Managed Funds Association
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York | Brussels

January 25, 2023

Trading and Wholesale Conduct Policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Re: Sustainability Disclosure Requirements and investment labels: Consultation

Dear Sir/Madam,

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to represent the views of the global alternative investment industry in this written response to the Financial Conduct Authority's (the "**FCA**") consultation paper on Sustainability Disclosure Requirements ("**SDR**") and investment labels (the "**Consultation Paper**").

MFA is fully supportive of the FCA's intentions to build greater transparency, consistency and trust in the market for sustainable instruments, products and the supporting ecosystem. As consulting on the SDR and investment labels continues to develop, we would encourage the FCA to continue to engage closely with the United States ("**US**") and other international policy and regulatory leaders to ensure continued alignment of the United Kingdom ("**UK**") market framework in a way that supports cross-border trading.

MFA agrees with the FCA's view that it is important to help consumers navigate an increasingly complex investment product landscape. In particular, MFA is supportive of the three target outcomes outlined in paragraph 1.31 of the Consultation Paper: (i) to reduce greenwashing and protect consumers; (ii) to increase provision of standardised sustainability information along the investment chain; and (iii) to allow consumers to more effectively navigate the market and make informed decisions.

In addition, MFA appreciates the FCA's aim to strike a balance between ensuring the regime works both for consumers and for firms that need to apply the rules in practice. MFA fully agrees with the FCA's view that it is important to ensure that the proposed SDR rules strive to ensure international coherence with other regimes, such as the European Union's Sustainable Finance Disclosure Regulation ("**SFDR**") and proposals by the Securities and Exchange Commission ("**SEC**") in the US (the "**SEC proposals**").

[1] MFA represents the global alternative investment industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 member firms collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

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Context

MFA represents the global alternative investment industry supporting a policy environment that provides greater transparency, consistency and trust in the market for sustainable investment products. Many of MFA's members are headquartered in the US and nearly 40 percent of MFA members have offices in the UK.

Many MFA members have clients who look to invest with an increasing focus on sustainable investment products. To meet this demand, many MFA members manage funds with investment strategies that consider the sustainability-related risks, opportunities and impacts of their investments and in doing so, members frequently promote the sustainability characteristics of such funds. As a consequence, MFA understands the importance of standardised disclosures and reporting to allow members to promote sustainability objectives and strategies in a manner that is reliable and comparable, particularly given the significant amount of harm caused by misleading sustainability-related claims that have been recently highlighted in the sustainable investment product market.

MFA and its members are interested in the Consultation Paper and believe that the resulting framework will play an influential role in the labelling and disclosure expectations of investors more broadly, beyond the strict regulatory scope of the SDR.

We have set out our responses to the relevant questions in the Annex hereto.

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We appreciate your consideration, and we would be pleased to meet with the FCA to discuss our comments. If you have any questions about these comments, please do not hesitate to contact David Lourie, Vice President & Senior Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

Very truly yours,

/s/ Jennifer W. Han
Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

ANNEX – Consultation Questions

CHAPTER 3. OVERVIEW, SCOPE AND TIMINGS

Q1: 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?

MFA Response

MFA agrees with the proposed scope of firms, which includes UK AIFMs, UK UCITS management companies and portfolio managers; and, to address any consideration of overseas funds in a separate consultation.

In addition, MFA welcomes the FCA's exemption for firms where assets under administration or management in relation to the sustainability in-scope business amount to less than £5 billion, calculated as a 3-year rolling average.

However, MFA would encourage the FCA to provide guidance on how a firm should calculate its assets under administration or management for the purposes of the £5 billion exemption. At present, we note that the FCA has flagged in its Policy Statement (PS21/24) that this remains an area for further clarification but the FCA has not provided any further information in response (see excerpt below):[2]

> Para 3.47: "We also received a small number of requests from regulated firms, trade and professional bodies asking us to clarify how the threshold should be calculated."

As a result, this has caused some legal uncertainty for MFA members. For example, calculated AUM figures can vary greatly, depending on whether a firm calculates its AUM based on K-factors (i.e. K-AUM) under the UK Investment Firm Prudential Regime[3] or an alternative methodology (such as one that may have been developed internally before the Investment Firms Prudential Regime came into force).

Given that the FCA is proposing a robust set of requirements under the consultation, we request that FCA also provides guidance on what methodology should be used for the £5 billion threshold exemption. This will ensure clarity and consistency amongst the industry as to whether or not a firm falls within scope of the ESG Sourcebook requirements.

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[2] FCA Policy Statement PS21/24 "Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers" – December 2021.

[3] K-AUM represents the methodology for calculating AUM with quantitative factors (K-factors) as required under the UK Investment Firm Prudential Regime, which applies to UK Markets in Financial Instruments Directive (MiFID) investment firms and UK alternative investment fund managers with MiFID top-up permissions.

Q2: Do you agree with the proposed implementation timeline? If not, what alternative timeline would you prefer, and why?

MFA proposes delaying the implementation of the proposals in the Consultation Paper by at least twelve months, meaning that the sustainable investment labels regime and naming and marketing rules would apply from June 2025.

MFA notes that the Consultation Paper seeks to introduce its proposals as early as June 2023. In particular, the timeline for the anti-greenwashing rule would be June 2023, and the sustainable investment labels regime and naming and marketing rules would apply from June 2024.

At this time, MFA members are developing their capabilities to comply with the staggered application of the SFDR as well as processing the SEC proposals. Further, MFA members are still processing the TCFD-aligned disclosure requirements that were introduced in the ESG Sourcebook in January 2022.

Given the complexities that asset managers will face to comply with various regimes, MFA considers it would be prudent to extend the implementation timeline of the current SDR proposals to give industry sufficient time to digest and implement the proposals alongside other global regimes.

MFA is conscious that in order to evidence compliance with the qualifying criteria of the sustainable investment labels, firms will require reliable data and disclosures from potential investee companies. As mentioned in the Consultation Paper, the International Sustainability Standards Board ("**ISSB**") and the Transition Plan Taskforce ("**TPT**") are in the process of producing disclosure standards for companies. In order to maximise the effectiveness of the proposed SDR regime, MFA supports aligning the timing of the proposals in the Consultation Paper with the ISSB and TPT disclosure regimes.

Given that the two regimes are still being developed, MFA proposes delaying the implementation of the proposals in the Consultation Paper by at least twelve months, meaning that the sustainable investment labels regime and naming and marketing rules would apply from June 2025.

Q5: 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?

MFA generally agrees with the proposed approach to labelling and classification in the Consultation Paper. MFA understands the FCA's intention to create a distinct labelling regime whose qualifying criteria inform what disclosures are required and appreciates the emphasis that the Consultation Paper places on the desire for international coherence with these regimes and the policy decision for deviations.

MFA members wish to reiterate that it is important for different sustainability-related labelling and/or disclosure regimes to retain as much international coherence as possible. Significant points of divergence across international regimes would create administrative and cost barriers, which, in practice, could restrict members from making investment products available on a cross-border basis.

In order to allow members to more easily navigate deviations between different international regimes, MFA requests that the FCA conduct and publish a detailed assessment of the extent to which existing entity and product level disclosures under the EU SFDR, and its related Regulatory Technical Standards (RTS), would satisfy specific rules proposed in the Consultation Paper, as well as specifying disclosures under the SFDR that would need to go further to meet the proposed SDR rules.

MFA notes that Annex I of the Consultation Paper outlines broad overlaps between the product level disclosures under the two regimes. MFA encourages the FCA to provide a more granular comparison of the disclosures required by the two regimes at both product and entity level (and conduct a similar assessment for the US-based rules once the SEC proposals have been finalised).

For example, paragraph 5.50 of the Consultation Paper sets out a list of precontractual disclosures that will need to be provided against the cross-cutting principles. Given that a large number of UK asset managers would have prepared precontractual disclosures for purposes of complying with the SFDR, it would be helpful if the FCA's proposed disclosures could be set out in a table mapping, and explaining, how each requirement aligns, varies, or requires additional information from the similar questions that are set out in the precontractual disclosure templates under the SFDR's RTS.

In this regard, the FCA could explain for example, that the disclosure requirements (1-3) under Principle 1 (which require disclosures on sustainability objective in specific measurable terms etc.) are broadly comparable to the question "What environmental and/or social characteristics are promoted by this financial product?" in the SFDR Article 8 template. In addition, the FCA could highlight that disclosure requirement 2 under Principle 1, requires further information from firms as they will need to disclose the extent to which the sustainability objective may impact the product's financial return.

This mapping exercise would be beneficial to both the FCA and firms. In practice, firms that are subject to both the SFDR and the SDR will be reviewing both sets of disclosure requirements in tandem. Conducting such an exercise would allow the FCA to highlight any gaps in disclosure requirements and areas where a firm that is already SFDR-compliant would need to adjust their disclosures. By doing so, firms will also have a practical tool to make sure that the disclosures prepared are sufficient to meet the FCA's expectations and to ensure consistency across the industry.

In our view, given that UK investors invest in products from US, EU as well as UK manufacturers, UK investors will also benefit greatly from further clarity on how the proposed SDR rules interact with the requirements under the SFDR as well as the SEC proposals. Effective guidance in this respect would enable firms to leverage their existing disclosures in developing SDR-compliant disclosures and ultimately minimise administrative and cost burdens for the benefit of UK investors.

Q6: 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?

MFA Response

Independent verification

MFA supports the FCA's proposal to not prescribe specific standards that need to be met to meet the scope of each type of label, as this would allow for flexibility in light of the different types of products/services that may be offered. Nevertheless, MFA requests that the FCA publish additional case studies and publications to provide further guidance on how the proposed criteria for each category should be met.

In the case of the "Sustainable Focus" label, the proposal requires at least 70% of a product's assets to meet a "credible standard" of environmental and/or social sustainability. As the UK Green Taxonomy remains subject to change and its implementation has been delayed, the FCA should provide other types of standards that would be deemed appropriate or inappropriate. In addition, the FCA should make clear whether firms can develop their own proprietary models as their standard. Furthermore, the FCA should set out the methodology for calculating the 70% threshold.

In the case of the "Sustainable Improvers" label, the proposal requires a product to invest in assets that are selected for their potential to become more environmentally and/or socially sustainable over time, including in response to the stewardship influence of the firm. As many firms may be signatories to the UK Stewardship Code, the FCA is encouraged to clarify what would qualify as "stewardship" (such as implementing a transition plan at the outset versus active involvement over time) and any alignment with the stewardship activities and outcomes promoted by the Stewardship Code.

In the case of the "Sustainable Impact" label the proposal requires a product to invest in assets that provide solutions to environmental or social problems and that a firm will typically be able to demonstrate the additionality of its contribution by investing new capital. However, our members consider and provide various investment strategies with environmental and social characteristics that are not limited to new capital. The FCA is encouraged to consider other types of strategies that could fall within scope of the label.

As a broader point, the category descriptions in the Consultation Paper and the accompanying boxes containing "likely product profile and strategies" are generally targeted towards equity-based strategies. However, MFA members manage diverse fund portfolios with different types of asset classes, such as real estate, derivatives, private capital and currencies. Accordingly, MFA requests that the FCA provides additional case study examples to address how the labels

should be applied to different types of assets. Moreover, the FCA should also specify how managers of multi-asset funds and funds of funds should approach categorising a portfolio under a single label.

Acknowledging sustainability-related products that fall outside of labelling regime

As a broader point, MFA members employ a wide spectrum of investment strategies and take various approaches to ESG issues. Accordingly, MFA is also concerned that that the proposed features for each category are fairly stringent – particularly in comparison to the characterisation of funds under the SFDR and the SEC proposals.

MFA understands that the current proposals seek to distinguish from products that integrate ESG considerations solely to manage financial risk and maximise financial returns. However, MFA notes that that the current thresholds set a high bar for what qualifies as a sustainable product and risk excluding other products that may provide worthy sustainability considerations even if they do not reach the extent envisaged by the current thresholds.

For example, a fund manager may not be able to use any sustainability labels even if it maintains a considerable standard of sustainability in its portfolio because it might not necessarily meet a "high" standard as required under "Sustainable Focus" label. Similarly, a small manager that generally seeks to improve the sustainability profile of its investments but lacks size or influence may struggle to commit to having an "objective to deliver measurable improvements over time" as required for the "Sustainable Improver" label.

There are various concerns posed in this regard. Investors that rely on the labelling regime may overlook products that have sustainability considerations but do not fall comfortably within the labelling regime. Nevertheless, it remains important that investors still receive such relevant information so that they are able to make fully-informed investment decisions.

Furthermore, fund managers of such products may be disincentivised from deploying sustainability-related strategies if they are unlikely to meet the sustainable label criteria and will ultimately be pooled with products that have no ESG ambitions in the "no sustainable label" category.

Accordingly, the current characterisations for the three categories leave little scope as to what can be designated as sustainable in the market. The consequence is that various forms of sustainable strategies may not qualify for a label and investors will not be able to access the information needed to understand the full spectrum of sustainability-related products in the market.

MFA recommends that the FCA considers providing a fourth category to cover products that do provide sustainability features (beyond foundational ESG integration strategies) but do not qualify for the three proposed sustainable investment labels. This would ensure that investors are able to identify such types of sustainability-related products to meet their own needs. In addition, it would provide a clear boundary for such funds to make disclosures on their sustainability features without any risk of contravening the proposed naming and marketing rules.

Q10: 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?

Implementing guidance – Short selling

MFA notes that the FCA's implementing criteria (paragraph 7g) in relation to the general criteria set out in ESG 3.2.3R explains that "where relevant to its investment policy and strategy, a firm should explain how short selling aligns with or contributes to the sustainability product's sustainability objective".

MFA greatly welcomes the FCA's acknowledgement of the role that short-selling can play in contributing to positive sustainability outcomes. A recent report published by MFA, in conjunction with Copenhagen Economics, provides quantitative evidence in support of this position.[4] In addition, MFA supports the FCA's proposal to not set specific parameters for the use of short-selling in this context, given that short-selling can be used to contribute towards sustainability outcomes in various manners.

Independent verification

In terms of verification, the current criteria do not mandate a specific standard by which a firm will be considered to be fulfilling its sustainability objective. However, the relevant firm is required to keep a record of the basis on which a label is being used and such record should be made available to the FCA upon request. Under this arrangement, firms will not need to seek independent verification on the categorisation of its sustainable investment products.

In this regard, MFA would appreciate guidance from the FCA to clarify how a firm should assess and determine whether its product is fulfilling each aspect of the sustainable investment labelling criteria. Although the Consultation Paper provides examples of products that would not meet the FCA's criteria (see Box 9 of Chapter 4, page 49), we think it would be beneficial if the FCA could provide additional guidance on the FCA's expectations.

MFA is supportive of the FCA's considered approach to the labelling and classification of sustainable investment products. MFA appreciates that not requiring independent verification will provide firms with the flexibility to consider and develop their own proprietary models of assessment. However, this presents some uncertainty for members as explained below.

By way of example, a cross-cutting consideration for Principle 1 is that the firm must have "adequate processes" in place to monitor the product's performance against its sustainability objective. While the implementing guidance in Appendix 2 of the Consultation Paper considers what a firm should disclose to ensure it has adequate processes, there is little guidance on what processes (and disclosure thereof) would be considered "adequate".

[4] MFA, *The Use of Short Selling to Achieve ESG Goals* (June 2022), *available at* https://www.managedfunds.org/wp-content/uploads/2022/06/ESG-Short-Selling-White-Paper_Final.pdf.

A second example involves the cross-cutting consideration for Principle 4, which requires a firm to ensure that its resources remain "fit for purpose" in supporting the product's sustainability objective on an ongoing basis. However, the large number of ESG data providers in the market means that different providers may take contrasting views of investee companies. As such, fund managers will face challenges, in the absence of guidance, to determine whether a particular provider is indeed "fit for purpose".

MFA recommends that the FCA implements a "best efforts" or "good faith" standard in respect of firms determining how to classify their products under the labelling regime. Determinations can be subjective and context-dependent and accordingly, implementing such standards would provide firms with more comfort and certainty when making determinations as to whether a particular products falls within the labelling regime.

Q12: 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?

MFA welcomes the FCA's proposal to develop the sustainability product and entity reports from the product and entity level TCFD-aligned disclosures. MFA agrees with the practicality of integrating or hyperlinking between the two types of reports and welcomes the flexibility of being able to cross-reference to third party disclosures at both entity and product level, as well as between the sustainability product and entity reports.

MFA hopes that the integration of the two types of reports (ie. TCFD and sustainability) and the ability to cross-reference to third party disclosures will allow its members to avoid unnecessarily repeating disclosures.

While it is clear that the intention is to treat the TCFD and SDR disclosures as forming "one overall report" (paragraph 5.64 of the Consultation Paper), MFA notes that the Consultation Paper does not explicitly consider cross-referencing between the TCFD and SDR disclosures.

Accordingly, MFA requests that the FCA clarify whether an entity or product-level sustainability report that integrates or has a hyperlink to a TCFD report may rely on a reference to a relevant section of the integrated or hyperlinked TCFD report as satisfying the disclosures for the sustainability report (to the extent there is a relevant overlap in the required disclosures).

This clarification would enable members to avoid repeating the same disclosures either within the same document (where the TCFD report is integrated) or across hyperlinked documents (where the TCFD report is hyperlinked). Further, the ability to cross-reference between a single entity's sustainability and TCFD reports would make clear how specific disclosures satisfy the distinct TCFD and SDR disclosure obligations.

Generally, MFA welcomes the FCA's intention to incorporate the ISSB standards into the disclosure rules. In particular, the Consultation Paper highlights the relevance of the ISSB standards in developing: (i) the required disclosure of a baseline of sustainability-related metrics in the sustainability product report[5] (paragraph 5.62 of the Consultation Paper); as well as (ii) the contents of specific disclosure requirements in the sustainability entity report (paragraph 5.96 of the Consultation Paper).

When developing the SDR's disclosure requirements, MFA urges the FCA to avoid unclear cross-references to the ISSB standards, because ambiguity in application will affect the quality of disclosures, in turn eroding investor trust and undermining the purpose of the SDR. MFA encourages the FCA to specify clearly the ISSB standards to which any disclosure requirements refer. One method would be to integrate the relevant ISSB wording directly into the SDR's disclosure rules rather than relying on cross-referencing.

Our observations above apply similarly to any proposed development of the SDR disclosures against the UK Green Taxonomy, as mentioned in paragraph 5.82 of the Consultation Paper.

MFA believes that providing clarification on the cross-referencing points set out above would greatly benefit both firms and UK investors as it would limit duplicative language and allow for efficacy when preparing and reviewing disclosures.

Q15: 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.

MFA generally agrees with the Consultation Paper's proposals for pre-contractual disclosures and appreciates the manner in which Annex I of the Consultation Paper outlines how the proposed SDR disclosures overlap with disclosure requirements under the SFDR and the SEC proposals.

Many MFA members will have produced pre-contractual disclosures in compliance with the SFDR by the time the proposed SDR rules come into force. As a result, MFA strongly encourages the FCA to allow firms to cross-reference to SFDR pre-contractual disclosures in order to satisfy specific overlapping pre-contractual requirements under the proposed SDR rules. The FCA could enhance the ability of firms to accurately cross-reference to existing pre-contractual disclosures by conducting a detailed assessment of the extent to which disclosures under the SFDR overlap with those required under the proposed SDR rules, as discussed in Q5 above.

MFA encourages the FCA to allow firms to cross-reference to disclosures both at product and entity level, and gradually broaden the scope of internationally-compliant disclosures to which a firm might cross-reference as more jurisdictions introduce sustainability-related labelling and/or disclosure regimes.

[5] It is noted that this does not yet form part of the current proposals but the Consultation Paper signals the FCA's intention to develop the disclosures requirements in this manner.

The ability to make specific cross-references between international disclosure regimes would play an important role in reducing duplicative disclosure exercises and cost. From the perspective of UK investors, it will also ensure that firms can be cost-effective with compliance efforts and limit their review of duplicative materials and information.

CHAPTER 6. NAMING AND MARKETING

Q20 Do you agree with our proposed general 'anti-greenwashing' rule? If not, what alternative do you suggest and why?

The proposed "anti-greenwashing" rule will help ensure that sustainability claims in the UK market are substantiated. MFA agrees that the naming and marketing of products should be consistent with the sustainability profile of such products.

To ensure clarity in the industry, MFA members would welcome clarification on the scope. It is understood that the rule will apply to all regulated firms for the purposes of the ESG Sourcebook "whether it is undertaking sustainability in-scope business or not, including firms that approve financial promotions for unauthorised persons"[6]. In terms of business scope, the FCA should specify whether an unregulated business or product of a regulated firm may fall within scope.

Territorial scope

The FCA should explain whether the rule will apply to information that a UK regulated firm provides to investors overseas, particularly where they may be subject to local rules on sustainability disclosures.

To the extent that the FCA considers that the anti-greenwashing rules should apply to disclosures that are provided investors overseas, MFA strongly encourages the FCA to provide explicit acknowledgement that requirements in other jurisdictions may require disclosures of a different nature. In particular, the FCA should provide a clear expression that the UK will not demand that the UK rules should override the requirements of other jurisdictions so that firms in such scenarios are not subject to conflicts of laws.

Determination/definition of greenwashing

We encourage the FCA to provide legal clarity as to how the FCA will make a determination of greenwashing by introducing a definition. This would provide clear parameters so that firms can better understand the discretion upon which the FCA may challenge firms and take enforcement action where necessary.

MFA notes that in the regulatory technical standards of the SFDR, the term "greenwashing" is described as "the practice of gaining an unfair competitive advantage by recommending a financial product as environmentally friendly or sustainable, when in fact that financial product does not meet basic environmental or other sustainability-related standards"[7].

[6] Proposed ESG 3.3.1R
[7] Recital 25, Regulatory Technical Standards to the Sustainable Finance Disclosure Regulation.

To ensure consistency across international frameworks, the FCA should align any proposed overarching definition of "greenwashing" with the description set out above, to the extent possible.

Furthermore, the Consultation Paper suggests (in the context of the discussion on sustainable labels) that products that are marketed as "ESG-integrated" and employ exclusion/negative screening or basic "ESG-tilts" would not meet the requirements for a sustainable label and if the marketing documents for such products included sustainability-related terminology, "consumers could be misled" (paragraph 6.3 of the Consultation Paper).

MFA members currently offer a wide range of products that incorporate general ESG integration techniques as this is increasingly seen by many as forming a baseline for the industry. However, many financial products in the market now go beyond this baseline with varying degrees of additionality, ranging from best-in-class selection processes to proprietary investment scoring methodologies.

It would be helpful if the FCA could publish further case studies to explain how the rule will apply to different types of funds (for example, what would constitutes as a "basic" ESG-tilt? To what degree could enhanced positive/negative screening merit sustainability related claims?).

More generally, MFA requests the FCA to clarify: (i) how the FCA intends to detect greenwashing or receive claims of greenwashing; (ii) what definition or criteria of greenwashing the FCA will use to assess a potential instance of greenwashing; (iii) how the concept of "proportionality" will be applied; and (iv) what processes the FCA will take to engage with a firm and potentially escalate with enforcement action.

As referenced above, clear guidelines on the parameters of the anti-greenwashing rule will ensure that firms are able to apply the rule consistently such that the FCA's objectives can be realised for the benefit of investors.

Application to non-UK firms

The FCA is encouraged to express clearly whether the rule is expected to affect non-UK firms. Some MFA members may be indirectly impacted by the rules where they are non-UK firms targeting UK investors, for example through a UK retail distribution platform. Accordingly, MFA requests that the FCA considers the impact of the rules for such non-UK firms in a separate consultation to provide the appropriate attention for this topic.

Q21: Do you agree with our proposed product naming rule and prohibited terms we have identified? If not, what alternative do you suggest and why?

Interoperability with other frameworks

MFA welcomes the FCA's consideration of proposals and regimes in other jurisdictions and notes that the FCA has taken account of the SFDR and the SEC proposals.

In the context of naming and marketing rules, it is noted that the SEC has proposed extending the US "names rule" specifically in the context of sustainability-related products, and the European Securities and Markets Authority ("**ESMA**") has published a consultation paper on proposed EU rules governing fund names. Both of these proposals suggest introducing investment thresholds that must be met in order to make use of particular sustainability-related terms.

As noted in the Consultation Paper, the SDR has been designed as a labelling regime first and foremost, which then informs the required disclosures, whereas the SFDR and the SEC proposals focus on the required disclosures as their starting point. As a consequence, the naming and marketing rules proposed under the SDR differ from those proposed by ESMA and the SEC.

For example, MFA notes that the SDR's proposed naming and marketing rule places restrictions on products that fall outside the labelling regime. On the other hand, ESMA and the SEC propose restrictions based on far broader requirements such as quantitative thresholds on the level of sustainability-related investments.

As mentioned in our responses above, MFA strongly supports the FCA's efforts to maintain international coherence between the various regimes, where possible, and this would also apply in relation to the naming and marketing rules. In this context, MFA strongly encourages the FCA to ensure that the qualifying criteria for the sustainable investment labels consider the SEC's and ESMA's proposed scope of restrictions on naming and marketing.

In this regard, MFA also requests that the FCA provide express clarification that firms can refer to other classifications or labels that may be applicable to a product under other international regimes, such as a classification as Article 8 or 9 product under the SFDR, in the product's marketing and disclosures.

Pre-contractual disclosures

MFA strongly supports the FCA's proposal that the naming and marketing prohibition does not apply for the purposes of disclosing "factual" information and "in a proportionate way" in the pre-contractual disclosures" (paragraph 6.15-6.16 of the Consultation Paper).

It is important that products that have some sustainability-related features are able to provide investors with the relevant information even if they do not use a sustainable investment label – this would not be feasible if the firm cannot use prohibited terms to describe the relevant sustainability-related features.

However, it is unclear what would be considered by the FCA to be "factual" and "proportionate"; further clarification would help industry better understand how disclosures should reflect their respective sustainability-related investment policies and strategies.

For example, a fund may not reference ESG elements in its name, but might employ basic ESG integration techniques and have internal processes in place to monitor continuously its approach to sustainability considerations. Could the pre-contractual disclosures explain that the firm will continue to assess the fund's approach to ESG and that it remains subject to change, or would this fall outside the FCA's consideration of "factual" because the disclosures do not point to a specific binding policy?

As a further example, MFA also notes that funds that do not have ESG-related or prohibited terms in its name may nonetheless make a number of standalone climate- or sustainability-related investments. MFA also requests that the FCA clearly expresses that such descriptions in pre-contractual disclosures are permitted and to provide examples of what such "proportionate" disclosures could look like.

MFA wishes to highlight the importance of providing clear direction and examples of "factual" and "proportionate" disclosures for the purposes of this rule. This would ensure that firms are able to understand the parameters of the rule such that it can be applied consistently across pre-contractual disclosures. Ultimately, this would enable investors to make better comparisons across fund disclosures and thereby make better informed investment decisions.

Annex – All Consultation Paper Questions

The questions that this comment letter has addressed are marked in bold.

Q1: 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?

Q2: Do you agree with the proposed implementation timeline? If not, what alternative timeline would you prefer, and why?

Q3: 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.

Q4: 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.

Q5: 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?

Q6: 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:

- 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?

- 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?

- 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?

Q7: 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?

Q8: 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?

Q9: 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 any other important aspects that we should consider adding.

Q10: 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?

Q11: 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?

Q12: 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?

Q13: 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?

Q14: 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?

Q15: 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.

Q16: 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.

Q17: 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?

Q18: 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.

Q19: 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?

Q20: Do you agree with our proposed general 'anti-greenwashing' rule? If not, what alternative do you suggest and why?

Q21: Do you agree with our proposed product naming rule and prohibited terms we have identified? If not, what alternative do you suggest and why?

Q22: Do you agree with the proposed marketing rule? If not, what alternative do you suggest and why?

Q23: Are there additional approaches to marketing not covered by our proposals that could lead to greenwashing if unaddressed?

Q24: Do you agree with our proposals for distributors? If not, what alternatives do you suggest and why?

Q25: 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?

Q26: 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?

Q27: 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 or DWP's requirements?

Q28: 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?

Q29: 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?

Q30: What other considerations or practical challenges should we take into account when expanding the labelling and disclosures regime to pension products?

Q31: 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.