

SFDR? The UK's proposed rules regarding Sustainability Disclosure Requirements and investment labels



Authored by: [James Tinworth](#) and [Christopher Orford](#)

Following on from last year's discussion paper (DP21/4: Sustainability Disclosure Requirements (SDR) and investment labels) in which the FCA sought initial views on the new SDR for asset managers and certain FCA-regulated asset owners and a proposed sustainable investment labelling system, the FCA has issued consultation paper CP22/20 (CP). The CP revises the FCA's initial proposals and sets out draft FCA rules.

Full details of the FCA's consultation paper can be found at <https://www.fca.org.uk/publications/consultation-papers/cp22-20-sustainability-disclosure-requirements-sdr-investment-labels> with the consultation closing on 25 January 2023.

APPLICATION OF THE PROPOSED RULES

The application of the proposed rules is key because:

- (1) Unlike the EU's Sustainable Finance Disclosure Regulation (SFDR), the rules will not apply to non-UK managers and non-UK AIFMs. However, the FCA notes its intention to follow with a separate consultation in due course on how the proposals may be applied in respect of overseas managers.
- (2) Most of the rules apply only where a UK manager chooses to make use of one of the prescribed "sustainability labels" (described below).
- (3) A large number of the rules only apply where retail investors are involved. However, a number of managers are all too aware how easy it is for an individual UK investor to technically fall short of the professional investor criteria and trigger retail investor protections (e.g. PRIIPS KID requirements etc.).
- (4) The "sustainability entity report" requirements (described below) do not apply where the UK manager's AUM is under £5bn (on a 3 year rolling basis).

SUMMARY OF THE PROPOSALS

The FCA's proposals can be summarised as:

- A general 'anti greenwashing' rule (which is to apply to all UK firms in all circumstances), reiterating existing rules to clarify that sustainability-related claims must be clear, fair and not be misleading.
- Naming and marketing rules restricting the use of certain sustainability-related terms (e.g. "Paris-aligned", "ESG", "green" etc.) in the naming and marketing of products offered to retail investors that do not use a sustainable investment

label. Whilst the rules technically would not apply to products offered only to non-retail investors, firms should be mindful of the general ‘anti greenwashing’ rule described above.

- Sustainability labels aimed at helping consumers navigate the product landscape and enhance consumer trust. Three product labels have been suggested:
- ‘Sustainable focus’
- ‘Sustainable improvers’
- ‘Sustainable impact’

There is no hierarchy between these proposed labels but they will allow consumers to make a more informed decision as to exactly what their money will be doing, each label having a clear focus for the products that meet its criteria. Firms will need to decide if they want to apply any of the sustainability labels to their products and assess whether the products meet the FCA’s qualifying criteria, as set out in the proposed rules.

Article 8 and Article 9 SFDR funds could use any of the proposed sustainability labels if they meet the applicable label’s criteria.

- Consumer-friendly, accessible disclosures for retail investors to help consumers understand the key sustainability-related features of an investment product. This includes its sustainability objective, investment approach, and performance against the objective. These disclosures must be produced for products with or without a sustainable investment label, although disclosures will inherently be more limited for products that do not have a label.
- Pre-contractual disclosures will be required for any product that uses one of the sustainability labels. More limited pre-contractual disclosures (to both retail and non-retail investors) will be required where a product does not use a sustainability label but does have ESG characteristics as an integral part of its investment policy or strategy.

- Ongoing sustainability related performance information for products using a label, including key sustainability-related performance indicators and metrics, produced in a sustainability product report.
- Entity-level disclosures, in a ‘sustainability entity report’ on how firms are managing sustainability-related risks and opportunities. These disclosures must be made regardless of whether an in-scope firm uses a label but these requirements do not apply where the UK manager’s AUM is under £5bn (on a 3 year rolling basis).
- Requirements for distributors of in-scope investment products to retail investors in the UK to make the sustainable investment label and consumer-facing disclosures available to those investors.

TIMELINE

The suggested timeline for the implementation of the proposed rules is currently as follows:

- The general anti-greenwashing rule requirement would come into effect immediately on the publication of the final rules. Provisionally this is expected to be 30 June 2023.
- Labelling, naming and marketing, consumer-facing and pre-contractual disclosure requirements and rules for distributors to all become effective 12 months later on 30 June 2024.
- The first ongoing sustainability performance related disclosures to be published on 30 June 2025.
- Entity level disclosures in the sustainability entity report to be published by the largest firms (over £50bn AUM) by 30 June 2025 with smaller firms’ publishing requirements implementation staggered after this date.