

Financial Conduct Authority

Consultation: CP22/20 Sustainability Disclosure Requirements (SDR) and investment labels

RESPONSE FROM:

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Financial Conduct Authority Consultation

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Contents

1. Introduction.....	6
UKSA and ShareSoc offer to FCA	7
2. About UKSA and ShareSoc.....	8
3. Answers to your numbered questions.....	9
Overview, scope and timings	9
Q 1. Do you agree with the proposed scope of firms, products and distributors under our regime? If not, what alternative scope would you prefer, and why?	9
Q 2. Do you agree with the proposed implementation timeline? If not, what alternative timeline would you prefer, and why?	9
Q 3. Do you agree with the proposed cost-benefit analysis set out in Annex 2. If not, we welcome feedback in relation to the one-off and ongoing costs you expect to incur and the potential benefits you envisage.	9
Classification and labelling.....	10
Q 4. Do you agree with our characterisation of what constitutes a sustainable investment, and our description of the channels by which positive sustainability outcomes may be pursued? If not, what alternatives do you suggest and why?	10
Q 5. Do you agree with the proposed approach to the labelling and classification of sustainable investment products, in particular the emphasis on intentionality? If not, what alternatives do you suggest and why?	10
Q 6. Do you agree with the proposed distinguishing features, and likely product profiles and strategies, for each category? If not, what alternatives do you suggest and why? In particular, we welcome your views on:	10

Q 7. Do you agree with our proposal to only introduce labels for sustainable investment products (ie, to not require a label for ‘non-sustainable’ investment products)? If not, what alternative do you suggest and why? 11

Q 8. Do you agree with our proposed qualifying criteria? If not, what alternatives do you suggest and why? In your response, please consider: 11

Q 9. Do you agree with the category-specific criteria for:..... 11

Q 10. Does our approach to firm requirements around categorisation and displaying labels, including not requiring independent verification at this stage, seem appropriate? If not, what alternative do you suggest and why? 12

Disclosures 12

Q 11. Do you agree with our proposed approach to disclosures, including the tiered structure and the division of information to be disclosed in the consumer-facing and detailed disclosures as set out in Figure 7? 12

Q 12. Do you agree with our proposal to build from our TCFD-aligned disclosure rules in the first instance, evolving the disclosure requirements over time in line with the development of future ISSB standards? 12

Q 13. Do you agree with our proposals for consumer-facing disclosures, including location, scope, content and frequency of disclosure and updates? If not, what alternatives do you suggest and why?..... 12

Q 14. Do you agree with the proposal that we should not mandate use of a template at this stage, but that industry may develop one if useful? If not, what alternative do you suggest and why? 13

Q 15. Do you agree with our proposals for pre-contractual disclosures? If not, what alternatives do you suggest and why. Please comment specifically on the scope, format, location, content and frequency of disclosure and updates. 13

Q 16. Do you agree with our proposals for ongoing sustainability-related performance disclosures in the sustainability product report? If not, what alternative do you suggest and why? In your response, please comment on our proposed scope, location, format, content and frequency of disclosure updates. 13

Q 17. Do you agree with our proposals for an ‘on demand’ regime, including the types of products that would be subject to this regime? If not, what alternative do you suggest and why? 14

Q 18. Do you agree with our proposals for sustainability entity report disclosures? If not, what alternatives do you suggest and why? In your response, please comment on our proposed scope, location, format, content, frequency of disclosures and updates.....	14
Q 19. Do you agree with how our proposals reflect the ISSB’s standards, including referencing UK-adopted IFRS S1 in our Handbook Guidance once finalised? If not, please explain why?	14
Naming and marketing	14
Q 20. Do you agree with our proposed general ‘anti-greenwashing’ rule? If not, what alternative do you suggest and why?	14
Q 21. Do you agree with our proposed product naming rule and prohibited terms we have identified? If not, what alternative do you suggest and why?	14
Q 22. Do you agree with the proposed marketing rule? If not, what alternative do you suggest and why?	15
Q 23. Are there additional approaches to marketing not covered by our proposals that could lead to greenwashing if unaddressed?.....	15
Distributors	15
Q 24. Do you agree with our proposals for distributors? If not, what alternatives do you suggest and why?	15
Next steps	15
Q 25. What are your views on how labels should be applied to pension products? What would be an appropriate threshold for the overarching product to qualify for a label and why? How should we treat changes in the composition of the product over time?	15
Q 26. Do you consider the proposed naming and marketing rules set out in Chapter 6 to be appropriate for pension products (subject to a potentially lower threshold of constituent funds qualifying for a label). If not, why? What would be an appropriate threshold for the naming and marketing exemption to apply?	16
Q 27. Are there challenges or practical considerations that we should take into account in developing a coherent regime for pension products, irrespective of whether they are offered by providers subject to our rules or DWP’s requirements?	16

Q 28. To what extent would the disclosures outlined in Chapter 5 be appropriate for pension providers ie do you foresee any challenges or concerns in making consumer-facing disclosures, pre-contractual disclosures and building from the TCFD product and entity-level reports? 16

Q 29. Do you agree that the approach under our TCFD-aligned product-level disclosure rules should not apply to products qualifying for a sustainable investment label and accompanying disclosures? Would it be appropriate to introduce this approach for disclosure of a baseline of sustainability-related metrics for all products in time? 16

Q 30. What other considerations or practical challenges should we take into account when expanding the labelling and disclosures regime to pension products? 16

Q 31. Would the proposals set out in Chapters 4-7 of this CP be appropriate for other investment products marketed to retail investors such as IBIPs and ETPs? In your response, please include the type of product, challenges with the proposals, and suggest an alternative approach..... 17

1. Introduction

1. UKSA and ShareSoc welcome the opportunity to provide the Financial Conduct Authority with our comments on their consultation on Sustainability Disclosure Requirements (SDR) and investment labels (Consultation or CP22/20). Our comments are provided on the basis of knowledge and experience derived from being practised investors and prior participation in the financial services industry. You should allow for our not being technical experts and not having the time to go through the Annexes of CP22/20 in detail.
2. We welcome the proposed new rules to help consumers or retail investors navigate an increasingly complex investment product landscape, protect them from greenwashing, and rebuild trust. We agree that you should set a high bar for products that make sustainability claims. We support your New Consumer Duty and the consumer duty rules' aim to address harms such as firms presenting information in a way that exploits consumers' behavioural biases, among others. Where we anticipate any problems with your proposals in respect of these outcomes, we highlight them below.
3. Our main problem with the proposals is whether or not investment products can actually be sustainable in the sense that they may improve or resolve environmental or social problems. We can envisage how their underlying investments may improve or help to resolve sustainability problems, but this will not mean that the investment products are doing so themselves. As a result, **it may be better to recognise that there can never be sustainable investment products but only investment products that invest in sustainable businesses**. This should lead to the importance of the investment process and its control over and monitoring of sustainability investments, disclosure requirements around this and any resulting labelling.
4. Also, as a result, the regulations should ensure consumers are not misled into believing that their investment products are sustainable in themselves. They should be pushing consumers to understand and monitor the sustainability of their products' underlying investments, especially where an important investment objective for them is sustainability. However, in the interests of consumers not being misled, it may be simpler to not allow investment products to be described as sustainable. The regulations should then focus on investment product disclosures of their sustainability attributes.
5. In summary, **we suggest the words “sustainable” or “sustainability” are not allowed in the name of any investment product** and that your transparency and disclosure proposals are implemented as you describe unless our answers to your questions suggest otherwise.

6. We note that in your section on the proposed qualifying criteria you refer to the Sustainability Accounting Standards Board (SASB). It would be helpful if the proposals clarified that SASB is now part of the IFRS Foundation's International Sustainability Standards Board (ISSB).
7. Our answers to your questions include the suggestion that entity reporting is left out of your proposals as this is sufficiently covered by corporate reporting requirements; which would also importantly allow a proper application of materiality in determining what is prioritised in such reporting.
8. We answer your consultation questions in section 3 below.

UKSA and ShareSoc offer to FCA

9. We would be happy to engage with FCA staff in your continuous engagement via roundtables, webinars, etc in helping to clarify individual investor views and perspectives. Please contact Charles Henderson at charles.henderson@uksa.org.uk or Dean Buckner at dean.buckner@uksa.org.uk and Cliff Weight at cliff.weight@sharesoc.org if you wish to take us up on this offer.

2. About UKSA and ShareSoc

10. UKSA and ShareSoc represent the views of individual investors. Between us we have over 23,000 members. In addition to our own members, 6 million people own shares or have investment accounts with platforms in the UK.
11. The Office for National Statistics estimates that at the end of 2018 UK-resident individuals held 13.5% of the UK stock market, up by 1.2% from 2016 and moving away from the historical lows of 10.2% in 2008. In 2020, the Financial Times estimated that 15% of the UK stock market is held by individual shareholders. In addition to this there are many more who have money invested in shares via funds, pensions and savings products such as employee share ownership schemes. See <https://www.sharesoc.org/investor-academy/advanced-topics/uk-stock-market-statistics/>

UKSA (United Kingdom Shareholders' Association)

12. UKSA was originally formed to provide individual shareholders with a voice, influence and an opportunity to meet like-minded fellow investors. It is structured as a non-profit making company with annual subscriptions. An elected Chairman and Board of Directors (all volunteers and individuals with a wide range of backgrounds and experience) monitor a regional organisation. Each region benefits from oversight by an elected regional Chairman and Committee.
13. There are many agents and intermediaries in financial markets. Unlike them, UKSA represents solely those people who are investing their own money. UKSA and ShareSoc work together to build relations with regulators, politicians and the media to ensure that the voices of individual shareholders and their interests in the long term public good are reflected in the development of law, regulation, and other forms of public policy. See www.uksa.org.uk

ShareSoc (UK Individual Shareholders Society)

14. ShareSoc is a not for profit company. It is dedicated to the support of individual investors (private shareholders as opposed to institutional investors). It aims to make and keep investors better informed to improve their investment skills and protect the value of their investments. It engages with companies, the Government or other institutions if we think individual shareholders are not being treated fairly.
15. ShareSoc actively campaigns to seek redress for private shareholders in cases where they have been the victims of unfair or unscrupulous treatment by companies and / or the financial services industry. See www.sharesoc.org

3. Answers to your numbered questions

Overview, scope and timings

Q 1. Do you agree with the proposed scope of firms, products and distributors under our regime? If not, what alternative scope would you prefer, and why?

16. Yes, we agree.

Q 2. Do you agree with the proposed implementation timeline? If not, what alternative timeline would you prefer, and why?

17. Yes, we agree.

Q 3. Do you agree with the proposed cost-benefit analysis set out in Annex 2. If not, we welcome feedback in relation to the one-off and ongoing costs you expect to incur and the potential benefits you envisage.

18. We have no insight to the potential costs of implementing the proposed SDR and investment labels regime.

19. We agree that some benefits are likely to be achieved and these include:

19.1. Reduced greenwashing and thus better consumer protection will help because relevant firms can be held accountable for harmful greenwashing, especially with the anti greenwashing rule that will become effective immediately on the publication of your Policy Statement.

19.2. Better provision of standardised sustainability-related information. This will help because it will encourage the use of sustainability disclosures that are clear, objective and measurable and which, in turn, should enable better decision making by investors.

19.3. Providing better transparency around the claims made for sustainable investment products. This will help by enabling consumers to better navigate the market and make more informed investment decisions.

20. However, we are less convinced that you can predict the benefits of better informed capital allocation and asset pricing. Nor are we convinced better labelling and transparency can help facilitate an orderly transition to a more sustainable future. These are complex areas and, like investment performance, can only be assessed with hindsight.

Classification and labelling

Q 4. Do you agree with our characterisation of what constitutes a sustainable investment, and our description of the channels by which positive sustainability outcomes may be pursued? If not, what alternatives do you suggest and why?

21. Yes, we agree; as we are unable to suggest alternatives.
22. In your paragraph 4.38, you mention “other types of investor additionality”. However, it is not clear what is meant by additionality in this context.

Q 5. Do you agree with the proposed approach to the labelling and classification of sustainable investment products, in particular the emphasis on intentionality? If not, what alternatives do you suggest and why?

23. We agree; as intention must be a starting point for any investment product. We also recognise that the regulatory requirements will be monitored to ensure the required outcomes of the regulations continue to materialise.

Q 6. Do you agree with the proposed distinguishing features, and likely product profiles and strategies, for each category? If not, what alternatives do you suggest and why? In particular, we welcome your views on:

- a. **Sustainable Focus:** whether at least 70% of a ‘sustainable focus’ product’s assets must meet a credible standard of environmental and/or social sustainability, or align with a specified environmental and/or social sustainability theme?
- b. **Sustainable Improvers:** the extent to which investor stewardship should be a key feature; and whether you consider the distinction between Sustainable Improvers and Sustainable Impact to be sufficiently clear?
- c. **Sustainable Impact:** whether ‘impact’ is the right term for this category or whether should we consider others such as ‘solutions’; and the extent to which financial additionality should be a key feature?

24. Generally we agree - although this is partly because we are unable to suggest better alternatives. Notwithstanding this, we would suggest that each category is required to have at least 80% (not 70%) of their assets in the sustainable businesses that they profess to invest in and which, in turn, determine the category they fall into. More than 20% of underlying investments not meeting a categories’ requirements seems too much of an allowance. 80% or more would align with most other similar regulatory requirements of investment funds.

Q 7. Do you agree with our proposal to only introduce labels for sustainable investment products (ie, to not require a label for ‘non-sustainable’ investment products)? If not, what alternative do you suggest and why?

25. With our introduction comments suggesting product names do not include sustainable and ESG in mind, no we do not agree. We would prefer only the investment products that meet all relevant regulatory criteria in respect of the underlying investments in sustainable businesses to be labelled with one of the proposed three labels. Therefore it would be helpful to the consumer for ‘non-sustainable’ products to have a ‘non-sustainable’ label.

Q 8. Do you agree with our proposed qualifying criteria? If not, what alternatives do you suggest and why? In your response, please consider:

- whether the criteria strike the right balance between principles and prescription
- the different components to the criteria (including the implementing guidance in Appendix 2)
- whether they sufficiently delineate the different label categories, and;
- whether terms such as ‘assets’ are understood in this context?

26. We agree and cannot suggest any alternatives. However, we believe Principle 5, Stewardship will cover Principle 4, Resources and Governance as resources and governance are covered under the Principles of the Stewardship Code.

27. We also suggest that Principle 5, Stewardship includes a requirement that the firm managing the relevant investment product(s) is a signatory to the Stewardship Code.

28. We notice reference to the Sustainability Accounting Standards Board (SASB). It would be helpful if the proposals clarified that SASB is now part of the IFRS Foundation’s International Sustainability Standards Board (ISSB).

Q 9. Do you agree with the category-specific criteria for:

- The ‘Sustainable focus’ category, including the 70% threshold?
- The ‘Sustainable improvers’ category? Is the role of the firm in promoting positive change appropriately reflected in the criteria?
- The ‘Sustainable impact’ category, including expectations around the measurement of the product's environmental or social impact?

Please consider whether there are any other important aspects that we should consider adding.

29. Generally, yes. However, as mentioned above, we would prefer to see all categories having an 80% threshold (not 70% and not just for the Sustainable Focus category/label).

Q 10. Does our approach to firm requirements around categorisation and displaying labels, including not requiring independent verification at this stage, seem appropriate? If not, what alternative do you suggest and why?

30. Yes, your approach including not requiring independent verification seems appropriate. In a highly regulated industry, we would expect the internal compliance monitoring processes of firms should ensure compliance with your categorisation and displaying labels requirements.

Disclosures

Q 11. Do you agree with our proposed approach to disclosures, including the tiered structure and the division of information to be disclosed in the consumer-facing and detailed disclosures as set out in Figure 7?

31. Yes, we agree, except we believe the product summary should cover all product-related sustainability disclosures. As a result stewardship (KPIs), where applicable should also be included in the product summary.

Q 12. Do you agree with our proposal to build from our TCFD-aligned disclosure rules in the first instance, evolving the disclosure requirements over time in line with the development of future ISSB standards?

32. Yes, we agree as we envisage that the sustainability reporting standards of the ISSB will be the primary source of standards for sustainability reporting; and these are being developed from TCFD reporting requirements and SASB standards.

Q 13. Do you agree with our proposals for consumer-facing disclosures, including location, scope, content and frequency of disclosure and updates? If not, what alternatives do you suggest and why?

33. In principle, we agree with your proposals for consumer-facing disclosures. However, as you state in your CP22/20, behavioural research found consumers' comprehension of products' sustainability-related features was

lower when consumers were limited to consumer-facing disclosures for products that had a sustainable label, rather than for all products. Additionally, Box 10 of your CP22/20 states that these “rules aim to address harms such as firms presenting information in a way that exploits consumers’ behavioural biases”. Our first concern is that sustainability as a topic and an objective is in its early stages (eg similar to the process of ISSB sustainability standard setting) and therefore consumers cannot be expected to have sufficient knowledge, even when reading the required disclosure documents, to make well informed investment decisions. Our second concern is that sustainability biases in consumers will be used by providers to exploit them. This would be another more insidious form of greenwashing, which would be against the requirements of your new consumer duty.

34. As a result of these concerns, we cannot agree fully with your proposals as we believe it is too early to assess and understand the potential of sustainability investment products existing currently. **As we outline in our introduction, a better alternative would be to not allow investment products to be described as sustainable.** This can then be reviewed in five years’ time.
35. If the simpler, practical approach of prohibiting investment products from being described as sustainable was implemented, then this could be fully enforced from the date that the general anti-greenwashing requirement is introduced, provisionally at the end of June 2023.

Q 14. Do you agree with the proposal that we should not mandate use of a template at this stage, but that industry may develop one if useful? If not, what alternative do you suggest and why?

36. We are unable to comment as we are not sure of any alternatives to suggest. We are not persuaded that some flexibility is allowed the industry as this opens the way for too many variations in disclosures and think some structural template may be helpful.

Q 15. Do you agree with our proposals for pre-contractual disclosures? If not, what alternatives do you suggest and why. Please comment specifically on the scope, format, location, content and frequency of disclosure and updates.

37. Yes, we agree.

Q 16. Do you agree with our proposals for ongoing sustainability-related performance disclosures in the sustainability product report? If not, what alternative do you suggest and why? In your response, please comment on our proposed scope, location, format, content and frequency of disclosure updates.

38. Yes, we agree.

Q 17. Do you agree with our proposals for an ‘on demand’ regime, including the types of products that would be subject to this regime? If not, what alternative do you suggest and why?

39. We are unable to comment. We feel that the proposed ‘on demand’ regime is for investment products outside the scope of normal retail investment products and therefore not an area with which we are overly familiar.

Q 18. Do you agree with our proposals for sustainability entity report disclosures? If not, what alternatives do you suggest and why? In your response, please comment on our proposed scope, location, format, content, frequency of disclosures and updates.

40. No, we do not agree. Entity reporting appears to us to be outside the scope of investment product reporting, which appears to be the focus of CP22/20. As a result, the proposals should leave entity reporting on sustainability and related disclosures to the realm of corporate reporting and they should be left out of the CP22/20 proposals.

Q 19. Do you agree with how our proposals reflect the ISSB’s standards, including referencing UK-adopted IFRS S1 in our Handbook Guidance once finalised? If not, please explain why?

41. No, for the reason outlined above in our answer to question 18. Any application of ISSB sustainability standards, such as IFRS S1 and S2, should be left to corporate reporting and allow the application of materiality, as defined for IFRS financial reporting and sustainability standards, to determine the content of entity sustainability reporting.

Naming and marketing

Q 20. Do you agree with our proposed general ‘anti-greenwashing’ rule? If not, what alternative do you suggest and why?

42. Yes, we agree.

Q 21. Do you agree with our proposed product naming rule and prohibited terms we have identified? If not, what alternative do you suggest and why?

43. Our overarching answer is no. We do not agree with any products being named as sustainable. **We suggest that product names should not use the terms sustainable, sustainability, ESG or anything similar that could lead consumers to believe they are “green”.**

44. Within the confines of this question, yes, we do agree that products that do not meet the criteria for the three sustainability labels should be prohibited from using the terms you have identified; especially if this could be seen as greenwashing and therefore breach your anti greenwashing rule. Also as mentioned above these “non-sustainable” investment products should have a “non-sustainable” label.

Q 22. Do you agree with the proposed marketing rule? If not, what alternative do you suggest and why?

45. Yes, we agree.

Q 23. Are there additional approaches to marketing not covered by our proposals that could lead to greenwashing if unaddressed?

46. We are not aware of any additional approaches.

Distributors

Q 24. Do you agree with our proposals for distributors? If not, what alternatives do you suggest and why?

47. Yes, we agree but would suggest that distributors are also subject to the anti greenwashing rule that product providers are, if the proposals do not include this (as it is not clear to us that the proposals do).

Next steps

Q 25. What are your views on how labels should be applied to pension products? What would be an appropriate threshold for the overarching product to qualify for a label and why? How should we treat changes in the composition of the product over time?

48. Our general view is that pension products, including insurance based investment products (IBIPs), are like any other investment products and therefore should be treated the same as those that are available to the retail investment consumer. **This should mean that sustainability related terminology is banned from the names of products** and that they should be labelled and provide disclosures as you outline in this CP22/20.
49. The appropriate threshold should be 80%, as we have suggested elsewhere in our response.

Q 26. Do you consider the proposed naming and marketing rules set out in Chapter 6 to be appropriate for pension products (subject to a potentially lower threshold of constituent funds qualifying for a label). If not, why? What would be an appropriate threshold for the naming and marketing exemption to apply?

50. See our responses to Q 25 above, which would be the same here.

Q 27. Are there challenges or practical considerations that we should take into account in developing a coherent regime for pension products, irrespective of whether they are offered by providers subject to our rules or DWP's requirements?

51. We are not aware of any such challenges or practical considerations.

Q 28. To what extent would the disclosures outlined in Chapter 5 be appropriate for pension providers ie do you foresee any challenges or concerns in making consumer-facing disclosures, pre-contractual disclosures and building from the TCFD product and entity-level reports?

52. Subject to our related comments elsewhere, we believe that the disclosures are appropriate for pension products and therefore providers.

Q 29. Do you agree that the approach under our TCFD-aligned product-level disclosure rules should not apply to products qualifying for a sustainable investment label and accompanying disclosures? Would it be appropriate to introduce this approach for disclosure of a baseline of sustainability-related metrics for all products in time?

53. We assume your TCFD-aligned product-level disclosure rules apply to products aligned to addressing the issue of climate change. Also, as mentioned previously, we believe regulation should always be proportional and materiality judgements should be applied to decide whether a sustainability topic is a priority and relevant to an entity or product. This would lead to us not agreeing and thinking that your approaches should be consistent – ie your approach under TCFD-aligned product-level disclosure rules should also apply to products qualifying for a sustainable investment label and accompanying disclosures.

Q 30. What other considerations or practical challenges should we take into account when expanding the labelling and disclosures regime to pension products?

54. We have no further comments.

Q 31. Would the proposals set out in Chapters 4-7 of this CP be appropriate for other investment products marketed to retail investors such as IBIPs and ETPs? In your response, please include the type of product, challenges with the proposals, and suggest an alternative approach.

55. Subject to our related comments elsewhere, we believe that the proposals are appropriate for any investment products marketed to retail investors.