

FCA UNVEILS PROPOSALS ON SUSTAINABILITY DISCLOSURE REQUIREMENTS AND INVESTMENT LABELS

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Legal Briefings

The regulator's long-awaited measures form part of a package to tackle greenwashing and protect consumers

The FCA has [published](#) its [consultation paper](#) on sustainability disclosure requirements and investment labels (the Consultation). This follows the [discussion paper](#) published in November 2021, which we summarised [here](#).

The Consultation builds on the core elements of the regime outlined in the discussion paper: sustainable investment labels, consumer-facing disclosures, detailed product-level disclosures and entity-level disclosures. In addition, the Consultation also proposes naming and marketing rules with broader applicability, a general anti-greenwashing rule and other specific obligations on distributors.

In this post, we summarise our key takeaways from the Consultation, together with a high-level overview of the FCA's proposals.

THE REQUIREMENTS

- Broadly speaking, the regime comprises a labelling regime, supplemented by several layers of disclosures starting with consumer-facing disclosures, through to more detailed entity and product-level disclosures.
- In a change to the original proposal in the discussion paper, the number of labels has been changed from five to three: sustainable focus; sustainable improvers; and sustainable impact. Products which are not labelled with one of these three labels but

use sustainability concepts need to comply with the naming and marketing rules (covered below).

- In addition, there are now anti-greenwashing rules, naming and marketing rules, and rule for distributors (more details on all of these in the table below).
- The labelling regime is expected to be an opt-in regime, where asset managers can choose to apply the proposed labels to their products subject to meeting the relevant eligibility requirements. The FCA has to be notified of the use of any sustainable investment labels although no regulatory approvals are required. The FCA expects the UK Green Taxonomy, once finalised, will support the labelling regime.

ENTITIES IN SCOPE

- The labelling, disclosure, naming and marketing requirements are directed principally at asset managers.
- The discussion paper anticipated that FCA-regulated asset owners (such as pension and insurance funds) will also be in scope, but this has been dropped in the Consultation, though the regime is expected to be extended to asset owners in due course.
- The anti-greenwashing rule and the distribution obligations will apply more broadly to UK-authorized financial services firms. The anti-greenwashing rules applies to all regulated firms; and the distribution rules to distributors, including platforms and advisers.
- The impact of the Consultation is therefore broader than asset managers. All UK-authorized firms should be familiarising themselves with the proposals and the potential impact it could have on their business and operations.

DIVERGENCE FROM EU SUSTAINABLE FINANCE DISCLOSURES REGULATION (SFDR)

- The FCA accepts the starting point of its proposed labelling regime is materially different to the EU SFDR and the US Securities and Exchange Commission (SEC) rules.
- The FCA's policy rationale for categorising products is to help consumers identify sustainable investment products and navigate the market, and the proposed criteria are therefore designed to set a high bar for products that make sustainability claims.
- The primary driver of the EU and US regimes, by contrast, has been to categorise

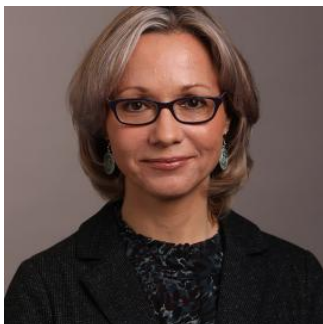
products principally to determine disclosure requirements – this has led to labels with lower eligibility thresholds (such as Article 8 under the EU SFDR).

- In addition, although the FCA has sought to avoid inconsistencies with the EU SFDR, there are several respects in which the UK regime is materially different to the EU SFDR. To take two examples, the proposed labels do not map across onto the Article 6/8/9 classifications under the EU SFDR, and the FCA has also specifically elected not to adopt the concepts of “do no significant harm” and “principal adverse impacts” which are important elements of the EU SFDR regime.
- This means while the two regimes are not inconsistent, to the extent a financial product falls within the scope of both regimes, the manager of such a product will need to comply with two distinct ESG labelling/classification regimes.
- Annex 1 to the Consultation sets out a high-level map to the EU SFDR and US SEC proposals; but this is merely a starting point and firms that may be impacted by all of these regimes will need to undertake a more detailed gap analysis.

TIMING

- The Consultation closes on 25 January 2023, following which the FCA expects to publish the final rules by 30 June 2023.
- The anti-greenwashing rule will come into force immediately upon the publication of the final rules in June 2023.
- Generally, the rest of the rules relating to labelling requirements and pre-contractual disclosures will come into force by 30 June 2024 (on which more below).
- Generally, the ongoing periodic disclosures will apply from 30 June 2025 (on which more below).

HIGH LEVEL OVERVIEW OF THE FCA'S PROPOSALS



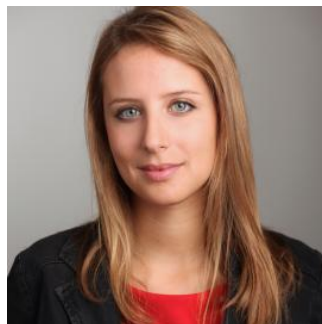
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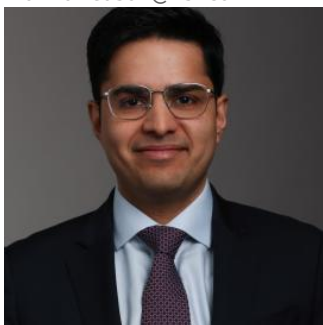
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