

Sustainability Disclosure Requirements – June 2024

SDR refers to the FCA's flagship regime on sustainability following similar initiatives in other jurisdictions globally. It covers sustainability disclosure requirements, investment labelling and anti-greenwashing.

In November 2023, the FCA finalised rules relating to so-called 'fiduciaries' such as fund managers, life insurers and pension providers. The various requirements for such firms take effect between 31 May 2024 and 2 December 2026.

The regime that has been finalised by the FCA applies to fund managers which includes UK alternative investment fund managers ("AIFMs") managing a UK AIF and a UK under-taking for collective investments in transferable securities ("UCITS") management company that manages a UK UCITS.

Consultation Paper CP24/8 sets out the FCA's proposal for extending the regime to cover other types of buy-side activity apart from acting as a fund manager.

A summary of the FCA's proposals is as follows.

- **Scope – type of firms**

The FCA proposes extending SDR to firms carrying out portfolio management services, which effectively means any firm with a 'managing investments' regulatory permission. As such this captures the discretionary management of segregated accounts. It also includes investment advisory activity, in relation to private equity or other private market activities, on a recurring or ongoing basis.

- **Scope – location of activity**

The SDR extension would apply to firms that are FCA authorised and where the portfolio management activity takes place in the UK (i.e. a UK place of business). Portfolio management activity conducted at a non-UK branch would be out of scope.

- **Scope – clients**

The SDR extension would apply where the firm's client is UK-based. However, it would not apply where the portfolio management activity is with respect to a fund i.e., where the client is either the fund itself or is a fund manager. This would mean, for example, that SDR would not apply to a firm that has been delegated portfolio management by an AIFM or a UCITS management company, so technically an investment manager acting as an investment advisor rather than manager may be out of scope depending on the nature of their contract with the ACD.

- **Timescale**

The FCA intend to implement the SDR extension in the second half of 2024, and in doing so aligning the implementation timescale for portfolio management activity to that for fiduciaries such as fund managers.

- 2 December 2024: Portfolio managers can begin to use labels with accompanying disclosures, and naming and marketing rules come into force (NB: fund managers can use labels from 31 July 2024)
- 2 December 2025: Deadline for first ongoing product level disclosures, and first entity-level disclosures for firms with AUM of over £50 billion.
- 2 December 2026: Deadline for first entity-level disclosures for firms with AUM of over £5 billion but less than £50 billion.

• Requirements – retail v non-retail

The SDR is focussed on consumer protection, the SDR extension would apply differently to retail versus non-retail clients.

It should be noted that the anti-greenwashing rule covers all FCA authorised firms and therefore this is unaffected by the proposed SDR extension.

	Retail	Non-Retail
Labels (see 1 below)	Can be used	Can be used
Naming & marketing rules	Applies	Does not apply
Disclosure: scope	Where firms are using labels or sustainability-related terms	Where firms are using labels
Disclosure: consumer facing (see 2 below)	Applies	Does not apply
Disclosure: pre-contractual (see 2 below)	Applies	Applies
Disclosure: product level (see 2 below)	Applies	Applies
Disclosure: entity level (see 3 below)	Applies	Applies

1: An optional regime designed to assist consumers navigate the investment product landscape. The labels are: ‘Sustainability Focus’, ‘Sustainability Improvers’; Sustainability Impact’; and ‘Sustainability Mixed Goals’

2: Applies if using a level of sustainability related terms without a label.

3: Applies to firms with over £5bn in AUM providing portfolio management services.

NRS’s View:

From review of the paper is clear that the FCA intends SDR to be a UK-centric framework. Aside from anti-greenwashing which applies to all FCA regulated firms, the regime will generally apply where either the client or the fund is in the UK, but there is a carve-out for firms managing a fund under a delegated arrangement which is sensible given the nature of the contract.

In some circumstances this makes it less likely for a firm to be impacted by both the UK sustainability regime and similar regimes in other jurisdictions, such as the EU’s Sustainability Finance Disclosure Regulation (“SFDR”). The reduced requirements for non-retail fund managers and smaller fund managers indicate that the FCA is maintaining a pragmatic yet proportional approach whilst having regard to the focus on consumer protection as per their stated goals.

The FCA requests feedback on its proposals by 14 June 2024.

Guidance on the Anti-Greenwashing Rule

On the same day as CP24/8 was published, the FCA also released the final version of its anti-greenwashing guidance. The anti-greenwashing rule, which takes effect on 31 May 2024, applies to all FCA regulated firms. Firms are required to ensure that any reference to the sustainability characteristics (i.e., environmental, or social characteristics) of a product or services is:

- a) consistent with the sustainability characteristics of the product or service; and*
- b) fair, clear, and not misleading.*

This applies to communications to UK clients about a product or service, when communicating a financial promotion to a person in the UK and approving a financial promotion for communication (by an unregulated firm) in the UK.

The finalised guidance follows the previously published draft guidance.

There is a focus on four ‘principles’ that must be adhered to when making sustainability references:

- *Correct and capable of being substantiated.*
- *Clear and presented in a way that can be understood.*
- *Complete – they should not omit or hide important information and should consider the full life cycle of the product or service; and*
- *Fair and meaningful, in relation to any comparisons to other products or services.*

The guidance provides additional detail on each of these and sets out some practical examples.

The naming and marketing rules will apply to those portfolio managers that offer services and/or market to retail investors. Portfolio managers will be able to use what the FCA call “sustainability-related terms” for its names of products or services and marketing if:

- The portfolio uses a label. The word “impact” can only be used for sustainability impact labelled products or services, or
- It does not use a label but complies with the naming and marketing rules.

If the portfolio manager does not use a label then firms must comply with the following naming and market requirements:

- The portfolio management offering must have sustainability characteristics and the service name must accurately reflect those characteristics, whilst not containing the terms ‘sustainable’, ‘sustainability’, ‘impact’ or any variation of these terms.
- Firms must provide the same types of disclosures as for labelled products/services
- Firms must provide statement that clarifies that the offer does not have a label and explain why this is the case. This must be published information (i.e. on a website) or provided to the retail investors in a written format.

Portfolio managers are required to ensure that financial promotions are consistent with labels and associated disclosure documents. When a firm decides not to use labels for a portfolio management offering but are using permitted sustainability related terms instead, then any applicable financial promotion must use statements that align to those in the disclosure as required under the naming and marketing rules.

Disclosure requirements

Consumer-facing disclosures

Portfolio managers must produce and provide retail investors with consumer-facing information disclosures that summarise the key sustainability characteristics for both labelled and non-labelled portfolios that have such characteristics.

The document must be stand-alone and be presented with other key investor information documents, not exceed two pages and include:

- The sustainability objective and label, or the statement that clarifies why the service has no label
- The investment policy and strategy (including what the portfolio will/will not invest in)
- Relevant KPIs/Metrics
- Sign posting the consumer to access other sustainability and non-sustainability information
- The proportion of assets invested in line with each of the relevant labels (Sustainability Mixed Goals only)
- Disclosures must be reviewed annually

For non-labelled arrangements, the consumer facing disclosures should only be produced where the portfolio manager is caught under the Naming and Marketing rules.

Detail product-level disclosures

Portfolio management offerings using sustainability-related terms must include sustainability details in pre-contractual disclosures by 2 December 2024.

Annual disclosures at the product level are required for all offerings, detailing the investment policy, strategy, and relevant metrics.

Where offerings have a sustainability label the firm must ensure disclosed information aligns with the label's criteria and UK fund regulations, including the portfolio manager's investment selection process and sustainability criteria.

For the 'Sustainability Mixed Goals' label, disclosures must specify the asset percentage invested per label and provide information corresponding to each label's requirements.

- Information must be easily accessible on the digital platform where the product is offered, ensuring transparency for consumers and advisors. Firms should also consider delivery for vulnerable clients.
- Portfolio managers not publicly disclosing must provide disclosure information directly to clients, bypassing the on-demand regime that allows client-requested information for legal obligations.