

ESG: A summary of the FCA's Sustainability Disclosure Requirements (SDR) and investment labels consultation paper (CP22/20)

The FCA's long-awaited [Consultation Paper](#) setting out its proposals for the UK's sustainability disclosure regime (CP22/20) was published on 25 October 2022.

The updated proposals are materially different to those set out in the FCA's November 2021 [Discussion Paper \(DP21/4\)](#), reflecting the strength of feedback on the Discussion Paper and the fast pace of change in this area both in the UK and internationally.

A remarkably long 179 pages, the Consultation Paper has a substantial amount of information to consider that will impact not only product and entity level disclosures, but governance and organisational requirements too. We recommend that clients establish the impact of the Consultation Paper proposals as soon as possible, with a view to providing thorough feedback to the FCA in advance of the deadline for responses on **25 January 2023**.

Throughout the Consultation Paper, the FCA is keen to emphasise that the new rules will be a starting point aimed at addressing immediate harms and helping firms to build their capabilities around sustainability-related disclosures. The clear intention is that these proposals will evolve and expand over time in respect of both the content of the rules and the firms and products to which they apply.

Our summary of the proposals is below with a more detailed analysis available [here](#).

Who? *Application of the proposed rules*

The proposals within the Consultation Paper apply to various in-scope firms and in-scope products – in summary:

- the general anti-greenwashing rule will apply to all FCA-regulated firms
- the core elements of the Consultation Paper will, initially, only apply to UK regulated firms in respect of their asset management activities covering authorised funds (excluding feeder funds) and unauthorised funds (including investment trusts) and portfolio management services
- targeted distribution rules will apply to firms that distribute in-scope products to retail investors (including platforms and financial advisers)

The current proposals apply only to UK products, however the FCA intends to consult on the SDR requirements in respect of overseas funds in due course. The FCA is also seeking views on expanding the regime to asset owners in respect of their investment products.

The FCA uses the following definitions:

In-scope firms:

- Firms carrying out portfolio management
- UK UCITS management companies
- ICVCs (without a separate management company)
- Full-scope UK AIFMs
- Small authorised UK AIFMs

In-scope products:

- Authorised funds (excluding feeder funds and funds in the process of winding up or termination)
- Unauthorised AIFs (including investment trusts)
- Portfolio management services

What? Key proposals

Further detail on the Consultation Paper's proposals can be found [here](#), but in summary these cover the following main areas:

1. **Sustainable investment labels** to help consumers navigate the investment product landscape and enhance consumer trust
2. **Consumer-facing product-level disclosures** to help consumers understand the key sustainability-related features of a product
3. **Detailed disclosures** targeted at a wider audience (e.g., institutional investors and consumers seeking more information):
 - pre-contractual disclosures (e.g., in the fund prospectus), covering the sustainability-related features of investment products
 - ongoing sustainability related performance information including key sustainability-related performance indicators and metrics, in a sustainability product report
 - a sustainability entity report covering how firms are managing sustainability-related risks and opportunities
4. **Naming and marketing rules** restricting the use of certain sustainability-related terms in product names and marketing materials unless the product uses a sustainable investment label
5. **A general 'anti-greenwashing' rule** applied to all regulated firms which reiterates existing rules to clarify that sustainability-related claims must be clear, fair and not misleading
6. **Requirements for distributors** to ensure that product-level information (including the labels) is made available to consumers

The FCA acknowledges that there are other international regimes, particularly the EU's Sustainable Finance Disclosure Regulation and the SEC's similar proposals for investment funds, to which a large number of UK firms are already subject.

Firms are quite rightly concerned with the costs and resources that will be required to comply with overlapping sustainability regimes and would prefer consistency where possible (as this is also considered to be an important element in ensuring that products are not mis-sold).

Although the FCA's proposed rules are not the same as those in the EU or as proposed in the US, the FCA has sought to demonstrate how its proposals would apply to those products already caught by SFDR or the SEC rules. We further outline the comparison with SFDR in our more [detailed paper](#) on SDR.

When? Key timescales

The FCA has requested comments on the Consultation Paper by **25 January 2023**, with the intention of publishing the corresponding Policy Statement and final rules by the **end of June 2023**.

The rules are expected to be introduced on a phased basis as follows:

- the general 'anti-greenwashing' rule is to be effective immediately on the publication of the Policy Statement (provisionally, from **30 June 2023**)
- the labelling, naming and marketing, consumer-facing and pre-contractual disclosure requirements, and rules for distributors, will become effective 12 months after publication of the Policy Statement (provisionally, from **30 June 2024**)
- the first on-going sustainability performance-related disclosures must be published 24 months after publication of the Policy Statement (provisionally, from **30 June 2025**); and
- entity level disclosures will have a staggered implementation with the largest firms producing their first disclosure 24 months after publication of the Policy Statement (provisionally, from **30 June 2025**)

How can we help?

It is crucial that you assess the proposed rules, consider how these will impact your business' products, services, governance and organisational requirements and respond to the FCA to ensure that the Policy Statement and final rules reflect the best position for the UK funds industry. For further information on SDR, please see our more [detailed paper](#).

Our specialist ESG team is one of the leaders in the market, with significant experience in advising clients on the implementation of sustainability regimes (including SFDR, the EU Taxonomy and TCFD) in relation to all types of UK fund and all asset classes. We advise clients across Europe, the UK and the US on their strategic adoption of these requirements, including ensuring strong governance and buy in at all levels of the business.

We can provide training on the proposed rules, help you to assess how they will impact your business' products and services, including:

- mapping the Consultation Paper's proposed rules to your business
- identifying key actions required to meet the Consultation Paper's rules to meet the immediate labelling and disclosure requirements and governance and organisation requirements
- indicative timelines for SDR readiness



Laura Houët
Partner, Co-head of ESG
T +44 207 367 3582
E laura.houet@cms-cmno.com



Rachel Lowe
Senior Associate
T +44 20 7367 3923
E rachel.lowe@cms-cmno.com