	Label	The label used for the product
NL	Statement	Statement clarifying that the product does not have a label and why
L	Sustainability objective	Details of the sustainability objective, progress towards achieving the objective, the proportion of assets invested in accordance with the sustainability objective and the types of assets held for other reasons (and why)
L NL	Investment policy and strategy	Details of how the product is invested in accordance with its investment policy and strategy on an ongoing basis
L	Sustainability metrics	Details of the product's performance against KPIs
L NL		Details of any other relevant metrics that a consumer might find useful in understanding the investment policy and strategy for the product
L NL		Contextual information and historical annual calculations for the KPIs and/or metrics (as relevant)
L NL	Material deviations	Details as to how the firm's approach to the product materially deviates from its entity-level approach (where relevant)
L	Investor stewardship	Details as to how investor stewardship has been applied, including activities undertaken and outcomes achieved (or expected to be achieved). These may include cross-references to Stewardship Code reporting, provided that information relevant to the product is clearly signposted.
L	Escalation plan	Details of matters escalated
L	Category-specific disclosures	Specific disclosures associated with the relevant labels: • Sustainability Impact (eg, progress that the product is making towards achieving a positive impact)

Source: FCA Policy Statement 23/16, Table 27, Annex 2. (In Table 27, disclosure items marked "L" must be included in the disclosures for products using labels and those marked with "NL" are the minimum information requirements for products using sustainability-related terms without a label. However, disclosures for products not using labels may include other disclosure items above as appropriate.)

For products using a label, the information that must be disclosed is broadly associated with the qualifying criteria for the labels. For products not using a label, the pre-contractual and ongoing product-level disclosures must, at a minimum, include information relating to the investment policy and strategy and any relevant metrics. For the Sustainability Mixed Goals label only, the disclosures must include the proportion of assets invested in accordance with each of the relevant labels, and the information required in relation to those labels.

At the moment, the FCA has not added any requirements for products to disclose the baseline of metrics, but they will consider updating product -level disclosure requirements in line with UK and international developments such as the UK Green Taxonomy and future ISSB standards.

– **on-demand sustainability information**

Note that there is actually an additional category - of on-demand sustainability information. The requirements for such are broadly unchanged from those set out in the Consultation Paper except for small updates to reflect the implementation timeframe of the new regime.

The rules apply to UK AIFs not listed on a recognised exchange and the FCA is to consult on the application of the regime to portfolio management services in early 2024.

In the same way as with the on-demand requirements under the climate-related disclosure rules already in place, a firm can either provide information as at an agreed calculation date with the client, or select the most recent calculation date for which up-to-date information is available.

- **entity-level disclosures**

All firms with over £5 billion AUM must make disclosures annually in a sustainability entity report, which builds from the TCFD entity report. (Although these provisions only apply to asset managers with AUM above £5 billion (regardless of whether they use a label or sustainability terms), the FCA is encouraging smaller firms with assets under the £5 billion threshold to produce disclosures voluntarily and the FCA also mention that they will consider whether to amend the threshold as part of their post implementation review of climate-related disclosures.)

Consistent with TCFD's (and ISSB's) four pillars, firms are required to disclose their governance, strategy, risk management, and metrics and targets in relation to managing sustainability-related risks and opportunities. TCFD's supplementary guidance for asset managers, IFRS sustainability disclosure standard (IFRS S1), the SASB Standards and GRI Standards are documents that may be relevant for firms to help determine what to disclose.

For firms using labels or sustainability-related terms in product names and marketing, they must also include details on their resources, governance and organisational arrangements in relation to those products.

Firms can cross-refer to disclosures made in a group, parent-level or other relevant report, provided the information is clearly signposted and other cross-referencing requirements are met.

Note that the FCA has made small amendments to the proposals set out in their Consultation Paper to clarify that both firms using labels and those using sustainability-related terms in their product names and marketing must include information on resources, governance and organisational arrangements relating to sustainability objective and/or investment policy and strategy, as relevant, in their sustainability entity report.

The FCA mention in the Policy Statement that these entity-level disclosure requirements are a starting point, setting the direction of travel from climate to wider sustainability-related reporting. They encourage the development of industry-led guidance which further specifies the types of information that may be useful for asset managers to disclose.

Distributor's role

In the same way as with Consumer Duty, the FCA are following through on their acknowledgement that there can be no success in following through on proposals if distributors are not also obliged to participate. Consequently, under this new regime:

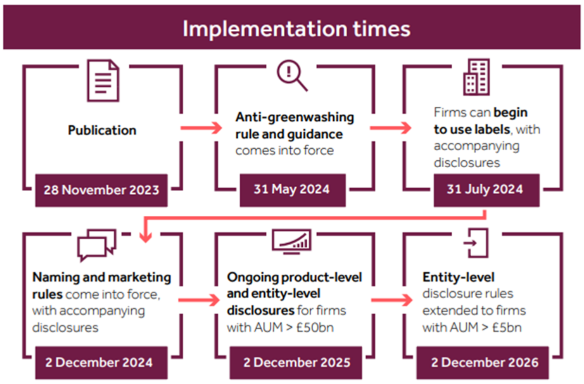
- distributors must communicate labels and provide access to consumer-facing disclosures to retail investors, either on a relevant digital medium for the product or using the channel they would ordinarily use to communicate information;
- they must keep the labels and consumer-facing disclosures up to date with any changes that the firm makes to a label or the disclosures;
- distributors must also include a notice on overseas products to clarify they are not subject to the UK sustainable investment labelling and disclosure regimes – at least for the present. Distributors must ensure the notice is placed on overseas products by 2 December 2024. (See the comments on overseas funds and the Overseas Fund Regime above); and
- the notice must be in a prominent place on the relevant digital medium, along with a link to the FCA webpage setting out more information for consumers, or communicated via the channel the distributor would ordinarily use.

The final rules in Appendix 1 to the Policy Statement clarify which rules and guidance apply in respect of firms that are distributors and firms that are fund managers. Distributors are reminded of their existing requirements, including those in the PROD Sourcebook and under the Consumer Duty, and these provide the overarching framework regardless of the specific provisions on SDR matters.

Timing

The FCA have settled on a staggered implementation timeframe.

The revised timetable is now clearly set out in the chart below which is contained within PS 23/16:



Source: FCA's Policy Statement 23/16, Paragraph 2.18

The key point is that firms may use choose to use labels when, after 31 July 2024, they decide to use a label and align their disclosures accordingly.

For firms producing disclosures without labels, firms may choose to publish disclosures earlier than the 2 December 2024 deadline to align with their existing reporting periods, or change their reporting deadline after the first year of reporting (provided that there is no period of time left uncovered, publishing an interim disclosure or report where needed).

The FCA's helpful summary of the implementation timeline is reproduced at the end of this Briefing Paper for your ease of reference.

Implementing and Operationalising the Regime

The real challenge will be in formulating individual firms' plans for their products and operationalising the regime in the applicable timeframe.

Note that when using a label, firms must use the graphic prescribed by the FCA and firms must use the online notification and application system to notify the FCA before, or as soon as practicable after, using a label or revising or ceasing to use a label.

Clearly there is much work to be done in the forthcoming months and particular challenges for products which already have been promoted using sustainability characteristics as to how they fit within this new regime. And also how international asset managers, who likely operate a number of product ranges including Luxembourg and/or Dublin based products already following the EU SFDR requirements, adapt and accommodate the UK SDR regime for their UK products.

For those who wish to start to use the labels for their products from the first available date of 31 July 2024, time is relatively short to settle on a plan and allow for implementation. This of course is only a start date - as explained above, it is not a deadline.

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Implementation timeline:

Element of the regime	Timelines	
All firms		
Anti-greenwashing rule	31 May 2024	This gives all firms additional time to consider the guidance that we are consulting on Guidance Consultation (GC23/3)
Firms using product labels		
Labels, consumer-facing, pre-contractual disclosures and naming and marketing rules	From 31 July 2024	This allows firms that are ready to use labels earlier than 12 months after the PS is published to do so. Consumer-facing and pre-contractual disclosures must be published at the same time as the label is first used, and relevant naming and marketing rules must be met
Ongoing product-level disclosures	From 31 July 2025 (public) From 2 December 2025 (on demand)	Ongoing product-level disclosures must be either (i) published 12 months after the label is first used and annually thereafter, or (ii) provided to eligible clients on demand from 2 December 2025
Firms using sustainability-related terms without product labels		
Naming and marketing rules, consumer-facing and pre-contractual disclosures	2 December 2024	This allows a 12-month implementation period to produce relevant disclosures and statements. Firms must still comply with the anti-greenwashing rule from 31 May 2024.
Ongoing product-level sustainability disclosures	From 12 months after the terms are first used	Ongoing product-level disclosures must be produced annually
Distributors		
Labels, consumer-facing disclosures, notice on overseas funds	From 31 July 2024 (where firms are using labels) 2 December 2024 (notice on overseas funds)	The notice on existing overseas funds must be included by 2 December 2024.
Firms with above £5 billion in AUM		
Entity level disclosures	2 December 2025 (largest firms) 2 December 2026 (smaller firms)	The rules apply to larger firms (asset managers with above £50 billion in AUM) first and to smaller firms (with above £5 billion in AUM) one year later

Source: FCA's Policy Statement 23/16, Table 17

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