K&L GATES

GLOBAL SURVEY OF ESG REGULATIONS FOR ASSET MANAGERS

ESG and the Sustainable Economy Handbook

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INTRODUCTION

INTRODUCTION

Asset managers (i.e., investment advisers) offering funds in more than one country are accustomed to adapting to different regulatory requirements. However, the challenges presented by the global regulation of ESG investing strategies are presenting a particularly arduous burden, especially as countries' approaches to ESG regulation become more varied.

Not only do investor demands differ among countries, but the regulators and other controlling bodies have imposed, or proposed to impose, different requirements that will impact approaches to investing fund assets, disclosures, and marketing, even with respect to the same strategies. While the approaches and goals can vary across jurisdictions, one message is universal in all languages: Regulators want asset managers to say what they do and do what they say. Some regimes seek to accomplish this with specific ESG labeling or other requirements, while others are currently relying on existing rules prohibiting fraud and material misrepresentations.

To help asset managers keep up with the current regulatory landscape and get a comparative sense of the requirements and common issues in various regions, our lawyers—located in the Americas (the United States), Asia (Hong Kong, Japan, and Singapore), Australia, and Europe (the European Union, including Ireland and Luxembourg,[1] and the United Kingdom)—have provided an overview of regional regulations by responding to the same eight questions regarding the existing ESG-related rules and ESG developments impacting the investment management industry. We summarize, among other things, each country or region's position on ESG-related labeling and categories, investment requirements, disclosure and reporting requirements and restrictions for offshore products, as well as other ESG-related initiatives that could impact asset managers doing business in that country or region. Taken together, this publication provides a high-level view of the overall global ESG regulatory landscape, allowing managers to think strategically about how their firms can navigate this changing environment and effectively approach their business activities in the various regions in which they offer services.

While we expect that governments will continue to address ESG concerns by amending existing or imposing new rules at a rapid pace, the following summary responses are designed to provide asset managers—particularly those with an international business—with a helpful guide, based on practical experience, to current requirements and trends impacting their services and products, as well as offer practical insight into how they can seek to straddle the various regulatory regimes.

WHAT IS NEW?

The global landscape of ESG regulation continues to evolve quickly. Below are some of the key changes that occurred since the last publication of this survey on 15 October 2024:

United States: Given the change in presidential administration and Congress, federal regulation concerning ESG is less likely to be adopted or enforced. In fact, the recently adopted climate risk disclosure rules for operating companies may be rescinded even if the SEC prevails in the pending litigation relating to such rules.

There have also been legal actions directed at asset manager participation in Climate Action 100+ and the Net Zero Asset Managers (NZAM) initiative. First, the state of Texas has led an antitrust lawsuit against asset managers resulting from their participation in these groups. The House Judiciary Committee also initiated another inquiry into asset manager participation in the NZAM, presenting a further obstacle in new obligations being approved for investment advisers. In addition, on 13 January, NZAM announced that in light of “recent developments in the U.S. and different regulatory and client expectations in investors' respective jurisdictions,” the organization will be reviewing its processes and system to ensure it remains “fit for purpose in the new global context,” and in the meantime will be suspending its activities in order to track signatory implementation and reporting.

Hong Kong: In December 2024, Hong Kong published its Roadmap on Sustainability Disclosure, outlining its approach to require PAEs (acronyms used herein are defined in the glossary), including listed companies and large financial institutions, to adopt Hong Kong's sustainability disclosure standards. These standards are fully aligned with the ISSB standards, with large PAEs expected to comply by 2028.

In a related development, on 12 December 2024, the HKICPA published its first two sustainability reporting standards for Hong Kong following a public consultation initiated on 16 September 2024. These standards are fully aligned with the ISSB's IFRS S1 and IFRS S2 and are set to become effective from 1 August 2025.

Additionally, on 25 November 2024, the SFC issued a Circular to Intermediaries (Guidance to asset managers regarding due diligence expectations for third-party ESG ratings and data product providers) (the Guidance), providing guidance to asset managers regarding due diligence expectations for third-party ESG ratings and data-product providers. This guidance references the VCoC for ESG ratings and data providers, which was published on 3 October 2024 by a working group comprised of Hong Kong and international representatives from the ESG ratings and data products industry. The VCoC is intended to be internationally interoperable and part of a globally consistent regulatory framework.

Japan: There have been no new updates since the last edition of this survey was published.

Singapore: On 4 December 2024, MAS published an Information Paper on Good Disclosure Practices for Retail ESG Funds (the Information Paper), which sets out good disclosure practices that ESG funds may adopt in their adherence to the ESG disclosure guidelines set out in MAS Circular No. CFC 02/2022.

Australia: On 7 November 2024, ASIC released a consultation paper on sustainability reporting, Consultation Paper 380 Sustainability reporting (CP380). CP380 includes a draft regulatory guide on sustainability reporting. The regulatory guide explains how ASIC will exercise its powers under legislation, how it interprets the law, and the principles underlying its approach. Additionally, CP380 includes practical guidance for reporting entities to assist them in complying with their sustainability reporting

obligations. ASIC sought feedback on CP380 and comments closed on 19 December 2024.

Also in November 2024, APRA released its Climate Risk Self-Assessment Information Paper outlining the results of a Climate Risk Self-Assessment Survey (Self-Assessment Survey).

European Union: The Central Bank conducted a workshop with industry representatives to discuss SFDR implementation issues, ESMA's fund-naming guidelines, and the results of a CSA on sustainability. Guidelines published by the ESMA for fund names containing ESG or sustainability-related terms began to apply on 21 November 2024. Such guidelines will apply to UCITS management companies, AIFMs, and other money-market fund managers and competent authorities. The Central Bank introduced a fast-track process for renaming funds that will be available until 21 May 2025.

United Kingdom: ESG-related naming and marketing rules and disclosure requirements became effective on 2 December 2024. These largely complete the introduction of the FCA's Sustainability Disclosure Requirements (SDR), which also incorporate an antigreenwashing rule applicable to FCA-authorized firms and a fund-labeling regime. The scope of firms, funds, and activities subject to the requirements is likely to expand over time.

AMERICAS

UNITED STATES

By Lance C. Dial and Keri E. Riemer

WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

At the federal level, no formal ESG-specific rule is currently in place for funds and advisers (i.e., fund managers), but in March 2024, the SEC finalized its climate risk-related reporting rules applicable to public operating companies and other issuers of securities in the United States. These rules were promptly challenged in court, and the SEC has halted their effectiveness with a voluntary stay. While the climate risk-related reporting rules would not apply to funds (except for business development companies), they could have implications for advisers and funds that may be able to use the information required by the rules in their investment processes, disclosures, and reporting. Given the recent change in the presidential administration and Congress, these rules are not expected to come into effect.

In addition to SEC reporting requirements, the state of California has passed legislation that would require companies “doing business” in California to make certain disclosures of their emissions and climate-related risks. Other states have adopted—or are considering adopting—various laws or regulations that seek to regulate how and whether ESG factors may be considered by those conducting business in such states. In general, these laws and regulations require advisers to consider only “pecuniary” factors, and advisers that consider ESG factors in investing may be subject to sanction. Many other states have adopted legislation that would prohibit the state government from doing business with or investing with firms that avoid investment in certain industries for ESG purposes. The "pro-ESG" California climate risk disclosure legislation and a pair of "anti-ESG" regulations in the state of Missouri have both drawn legal challenges.

While there are no laws or regulations specifically relating to ESG disclosures for funds or advisers as of the date of this survey, the currently existing federal laws and rules prohibiting materially misleading statements and previously issued guidance from the SEC staff do provide limits and standards for funds and advisers with respect to their use of ESG factors. In addition, SEC enforcement actions indicate that the SEC will take a very strict read of ESG-related disclosures and expect that asset managers have in place procedures ensuring that any ESG-related processes they describe in fund disclosures or marketing materials are consistently followed.

Proposed ESG-Specific Rules for Funds and Advisers

In May 2022, the SEC proposed a sweeping set of requirements for SEC-registered investment companies (e.g., mutual funds, ETFs, closed-end funds) (Registered Funds) and investment advisers that, if adopted, would establish a new ESG taxonomy for such entities and require them to disclose and report certain information regarding their use of ESG factors (the 2022 ESG Proposal). (See our client alerts entitled SEC Takes First Step Toward Standardized ESG Disclosures for Funds and Investment Advisers and Q&A On The Proposed ESG Reforms For Registered Funds: Addressing The Potential Challenges Imposed And Comment Opportunities.)

In connection with the US administration change, there will be some change to the SEC commissioners, including the SEC chair. President Trump has nominated Paul Atkins to serve as chair, replacing Gary Gensler and any interim successor. It is unlikely that the new administration or the SEC will adopt the 2022 ESG Proposal, at least not without significant modification to certain requirements.

Existing Rules and Guidelines

As indicated previously, funds and advisers are currently subject to laws and rules that prohibit them from making materially misleading statements or untrue statements of material fact, including statements about ESG. Accordingly, funds and advisers are presently required to provide accurate disclosures regarding their use of ESG-related factors in their investment strategies. In May 2021, the staff of the SEC issued a risk alert urging funds and advisers to, among other things, establish policies and procedures related to ESG investing, ensure that portfolio management practices were consistent with disclosures about ESG approaches, and implement adequate controls around the implementation and monitoring of negative screens (e.g., prohibitions on investing in tobacco). Nearly two years later, the SEC took enforcement action against the investment adviser of a Registered Fund after determining that the adviser made material misstatements and omissions concerning its consideration of ESG factors when managing the fund's assets.

Advisers are also subject to Rule 206(4)-1 (the Marketing Rule) under the Investment Advisers Act of 1940, as amended (the Advisers Act), which was designed to prevent false or misleading advertisements by advisers, including in connection with the private funds (e.g., hedge funds, private equity funds) they manage. Accordingly, even in the absence of a specific ESG rule, funds and advisers are still bound by existing requirements pertaining to material misstatements and omissions, and accurate reporting.

In addition, as noted below, the SEC finalized rule amendments that introduce new requirements for Registered Funds and business development companies with names suggesting an “investment focus.” In doing so, the SEC specifically identified the consideration of ESG factors as an element suggesting an “investment focus.”

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

The 2022 ESG Proposal had included a new disclosure taxonomy for Registered Funds and advisers focusing on “Integration Funds,” “ESG-Focused Funds,” and “Impact Funds.” As noted above, the 2022 ESG Proposal is now unlikely to be adopted and as a result there are no labels or categories currently required or likely to be adopted in the near term.

In September 2023, the SEC adopted rule amendments that introduced new requirements for funds with names suggesting an “investment focus” and specifically identified the consideration of ESG factors as an element suggesting an “investment focus” (the Names Rule). (Information about the newly adopted amendments is available in our client alert, What's In A Fund Name? SEC Approves Changes to The Fund Names Rule.) As a result, a fund with a name suggesting an ESG-related investment program is required to disclose how it defines the relevant terms used in its name and adopt a policy to invest at least 80% of its assets in investments suggested by its name.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

There are no ESG-specific disclosure or reporting requirements applicable to funds or advisers at the federal level. That said, current regulations effectively require certain levels of disclosure about material facts, including the incorporation of ESG factors. Specifically, a Registered Fund that utilizes ESG factors in its investment strategies must disclose how such factors are used and any risks related to its ESG-related strategies in its registration statement

and, if applicable, shareholder reports. Likewise, an adviser that employs one or more ESG strategies in formulating investment advice or managing assets is required to disclose information regarding such strategies (and related risks if such strategies are "significant") in its Form ADV Part 2A (i.e., brochure), but there are no specific ESG-related requirements.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

The Marketing Rule (with respect to advisers) and antifraud rules currently apply to funds and advisers in connection with their ESG-related statements and investment activities. Existing rules under the Advisers Act and the Investment Company Act of 1940, as amended, relating to compliance programs impose certain obligations on advisers and Registered Funds, respectively, that could require funds or advisers to incorporate ESG elements into their compliance programs. Notably, under the new Names Rule, a Registered Fund with ESG terminology in its name will be required to invest at least 80% of its assets consistent with its name.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE UNITED STATES, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

Non-US funds may only be offered in the United States on a private placement basis and pursuant to certain securities law exemptions. While such offshore funds would not be subject to the new rules impacting Registered Funds, they would be subject to the prohibitions against misrepresentations described previously.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

The SEC has not proposed or adopted specific rules for nonfund investors, such as natural persons. The Employee Retirement Income Security Act of 1974 has provisions that impact how ESG factors may be considered for retirement plans.

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

The climate risk-related reporting rules described previously would have required US public operating companies and other issuers to include certain disclosures regarding the financially material climate risks associated with their businesses and operations, including by requiring Scope 1 and Scope 2 emissions information. As noted, these rules have been subject to challenge, are subject to a voluntary stay, and are not likely to be enforced under the new SEC administration.

In addition, various US states, such as California (as described previously), have been adopting their own legislation that impacts how ESG factors can be considered. While the legislation takes several forms and key details differ from state to state, the laws tend to share core common features. First, those passed to date apply only to the disposition or management of state funds (e.g., who the state can hire, in which companies the state can invest, or what standards must be applied by fiduciaries who are investing state money, particularly the assets of state pension plans). Second, with respect to the management of state funds, the state laws generally limit the consideration of ESG factors to financial or "pecuniary" decision making. In other words, even in states that have adopted laws presumably restricting the consideration of ESG factors, there remains room for investment managers to make decisions on investments based on ESG factors so long as that consideration is

grounded in the pursuit of financial returns. On the other hand, these state laws most likely prohibit states from investing in impact investment strategies.

Two states (Missouri and Wyoming) have adopted ESG regulations through their executive branches, and the Missouri regulation was the first to impose specific requirements on federally registered investment advisers and broker-dealers outside the context of managing state assets. In September, a federal court found that the Missouri rule, in seeking to substantively regulate investment advisers and broker-dealers, was preempted by federal regulation and was therefore set aside. This ruling (which was ultimately not appealed by Missouri) will serve as a headwind against future regulations or legislation that seek to impose specific requirements on federally registered investment advisers or broker-dealers.

Federal lawmakers and states have also focused on asset manager participation in ESG-related group initiatives, such as Climate Action 100+ and the NZAM initiative. First, in November 2024, a group of states, led by the state of Texas, filed suit against a trio of large asset managers citing antitrust concerns arising from their participation in both of these initiatives. In December, the House Judiciary Committee of the US Congress sent requests for information to members of the NZAM. These requests focus on how members of NZAM meet their fiduciary obligations while meeting the tenets of the NZAM commitment. Subsequent to this investigation, NZAM announced that in light of "recent developments in the U.S. and different regulatory and client expectations in investors' respective jurisdictions," the organization will be reviewing its processes and system to ensure it remains "fit for purpose in the new global context," and in the meantime, will be suspending its activities in order to track signatory implementation and reporting.

These developments reflect an accelerating effort by lawmakers and state enforcement officials to look closely at asset manager participation in group initiatives for compliance with fiduciary duties and antitrust principles.

WHAT IS ON THE HORIZON?

As noted above, the existing proposed rules (and, in the case of the climate risk disclosure rules, adopted rules) are not likely to be adopted or enforced. It is also not likely that the new SEC commissioners will prioritize ESG regulation over other initiatives, so little is likely to change in the near term.

ASIA

HONG KONG

By Anson Chan and Sook Young Yeu

WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

Currently, there are prescribed ESG rules for funds that have been authorised by the SFC to be marketed to retail investors in Hong Kong and that consider ESG or sustainability factors (including climate change) in their investment process (Hong Kong ESG Funds). As described in greater detail below, Hong Kong ESG Funds are subject to certain disclosure and reporting requirements, as currently set out in the SFC's "Circular to management companies of SFC-authorized unit trusts and mutual funds – ESG funds," which took effect 1 January 2022.

The SFC maintains on its website a database of Hong Kong ESG Funds. The database is categorised according to the investment theme (e.g., climate change, environmental, sustainability, food security, forestry, nutrition, social, sustainable energy, and water) and investment strategy (e.g., best-in-class, positive screening, impact investing, and thematic), in each case as disclosed in the applicable Hong Kong ESG Fund's offering document. UCITS authorised by the SFC will be considered Hong Kong ESG Funds if they incorporate ESG factors as their key investment focus and reflect such in their investment objectives or strategies. This is irrespective of whether they are classified as falling under Article 8 or Article 9 of SFDR.

Fund managers that are SFC-licensed intermediaries are subject to certain conduct rules. In particular, fund managers with investment discretion over collective investment schemes, including both SFC-authorised funds (i.e., funds authorised to be marketed to retail investors) and private funds (i.e., hedge funds), are required to take climate-related risks into consideration as part of their investment and risk management processes and to make appropriate disclosures. These requirements, which largely reflect recommendations and proposals of the Financial Stability Board's TCFD, were imposed pursuant to the SFC's Consultation Conclusions on the Management and Disclosure of Climate-Related Risks by Fund Managers, which took effect 20 August 2022.

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

While no ESG investment labels or categories have been established for either SFC-authorised funds or private funds, there is a general requirement that licensed intermediaries must ensure that their product disclosures are not misleading. Accordingly, ESG-related names may only be used for products where such ESG-related considerations are applied in the investment process. In addition, there is a general requirement that a product's name must not be misleading, and references to ESG or related terms in an authorised fund's name or marketing materials should be accurate and proportionate. A fund that does not satisfy the definition of a "Hong Kong ESG Fund" (set forth above) would generally not be permitted to name or market itself as ESG related.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

While there are currently no prescribed ESG-related disclosure or reporting requirements for non-SFC-authorised funds, as noted previously, intermediaries are required to ensure that their product disclosures are not misleading.

Unlike in some other regions, where specific ESG-related disclosures are not yet required, Hong Kong ESG Funds are currently required to make various ESG-related disclosures in their respective offering documents. Such required disclosures include information about the ESG focus or investment theme of the fund; the criteria used to measure the attainment of such focus or investment theme; the investment strategy and methodologies adopted (including any exclusion policies); the expected or minimum asset allocation to the designated ESG focus; any applicable reference benchmarks or additional information references used by the fund; and any risks or limitations associated with the fund's ESG focus. In addition, the Hong Kong ESG Fund or its manager must disclose to investors on its website or via other means, and review and keep updated certain additional information, including how the Hong Kong ESG focus is measured and monitored (and related internal and external control mechanisms); details regarding the due diligence carried out in respect of the fund's investments; a description of the fund's engagement policies (including proxy voting); and a description of the sources and processing of ESG data upon which the fund relies (including any assumptions made when data is not available).

In addition, a Hong Kong ESG Fund is required to conduct periodic assessments at least annually on how it has attained its ESG focus and then disclose to investors the results of such assessments by appropriate means (e.g., in annual reports).

In particular, the Hong Kong ESG Fund should disclose—such as in its annual report—the proportion of underlying investments that are commensurate with its ESG focus; the proportion of the investment universe that was eliminated or selected as a result of ESG-related screening; a comparison of the performance of the fund's ESG factors against any designated reference benchmarks; and information about actions (such as shareholder engagement or proxy voting activities) taken by the fund to attain its ESG focus.

UCITS that are authorised by the SFC are generally subject to a streamlined regulatory approach. A UCITS fund authorised as a Hong Kong ESG Fund that meets the disclosure and reporting requirements for Article 8 or Article 9 funds under the SFDR will be deemed to have generally complied with the Hong Kong disclosure and reporting requirements for Hong Kong ESG Funds.

As noted previously, fund managers with investment discretion over collective investment schemes are required to take climate-related risks into consideration in their investment and risk management processes and to make appropriate disclosures. The applicable requirements depend on the relevance and materiality of climate-related risks to the investment strategies and funds managed. Required disclosures include baseline requirements applicable to all such fund managers, such as governance structure in relation to the management of climate-related risks and steps taken to incorporate risk management into the investment management process (including any key tools and metrics applied). Such disclosures must be made to investors via channels—such as websites, newsletters, or reports—and reviewed at least annually (and updated in the interim, where appropriate), and fund investors must be informed of any material changes as soon as practicable.

A large fund manager with HK$8 billion or more in fund assets for any three months in the preceding reporting period may also be subject to enhanced risk management and disclosure standards, including a description of its engagement policy at the entity level regarding the management of material climate-related risks and disclosure of Scope 1 and Scope 2 GHG emissions associated with portfolio investments at the fund level, together with calculation methodology, underlying assumptions and limitations, and the

proportion of investments that are assessed or covered.

With respect to reporting requirements, fund managers are subject to SFC reporting requirements as licensed intermediaries. However, there are currently no prescribed ESG-related SFC reporting requirements.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

There are currently no prescribed ESG-related requirements for non-SFC-authorised funds.

Fund managers of Hong Kong ESG Funds are required to regularly monitor and evaluate the underlying investments to ensure that the Hong Kong ESG Funds continue to meet their stated ESG focus and requirements. In addition, SFC-authorised funds and their fund managers are required to comply with all applicable codes and guidelines in relation to their authorisation and licensing that are not specifically related to ESG.

There are general requirements for licensed intermediaries to know their client (including their investment objectives); to exercise due care, skill, and diligence in providing services to the client; and to act in the best interests of the client. If a client has indicated ESG- or climate-related investment preferences in its investment mandates, the intermediary is expected to take those into consideration. However, there is no current requirement that the intermediary determine a client's "sustainability preferences."

On 25 November 2024, the SFC issued the Guidance, referencing the VCoC for ESG ratings and data providers published on 3 October 2024 by a working group comprised of Hong Kong and international representatives from the ESG ratings and data products industry. The VCoC is modelled on international best practices recommended by the International Organization of Securities Commissions and intended to be internationally interoperable and part of a globally consistent regulatory framework. The VCoC is intended to enhance transparency of methodologies for ESG ratings and data products and improve standards generally across the market, which should assist users of these products, including funds and fund managers, to better carry out their due diligence. According to the Guidance, asset managers should conduct reasonable due diligence and ongoing assessments on third-party ESG service providers and for this purpose may take into account the principles and recommended actions of the VCoC. ESG ratings and data products providers who signed up to the VCoC will be expected to make available publicly a self-attestation document that explains their approach and actions taken to adhere to the principles of the VCoC. Asset managers can use this information to facilitate their due diligence and ongoing assessment of the ESG service providers and their products.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE REGION, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

The requirements relating to SFC-authorised funds apply irrespective of domicile. As long as a fund, including an offshore fund, has been authorised by the SFC for marketing to retail investors in Hong Kong, it must comply with the applicable requirements.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

There are currently no prescribed ESG-related rules for investors. The SFC has issued a set of "Principles of Responsible Ownership," which provides principles and guidance to assist investors in determining how to

best meet their ownership responsibilities. These principles are nonbinding and voluntary, but investors are encouraged to adopt them and to disclose to their stakeholders that they have done so in whole or in part, as well as explain any deviations or alternative measures adopted.

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

In June 2023, the ISSB published its two inaugural IFRS sustainability standards, IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures, for reporting periods beginning on or after 1 January 2024, subject to endorsement by local jurisdictions and transitional relief. On 12 December 2024, following a public consultation, HKICPA published its first two Hong Kong sustainability disclosure standards, HKFRS S1 and S2, which fully align with IFRS S1 and S2, with an effective date of 1 August 2025 (the Hong Kong Standards).

Unlike HKFRS accounting standards, the Hong Kong Standards are not mandatory for Hong Kong-incorporated companies or other entities in Hong Kong, unless there are other applicable legislation or regulatory requirements mandating compliance (e.g., listing rules issued by HKEX).

However, in December 2024, the Hong Kong government published the Roadmap on Sustainability Disclosure in Hong Kong (December 2024) (the 2024 Roadmap), which sets out Hong Kong's approach to require PAEs, which includes listed companies and large financial institutions to adopt the Hong Kong Standards, with large PAEs (large-cap listed companies and large nonlisted financial institutions carrying a significant weight in Hong Kong) expected to do so no later than 2028.

Under the 2024 Roadmap, Hong Kong will prioritise the application of the Hong Kong Standards by large PAEs under a phased-in approach with reference to the ISSB Inaugural Jurisdictional Guide issued by the ISSB Foundation in May 2024.

As an interim step, all HKEX Main Board listed issuers are required to comply with the new climate disclosure requirements based on IFRS S2 on a “comply or explain” basis starting from 1 January 2025 (except for the mandatory disclosure requirement on Scope 1 and 2 GHG emissions that apply to all HKEX listed issuers from 1 January 2025). Large-cap issuers will be required to disclose against the new climate disclosure requirements on a mandatory basis starting from 1 January 2026. HKEX will then conduct a review in 2027 on how the Hong Kong Standards can be better applied to listed PAEs for the financial years beginning on or after 1 January 2028 (with an aim for large-cap issuers to fully adopt the Hong Kong Standards no later than 2028).

Nonlisted PAEs, which are expected to include asset managers if they carry significant weight in Hong Kong, are expected to be required by relevant financial regulators to apply the Hong Kong Standards no later than 2028, subject to stakeholders' comments and feedback. Relevant authorities and regulators, including the SFC, which regulates funds and fund managers, are expected to conduct sector-specific engagements to determine the approach and timing of adopting the Hong Kong Standards for different financial sectors.

WHAT IS ON THE HORIZON?

The Cross-Agency Steering Group, comprised of various regulators and governmental bodies, was established by the Hong Kong government to accelerate the growth of green and sustainable finance and support the government's climate strategies. The group has identified the following as near-term priorities:

- Climate-related disclosures aligned with TCFD recommendations to be mandatory across

relevant sectors no later than 2025. As discussed above, there are currently no proposals to mandate the ISSB standards for entities other than HKEX-listed issuers but, under the 2024 Roadmap, the target is for financial institutions (being nonlisted PAEs) carrying a significant weight in Hong Kong to apply the Hong Kong Standards no later than 2028.

- To promote a climate-focused scenario analysis to assess the impact on financial institutions under different climate pathways, such as the use of scenario analysis by large asset managers.
- To adopt the Common Ground Taxonomy in Hong Kong in the context of the financial sector and specifically in relation to Hong Kong ESG Funds.

On 3 May 2024, the HKMA published the Hong Kong Taxonomy for Sustainable Finance (the Hong Kong Taxonomy). The Hong Kong Taxonomy currently encompasses 12 economic activities under four sectors: power generation, transportation, construction, and water and waste management. It is expected to include more sectors and activities, including transition activities, in the future and is designed to facilitate easy navigation among other taxonomies, including the Common Group Taxonomy, China's Green Bond Endorsed Projects Catalogue, and the European Union's Taxonomy for Sustainable Activities. Although the Hong Kong Taxonomy is not expected to have any immediate regulatory impact on fund managers in Hong Kong as it is not required to be adopted, it provides practical guidance to fund managers who are required to take account of climate-related risks in their investment and risk management processes regardless of whether the managed fund is a Hong Kong ESG Fund. It also provides guidance to fund managers of Hong Kong ESG Funds when selecting underlying investments that are commensurate with the disclosed ESG focus of such funds.

The SFC's initial ESG focus in relation to fund managers has been on climate-related risks, as metrics are generally more developed in this area currently and the SFC believes that this will help effective implementation. However, the SFC has also acknowledged the importance of ESG factors more generally and stated that it will remain abreast of international and market developments and consider an expansion of the regulatory coverage to other aspects of ESG over the longer term. The 2024 Roadmap further reinforces this approach.

JAPAN

By Yuki Sako

WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

Disclosure and Organizational Resources Requirements for Publicly Offered ESG Investment Trusts

The Comprehensive Guidelines for Supervision of Financial Instruments Business Operators (Supervisory Guidelines) issued by the FSA require asset managers to make certain disclosures and implement certain organizational or operational and due diligence measures (ESG Guidelines) regarding publicly offered ESG-focused investment trusts. The ESG Guidelines, which became effective 31 March 2023, include:

- *Definition of ESG Funds:* ESG Guidelines focus on “ESG Funds,” which are defined as publicly offered investment trusts that (a) consider ESG as “a key factor” in the selection of investment assets, and (b) disclose that ESG is such a key factor in their respective prospectuses (Japan ESG Funds). Asset managers must determine whether their funds are “ESG Funds” (referred to as Japan ESG Funds in this publication).
- *Required Disclosure Regarding Investment Strategies:* Japan ESG Fund managers are required to provide ESG-related disclosures in the fund's prospectuses, including (a) detailed information about key ESG factors considered in selecting investment assets; (b) a description of how key ESG factors are considered in the investment process; (c) the risks and limitations of such consideration; (d) for Japan ESG Funds that seek to achieve a certain impact, detailed information about the impact and how it is measured; (e) any fund-specific policy or the manager's companywide stewardship policy; and (f) if additional disclosure is provided on a website, references to such website.
- *Required Disclosure Regarding Portfolio Construction:* Japan ESG Fund managers are required to disclose in the fund's prospectus, with respect to any Japan ESG Fund, any designated target or standard ratios or indicators, whether on the basis of an amount of investments selected by key ESG factors or on the entire portfolio basis. If no target or standard ratios are designated, there should be an explanation as to why that is the case.
- *Required Disclosure Regarding Reference Index:* If a Japan ESG Fund seeks to track a specific ESG index, the Japan ESG Fund manager is required to disclose how ESG factors are considered by such ESG index and the manager's reasons for selecting such ESG index.
- *Required Periodic Disclosure:* Japan ESG Fund managers are required to provide, as applicable, the following periodic disclosures in the fund's investment reports or periodic disclosure documents: (a) if target or standard ratios of investments selected by key ESG factors are designated, actual investment ratios calculated using the amount of investments (market value) selected by such ESG factors against the total net assets; (b) if target or standard ESG valuation indicators used for selecting investments are designated for entire ESG portfolios, the status of achievement; (c) any ESG impact achieved; (d) actions taken in accordance with any related stewardship policy; and (e) if further information regarding these items is provided on a website or elsewhere, references to such website or places.
- *Required Due Diligence for Investment Management Outsourcing:* When management of a Japan ESG Fund is outsourced to another

manager, appropriate due diligence must be conducted with regard to such other manager, including its investment management practices and whether such manager provides all types of required disclosure and reporting listed previously or an explanation as to why it does not provide such disclosure or reporting.

- *Organizational Resources:* Japan ESG Fund managers must have adequate resources to both (a) provide investment management services in accordance with the funds' stated investment strategies, and (b) monitor such services, including by maintaining ESG-related data or information technology infrastructure or securing appropriate personnel. If management of a Japan ESG Fund is outsourced to another manager (i.e., a subadviser or submanager), the primary asset manager must have the internal resources necessary to conduct due diligence and ensure that the submanager's disclosures and reporting are accurate.
- *Due Diligence for ESG Rating and Data Providers:* Japan ESG Fund managers must conduct appropriate due diligence when using ESG ratings or data in their investment process.

The ESG Guidelines also apply to non-ESG publicly offered investment trusts (Non-Japan ESG Funds). Specifically, Non-Japan ESG Funds may not use ESG-related terms (e.g., ESG, sustainable development goals, green, decarbonization, impact, sustainable) in their names, and when ESG is only one factor to be considered along with other factors and has no greater significance, such Non-Japan ESG Funds' prospectuses and marketing materials should not include statements that would mislead customers to think that ESG is a key factor in selecting investment assets.

Code of Conduct for ESG Rating and Data Providers

In December 2022, the FSA issued the final "Code of Conduct for ESG Evaluation and Data Providers" (Code of Conduct or CoC). The Code of Conduct consists of six principles and guidelines for ESG rating and data providers to (a) ensure quality of ESG ratings and data; (b) provide more transparency and fairness; (c) address conflicts of interest issues; (d) ensure the retention of appropriate personnel, including providing appropriate training; (e) mitigate conflicts of interest and ensure independence, objectiveness, and neutrality; (f) provide for proper handling of nonpublic information; and (g) facilitate better communications with operating companies that receive ESG ratings and other entities. Although the Code of Conduct is not a formal regulation, the FSA calls for ESG rating and data providers to formally endorse the Code of Conduct. Accordingly, such entities are subjected to a "comply or explain" regime; providers must comply with, or provide an explanation as to why they are departing from, the Code of Conduct.

More directly relevant to asset managers, the Code of Conduct includes "recommendations to investors," which are attached to the Code of Conduct as references but are not formally part of the Code of Conduct. For this purpose, the term "investors" includes entities and persons that invest proprietary or client funds, such as asset managers. The recommendations call for investors to:

- Carefully examine and understand the purpose, methodologies, and limitations of ESG evaluation and data they utilize for their investment decisions.
- To the extent there are issues in evaluation results, engage in dialogue with the applicable ESG evaluation and data providers or companies.

- Publicly clarify the basic approach of how they utilize ESG evaluation and data in their investment decisions.

While the FSA has stressed that the recommendations are voluntary and do not impose formal obligations, it also affirmed that each asset manager should consider implementing these principles as appropriate in consideration of the nature of its business, confidentiality, and fiduciary obligations. Asset managers using ESG ratings and data should be mindful that the FSA views these measures as an important part of proper ESG rating and data usage.

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

No formal labels or categories have been established or proposed.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

Other than the disclosure and reporting requirements under the ESG Guidelines discussed above, there are no ESG-specific disclosure or reporting requirements applicable to funds or asset managers. Note, however, that Japan requires publicly listed companies to provide certain ESG-related disclosures under the corporate disclosure regime.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

No. However, the FSA convenes several groups of academic and industry experts to discuss various ESG-related issues in the financial sector. Most recently, upon public consultation on 29 March 2024, the FSA adopted the “Basic Guidelines on Impact Investment (Impact Finance),” setting forth certain concepts and factors to be considered in pursuing “impact investments” (Impact Investment Guidelines). The Impact Investment Guidelines highlight four specific elements of impact investments: (a) intention; (b) contribution; (c) identification, measurement, and management; and (d) accelerating market transformations. They also provide guidance regarding these concepts. For example, with respect to intention, they describe how intended social and environmental impacts can be or should be clarified. The stated purposes of the Investment Guidelines include setting forth shared understandings and expectations for concepts relating to impact investments among asset managers, investors, and other stakeholders, and encouraging further discussions among them. While the Impact Investment Guidelines do not create any legal or regulatory obligations per se, asset managers may want to consider these elements when providing services to Japanese investors in the area of impact investments.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE REGION, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

The FSA has stated that the ESG Guidelines generally do not apply to foreign domiciled investment funds that are managed outside of Japan. While the Supervisory Guidelines primarily apply to asset managers registered in Japan or certain managers that are relying on exemptions that are subject to the FSA's supervision, non-Japanese managers whose asset management services to Japan ESG Funds were delegated to them by Japanese managers may be indirectly impacted as a result of that outsourcing. Accordingly, such non-Japanese submanagers may

ultimately be required to satisfy some of the aforementioned disclosure and reporting requirements.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

As discussed previously, the Code of Conduct for ESG rating and data providers includes recommendations (i.e., not formal rules) for investors, including fund managers. As noted, these include recommendations that certain disclosures be provided and actions be taken by investors with respect to their use of ESG ratings and data.

In August 2024, the Japanese government adopted "Asset Owner Principles," which set forth five principles that should be considered by asset owners in fulfilling their fiduciary responsibilities. These principles include consideration relating to stewardship activities, including engaging in sustainable investments or requiring their managers to consider sustainability in investing in their assets. These principles are not regulations per se. Nevertheless, a number of Japanese institutional investors—including corporate and public pensions, insurance companies, and universities—have already announced that they adopted these principles.

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

Since December 2020, the Expert Panel on Sustainable Finance established by the FSA has discussed various issues, including sustainable investments and disclosure. Members of the panel include asset management, broker and banking industry associations, and other business associations and stakeholders. Most recently, the panel issued its fourth report summarizing the current state of play in various aspects, including disclosure, accessibility to sustainable investment opportunities, and various initiatives relating to sustainable finance. While the most recent report did not include specific noteworthy regulatory proposals, we will continue to monitor policy priorities discussed at the panel.

WHAT IS ON THE HORIZON?

We expect that the FSA will continue to be actively engaged in reviewing various ESG-related policy and regulatory issues, as well as setting forth guidelines for ESG-related products.

In addition, Japanese government agencies other than the FSA have also been reviewing ESG-related issues and taking actions that could impact funds and asset managers. For example, on 31 March 2023, the Japan Fair Trade Commission adopted the "Guidelines Concerning the Activities of Enterprises, etc., Toward the Realization of a Green Society Under the Antimonopoly Act" to prevent anticompetitive or unfair conduct and to raise transparency and predictability of the application and enforcement of the Antimonopoly Act. While this is not specifically targeted for funds or asset managers, if managers' conduct, including manners of marketing or distribution focusing on ESG, result in anticompetitive effects, such conduct may be found problematic from an anticompetition perspective.

SINGAPORE

By Edward M. Bennett and Ke Jia Lim, K&L Gates Straits Law LLC

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WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

Given the growing international investor interest in ESG-related investment products, in late July 2022, MAS released MAS Circular No. CFC 02/2022 (Circular), setting out ESG disclosure and reporting guidelines to mitigate the risk of greenwashing with respect to a retail ESG fund (called a "scheme" in the Circular).

MAS also used the Circular, which took effect 1 January 2023, to explain how the requirements under the existing CIS Code and Securities and Futures (Offers of Investment) (Collective Investment Schemes) Regulations 2005 (SF(CIS)R) should apply to retail ESG funds.

The Circular pertains to retail "ESG funds" and the related CMS licensees and approved trustees under Section 289 of the SFA who sponsor and operate such ESG funds.

The Circular defines an "ESG fund" as an authorised or recognised scheme (i.e., fund) that: (a) uses or includes ESG factors as its key investment focus and strategy (i.e., ESG factors significantly influence the scheme's selection of investment assets), and (b) represents itself as an ESG-focused scheme. ESG funds may incorporate sustainable investing strategies with significant ESG influences, such as impact investing and ESG inclusionary investing. This could include broad strategies, such as the application of best-in-class positive screening and ESG tilts, and thematic strategies, such as strategies with a specific focus on ESG outcomes, such as low-carbon transition. Notably, a scheme would not be regarded as having an ESG investment focus if it only uses negative screening or merely incorporates or integrates ESG considerations into its investment process to seek financial returns.

In assessing the compliance of a fund with the Circular, MAS will consider its compliance with the relevant ESG rules in its home jurisdiction, if any. For example, a UCITS scheme that is an ESG fund would be considered to have complied with the Circular's disclosure requirements if it complies with Article 8 or 9 of the European Union's SFDR. However, compliance with the naming requirements under Section B of the Circular (as discussed in more detail below) is still required for any such UCITS fund.

On 4 December 2024, MAS published the Information Paper, which sets out good disclosure practices that ESG funds may adopt in their adherence to the ESG disclosure guidelines set out in the Circular.

Notably, the Information Paper calls for ESG fund managers to clearly define, within the context of an ESG fund, vague or subjective terms such as "favourable/improving ESG characteristics," "sustainable leaders," or "strong sustainability profile." This is because such terms, on their own, do not give investors adequate insight into the types of ESG investments or strategies that an ESG fund may seek to employ. The overall intention is for greater alignment of expectations and to empower investors to make informed investment decisions.

The Information Paper also recommends that ESG fund managers provide clear descriptions of ESG metrics used by their ESG funds and the extent to which they are to be used. The aim is to improve

manager accountability and minimise potential greenwashing by providing clear yardsticks by which investors can assess whether an ESG fund has met its claims. Key areas that MAS considers ESG fund managers should disclose as a matter of good practice include: (a) sources of ESG criteria or metrics; (b) calculation methodologies and description of underlying data used; (c) the minimum ESG rating or score that investments must meet; and (d) the basis for sustainability targets set (if any).

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

Chapter 4.1 of the CIS Code provides that scheme names must be "appropriate, and not undesirable or misleading." Therefore, should an ESG fund wish to use an ESG-related name, an ESG focus should be reflected in its investment portfolio or strategy in a substantial manner.

To assess whether a scheme is ESG focused, MAS will consider factors such as whether the scheme's capital is primarily invested in an ESG strategy (i.e., generally, at least two-thirds of the scheme's net asset value must be invested in accordance with an ESG-related investment strategy).

MAS also expects fund managers to explain in each scheme's offering documents how its investments are substantially ESG focused on cases where it is neither possible nor practicable to determine, at the individual asset level, the proportion of a scheme's net asset value that is invested in accordance with ESG investing strategies.

On 3 December 2023, MAS launched the Singapore-Asia Taxonomy for Sustainable Finance (the Taxonomy). The Taxonomy sets out detailed thresholds and criteria for defining green and transition activities that contribute to climate change mitigation across eight focus sectors: energy, industrial, carbon capture and sequestration, agriculture and forestry, construction and real estate, waste and circular economy, information and communications technology, and transportation.

This initiative is designed to mitigate the risk of greenwashing and ensure that financed activities are on a credible path to net-zero emissions.

Transition activities are defined through two approaches:

- A "traffic light" system that defines green, transition, and ineligible activities across the eight focus sectors. In this context, "transition" refers to activities that do not meet the green thresholds now but are on a pathway to net-zero—or contributing to net-zero outcomes.
- A "measures-based approach" that seeks to encourage capital investments into decarbonisation measures or processes that will help reduce the emissions intensity of activities and enable the activities to meet the green criteria over time.

MAS plans to collaborate with industry stakeholders and government agencies to explore the Taxonomy's use in developing taxonomy-aligned financial instruments, accelerating the flow of capital into green and transition activities, and encouraging companies to disclose transition plans and use the Taxonomy to support these disclosures.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

Prospectus Disclosure Requirements and Guidelines

The third schedule of the SF(CIS)R sets out the requirements for information to be disclosed in a scheme's prospectus. In addition, the Circular requires

that the prospectus of an ESG fund lodged (i.e., filed) with MAS clearly defines ESG-related terms and discloses information relating to the fund's investment focus, investment strategy, reference benchmark, and the risks associated with investing in the scheme. The Circular sets out some practical examples of the disclosure requirements:

- *Investment Focus:* The ESG focus of the scheme and the relevant ESG criteria, methodologies, or metrics used to measure whether the ESG focus is achieved.
- *Investment Strategy:* An explanation of how the sustainable investing strategy is used to achieve the scheme's ESG focus, the binding elements of the strategy in the investment process, and how the strategy is applied in the investment process on a continuous basis; the relevant ESG criteria, metrics, or principles considered in the investment selection process; and the minimum allocation into assets used to achieve the scheme's ESG focus.
- *Reference Benchmark:* Where the scheme references a benchmark or index to measure whether an ESG focus is achieved, an explanation of how the benchmark or index is consistent with or relevant to its investment focus; and where the scheme references a benchmark or index for financial performance measurement only, a statement to this effect.
- *Risk Factors:* Risks associated with the scheme's ESG focus and investment strategy, such as concentration in investments with a certain ESG focus and limitations of methodology and data.

Annual Report Disclosure Requirements and Guidelines

Annual reports of ESG funds must include the following information:

- Details of how, and the extent to which, the scheme's ESG focus was fulfilled during the financial period, including a comparison with the previous period (if any).
- The actual proportion of the scheme's investments that meet its ESG focus (if applicable).
- Actions taken to achieve the scheme's ESG focus (e.g., through engaging with stakeholders).

Additional Information Disclosures

Fund managers should disclose, by appropriate means, additional information regarding an ESG fund, such as:

- How the ESG focus is measured and monitored, as well as the related internal or external control mechanisms that are in place to monitor compliance with the scheme's ESG focus on a continuous basis (including methodologies used to measure the attainment of the scheme's ESG focus, if any).
- Sources and usage of ESG data or any assumptions made where data is lacking.
- Due diligence carried out in respect of the ESG-related features of the scheme's investments.
- Any stakeholder engagement policies (including proxy voting) that can help influence corporate behaviour of investee companies and contribute to the attainment of the scheme's ESG focus.

Climate Reporting

From FY 2025, listed companies in Singapore will be required to make ISSB-aligned climate-related disclosures of GHG emissions if any of the three following categories of GHG emissions are applicable:

- *Scope 1 GHG emissions:* Direct emissions from owned or controlled resources of the entity.
- *Scope 2 GHG emissions:* Indirect emissions from the generation of purchased energy by the entity.

- *Scope 3 GHG emissions:* Any indirect emissions that occur in the value chain of the entity, including upstream and downstream emissions.

Entities listed on the Singapore Exchange will have to report on Scope 1 and Scope 2 GHG emissions from FY 2025. From FY 2026, they will be required to report on the much broader Scope 3 GHG emissions where applicable.

From FY 2027, large nonlisted companies with at least S$1 billion in revenue and total assets of at least S$500 million will also be required to report on Scope 1 and Scope 2 GHG emissions. The reporting requirements for these companies in relation to Scope 3 GHG emissions will be reviewed in the coming years and in any event will not come into force before FY 2029.

The new reporting requirements will apply to listed business trusts, investment funds (excluding ETFs), and real estate investment trusts. It remains to be seen if this climate-related disclosure requirement will extend to private investment funds in the future.

In view of the increasing demand for companies to publish climate-related disclosures, Singapore's Economic Development Board and EnterpriseSG will launch a Sustainability Reporting Grant. This grant will provide funding support for large companies with annual revenue of at least S$100 million to cover a portion of their costs in producing their first sustainability report in Singapore. The grant defrays up to 30% of qualifying costs, capped at the lower of S$150,000 per company or 30% of the qualifying costs in the preparation of their first sustainability report.

While sustainability reporting is currently not mandatory for SMEs, it is fast becoming a critical capability given the increasing requirement by large corporations to assess their suppliers' sustainability performance. To enable SMEs to report on sustainability, EnterpriseSG will partner with appointed sustainability service providers to launch a program to help SMEs develop their first sustainability reports. The program, targeted to launch in late 2024, will be available for three years. EnterpriseSG will defray 70% of eligible costs for SMEs participating in the first year of the program and 50% of costs for the following two years.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

No, requirements are currently limited to the enhanced disclosure and reporting obligations described above.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE REGION, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

As noted above, MAS will consider an offshore fund's compliance with its local regulations, to the extent adequately demonstrated by the fund sponsor. MAS will also consider the compliance of a foreign "recognised" scheme with the relevant ESG rules in its home jurisdiction when assessing compliance with the Singapore requirements.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

There are currently no prescribed ESG-related rules or voluntary codes for investors.

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

With the release of the final report of the International Organization of Securities Commissions on "ESG Ratings and Data Products Providers" identifying key

areas of concern and providing recommendations for good practices around governance, management of conflicts of interest, and transparency for ESG rating and data product providers, MAS, like other regulators, is developing an approach to regulate this nascent and rapidly changing industry.

Following public consultation from June to August 2023, in December 2023, MAS published a CoC and an accompanying compliance checklist for providers (Checklist). The CoC covers best practices on governance, management of conflicts of interest, and transparency of methodologies and data sources, including disclosure on how forward-looking elements are taken into account in data products. This disclosure is intended to allow users to better consider transition risks and opportunities when determining capital allocation. MAS is encouraging providers to disclose their adoption of the CoC and publish their completed Checklist within 12 months from publication of the CoC. In addition, providers must apply the CoC on a “comply or explain” basis. MAS has also encouraged market participants that use ESG ratings and data products to engage with providers that adopt the CoC.

For the long-term regulation of ESG rating providers, MAS proposed to apply the CMS licensing regime under the SFA to ESG rating providers. The proposed regulatory regime for the provision of ESG rating services will likely emulate the regulatory regime for the provision of credit rating services. As CMS licensees, the ESG rating providers will have to comply with the corresponding regulations, guidelines, and notices under the SFA, including a code of conduct that could be modelled on the CoC. MAS will have supervisory and enforcement powers over ESG rating service providers.

WHAT IS ON THE HORIZON?

The Singapore Green Plan 2030 (Green Plan) was unveiled in February 2021 to advance Singapore's sustainable development agenda and charts Singapore's green targets over the next decade. The Green Plan includes targets for Singapore to become a leading centre for green finance in Asia and globally. Various requirements were identified for green finance to work effectively, such as implementing a consistent set of global disclosure and reporting standards; improving the quality, availability, and comparability of data; and developing taxonomies for green and transition activities.

MAS also launched Project Greenprint in December 2020, which aims to harness technology to support green finance in conjunction with the financial industry—establishing data platforms to mobilise capital for green projects, facilitating the acquisition and certification of climate-relevant data, and monitoring the financial industry's commitments to emissions reductions. In November 2023, MAS launched Gprnt (pronounced “Greenprint”). Gprnt is the culmination of Project Greenprint and offers an enhanced digital reporting solution for businesses to seamlessly report their ESG information by enabling them to automatically convert their economic data into sustainability-related information. It seeks to achieve this by integrating with a range of digital systems used in day-to-day business operations, including systems for utilities consumption; bookkeeping and payroll solutions; building and waste management; payments gateways; and networks for artificial intelligence of things, sensors, and devices. Through these integrations, it is intended that Gprnt will enable companies to easily share their operational data with end users such as financial institutions and regulators, which will then be used to compute key sustainability metrics. Gprnt will initially focus on addressing the baseline reporting needs of SMEs, and will progressively scale its capabilities and network of data sources in the future, to serve the more advanced needs of larger multinational corporations, financial institutions, supply chain players, and national authorities. The full platform is currently undergoing live testing.

MAS is intending to introduce a set of Guidelines on Transition Planning to provide guidance for asset managers to facilitate their transition planning processes as they build climate resilience and enable robust climate mitigation and adaptation measures.

In the proposed guidelines, asset managers are urged to consider, among other things:

- Adopting a multiyear view for the continued sustainability of their portfolios in a “forward-looking manner.” For instance, asset managers should set decarbonisation targets that are supportive of the global transition to a carbon-minimised economy as part of their strategic decision-making process.
- Engaging with issuers regarding the need to adopt mitigation strategies where climate risks appear to be of material concern. In this regard, asset managers are encouraged to implement structured processes to identify and prioritise issuers for engagement, especially those which are more vulnerable to transition.
- Having a clear and actionable strategy and approach to guide the implementation of their transition plans.
- Proactively communicating their transition planning process by publishing sustainability reports.
- Establishing mechanism(s) through which the asset managers' existing approaches to respond to climate-related risks are regularly refined due to the evolving nature of climate risk management practices.

AUSTRALIA

AUSTRALIA

By Jim Bulling and Lisa Lautier

WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

Funds and asset managers are prohibited from making statements that are false or misleading, and from engaging in dishonest, misleading, or deceptive conduct when offering or promoting sustainability-related products. These prohibitions are set out under the Corporations Act 2001 (Cth) (Corporations Act) and the ASIC Act.

In addition, funds and asset managers must comply with certain disclosure obligations and guidelines when preparing a product disclosure statement for sustainability-related products that are offered to retail investors. These obligations and guidelines are set out under the Corporations Act and ASIC Regulatory Guide 65 (RG 65). They require disclosure of the extent to which labour standards or environmental, social, or ethical considerations are taken into account in selecting, retaining, or realising an investment.

To assist funds and asset managers in complying with their obligations, the ASIC, issued Information Sheet 271. The information sheet defines "greenwashing" and sets out nine questions to consider when offering or promoting sustainability-related products. There is an expectation that funds and asset managers will consider this information sheet when offering or promoting sustainability-related products. ASIC has increased enforcement action in relation to these obligations.

Finally, as discussed below, in September 2024, parliament passed legislation for mandatory climate-related financial disclosure requirements, with obligations to commence from 1 January 2025 for certain large Australian businesses and financial institutions. It will require certain funds and asset managers to prepare a "sustainability report" in addition to annual financial statements.

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

In June 2024, an Australian ministerial department (Treasury) released the Sustainable Finance Roadmap, which outlines a timeline for achieving its goals in the sustainable finance space. The Sustainable Finance Roadmap states that Treasury aims to release a sustainable investment product labelling regime for consultation in early 2025. The proposed commencement date for the product labelling regime is 2027.

In the meantime, the FSC, the leading body that sets standards and develops policy for its members, has issued guidance on product labelling. This guidance is set out in:

- FSC Guidance Note No. 44 Climate Risk Disclosure in Investment Management (Guidance Note 44) dated 3 August 2022.
- FSC Information Sheet: Labelling Responsible Investment Products dated 24 February 2024.

Guidance Note 44 addresses the use of product labels such as "climate friendly," "net-zero," "impact," and "best of sector," and it offers asset managers recommendations as to how they can approach disclosure to ensure it aligns with such labels.

The latest FSC Information Sheet outlines overarching principles in relation to the use of responsible or suitability-related terms in investment product labelling. It also provides guidance on commonly used labels, such as "ESG," "Responsible," "Sustainable," "Sustainable Development Goals," "Earth/Nature," "Impact," "Ethical," "Stewardship," "Active Ownership," "Low carbon," and "Net zero," and labels with religious

meanings. The information sheet sets out an expectation of what that label represents and provides good practice examples of funds that use those labels.

FSC guidance is, strictly speaking, only relevant for FSC members, but it is influential in establishing industry standards and expectations.

In addition to industry guidance, funds and asset managers should also be aware of ASIC's expectations. In August 2024, ASIC released ASIC Report 791 on its regulatory interventions between 1 April 2023 and 30 June 2024. In this report, there are several interventions identified from ASIC's surveillance activities relating to instances where underlying investments were inconsistent with disclosed ESG investment screens and policies. Failure to act in accordance with ASIC's expectations has attracted enforcement actions, such as corrective disclosure outcomes and infringement notices.

In November 2024, as discussed below, ASIC released CP380. CP380 is accompanied by Draft Regulatory Guide RG 000 Sustainability Reporting (Draft RG). The Draft RG details labelling requirements related to sustainability reporting. This includes that the terms “sustainability reports,” “climate statements,” “voluntary sustainability statements,” and “voluntary climate statements” have precise meanings under the sustainability reporting regime. As such, these terms must be appropriately distinguished from other reports that may have been historically labelled as “sustainability reports.”

Additionally, the Draft RG provides that fund and asset managers should exercise caution in relation to the selective use or reproduction of information contained within sustainability reports. ASIC has warned that reporting entities that selectively reproduce or use information from a sustainability report:

- Increase the risk of compromising the objective of the sustainability reporting regime; and
- Increase the risk that these disclosures may be misleading.

Examples of where selective reproduction could be misleading, including where:

- A climate-related target is used in the headline of an investor presentation without referencing the inputs, assumptions, and contingencies as are disclosed in the sustainability report; and
- Information from a sustainability report is summarised in corporate documents in a manner that distorts the balance, tenor, or prominence of information disclosed in the sustainability report.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

As noted previously, Australia's disclosure requirements for funds and asset managers are set out in legislation, ASIC regulatory guidance, and industry guidance.

Australia's reporting requirements with respect to climate-related financial disclosures, on the other hand, are being progressively phased in over the next three to four years.

On 17 September 2024, the Treasury Laws Amendment (Financial Market Infrastructure and other measures) Bill 2024 received royal assent.

The new legislation implements the climate-related financial disclosures regime, which requires entities to report climate-related information under a “sustainability report” to be lodged with ASIC each financial year. The proposed regime builds on the existing financial reporting framework for entities that lodge financial reports under the Corporations Act.

Climate-related information that is reported will need to comply with Australian Sustainability Reporting Standards issued by the AASB, which were finalized on 20 September 2024. The standards comprise:

- *AASB S1*: General requirements for Disclosure of Sustainability-related Financial information; and
- *AASB S2*: Climate-related Disclosures.

AASB S1 is a voluntary standard while AABS S2 is a mandatory standard. These standards largely align with the ISSB standards with some modifications.

Under the legislation, reporting obligations will be phased in over the next three to four years. Funds and asset managers will fall within one of three groups if they meet two of the three asset, revenue, and employee size thresholds:

- *Group 1*: 1 January 2025: Entities that have consolidated revenue of at least AU$500 million, consolidated assets of AU$1 billion, and 500 or more employees.
- *Group 2:* 1 July 2026: Entities that have a consolidated revenue of at least AU$200 million, consolidated assets of AU$500 million, and 250 or more employees. Importantly, Group 2 Entities also include fund managers at the registered entity level and superannuation funds if the value of assets at the end of the financial year of the entity and the entities it controls is AU$5 billion.
- *Group 3:* 1 July 2027: Entities that have at least AU$50 million of consolidated revenue, AU$25 million of consolidated gross assets, and 100 or more employees.

Details required to be incorporated in the "sustainability reports" include:

- Material climate risks and opportunities (noting certain smaller entities that do not face material climate risks and opportunities may state as such).
- Any metrics and targets of the entity for the financial year related to climate that are required to be disclosed pursuant to the Draft Reporting Standards, including metrics and targets relating to Scope 1, 2, and 3 GHG emissions, with reporting of Scope 3 emissions to follow after a 12-month grace period.[2]

The AUASB has now finalised the Australian Standard on Sustainability Assurance ASSA 5010 Timeline for Audits and Reviews of Information in Sustainability Reports (the Standard) under the Corporations Act 2001 which outlines the proposed assurance phasing model. The details of the Standard are not yet available but are expected to specify how assurance requirements will be phased in, with reasonable assurance required of all climate-related disclosures made from years commencing on 1 July 2030 onward.

In addition, the legislation contains some limited immunities which provide that, with respect to Scope 3 emissions and scenario analysis, no legal action can be made against a person in relation to statements made in sustainability reports lodged during the transitional period. However, this limited immunity does not apply to criminal proceedings or where ASIC brings a civil claim and, with respect to that claim, there is a fault element or ASIC seeks an injunction or declaration as remedy.

Where entities make incorrect statements in their sustainability disclosure reports during this transitional period, ASIC may direct the entity to confirm, explain, and rectify such errors. Where ASIC gives a direction, it must hold a hearing with the entity and provide reasonable opportunity for the entity to make submissions.

In addition to the labelling requirements discussed above, CP380 sought feedback on:

- ASIC's proposals to issue a regulatory guide for entities required to prepare a sustainability report under Ch 2M of the Corporations Act;

- ASIC's proposals to facilitate sustainability reporting relief for stapled entities; and
- Broader questions, issues, or uncertainties that may inform our approach to any future guidance.

The consultation closed on 19 December 2024.

CP380 attached Draft RG and a draft legislative instrument on reporting requirements for stapled entities.

Draft RG explains how ASIC will exercise specific powers under legislation, how ASIC interprets the law and the principles underlying ASIC's approach, as well as provides practical guidance to entities about complying with their sustainability reporting obligations. Specifically, the regulatory guidance deals with matters including how the sustainability report should be prepared, content required in the sustainability report, and how sustainability-related financial disclosures outside of the sustainability report should be handled. Finally, Draft RG outlines ASIC's approach to the administration of sustainability reporting requirements, including for relief from reporting requirements. Fund and asset managers should consider the draft regulatory guidance as a useful resource in respect of sustainability reporting.

ASIC has encouraged reporting entities that are thinking of applying for relief from sustainability reporting to do so as early as possible.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

The APRA—which regulates Australian banks, insurers, and superannuation funds—has outlined its expectations for such entities with respect to their consideration of ESG factors in their investment risk management framework and investment strategy in the Prudential Practice Guide, SPG 530 Investment Governance. This supports APRA's revised Prudential Standard, SPS 530 Investment Governance, which commenced on 1 January 2023. Fund and asset managers are expected to consider ESG factors when forming, implementing, and monitoring their investment risk management framework and investment strategy. This report makes specific reference to the importance of stress testing and due diligence, with APRA expecting entities to consider scenarios that address climate risk, including both physical and transition risks. Once again, these are merely guiding principles and do not create enforceable requirements.

In November 2024, APRA released its Climate Risk Self-Assessment Information Paper outlining the results of the Self-Assessment Survey. The Self-Assessment Survey was carried out to “provide a better understanding of the alignment of entities' practices with APRA's guidance on climate risk.” Key insights from the Self-Assessment Survey included that:

- Entities on average showed slightly lower maturity for climate risk disclosure in 2024;
- More mature governance structures are typically in place at entities where climate risk has been integrated into risk management; and
- Entities are starting to consider adjacent risks and practices, such as nature risk and transition plans.

APRA has signalled that it continues to lift its expectations for entities considering climate-related financial risks in their decision making. In 2025 APRA intends to:

- Commence consultation on amending Prudential Standard CPS 220 Risk Management (CPS 220) and Prudential Standard SPS 220 Risk Management (SPS 220) to include climate risk; and

- Continue its work to understand how APRA can best incorporate climate risk within its broader supervision framework.

Fund and asset managers should be aware that changes to CPS 220 and SPS 220 may result in changes to APRA's approach to the integration of climate risk into risk management frameworks and functions more broadly.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE REGION, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

The disclosure obligations discussed previously and the expectations of ASIC in relation to greenwashing will apply to all investment products offered to Australian investors, including those offered by offshore managers. In addition, Australian superannuation funds will be seeking climate-related information from their asset managers (both local and offshore) in order to ensure that they can comply with their disclosure obligations.

The new legislation and the AASB Reporting Standards do not specifically consider the proposed application of mandatory climate-related reporting regimes to foreign companies operating in Australia.

In that regard, the proposed mandatory regime applies to entities that meet the required size thresholds for Group 1 and Group 2 Entities, or where they can be properly classified as a 2M Entity. In addition, the regime is proposed to apply to each entity that is a registered corporation—or is required to be—under the National Greenhouse and Energy Reporting Act 2007 (Cth). According to the act, corporations are required to be registered if they:

- Emit more than 50 kilotons of GHG or produce 200 terajoules of energy for a financial year;
- Are a constitutional corporation (meaning a foreign corporation, and trading or financial corporation formed within the limits of the Commonwealth); and
- Do not have a holding company incorporated in Australia.

Interestingly, this could include a foreign-incorporated entity that operates directly in Australia without an Australian-incorporated subsidiary.

Released in November 2024 to accompany CP380, the Draft RG has clarified that foreign companies that are registered under Div 2 of Pt 5B.2 of the Corporations Act are not required to prepare a sustainability report or keep sustainability records.

Entities that have obtained relief from the requirement to prepare an annual financial report under Chapter 2M will also not be required to prepare a sustainability report or keep sustainability records.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

APRA's Prudential Practice Guide, SPG 530 Investment Governance, has outlined its expectation that RSE Licensees clearly articulate the extent to which ESG considerations inform their investment decision making. APRA expects entities to consider ESG factors at all stages of the investment process, including in formulating the investment strategy and determining an appropriate level of diversification, conducting due diligence, and monitoring investment performance. Therefore, as superannuation funds are “RSE Licensees,” this will incidentally impact fund managers whose clients are typically superannuation funds; these considerations will be passed from the superannuation fund through to the manager.

Investors may also be subject to Australia's climate-related reporting regime, as discussed above, if they can be classified as a Group 1 Entity, Group 2 Entity, Group 3 Entity, or 2M Entity.

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

As part of ASIC's Sustainable Finance enforcement priority, ASIC continues to focus on greenwashing, issuing another two infringement notices in relation to alleged ESG misconduct on 28 May 2024. This brings the number of infringement notices to 19.

Action taken by ASIC to date includes action in relation to:

- Scope and application of sustainability-related investment screens being overstated or inconsistently applied.
- Vague and insufficiently explained terms when describing investment approach.
- Inaccurate representations of an investment screen in an index methodology.
- Projects or products being described as “carbon neutral,” “clean,” or “green” with no reasonable basis for these claims.
- Net-zero statements and targets not having a reasonable basis or were factually incorrect.

Action Arising Out of Insufficient Exclusionary Screening

On 25 September 2024, the Federal Court ruled on an ASIC greenwashing action resulting in a record AU$12.9 million penalty. The Federal Court found the product issuer contravened the ASIC Act by making false or misleading representations about certain ESG exclusionary screens applied to investments in respect of a quoted index fund (the Fund).

The representations were made to the public in a range of communications, including an interview on YouTube, a presentation at a fund manager event, a media release, and statements published on the product issuer's website. Investments held by the fund were based on the Bloomberg Barclays MSCI Global Aggregate SRI Exclusions Float Adjusted Index (Index). The product issuer had claimed the Index excluded only companies with significant business activities in a range of industries, including those involving fossil fuels, but has admitted that a significant proportion of securities in the Index and the Fund were from issuers that were not researched or screened against applicable ESG criteria.

The case highlights the importance of disclosure and the importance of clarifying how any ESG screening is applied across a fund portfolio.

Action Arising Out of Unequivocal Language

On 5 June 2024, in an action brought by ASIC against a superannuation entity with approximately AU$13.5 billion in superannuation assets, the Federal Court has found that the superannuation entity made misleading ESG claims by stating that it had no investments posing too great a risk to the environment and the community.

In its marketing material, the superannuation entity used language, such as “No Way” and “eliminate,” which the court found to be unequivocal statements that were not the subject of any potential qualifications. However, in reality, the superannuation entity had direct or indirect exposure (through managed funds or ETFs) to securities with the exposure to gambling, oil tar sands, and coal mining, as well as sanctioned entities.

Action Arising Out of Misleading Characterisation of Investment Products

On 2 August 2024, in an action brought by ASIC against a major superannuation trustee, the Federal Court found that the trustee made misleading statements about the sustainable nature and characteristics of some of its investment products.

It was found the trustee had statements on its website marketing certain sustainability-focused investment products as suitable for members who were “deeply committed to sustainability” because they excluded

investments in companies involved in carbon-intensive fossil fuels, alcohol products, and gambling. In reality, the investment products in question had direct investee companies which were involved in the stated exclusionary business purposes.

In this case, the trustee was ordered to pay an AU$11.3 million penalty and ASIC's costs.

WHAT IS ON THE HORIZON?

There is significant change on the horizon for Australia's ESG regulatory landscape. In this respect, the government's "Sustainable Finance Agenda" has detailed what to expect for the next four years. In addition to the introduction of mandatory climate-related reporting as discussed previously, other items include:

- Funding to ASIC to support enforcement action against greenwashing.
- The establishment and expansion of a sovereign green bonds program. The Australian Office of Financial Management issued the first Green Treasury Bond in June 2024.

The ASFI is developing a sustainable finance taxonomy (Australian Taxonomy). ASFI's first round of public consultation on the Australian Taxonomy closed on 30 June 2024. The consultation sought feedback on the draft headline ambitions for the Australian Taxonomy's environmental objectives and the draft climate change mitigation criteria for the first three priority sectors under development (electricity generation and supply; minerals, mining, and metals; and construction and the built environment). ASFI is targeting a second round of consultation to be held in the fourth quarter of 2024, having released an interim report for Treasury on 10 September 2024. The Australian Taxonomy is expected to be released for voluntary adoption by mid-2025. ASIC will publish a final version of the Draft RG following feedback from stakeholders. ASIC may determine to provide further or different guidance in relation to sustainability reporting.

EUROPE

EUROPEAN UNION

By Michelle Lloyd (Ireland), Adam M. Paschalidis (Luxembourg), and Dr. Philipp Riedl (Germany)

WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

Sustainable Finance Disclosure Regulation

The European Union's SFDR[3] and its Delegated Regulation[4] require FMPs (including fund managers and other asset managers) to make certain prospectus, website, and other disclosures regarding how ESG factors, risks, and impacts are integrated into their processes and products at both the FMP level and the applicable product level. The SFDR is a key aspect of the European Union's wider sustainable finance policy, designed to attract private investment to support the transition to a sustainable economy. It does this by requiring FMPs to be transparent to investors with respect to sustainability risks and how they may affect returns, and with respect to the adverse impacts that investments have on the environment and society. This approach is known as "double materiality."

EU Taxonomy Regulation

The EU Taxonomy Regulation[5] and its Delegated Regulations set out a classification system (the EU Taxonomy) that establishes economic activities that can be considered environmentally sustainable. Under the EU Taxonomy, an activity is considered environmentally sustainable if the activity:

- Contributes substantially to one of six environmental objectives identified in the EU Taxonomy Regulation.
- Does not do any significant harm to any of the six environmental objectives.
- Avoids violation of minimum social impacts.
- Complies with the relevant TSCs.

The six environmental objectives comprise two climate-related objectives and four nonclimate-related environmental objectives. The TSCs for the climate-related objectives set out the criteria for determining if activities cause significant harm to other environmental objectives. The economic activities covered include those within the sectors of manufacturing, supply and disposal, construction (e.g., real estate), and information and communication.

The EU Taxonomy Regulation interacts with other legal acts, and significantly with the SFDR. A financial product (e.g., a fund or a managed account) is making environmentally sustainable investments if its investments are aligned with the EU Taxonomy Regulation.

Organisational Requirements

EU financial market players—including UCITS management companies, AIFMs, and firms subject to MiFID II (e.g., investment firms, broker-dealers, and other entities that provide investment-related services)—are required to observe specific ESG-related measures relating to ESG risk management. For example, such firms must take into account risks related to sustainability with respect to reporting, risk controlling, and internal policies.

MiFID Code of Conduct

MiFID II firms that provide investment advice are required to consider their clients' sustainability preferences when determining the clients' respective investment objectives and selecting suitable financial products. For example, such firms must consider the extent to which clients require that a minimum portion of their assets be invested in environmentally sustainable investments (EU Taxonomy-aligned) or other sustainable investments (as defined in the SFDR), and whether clients require that financial

products consider PAIs on sustainability factors. MiFID II firms must also take into account sustainability risks when providing investment advice.

Corporate Sustainability Reporting Directive

The CSRD is a reporting directive that requires certain companies to report on a double-materiality basis, similar to the SFDR, as well as provide other information. The mandatory requirements are being applied on a roll-out basis, which started in 2024:

- 1 January 2024 for certain in-scope public interest entities with more than 500 employees.
- 1 January 2025 for other larger companies and public interest entities with more than 250 employees.
- 1 January 2026 for listed SMEs, with an "opt out" possible until 2028.

The CSRD does not yet apply to funds or the majority of fund managers. However, the CSRD will interact significantly with the SFDR, as the data and reporting produced pursuant to the CSRD will be used by FMPs in the preparation of their product-level disclosures under the SFDR, and the availability of these reports and additional data will enhance the quality of disclosures to investors under the SFDR.

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

While the European Union has not formally adopted ESG "labels" or "categories" for financial products, market participants, in practice, refer to financial products according to the applicable SFDR disclosure obligations:

- "Article 6 product"—no ESG strategy.
- "Article 8 product"—ESG strategy.
- "Article 8+ product"—ESG strategy and a minimum proportion of EU Taxonomy-aligned investments or other sustainable investments (SFDR-aligned).
- "Article 9 product"—exclusively EU Taxonomy-aligned investments or other sustainable investments (SFDR-aligned).

The disclosure obligations are described in greater detail below.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

The SFDR and EU Taxonomy Regulation provide for four basic disclosure and reporting obligations:

Sustainability Risks (SFDR Articles 3, 5, and 6)

FMPs are required to disclose if and how they integrate sustainability risks into their investment decisions in relation to a financial product, as well as the impact of sustainability risks (including transition risks) on the returns of the financial product and the remuneration of their employees. To the extent that sustainability risks are considered irrelevant, participants must explain why. These disclosure requirements apply to all FMPs and to all financial products. Disclosures must be made on an entity (i.e., firm, asset manager) level on the firm's website and on a product (i.e., fund, managed account) level in a precontractual document (e.g., prospectus, private placement memorandum).

PAIs (SFDR Articles 4 and 7)

All FMPs are generally required to comply with the PAI disclosure requirements on an entity level and a product level. Accordingly, firm websites and product documents must include disclosures regarding how PAIs on environment, social, and employee matters are considered when investment decisions are made.

In addition, on an annual basis, firms and products must provide information about quantitative impacts (e.g., GHG emissions, energy consumption) of the firm's managed portfolio and the respective product. An exemption from this disclosure requirement may be available for smaller firms.

Sustainable Investments (SFDR Articles 9, 10, and 11)

All market participants are required to disclose on a product level the extent to which, and how, an applicable financial product has environmentally sustainable investments (EU Taxonomy-aligned) as its investment objective or explain that it has no such investments.

In addition, if a financial product invests in EU Taxonomy-aligned investments or other sustainable investments (SFDR-aligned), additional information must be provided in firm and product documents (e.g., product prospectus, firm website).

Environmental or Social Characteristics (SFDR Articles 8, 10, and 11)

Likewise, if a financial product promotes environmental or social characteristics, information must be provided regarding such characteristics, the indicators used to measure the attainment of the promoted ESG strategy, and the binding elements of the ESG strategy. At the moment, the SFDR does not provide for specific requirements on the envisaged ESG strategy of the product, aside from requiring that funds disclosing pursuant to Article 8 or Article 9, to the extent that they invest in corporate issuers, take exposure only to those that follow “good governance” practices and that funds disclosing pursuant to Article 9 invest almost exclusively in SFDR-aligned or EU Taxonomy-aligned sustainable investments. However, proposals under consideration at the European Commission may result in a new criteria-based labelling system described more fully below. For financial products promoting environmental or social characteristics and committing to make a minimum proportion of sustainable investments (Article 8+ financial products), information regarding allocation of sustainable investments is also required.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

On 14 May 2024, ESMA published its guidelines for fund names containing ESG or sustainability-related terms. Such guidelines apply to UCITS management companies, AIFMs, and other asset managers.

Funds using transition-, social-, and governance-related terms (e.g., “transition,” “transformation,” “net-zero,” “social,” “equality,” or “governance”) should:

- Meet an 80% threshold linked to the proportion of investments used to meet environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy disclosed in compliance with SFDR; and
- Apply certain EU-Climate Transition Benchmark exclusions (i.e., companies involved in any activities related to controversial weapons or tobacco or companies in violation of the United Nations Global Compact's principles or the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises).

Funds using environmental- or impact-related terms (e.g., “green,” “environmental,” “climate,” “ESG,” “SRI,” or “impact”) should:

- Meet an 80% threshold linked to the proportion of investments used to meet environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy disclosed in compliance with SFDR; and

- Apply all EU Paris-Aligned Benchmark exclusions (i.e., in addition to the above-mentioned companies, companies that derive a certain percentage of their revenues from business activities in relation to coal, oil fuels, gaseous fuels, or electricity generation with a high GHG intensity).

Funds using terms derived from the word "sustainable" should:

- Meet an 80% threshold linked to the proportion of investments used to meet environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy disclosed in compliance with SFDR;
- Apply all EU Paris-Aligned Benchmark exclusions; and
- Commit to invest meaningfully in sustainable investments referred to in the SFDR (in its questions and answers, ESMA clarified that this means a proportion of sustainable investments of at least 50%).

According to ESMA's questions and answers, the EU Paris-Aligned Benchmark exclusions do not need to be assessed for the three categories above when investing into green bonds under the EU Green Bond Regulation.

ESMA's guidelines apply since 21 November 2024 with a transitional period until 21 May 2025 for existing funds. Among others, authorities in Germany and Luxembourg have announced that they apply the ESMA guidelines.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE REGION, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

The disclosure and reporting requirements under the SFDR also apply to non-EU asset managers and funds (i.e., an AIFM from a non-EU country that carries out its activities within the European Union based on national law exemptions, such as through a private placement). However, it is unclear whether a non-EU fund would be required to comply with the foregoing obligations if it sells shares (i.e., units) to EU investors based on an unprovoked reverse solicitation. While ESMA's fund-naming guidelines were silent on whether they applied to non-EU managers or funds being marketed in the European Union, the market view is that they will apply.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

There are no rules in place for retail investors. If an investor in a fund is itself a fund, the same disclosure rules apply to the investing fund. For example, a fund carrying out exclusively sustainable investments and disclosing under SFDR Article 9 may, if acting as fund investor, only invest in target funds holding exclusively sustainable investments. How the SDRs will apply to funds-of-funds is still lacking comprehensive guidance. Insurance companies will have to consider sustainability criteria as part of their risk management and disclosure obligations.

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

The ESG Rating Regulation, a regulatory framework for ESG rating agencies that is intended to enhance their transparency and integrity, has passed and will apply on 26 July 2026. In-scope ESG ratings will

provide an opinion on a company's or a financial instrument's sustainability profile by assessing its exposure to sustainability risk and its impact on society and the environment. Under the ESG Rating Regulation, EU providers of ESG ratings will require a license from, and be supervised by, ESMA. The regulation imposes certain operational requirements, such as rules relating to the methodology for ratings and certain disclosure requirements. It provides for the possibility of issuing separate environmental, social, and governmental ratings. If only a single rating is issued, the weighting of the ESG factors will need to be stated. Non-EU rating providers wishing to operate in the European Union will need to have their ESG ratings endorsed by an authorised EU ESG rating provider. An EU Commission equivalence decision in relation to their country of origin may also give third-country providers access to the European Union. Until the EU Commission has adopted such decision, small rating providers (annual turnover below €12 million) outside the European Union may alternatively seek recognition by ESMA if they apply the ESG Rating Regulation's requirements (other than licensing). ESG rating providers that are active in the EU are required to apply for a license or for recognition until 2 November 2026.

WHAT IS ON THE HORIZON?

In addition to the anticipated changes noted previously, ESMA launched its so-called “Sustainable Finance Roadmap 2022–2024,” which includes the following initiatives:

- Developing minimum sustainability criteria or a combination of criteria for financial products that disclose under SFDR Article 8.
- Clarifying the indicators for climate- and environment-related PAI.
- Introducing PAIs on social and employee, human rights, anti-corruption, and anti-bribery matters.
- Enabling FMPs to systematically consider positive and negative sustainability impacts of their investment decisions.

With respect to the SFDR review, the three European supervisory authorities recently published their ideas in the form of a joint opinion on 18 June 2024, including the following proposals:

- Introduction of two voluntary product categories: “sustainable” and “transition.” The “sustainable” product category would be based on the definition of sustainable investments under SFDR. “Transition” products would be able to utilise various methods and key performance indicators (CapEx according to the EU Taxonomy, transition plans, PAIs) in order to implement transition strategies. Products with sustainability features that do not qualify for one of the categories would be subject to certain disclosure requirements and be restricted in the use of sustainability-related terms in the product name and advertising.
- The use of one or more sustainability indicators (alongside the product categories or as an alternative), which would present the sustainability characteristics of products in a consumer-friendly manner.
- Customising ESG disclosure for different investor groups, such as including ESG disclosure in the key information document for retail investors.

In addition, on 17 December 2024, the Platform on Sustainable Finance, an expert group and advisory body to the EU Commission established under the EU Taxonomy Regulation, published a briefing for a new product categorisation under SFDR. The proposal recommends a product categorisation based on three possible sustainability strategies: “sustainable,” “transition,” and “ESG collection.” All other products would not be categorised as sustainable.

- “Sustainable”': products that invest a certain percentage in taxonomy-aligned assets.

Alternatively, investments can also be made in nontaxonomy-aligned (e.g., socially sustainable) assets if these investments fulfil certain criteria, e.g., do not significantly harm any sustainability objectives.

- "Transition": products that invest a certain percentage in assets to promote a climate-neutral and sustainable economy. The focus here is on a credible transition pathway or plan, ultimately including divestments. The products should also contain minimum exclusions building on the EU Climate Transition Benchmarks.
- "ESG collection": products that invest a certain percentage in assets that follow a material sustainability approach. For example, the strategy may involve the outperformance of a sustainability benchmark or a binding reduction path. Again, minimum exclusions are required. The proposal does not yet contain the specific percentages. The EU Commission will now consider the Platform's proposal and whether it should proceed further. The proposal does not bind the EU Commission and does not form part of its legislative process but is a significant indicator of a change of direction.

CONSIDERATIONS FOR IRELAND AND LUXEMBOURG

Asset managers offering funds or other services in EU countries should bear in mind that some such individual countries may have additional considerations or guidelines. Two examples of that are Ireland and Luxembourg, which are popular European domiciles for cross-border fund distribution. Asset managers should identify any additional requirements imposed by the particular countries in which they provide advisory services.

Ireland

The position in Ireland to date has been to apply the requirements of SFDR without any "gold-plating" (i.e., implementation that exceeds what is necessary to incorporate a directive). The Central Bank of Ireland (the Central Bank) is nonetheless very focused on its role as a key gatekeeper in this area, with Ireland being the second-largest, and fastest-growing, fund domicile in the European Union and the largest ETF domicile in Europe. Of all Irish-domiciled funds, approximately 25% are Article 8, Article 8+, or Article 9 funds, and that portion of the overall Irish-domiciled fund universe is expected to grow.

Since inception, the majority of SFDR-related precontractual disclosures have been submitted and approved by the Central Bank without review, facilitated by "fast-track" filings accompanied by certifications of compliance. The Central Bank conducted a review in 2022 of certain of these submissions as part of its "Gatekeeper Review" and published its findings and expectations. Generally, the expectations cited were consistent with those that had previously been issued by the ESMA and the European Commission, and the Central Bank has been conscious about not contributing to regulatory divergences at the European level. The Central Bank's Gatekeeper Review did, however, emphasise the importance of disclosing fund-specific sustainability risks.

In the first quarter of 2023, the Central Bank reviewed the underlying portfolios of funds with varying ESG-related commitments, in particular to ascertain whether the underlying portfolios of funds in fact reflected the level of ESG focus suggested by their precontractual disclosures. Although its findings have not been published, the Central Bank indicated in a workshop in November 2023 that it is presently taking a view on certain points that diverge slightly from a strict reading of the SFDR. For instance, the Central Bank has confirmed that it will raise questions about the appropriateness of having a product subject to Article 8 of SFDR when it cannot commit to having a percentage of its portfolio aligned with environmental and social characteristics. This would seem to

introduce a threshold requirement for Article 8 funds. The Central Bank has not issued formal guidance on this yet, however, and emphasised that their findings did not necessarily represent their final position and may be subject to change.

On 22 October 2024, the Central Bank held a further SFDR workshop with industry representatives to address a number of issues including: ongoing SFDR implementation issues; the application of ESMA's fund-naming guidelines; and the outcome of the CSA. Following the workshop, Irish Funds shared a note of the meeting with its members, in advance of formal guidance being published by the Central Bank. The Central Bank has indicated that the requirements and expectations set out in the note should be taken into account by all existing funds and also for new fund applications going forward.

Following the publication of ESMA's fund-naming guidelines on 21 August 2024, the Central Bank has launched a fast-track for funds renaming according to the ESMA guidelines. The fast-track will facilitate changes in relation to fund names, as well as minor changes to disclosures in fund offering documents and precontractual documents made with the sole purpose of aligning the fund with ESMA's requirements.

The fast-track opened on 21 November 2024, and will close on 21 May 2025, to allow for the transitional period of six months. Any new funds created on or after the application date should immediately apply the fund-naming guidelines.

Luxembourg

In an effort to justify Luxembourg's reputation as an attractive place to organise and operate investment funds, particularly alternative investment products, while also maintaining quality control, the Luxembourg financial regulator, CSSF, has, since the SFDR started to be enforced, attempted to (a) create a level and transparent playing field for all FMPs conducting business in Luxembourg, and (b) facilitate FMPs' compliance with SFDR requirements, which at least some FMPs may find demanding. In seeking to achieve these goals, the CSSF: (a) implemented an expedited process for FMPs to review, amend, and obtain CSSF authorisation[6] for their funds' documents for purposes of complying with SFDR disclosure requirements; (b) requires investment fund managers, among others, to complete an annual SFDR questionnaire in accordance with the financial year-end of the financial products that will be used to determine the level of compliance of the FMPs with SFDR and ESG standards; and (c) had initially launched on 2 December 2022 a frequently asked questions document “FAQ Sustainable Finance Disclosure Regulation (SFDR),” which is kept up-to-date (last update 18 December 2024).

Furthermore, on 22 March 2024, the CSSF's supervisory priorities in the area of sustainable finance were published. In this paper, CSSF outlines four focus areas (namely, credit institutions, asset managers, investment firms, and issuers) and indicates which aspects of those areas will be prioritised in terms of supervision (e.g., sustainability disclosures, risk management). A significant revelation in this Communiqué is that the Luxembourg regulator confirms its intention to ensure compliance and, most importantly, consistency across the fund documentation and marketing material in the context of financial products. This confirms legal practitioners' expectations that the Luxembourg regulator would at some point attempt to effectively intervene and perform checks on FMPs' disclosures in order to ensure a level playing field; thus, effective transparency toward investors.

UNITED KINGDOM

By Philip J. Morgan and Harriet Sherwin

WHAT RULES, IF ANY, ARE CURRENTLY IN PLACE (I.E., HAVE BEEN ADOPTED) FOR FUNDS AND ASSET MANAGERS?

The FCA has introduced an "antigreenwashing" rule. This rule has applied to all FCA-regulated firms since 31 May 2024. It establishes a new direct link between sustainability claims and the existing general rules and principles in the FCA Handbook requiring clear, fair, and not misleading communications. The antigreenwashing rule applies to all FCA- or Prudential Regulation Authority-authorised firms communicating with UK prospects in relation to any product or service. Accordingly, the antigreenwashing rule applies indirectly to the claims of non-UK products managed by non-UK firms that rely on authorised UK distributors.

Since 31 July 2024, certain voluntary ESG-related labels have been available for FCA-authorised firms to use in relation to UK funds, subject to compliance with relevant rules which include naming and marketing and disclosure requirements (see further below).

Since 2 December 2024, naming and marketing and disclosure rules have been in force for FCA-authorised managers of unlabelled products (see further below).

In its 2021 Policy Statement on enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers (PS21/24), the FCA introduced rules and guidance concerning the approach taken by FCA-authorised firms to ESG matters, particularly with respect to disclosure of climate-related financial information. These ESG-related disclosure rules are contained in the ESG Sourcebook, which is part of the FCA's Handbook of Rules and Guidance and are currently applicable to FCA-authorised firms with at least £5 billion of assets under management. Specifically, an in-scope firm must prepare and publish a Financial Stability Board's TCFD "entity report" (i.e., a public report that outlines an asset manager's approach to climate-related matters when managing or administering investments on behalf of clients) and "public TCFD product reports" (i.e., reports containing disclosures regarding key metrics, such as GHG emissions, in relation to the funds and separate accounts managed by the asset manager) on an annual basis. FCA guidance also encourages UK asset managers to assess the extent that they have considered the United Kingdom's commitment to a net-zero economy in developing and disclosing their transition plan as part of their entity report or otherwise explain why they have not done this.

FCA-authorised firms must also comply with the FCA's rules and guiding principles, including the overarching Principles for Business (Principles), which set out, as enforceable rules, high-level standards of market conduct. The Principles include, for example, requirements that firms: (a) must conduct business with integrity; (b) must communicate information to their clients in a manner that is clear, fair, and not misleading; and (c) must ensure that a communication or a financial promotion is fair, clear, and not misleading. The Principles also include a "Consumer Duty" requiring firms to act to deliver good outcomes for consumers, including supporting consumer understanding by communicating information to them in a way that is clear, fair, and not misleading. The FCA considers its antigreenwashing rule to be consistent with the Consumer Duty, but it is of broader scope as it is not limited to consumer-related business.

Managers of FCA-authorised funds also need to consider the FCA's guiding principles on design, delivery, and disclosure of ESG and sustainable investment funds set forth in the FCA's "Dear Chair" letter, dated 19 July 2021 (Guiding Principles), which

we referred to in our client alert, ESG Regulatory Developments In The UK, Japan, and Hong Kong. The Guiding Principles are statements of the FCA's expectations for UK FCA-authorised funds that make ESG-related claims, and they do not apply to funds that merely integrate ESG considerations into their mainstream investment processes. Rather than introduce new requirements, the Guiding Principles were based on then-existing rules, and their primary aim is to prevent greenwashing in FCA-authorised funds' disclosures. While the Guiding Principles are relevant for the design of new products, they apply equally to existing ones and should be considered by firms in their next periodic review of a relevant product that makes ESG or sustainability claims.

Other UK rules and guidance of more general application (i.e., not specifically targeted at financial services firms such as asset managers) may also be relevant to ESG-related claims made to UK persons. These include, for example, the rules on misleading statements and impressions under Sections 89 and 90 of the Financial Services Act 2012, which may impose criminal liability in certain egregious cases. Other rules and codes apply in relation to businesses—including asset managers, funds, and fund distributors—that are selling to UK consumers (i.e., natural persons). This includes the rules found in the CMA's guidance on making environmental claims on goods and services published on 20 September 2021, often referred to as the "Green Claims Code." The CMA also shares certain consumer protection functions with the ASA, which administers the requirements for advertising in the UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing and the UK Code of Broadcast Advertising (the CAP and BCAP Codes). The ASA has issued guidance designed to help firms interpret the Codes regarding environment-related advertising issues.

WHAT LABELS OR CATEGORIES, IF ANY, ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

The FCA finalised its SDR in a November 2023 Policy Statement on "Sustainability Disclosure Requirements and investment labels" (PS23/16) (Policy Statement). The new regime is (at least initially) applying only to (broadly) FCA-authorised asset managers. It is now largely in force and is also expected to expand and evolve over time. The SDR introduces certain core elements: (a) sustainable investment labels; (b) qualifying criteria that firms must meet to use a label; (c) product- and entity-level disclosures; and (d) naming and marketing rules.

Under SDR, the FCA has introduced an optional labelling regime for FCA-authorised firms to use in relation to UK funds. The labelling regime, and disclosure and naming and marketing requirements applicable where a label is used, took effect on 31 July 2024. All products using a label must have a sustainability objective to improve or pursue positive environmental or social outcomes as part of their investment objectives. Firms must identify and disclose whether pursuing the positive sustainability outcomes may result in material negative outcomes.

The available labels are:

- *Sustainable Focus*: The sustainability objective must be consistent with an aim to invest in environmentally or socially sustainable assets determined using a robust evidence-based standard that is an absolute measure of sustainability.
- *Sustainable Improvers*: The sustainability objective must be consistent with an aim to invest in assets that have the potential to improve environmental or social sustainability over time—determined by their potential to meet a robust,

evidence-based standard that is an absolute measure of environmental or social sustainability.

- *Sustainable Impact*: The sustainability objective must be consistent with an aim to achieve a predefined positive measurable impact in relation to an environmental or social outcome, measured using a robust method. These products must align with a clearly specified theory of change.
- *Sustainability Mixed Goals*: Products with a sustainability objective to invest in accordance with two or more of the sustainability objectives of the other three labels. Firms must identify (and disclose) the proportion of assets invested in accordance with any combination of the other labels.

Subject to limited exceptions, at least 70% of a labelled product's assets must be invested in accordance with its sustainability objective. However, in the case of the Sustainability Mixed Goals label, products must invest at least 70% of their assets in accordance with a combination of the sustainability objectives from two or more of the other labels.

Since 2 December 2024, UK distributors to UK retail clients of overseas funds that: (a) have been recognised for UK retail distribution (including recognised ETFs); and (b) include certain sustainability-related terms, are required to prepare and display a notice that, “This product is based overseas and is not subject to UK sustainable investment labelling and disclosure requirements.”

The above requirements, other than the overseas product notice rule, do not apply to non-UK funds that are sold to UK investors. Non-UK funds are specifically not able to use UK labels under the UK labelling regime (although, as noted above, the antigreenwashing rule applies indirectly to overseas products where a UK distributor is used). The FCA has disclosed its intention to work with the UK government to consider options as to how non-UK funds should be regulated in this regard. We expect a UK government consultation on the possible extension of SDR, including labels, to funds admitted to the United Kingdom's overseas funds regime. An announced timeline for this consultation in the third quarter of 2024 has been missed, and there is as yet no announcement as to an alternative likely publication date.

WHAT DISCLOSURE AND REPORTING REQUIREMENTS ARE CURRENTLY REQUIRED OR HAVE BEEN PROPOSED FOR FUNDS AND ASSET MANAGERS?

As noted previously, certain current disclosure requirements are set forth in the ESG Sourcebook, which requires annual disclosures by in-scope asset managers of climate-related financial information consistent with the TCFD Recommendations and Recommended Disclosures at both an entity level (i.e., the TCFD entity report) and product level (i.e., the public TCFD product reports).

In addition, the Policy Statement provides detail on product- and entity-level disclosures for in-scope asset managers as part of the SDR. The disclosure requirements include simplified consumer-facing disclosures that are intended to help consumers understand the key sustainability-related features of a product. In addition, certain mandatory detailed disclosures include: (a) disclosures in offering documents (e.g., fund prospectuses) regarding a product's sustainability-related features; (b) for products that have a sustainability label, ongoing sustainability-related performance information disclosure in sustainability product reports; and (c) sustainability entity reports covering how firms are managing sustainability-related risks and opportunities (whether a firm uses a sustainability label or not).

Since 2 December 2024, in-scope firms undertaking in-scope business for retail clients and using certain ESG-related terms in an unlabelled fund's name or

financial promotions, have been required to comply with SDR disclosure requirements.

For labelled funds, SDR disclosure requirements apply or applied from when the relevant fund is, or was, first labelled.

In-scope managers of in-scope funds are required to publish product-level disclosures 12 months after either a label is first used, or, for an unlabelled product, an ESG-related term is first used in the manner described above, and annually thereafter.

ARE THERE ANY CURRENT OR PROPOSED REQUIREMENTS OUTSIDE OF DISCLOSURE AND REPORTING (E.G., PRODUCT-LEVEL INVESTMENT REQUIREMENTS)?

As part of the SDR, the FCA is, as noted, imposing new naming and marketing requirements on FCA-regulated firms that provide in-scope products to retail investors and use sustainability-related words in product names or marketing. Since 2 December 2024, in-scope products that are not labelled products have not been able to use the terms “sustainable,” “sustainability,” or “impact,” or any variation of those terms, in their names.

Other sustainability-related words (e.g., “responsible” or “green”) may only be used in the nonlabelled product's name if the product has sustainability characteristics that the product's name accurately reflects. The new rules also prohibit “Sustainability Focus,” “Sustainability Improvers,” and “Sustainability Mixed Goals” labelled products from using the term “impact” in product names, and this rule will apply to labelled products from the date on which the label is first used. A nonlabelled product will only be able to use a sustainability-related term in its name or marketing material if the relevant firm: (a) complies with the “antigreenwashing” rule referred to previously; (b) as noted above, publishes the same disclosures required in relation to a labelled product; and (c) prominently publishes a statement to clarify that the product does not have a label and the reasons why.

As part of the SDR, where in-scope products are offered to retail investors and have an investment label, FCA authorised distributors must display prominently, and keep up to date, the correct label on a relevant digital medium (e.g., product webpage) and provide access to the accompanying retail investor-facing disclosures. In relation to nonlabelled products that use sustainability-related terms in their names or marketing, distributors will be required to provide retail investors with access to the applicable retail investor-facing disclosure.

DO THE EXISTING OR PROPOSED RULES APPLY EQUALLY TO OFFSHORE FUNDS BEING MARKETED IN THE REGION, OR DO THEY APPLY SOLELY TO LOCALLY DOMICILED PRODUCTS?

In general, the rules discussed herein, including proposed rules under SDR, do not (or will not) apply to offshore funds being marketed in the United Kingdom. However, as discussed above, the anti-greenwashing rule applies, and overseas product notice rules will apply, indirectly in relation to offshore funds being marketed in the United Kingdom where a UK distributor is used. As noted previously, we expect a UK government consultation on the possible extension of SDR, including labels, to funds admitted to the United Kingdom's overseas funds regime. The timing of this is currently uncertain.

ARE ANY RULES IN PLACE FOR INVESTORS (VERSUS FUNDS AND FUND MANAGERS)?

There are specialist rules in place for, for example, pension schemes, which aim to create greater transparency and oversight within the pension sector. Trustees of certain pension funds are required to report and publish climate-related risks. The impact on funds and fund managers is that if their underlying

investors include an affected pension scheme, the relevant pension scheme investor may insist on a fund or fund manager making pertinent disclosures to the pension scheme to allow the scheme to assess climate-related risks. Also, the FCA intends to expand the scope of the SDR regime to certain FCA-regulated asset owners and other investment products (e.g., pensions).

ARE THERE OTHER ACTIONS OR INITIATIVES THAT COULD IMPACT FUNDS AND MANAGERS?

The FCA has, in a consultation exercise, proposed to extend the SDR to all forms of portfolio management services provided by FCA-authorised firms, including model portfolios, customised portfolios, and bespoke services. The FCA is expected to publish a policy statement and further implementation in the second quarter of 2025. The proposals to extend the SDR regime are primarily aimed at wealth management services for individuals and model portfolios for retail investors. The FCA has proposed that such firms offering portfolio management services to professional clients would be able to opt in to the labelling regime but would not be subject to the naming and marketing requirements and associated disclosures. The proposed scope does not include services where the clients are based overseas or where the client is a fund or its manager (i.e., where the portfolio manager acts as a delegate).

WHAT IS ON THE HORIZON?

The FCA has indicated that the disclosure requirements set out in the Policy Statement are only a starting point and that it intends to develop rules and guidance over time, such as by adding more specificity to both product- and entity-level disclosure requirements under the SDR as the ISSB develops its sustainability disclosure standards.

In addition to developing proposals to expand the scope of investment products captured under the SDR, the FCA has expressed its intention to expand the regime in the following areas:

- *Overseas Products*: The UK government and the FCA are continuing to consider options for how to treat offshore products.
- *Financial Advisers*: The FCA is exploring rules for financial advisers regarding advisers' consideration of sustainability factors when providing investment advice and understanding investors' preferences regarding sustainability to ensure product suitability.
- *Listed Issuers*: The FCA intends to consult on adapting its TCFD-aligned disclosure rules for listed issuers to reference the ISSB's standards, once finalised and made available for use in the United Kingdom.
- *Disclosure of Transition Plans*: The FCA intends to build on its TCFD-aligned disclosure rules, which reference the TCFD's guidance on transition plans.
- *Taxonomy-Related Disclosure Requirements*: The FCA will consider how to update its product-level disclosure requirements to include relevant disclosures once the UK Green Taxonomy is developed.

CONCLUSION

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As reflected above, the global ESG landscape is widely varied, with jurisdictions addressing ESG matters in their own ways with their own goals. This can cause challenges for asset managers who seek to deploy asset management services and investment funds at scale and consistently around the globe. It is not possible at this point to develop a single "highest common factor" approach applicable to all jurisdictions, as some are imposing labeling requirements, while others are focusing on disclosure, and only some regions have prescriptive process requirements with respect to risk identification and product integrity. As a result, the global ESG landscape will remain an area requiring significant compliance resources for the foreseeable future. Indeed, some asset managers may consider creating bespoke products to address the regulatory needs of individual jurisdictions rather than trying to comply with multiple regulatory regimes.

The ESG landscape is also evolving and evolving quickly. The pace of change alone will create new challenges for asset managers in relation to their existing products, as well as their global products, especially for products that have a global distribution.

That said, there are some common themes that suggest some practical approaches asset managers can take to address these differing and evolving requirements. Specifically, clear and accurate disclosure to investors remains of paramount importance in all jurisdictions. As a result, asset managers operating in this fragmented global environment should take extra care to ensure that their ESG strategies are clearly described and that their portfolio managers are following any ESG processes that are communicated to investors. In addition, asset managers should ensure that their marketing materials do not overstate their ESG features. Not only could such overstatements create regulatory concerns in and of themselves, but such statements may also create different regulatory obligations in some jurisdictions with respect to labeling, disclosures, or testing.

ENDNOTES

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[1] Please note that individual countries within the European Union may impose additional ESG-related requirements or restrictions. While we touch on some particular considerations for Ireland and Luxembourg, asset managers should consider whether the particular EU countries that they perform services in have introduced rules or guidelines that exceed those that apply to all EU members.

[2] Scope 1 emissions are “direct” emissions, which a company causes by operating the things that it owns or controls. Such emissions can result from operating machinery to make products, driving vehicles, cooling buildings, or powering computers and other equipment. Scope 2 emissions are “indirect” emissions created by the production of the energy bought by a company, such as the fossil fuels generated by a company using purchased electricity. Scope 3 emissions are anticipated to be the most common form of emissions for asset managers, as they are “indirect” emissions from activities upstream or downstream in a company's value chain (e.g., emissions from investments).

[3] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

[4] Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of do no significant harm, specifying the content, methodologies, and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in precontractual documents, on websites, and in periodic reports.

[5] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

[6] Information about the process is available at https://www.cssf.lu/en/2021/02/communication-on-the-sfdr-fast-track-procedure-and-the-deadline-of-10-march-2021/, and (second round) https://www.cssf.lu/en/2022/09/communication-to-the-investment-fund-industry-on-sfdr-rts-confirmation-letter/.

GLOSSARY

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Acronym	Description
AASB	Australian Accounting Standards Board
AIFM	Alternative Investment Fund Manager
APRA	Australian Prudential Regulation Authority
ASA	UK Advertising Standards Authority
ASFI	Australian Sustainable Finance Institute
ASIC	Australian Securities and Investments Commission
AUASB	Auditing and Assurance Standards Board
CIS Code	Code on Collective Investment Schemes
CMA	UK Competition and Markets Authority
CMS	Capital Markets Services
CoC	Code of Conduct for Providers of ESG Rating and Data Products
CSA	Common Supervisory Action
CSRD	Corporate Sustainability Reporting Directive
CSSF	Commission de Surveillance du Secteur Financier (the Luxembourg financial regulator)
ESG	Environmental, Social, and Governance
ESMA	European Securities and Markets Authority
ETF	Exchange-traded Fund
FCA	UK Financial Conduct Authority
FMP	Financial Market Participant
FSA	Financial Services Agency of Japan
FSC	Financial Services Council
FY	Financial Year
GHG	Greenhouse Gas
HKEX	Stock Exchange of Hong Kong Limited

HKFRS	Hong Kong Financial Reporting Standards
HKICPA	Hong Kong Institute of Certified Public Accountants
HKMA	Hong Kong Monetary Authority
IFRS	International Financial Reporting Standards
ISSB	International Sustainability Standards Board
MAS	Monetary Authority of Singapore
MiFID	Markets in Financial Instruments Directive
NZAM	Net Zero Asset Managers
PAE	Publicly Accountable Entity
PAI	Principal Adverse Impact
RSE	Registerable Superannuation Entity
SDR	Sustainability Disclosure Requirements
SEC	Securities and Exchange Commission
SFA	Securities and Futures Act 2001
SFC	Hong Kong Securities and Futures Commission
SFDR	Sustainable Finance Disclosure Regulation
SME	Small- and Medium-sized Enterprises
TCFD	Task Force on Climate-related Financial Disclosures
TSC	Technical Screening Criteria
UCITS	Undertakings for the Collective Investment in Transferable Securities
VCoC	Voluntary Code of Conduct

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