This draft was prepared by the [Better Buildings Partnership](https://www.betterbuildingspartnership.co.uk/member-climate-change-commitment), a membership association which represents 50 commercial property owners in the UK. Our members are responsible for over £270bn of AUM (Assets Under Management), and alongside our sister organisation - the Managing Agents Partnership - manage over 30,000 buildings.

The BBP held a virtual roundtable event on the 24th November 2022 to discuss the FCA’s SDR proposals and consultation. The following responses to the consultation questions are adapted from a draft prepared by an informal industry working group comprising **AREF**, **BPF**, **CREFCE**, **INREV** and **IPF**, to which the BBP was an observer. Text in black is retained from this draft and reflects content which the BBP agrees with. Text in green reflects additional comments made by BBP members during the meeting outlined above.

Introduction

The BBP welcomes the FCA efforts to address greenwashing, clarify labelling and marketing rules, and seek international coherence between SFDR and SDR. However, there are concerns in the market with this mapping approach: for instance, there are a number of SFDR Article 8 products which will not meet the criteria to qualify for a SDR sustainable label (particularly since the proposal for a “Responsible” label has been dropped). It is important that these products are still able to accurately disclose their sustainability characteristics, despite not qualifying for a label.

Although the requirements do not directly map across, we welcome a number of improvements in the SDR (e.g., the recognition of transitioning investments as qualifying for a label).

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?***

We agree with the proposed scope of firms, products and distributors under the regime.

We would ask for clarity on whether the reporting at the entity level should be for the in-scope firms, as detailed in Table 1. Where these firms are part of larger UK and global organisations would the entity-level reporting be expected to be at the firm or parent company level? Given that entity-level reporting will build on the TCFD entity report, will this be the same corporate entity as is providing TCFD entity reporting?

We have concerns that it is proposed that overseas funds would not be in scope for the regime initially. This has two principal effects: (i) overseas funds do not benefit from the proposed product labels; and (ii) overseas funds are not subject to the restrictive naming and marketing rules. This could potentially create inconsistency in the market and on this basis, we would suggest that overseas funds marketed in the UK are brought into the regime at the same time as UK funds. From a consumer perspective, members felt that overseas funds should be included in the proposed scope of the regulations. Though enforcement of the labelling for overseas funds could be difficult, including them in the scope of the SDR would help to create consistency in labelling across the market.

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

BBP Members agreed with the proposed timeline, and felt it was an improvement on the SFDR, as long as guidance is provided along the way to help companies comply with the regulations.

It was also noted that it would be good to have a clearer timeframe for the release of the UK Taxonomy alongside the timeline for the SDR, as this will affect how companies are able to understand thresholds. Additionally, members felt that there is a need for better real estate focused metrics; if these were to be developed alongside the regulations, this may need to be factored into the overall implementation timeline.

Chapter 4 – Classification and labelling

***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?***

We agree that a key attribute of a sustainable investment product is an explicit environmental and/or social objective and this sustainability objective should sit alongside the financial return objective. Also, this objective should be expressed in specific and measurable terms.

Section 4.7 of the consultation paper states that the outcomes that any investment can achieve for the environment and/or society will reflect both the enterprise contribution and investor’s contribution. Enterprise contribution is not appropriate for investment in real assets; real asset funds contribute directly to the sustainability outcomes of the assets they hold.

One BBP member noted that a key challenges with SFDR is the lack of clarity around what constitutes a sustainable investment, especially in a real estate context. This is an area which is particularly open to accusations of greenwashing. We would appreciate more specific guidance here, for example clarity on whether there are any minimum requirements to be deemed sustainable?

***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?***

We support the introduction of a classification and labelling regime to help consumers (i.e., retail investors) navigate the market for sustainable investment products.

Section 2.14 of the consultation paper states that “intentionality” means “the investor’s deliberate intention to achieve the product’s stated objective”. We note that there is currently no definition of intentionality in the Guidance, and we request the FCA to consider whether they should be offering guidance on this point.

Using the definition for intentionality in section 2.14, we would like clarity on whether “stated objective” means that funds will have to update their current objectives to include sustainable objectives for a fund to qualify for a sustainable label. This would not be an easy process; potentially requiring regulatory and investor approval. This could lead to only new funds using the labels.

Investor demand for a sustainable label may mean that fund managers feel it is worth the effort to change their funds’ objectives. However, this cannot be guaranteed. For example, funds with US investors will need to strike a balance between the desire for a sustainable label and the requirements of certain US investors, who might be restricted from investing in products with sustainability objectives listed alongside financial objectives.

BBP members felt that while there is no hierarchy between the labels, in reality it is unlikely to be interpreted that way, with some labels likely to be seen as more desirable than others.

***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:***

We would have liked the product profiles for each of the labels proposed in the consultation to include an example of a real asset fund that would meet each label. We would be happy to provide some examples if helpful.

1. ***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?***
2. ***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?***

We note that, for example, a number of real asset funds that meet Article 8 of SFDR will not qualify for this label due to the intentionality requirement even if, for example, they have a 5-star rating from GRESB and/or a net zero pathway objective. This could lead to confusion and questions from investors.

The type of real asset funds that we believe should be able to meet the criteria for the “Sustainable Improvers” label include ones that look to improve existing assets rather than build new.

One member noted that there is a desire to see more guidance on what the precise definitions of the product profiles are, especially in a real estate context, appreciating that this is likely to be included in the FCA’s next updates. Specific questions that could be addressed by this include:

* Where are the precise lines between the categories?
* What is the decision tree that we would need to follow to understand which category a fund will fall into?
* What are the minimum thresholds to avoid greenwashing etc.?
* What would happen if a fund has a mixture of assets across the profiles – e.g. some improver and some impact?

They also noted that because of the proposals’ focus on ‘solutions’, it is going to be challenging for real estate funds to be categorised as impact funds.

1. ***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?***

BBP members felt that it would be useful to have more detail on what ‘impact’ would look like specifically for real estate funds. In the case of funds which include multiple assets, it would be helpful to understand what the minimum percentage requirement would be for assets within that fund meeting the sustainability targets in order to achieve the ‘sustainable impact’ label.

Many of the most impactful real asset funds will be those that look to improve existing assets rather than build new. For example, transitioning brown buildings is a main component in achieving net zero goals, should funds doing this be labelled as “impact” or “improver” funds?

BBP members felt that while there is no hierarchy between the labels, in reality it is unlikely to be interpreted that way, with some labels likely to be seen as more desirable than others. On this basis, we would recommend more clarity and differentiation between the labels.

***Q7: Do you agree with our proposal to only introduce labels for sustainable investment products (i.e., to not require a label for ‘non‑sustainable’ investment products)?   
If not, what alternative do you suggest and why?***

We agree with the proposal to only introduce labels for sustainable investment products.

***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?***

We agree that there should be a high bar for the labels, but we wonder if this has been set too high. There will be a lot of funds that will not be able to obtain the labels (including certain Article 8 SFDR products, which may have to change the objectives of the fund to qualify for a label). These products will nevertheless be subject to restrictive naming and marketing rules under the SDR proposals.

We recognise, and welcome, the consumer-focus with the FCA’s proposed qualifying criteria and welcome the opportunity to develop from the SDR base appropriate criteria applicable for real estate products for institutional investors. The BBP would be happy to assist in this regard.

***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?***

We would ask what enforcement mechanism the FCA plans to put in place for a firm that uses the incorrect label or does not meet some of the requirements for a label they are using.

We note that the FCA is not introducing mandatory requirements for firms to seek independent verification of their labelling at this stage. Although we note that the FCA, in the consultation, encourage firms to seek independent verification. We anticipate that as audit firms are auditing periodic disclosures for SFDR, they may do the same for SDR.

We expect that there will be demand from investors for firms to use the sustainable labels for their funds. As well as ensuring the funds have the appropriate sustainable objectives (see our response to Q5), firms will require additional compliance resources to ensure the proposed criteria have been met in full and the appropriate disclosures are made.

Chapter 5 - Disclosures

***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?***

While we agree in general with the proposed approach to disclosures, we note that it can present some sector-specific challenges to implement for real estate.

***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?***

The BBP agrees with the proposal.

***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?***

We agree with the proposals and, in particular, are encouraged by the fact that sustainability disclosures can be made even for investments that are not able to use one of the proposed labels.

***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?***

We agree with the proposal and would welcome the opportunity to help develop a template or further guidance specific to the real estate sector. The BBP would be happy to assist in this regard.

***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.***

We agree with the proposals and, in particular, as we noted in our response to Q13, are encouraged by the fact that sustainability disclosures can and should be made even for investments that are not able to use one of the proposed labels, but where sustainability-related features are integral for a firm’s investment policy and strategy.

While we are aware that the FCA has not provided explicit guidance or a template on how to do this in order to avoid being too prescriptive, members did feel that further guidance would be welcome. In particular, for those organisations who have not yet reported against SFDR, some additional guidance or a template for creating these disclosures under the SDR would be useful to ensure the correct information is included.

***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.***

We agree with the proposals and support the accountability and transparency obligation that they imply.

***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?***

*We agree with the proposals although in this, as well as in other proposals we would encourage the FCA to explicitly provide for an opportunity to cure any breaches after notice of potential non-compliance before further enforcement action is taken.*

***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.***

We agree with the proposals although we believe further clarity should be provided regarding, for example, whether the ‘entity’ referred to is a UK company or a global group (and whether it is the same entity as is providing TCFD entity reporting).

Some BBP members noted that the purpose of entity level reporting was not entirely clear and noted that this could potentially provide information to consumers that is diluted or misleading, as all different types of assets would be compiled in to one disclosure. Real estate as an asset class is so different to others, so this can be hard to compare against other classes.

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?***

We agree with the proposals although in this, as well as in other proposals we would encourage the FCA to explicitly provide for an opportunity to cure any breaches after notice of potential non-compliance before further enforcement action is taken.

We also note that challenges can arise in implementing standards to areas where specific local definitions necessarily apply, e.g., what income thresholds are used to determine what constitutes ‘affordable’ housing?

It would be helpful if the FCA were to create a mechanism by which guidance could be sought in cases of uncertain application and any guidance given communicated publicly, for example through the quarterly FCA bulletin.

***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?***

We agree with the proposed product naming rule and prohibit terms for product labels.

We would note that whilst this is manageable and achievable for new products, we have concerns about how existing products that potentially include prohibited terms will comply. We would suggest a period of conformance to enable compliance.

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

We do not agree with the restriction on the use of the prohibited terms within marketing. BBP Members expressed that the marketing and naming rules as they currently stand would not only be very prohibitive, but also could be actively counterproductive as it would not allow real estate funds to use conventional wording to explain why they are on their ESG journey and what actions they are taking. This could lead to funds who are not yet taking action on ESG issues choosing not to do so, because they would not be able to explain and justify their actions to investors and other stakeholders.

We note that paragraph 6.15 of the consultation paper allows for use of these terms where factually describing sustainability-related investment policies and strategies that are integral to a firm’s investment policy and strategy. It is not clear, however, how this interacts with the general prohibition on these terms in marketing (as set out in paragraph 6.12 of the consultation paper) – for example, when certain statements are contained in a marketing document, such as a PPM. Additionally, these terms are also materially important to the performance of the fund and therefore are fundamentally required to be integrated into any consumer-facing documentation.

Examples of common uses of these terms that are essential to be able to include in marketing to provide a factual view of an ESG integrated investment strategy:

* + If the manager is a signatory to the UN PRI, the Net Zero Asset Managers Initiative, the BBP Climate Commitment or similar.
  + Manager’s own net zero carbon pathway or responsible investment strategy, often aligned to the UN SDGs
  + GRESB (Global Real Estate Sustainability Benchmark) rating for the product
  + Green building certifications case studies and statistics. BREEAM, NABERS UK, LEED, Green Star
  + kWhr of renewable energy generated (renewable is not listed as a prohibited term, but the list provided is not exhaustive)

As such, we would propose that the use of these terms should be prescribed/limited to factual description of actions and a disclaimer should be used to clarify that the inclusion of this information does not imply or import a sustainable product label. In the case of existing funds, we would like to discuss with you further the implications of compliance with these requirements and appropriate scope for grandfathering reliefs. The BBP would be happy to assist in this regard.

We believe that prohibiting these terms would have unintended consequences:

* Funds may no longer be able to describe the investment and governance actions they are taking as part of an ESG integrated investment strategy. The FCA cites these actions as being increasingly expected and a required standard. Accordingly, this would have the result of undermining the expected approach from the FCA, disadvantaging those non-labelled products and arguably undermining the wider ESG agenda, as there is less incentive for these managers to focus on ESG integration as they are unable to disclose this to their investors.
* Products which have already ensured that they are SFDR-compliant by accurately disclosing their sustainability characteristics may not be able to use this prospectus language to market in the UK. This could result in UK investors receiving less information than EU investors, for example, leaving them less informed when making an investment decision.
* Application to solely retail investors could lead to a significant mismatch between disclosures provided to professional investors and those provided to retail investors, potentially resulting in retail investors receiving less information on the ESG characteristics of the products that they invest in.

In addition, there is a need to ensure consistency between these requirements and those which currently apply to fund products (including other UK regulations).

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

We are concerned about the mismatch between UK retail products and overseas retail products (particularly ones outside of SFDR) that would be created by this proposed approach. Such mismatch could then be compounded with the delay in the launch of complementary rules covering overseas funds which are marketed in the UK. As a result, UK retail funds could be at a significant disadvantage when marketing a product in the UK which does not meet the criteria for an SDR label and is subject to the restriction on the use of the prohibited terms in the product name or marketing materials. Such restrictions would not apply to overseas funds, which could create a distorted market.