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25<sup>th</sup> January 2023

Dear SDR and Labels Team,

## **ShareAction submission to CP22/20: Sustainability Disclosure Requirements and Investment Labels**

I am writing to respond to the CP22/20 on SDR and Investment Labels on behalf of ShareAction, a registered charity established to promote transparency and responsible investment practices throughout the financial services sector. We are a member organisation and count amongst our members well-known NGOs and charitable foundations, as well as over 26,000 individual supporters. Among other activities, we work with the financial services sector, including asset management firms, to promote integration of sustainability factors in investment decisions, long-term stewardship of assets and the consideration of the views of clients, beneficiaries and pension scheme members. ShareAction has been a member of the Disclosures and Labels Advisory Group (DLAG) since autumn 2021. We would like to thank the FCA for the constructive and collaborative way in which it has brought forward these proposals as well as colleagues on the group.

## **Summary**

ShareAction strongly supports the FCA's proposals on Sustainability Disclosure Requirements and investment labels. Despite net-outflows for the first time in a decade, primarily due to political turbulence and the war in Ukraine, global interest in sustainable finance remains strong.<sup>1</sup> Assets in global sustainable funds stood at USD \$2.24 trillion at the end of the third quarter 2022 with an estimated 148 new sustainable funds hitting the shelves, demonstrating strong institutional and retail interest in sustainable products.<sup>2</sup> This continued interest is also reflected in the UK retail investment market, where assets under management in sustainable funds grew to £62.5bn in 2022 showing that,

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<sup>1</sup> Reuters, ESG funds set for first annual outflows in a decade after bruising year, <https://www.reuters.com/business/sustainable-business/esg-funds-set-first-annual-outflows-decade-after-bruising-year-2022-12-19/>

<sup>2</sup> Morningstar, Global Sustainable Fund Flows: Q3 2022 in Review [https://assets.contentstack.io/v3/assets/blt4eb669caa7dc65b2/blt77ddb1651bd21f15/635c12de55e3125597604f2e/Global\\_ESG\\_Q3\\_2022\\_Flow\\_Report\\_12pm\\_27\\_Oct\\_2022\\_FRES\\_EDIT.pdf](https://assets.contentstack.io/v3/assets/blt4eb669caa7dc65b2/blt77ddb1651bd21f15/635c12de55e3125597604f2e/Global_ESG_Q3_2022_Flow_Report_12pm_27_Oct_2022_FRES_EDIT.pdf)

despite a volatile year for retail fund sales, consumers remain interested in their investments “doing good” as well as making a return.<sup>3</sup>

We note that, in contrast to the Sustainable Finance Disclosure Regulation (SFDR) in the EU and proposals by the Securities and Exchange Commission (SEC) in the US, the FCA’s starting point is different: The UK will introduce a consumer-focussed labelling regime. This means the regime will – at first – only apply to retail funds, rather than both retail and institutional, as in the EU. As a result, we expect to see final proposals which put consumer trust and tackling greenwashing at the heart of this new regime and, on the whole, we are happy that this is the case. We do, however, make a range of recommendations with these priorities in mind. These include:

### *Sustainability Outcomes*

Stewardship is crucial to meeting the sustainability objectives in all three of the sustainable investment labels. Therefore, **we recommend firms wishing to use a sustainability label should also disclose at entity level whether they are a signatory of the Stewardship Code or to explain why this is not the case.** We note that this is already the case for firms managing investments for professional clients under COBS 2.2.3<sup>4</sup>.

The current proposals may generate confusion amongst retail investors where a firm has adopted a blended strategy due to the sustainability labels being mutually exclusive. This may result in misleading claims where a fund adopts one label over another or may deter some firms from adopting any label to avoid punitive measures. **We recommend the FCA provides further guidance for firms wishing to adopt a label for blended funds or remove the principle of exclusiveness entirely.**

### *The Sustainable Focus Label*

We are concerned that the 70% threshold for sustainable assets in Sustainable Focus funds is too low and may lead to claims of greenwashing, undermining consumer trust in the labelling regime. Given the potential for up to 30% of assets in Sustainable Focus funds to be “non-sustainable” we are concerned that this could undermine consumer confidence in the labelling regime. **We recommend the FCA increases the threshold for assets considered to be sustainable in the Sustainable Focus label to at least 85%.**

We are also concerned that some assets, for example technology or service sector assets which are inherently “sustainability agnostic” due to a lack of emissions, may represent a significant proportion of Sustainable Focus funds focussed on e.g. tackling climate change. We consider there may be other assets that do not actively try to advance sustainability across all ESG themes, but are selected because they because they do not actively pose a sustainability risk in the first place. **We recommend the FCA**

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<sup>3</sup> EIRIS Foundation, Investment in Green and Ethical Funds holds steady despite turbulent year for retail investment sales, <https://eirisfoundation.org/greenandethicalfunds2022/>

<sup>4</sup> COBS 2.2.3 Disclosure of commitment to the Financial Reporting Council’s Stewardship Code, <https://www.handbook.fca.org.uk/handbook/COBS/2/2.html>

**provides further guidance on the extent to which it is appropriate for such assets to represent the bulk of Sustainable Focus funds.**

### *The Sustainable Improvers Label*

ShareAction research continues to show poor voting performance by asset managers on ESG issues.<sup>5</sup> Given the importance of investor stewardship to all three of the sustainable investment labels, **we recommend the FCA publishes best practice guidance with explicit reference to voting expectations for firms wishing to use the Sustainable Improvers label.** ShareAction would be happy to support the FCA to develop this guidance.

In addition, **we recommend the FCA publishes best practice guidance which explicitly covers expectations around corporate engagement for firms wishing to use the Sustainable Improvers label.** ShareAction would be happy to support the FCA to develop this guidance.

### *The Sustainable Impact Label*

We note various discrepancies between the proposed requirements under the Sustainable Impact Label and leading practice in the impact investment market, which we are concerned may lead to unintended consequences for impact investors. **We recommend the FCA provides a more balanced view around enterprise and investor contributions towards impact as well as the potential for both private and public market assets to qualify as impact investments.** Additionally, **we recommend the FCA replaces the requirement for additionality with a description of investor contribution which is more widely applied and more easily understood.**

### *Stewardship in fixed income*

ShareAction research has shown obstacles to institutional bondholders from conducting collaborative stewardship, including concerns around anti-trust laws and the Market Abuse Regulation.<sup>6</sup> This can potentially have a significantly negative impact on firms' ability to meet a fund's stated sustainability objectives. **We recommend the FCA publishes guidance for bondholders wishing to engage in collaborative engagement.** Additionally, given the inherent nature of bond syndication when investors are simultaneously engaging with the company on aspects of financial risk prior to deciding whether to participate in the bond deal **we recommend the FCA introduce a safe harbour for collaborative engagement amongst bondholders alongside guidance.**

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<sup>5</sup> ShareAction, 2022 Voting Expectations of Asset Managers,  
<https://api.shareaction.org/resources/reports/Voting-expectations-2022.pdf>

<sup>6</sup> ShareAction, Sleeping Giants: Are bond investors ready to act on climate change?  
[https://api.shareaction.org/resources/reports/Sleeping-Giants\\_BondInvestors\\_2019.pdf](https://api.shareaction.org/resources/reports/Sleeping-Giants_BondInvestors_2019.pdf)

## *The Green Taxonomy*

We were extremely disappointed with the Government's recent announcement of a delay to the publication of the UK's Green Taxonomy.<sup>7</sup> Despite the delay, **we recommend the FCA continue to consider how the labelling rules might be updated in future to include disclosures against the Green Taxonomy.** The FCA might also consider the role any future Transition Taxonomy might play in helping investors and consumers to differentiate genuinely sustainable investments from those which are not.

## *Naming and marketing rules*

We welcome new fund-level disclosures around unexpected investments whereby firms will provide a summary of the types of holdings that they would reasonably expect consumers to find inconsistent with the sustainability objective. We further support the FCA's recommendation that where firms do not know this information they should conduct consumer testing to better understand the types of holdings their consumers would or would not expect the product to invest in. To gauge industry progress on this, **we recommend the FCA reviews the extent to which firms that have made a disclosure of unexpected investments have actively conducted consumer testing and for the FCA to clarify how it intends to provide oversight of such disclosures.**

The consultation paper outlines the purpose of the anti-greenwashing rule is that the marketing of financial products in the UK is clear, fair and not misleading. Clarifying that this rule applies across all ESG themes would better achieve this. Therefore **we recommend the FCA replace the anti-greenwashing rule with a general 'anti-sustainability washing' rule.**

The consultation paper rightly prioritises better outcomes for consumers, in-line with the new Consumer Duty and the FCA's objective to protect consumers. We consider automatically-enrolled pension scheme savers to be amongst such consumers and **we recommend that the anti-greenwashing rule be applied to firms offering auto-enrolment products.**

We welcome new proposals around naming and marketing rules as well as the need for "prohibited terms" to ensure marketing is accurate and does not mislead consumers, however have some concerns around how the market will develop over time. **We recommend the FCA conducts a review on the effectiveness of the new product naming rule and prohibited terms 12 months after they come into force.**

## *Application of the regime to pension schemes*

Finally, in-line with the broad objectives of these proposals to tackle greenwashing and to avoid investments into products which may be marketed inaccurately, **we recommend the FCA work with**

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<sup>7</sup> ESG Clarity, 'Disappointment' as UK delays green taxonomy, 15 December 2022  
<https://esgclarity.com/disappointment-as-uk-delays-green-taxonomy/>

**DWP to explore how the sustainable investment labelling regime could be extended to apply to pension products.**

## Scope and timelines

*Q1: Do you agree with the proposed scope of firms, products and distributors under our regime? If not, what alternative scope would you prefer, and why?*

We agree with the scope of the proposals. Assuming a successful roll-out of the labelling regime, however, we would expect institutional products to be brought within scope in future.

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

We agree with the proposed implementation timeline. For a successful roll-out of the regime it is vital that firms are given enough time to prepare. We strongly welcome the general anti-greenwashing requirement and its immediate implementation following the publication of the Policy Statement in June 2023 and consider this as a helpful measure to mitigate against potential harms until the full introduction of fund rules in 2024 and entity-level disclosures from 2025. While we accept the thrust of the FCA's proposals are geared towards the retail investment market, we see no reason why the anti-greenwashing requirement shouldn't also apply to institutional funds used for automatic-enrolment immediately when it enters into force in June.

*Q4: Do you agree with our characterisation of what constitutes a sustainable investment, and our description of the channels by which positive sustainability outcomes may be pursued? If not, what alternatives do you suggest and why.*

We are pleased to see the removal of the 'Responsible' category for which the criteria were ESG integration and a stewardship policy. Retail investors wishing to do some good with their savings may reasonably assume that such funds invest in companies actively trying to advance sustainability, despite the original lacklustre classification criteria. ESG integration and stewardship are increasingly considered standard investment practice, so removal of the label is welcome and helps to further tackle potential greenwashing by firms.

We broadly agree with the description of the channels by which positive sustainability outcomes may be pursued. We welcome the fact that investor stewardship is the primary or secondary channel for sustainable outcomes in each of the three fund classifications. Clearly, this is particularly important for the sustainable improvers classification, although we welcome the addition of a secondary market-led channel of influencing asset prices and thereby reducing the relative cost of capital of sustainable economic activities. Given stewardship is crucial to all three of the classifications, **we recommend firms wishing to receive a sustainability label should also be under a duty to disclose at entity level**

**whether they are a signatory of the Stewardship Code or to explain why this is not the case.** We note this is already the case for firms managing investments for professional clients under COBS 2.2.3.<sup>8</sup>

*Q5: Do you agree with the proposed approach to the labelling and classification of sustainable investment products, in particular the emphasis on intentionality? If not, what alternatives do you suggest and why?*

We strongly support the approach to classifying products based on intentionality i.e. an investor's deliberate intention to achieve the product's stated objective, against which sustainability performance can be measured alongside financial performance. Greenwashing has evolved over the past few years from bad practice to a genuine legal and reputational risk.<sup>9</sup> The acceleration of greenwash accusations has risen in parallel with a new generation of investors that increasingly attach more importance to sustainability. While asset managers should strive for high levels of systematic ESG integration across all their portfolios (which, in itself, doesn't necessarily guarantee a fund will invest or engage more responsibly or sustainably), it is also important that clients are able to choose products that reflect their preferences. This will only be only possible where a firm is clear on its intention to meet a product's stated objective. Ensuring the SDR regime is adequately set up to prevent greenwashing claims will be key to its success.

ShareAction analysis of the world's 75 biggest asset managers, found that while 89% of firms offered funds labelled as "sustainable" or "ESG" there was no correlation between asset managers' overall responsible investment performance and the breadth of their ESG product suite. As more retail investors are opting to align their investments with their values, it is important that managers offer an array of products that enable their clients to channel their money into sustainable businesses that are genuinely "doing good". The introduction of sustainably labelled products through the SDR regime with a clear sustainability objective and emphasis on intentionality will help to raise standards of genuinely sustainable investment, boost consumer confidence and mitigate against the legal risks associated with greenwashing.

One aspect of the labelling regime which remains unclear is the approach that firms adopting blended strategies should take. Blended funds are a legitimate and wide-spread approach to achieving sustainability outcomes, but the current proposals are likely to generate more confusion amongst retail investors due to the labels being mutually exclusive. **We recommend the FCA provides further guidance for firms wishing to adopt a label for a blended fund or remove the principle of exclusiveness entirely.**

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<sup>8</sup> COBS 2.2.3 Disclosure of commitment to the Financial Reporting Council's Stewardship Code, <https://www.handbook.fca.org.uk/handbook/COBS/2/2.html>

<sup>9</sup> Bloomberg, *Deutsche Bank, DWS Raided Over Allegations of Greenwashing*, 31 May 2022, <https://www.bloomberg.com/news/articles/2022-05-31/deutsche-bank-s-dws-unit-raided-amid-allegations-of-greenwashing>



## Improving the fund labels

*Question 6: Do you agree with the proposed distinguishing features, and likely product profiles and strategies, for each category? If not, what alternatives do you suggest and why? In particular, we welcome your views on:*

- a) Sustainable Focus: whether at least 70% of a 'sustainable focus' product's assets must meet a credible standard of environmental and/or social sustainability, or align with a specified environmental and/or social sustainability theme?*
- b) Sustainable Improvers: the extent to which investor stewardship should be a key feature; and whether you consider the distinction between Sustainable Improvers and Sustainable Impact to be sufficiently clear?*
- c) Sustainable Impact: whether 'impact' is the right term for this category or whether should we consider others such as 'solutions'; and the extent to which financial additionality should be a key feature?*

*Question 8: Do you agree with our proposed qualifying criteria? If not, what alternatives do you suggest and why? In your response, please consider:*

- a) whether the criteria strike the right balance between principles and prescription*
- b) the different components to the criteria (including the implementing guidance in Appendix 2)*
- c) whether they sufficiently delineate the different label categories, and;*
- d) whether terms such as 'assets' are understood in this context?*

*Question 9: Do you agree with the category-specific criteria for:*

- a) The 'Sustainable focus' category, including the 70% threshold?*
- b) The 'Sustainable improvers' category? Is the role of the firm in promoting positive change appropriately reflected in the criteria?*
- c) The 'Sustainable impact' category, including expectations around the measurement of the product's environmental or social impact?*

## Sustainable Focus

We broadly agree with the likely product profiles and strategies for the sustainable focus classification. Such products are likely either to be active and to screen out investments which are environmentally or socially unsustainable or to track benchmarks which reflect the ESG standards specified in the fund objective. However, given that this category of products is likely to appeal to consumers seeking a 'highly screened portfolio that invests predominantly in assets that... are demonstrably aligned with a sustainability related theme and avoids investments in assets that they do not associate with sustainability' we believe that the 70% threshold is far too low. Our primary concern is that many consumers may be shocked to find up to 30% of their capital – in a product specifically designed to invest in environmentally and socially sustainable assets in assets which are actively having a negative impact on society or the environment. We note that today 'most well-established sustainable funds allow a 3, 5 or 10% (de minimis) tolerance – as a reflection of the realities of investing... some funds

[under the new sustainable focus classification] could be browner than the economy weighted FTSE100.<sup>10</sup> Where firms adopt such an approach there is clearly a risk of further claims of greenwash and more broadly a danger the consumer trust in the regime will completely undermined. **We recommend the FCA increases the threshold for assets considered to be sustainable in the Sustainable Focus label to at least 85%.**

One equally important concern is how assets within the “70% portion” of the fund are defined as sustainable. We see a clear risk that Sustainable Focus funds are created where the largest holdings are investment in technology or service sector companies simply due to a lack of emissions (or other sustainability-relevant attributes) from such companies. Consumers invested into such funds would reasonably assume their investments are actively trying to advance sustainability by aligning with a specified sustainability theme and through continuous improvements in the sustainability performance of the assets through stewardship (as outlined in the category description and rationale at 4.29) and judicious capital allocation. Rather, consumers’ capital may be invested into companies that do nothing to advance sustainability. These assets are inherently sustainability-agnostic and such investments would be aimed at “avoiding the problem” rather than “addressing the problem”. Targets for sustainable funds should either be agents for sustainable change (companies who are taking steps to improve the sustainability of their footprint or companies providing the solutions to enable such improvement) or are sustainability-leading (companies who are not part of the "improvement" but who have a material sustainability footprint which is ahead of the benchmark and peers). This, particularly when coupled with the issues around the 30% portion of the fund that we have already commented on, could significantly undermine the classification regime and increase, not decrease, greenwashing claims. **We recommend the FCA provides further guidance e on the extent to which it is appropriate for “sustainability agnostic” assets to represent the bulk of Sustainable Focus funds.**

## Sustainable Improvers

We largely agree that products in the Sustainable Improvers category will likely aim to invest in assets with the potential for measurable improvements in their sustainability profiles primarily through the use of investor stewardship. However, for companies who are already sustainable-ambitious, little stewardship should be necessary to deliver measurable improvement. In such cases positive results may be achieved through an optimal combination of capital allocation and stewardship to catalyse measurable improvements. Over recent years credibility on stewardship – through corporate engagement and voting – has become a key differentiator amongst sustainable investors. Within the range of investor tools available, voting is a vital way in which asset managers can influence companies on social and environmental concerns. Despite this, recent ShareAction research found that asset managers are not harnessing the full potential of voting.<sup>11</sup> In fact, managers often vote against ESG-related shareholder proposals that aim to have a positive influence on companies. It is unlikely that

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<sup>10</sup> Fund Eco Market, SDR: What and Why? <https://www.fundecomarket.co.uk/help/sdr-what-and-why>

<sup>11</sup> ShareAction, 2022 Voting Expectations of Asset Managers, <https://api.shareaction.org/resources/reports/Voting-expectations-2022.pdf>



stock selection for Sustainable Improvers funds will vary wildly from current “ESG” funds. Given the breadth of potential assets in such funds, **we therefore recommend the FCA publishes guidance with explicit reference to voting expectations for firms wishing to use the Sustainable Improvers label.** Last year ShareAction published a set of expectations on asset managers relating to voting at AGMs that we consider best practice and could form a basis for regulatory guidance. These included:

1. Setting public and ambitious ESG-related expectations for investee companies with explicit voting consequences;
2. Promoting voting standards within investor ESG-related coalitions;
3. Being transparent to all stakeholders on all dimensions of voting

The way in which investors conduct corporate engagement activities is equally important and ShareAction recently published best practice guidance in this area. While it is right that firms seeking the sustainability labels are given flexibility to pursue individual investment strategies and stewardship approaches, consumers should expect some consistency across the board. **We recommend the FCA publishes guidance which explicitly covers expectations around corporate engagement for firms wishing to use the Sustainable Improvers label.** ShareAction recently published a corporate engagement template which could form the basis for such guidance. This included:

1. Defining engagement: Corporate engagements should be purposeful, targeted communications with companies on specific matters of concern with the goal of encouraging change at an individual issuer and/or the goal of addressing a sustainability theme as outlined in the fund objective.
2. Escalation plans: Escalation plans should include the activities that the firm will undertake if engagement milestones are not met. These should be specific, measurable, achievable, realistic, and timebound and include timelines for reviewing engagement progress. Escalation steps might include:
  - AGM questions and/or voting against management at AGMs;
  - Letters to, and meetings with, boards of directors;
  - Public statements including pre-declaring voting intentions, filing shareholder resolutions, and open letters, and;
  - Divestment or refusal to purchase new debt in applicable funds.
3. Monitoring engagements: Firms should outline status categories for engagements. For example, “ongoing”, “escalated”, and “closed”. Investors may also disclose whether engagements were “with success” or “without success”.
4. Engagement progress: Firms should explain how they track and monitor the progress of corporate engagements.

## Stewardship in Fixed Income

Despite a broad acceptance of the benefits it brings, investor stewardship on sustainability concerns remains largely considered an activity for equity investors. Given the scope of the Sustainable Improvers label, however, we think engagement with companies should be the responsibility of debt

as well as equity holders. If corporate engagement is a key channel to secure measurable improvements in the sustainability profile of invested assets, then it makes little sense to limit engagement to equities. In fixed income, the access mechanism to the company is slightly different. Companies have accountability to their owners, the shareholders. However, companies essentially already have their equity capital, whereas companies repeatedly have to ask bond investors to provide or renew capital. Thus while the basis of access is not identical, bondholders have a comparable avenue to catalyse sustainability as equity investors. ShareAction research has found that collaborative engagement by bondholders has the potential to be incredibly powerful, though concerns about the legal consequences of such activities remains widespread.<sup>12</sup>

Institutional bondholders have highlighted varied obstacles to collaborative engagement with issuers on sustainability-related risks. In particular, our engagement with firms found that firms cite anti-competitive behaviour under anti-trust laws and market manipulation according to the EU Market Abuse Regulation as being particularly problematic. This runs contrary to Principle 10 of the Stewardship Code which calls on asset manager signatories ‘where necessary, [to] participate in collaborative engagement to influence issuers’.<sup>13</sup> Firms feeling unable or unwilling to engage in a major asset class poses significant problems for the success of the labelling regime as well as the ability of investors to co-operate to tackle climate change and other sustainability issues. We note increasing momentum elsewhere to address anti-trust rules which hinder investors’ ability to collectively tackle climate change. This includes action by the Competition and Markets Authority to relax restrictions on how businesses can collaborate to combat climate change and to clarify its approach around enforcement.<sup>14</sup>

As a result, **we recommend the FCA publishes guidance for bondholders wishing to engage in collaborative engagement.** This should include how firms set clear sustainability expectations on companies (e.g. around Net-Zero Transition Plans) as well as escalation steps where companies fail to live up to those expectations, including scaling down future commitments to subsequent financings as well as setting “red lines” e.g. around new fossil fuel extraction. By its nature, bond syndication brings investors together while they simultaneously engage with companies on aspects of financial risk prior to deciding whether to participate in the bond deal. **We therefore recommend the FCA introduce a safe harbour for collaborative engagement amongst bondholders** that explicitly covers the syndication process. This would help to ease fears around legal risks and further support the launch of the Sustainable Investment labelling regime.

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<sup>12</sup> ShareAction, *Sleeping Giants: Are bond investors ready to act on climate change?*

[https://api.shareaction.org/resources/reports/Sleeping-Giants\\_BondInvestors\\_2019.pdf](https://api.shareaction.org/resources/reports/Sleeping-Giants_BondInvestors_2019.pdf)

<sup>13</sup> FRC, *The UK Stewardship Code 2020*, [https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code\\_Dec-19-Final-Corrected.pdf](https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Dec-19-Final-Corrected.pdf)

<sup>14</sup> FT, *UK competition watchdog to ease rules on climate change action*, 24<sup>th</sup> January 2023, <https://www.ft.com/content/6513ae6f-2347-409c-9be1-eee673d9447f>

## Sustainable Impact

As currently drafted, we are concerned that the Sustainable Impact label fails to adequately take account of the realities global impact investment approaches and may not only stifle innovation amongst impact funds, but also hinder the ability of many funds currently considered ‘best in class’ from attaining the label. Again, we are concerned that this could lead to confusion amongst consumers and provide an obstacle to capital flows towards projects seeking to provide solutions to environmental and social problems. Our views echo those of the Impact Investing Institute who have identified three key design limitations of the Sustainable Impact Label:<sup>15</sup>

1. Enterprise impacts vs investor contribution: We are concerned that the Sustainable Impact label is skewed too heavily in favour of the investor’s contribution to impact at the expense of the impact of the enterprise. This is a poor reflection of the impact investment market where “impact” is typically considered to be sustainability outcomes generated by the underlying asset, which may be contributed to by an investor through increased investment or stewardship. **We recommend the FCA’s final rules present a more balanced view of the potential for investments to generate both enterprise and investor contribution.**
2. Additionality: Another area that should be revised by the FCA is the emphasis placed on investors demonstrating additional impact to that which would have ordinarily been generated by the underlying asset. This is a particularly difficult concept to apply, requiring investors to be able to demonstrate what would have happened if they had not invested and risks confusing both investors and consumers. We further note that “additionality” is not part of the GIIN definition of impact investing.<sup>16</sup> As such, **we recommend the FCA replaces the requirement around additionality with a description of investor contribution that is more widely accepted and more easily applied.**
3. Private v public markets: The emphasis on investor contribution and additionality is likely to result in a narrow universe of investible assets predominantly consisting of private assets. There is a clear risk that assets that meet the definition of an impact product will be excluded simply because they are traded on secondary markets, resulting in such assets falling into the Sustainable Focus label. **We recommend the FCA provides a more balanced view of the potential for both private and public market investments to qualify as impact investments.**

## The Green Taxonomy

In October 2021 the Government outlined its intention for SDR and investment labels to include disclosures against the UK Green Taxonomy. While we were keen to ensure that the Green Taxonomy was not the only framework against which disclosures were made – after all these are *sustainable* investment labels, not green investment labels – we welcomed this intention. We were extremely

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<sup>15</sup> Impact Investing Institute, Policy and Advocacy, <https://www.impactinvest.org.uk/work-areas/enabling-policies-and-regulations-that-support-impact-investing>

<sup>16</sup> GIIN, Core Characteristics of Impact Investing, [https://thegiin.org/assets/Core%20Characteristics\\_webfile.pdf](https://thegiin.org/assets/Core%20Characteristics_webfile.pdf)

disappointed when in December the Government announced its intention to repeal legal requirements to have technical details for the taxonomy made into regulations by 1<sup>st</sup> January 2023. We continue to see the Green Taxonomy as playing a key role in enabling both firms and consumers to better understand and compare the environmental performance of investment products.

Despite delays to the Green Taxonomy, the recent *Independent Review of Net-Zero*<sup>17</sup> recommended that a new Transition Taxonomy be set up to focus on interoperability and harmonisation with others' approaches. We note that the International Platform on Sustainable Finance, of which HM Treasury is a member, has already been set up to consider such matters and a key focus of its work in 2022 centred around commonality between taxonomies.<sup>18</sup> Should the Government accept this recommendation and implement a new Transition Taxonomy its purpose should be to highlight activities which are not yet green, for example investments in fossil fuels such as gas. A separate Transition Taxonomy can help to better distinguish investments which are truly sustainable from those which are not, helping to boost investor and consumer confidence and this should be reflected in the labelling regime. Despite the delay to the Green Taxonomy, **we recommend the FCA continue to consider how the labelling rules might be updated to include disclosures against the Green Taxonomy.** The FCA should consider how best to promote any future Transition Taxonomy as a tool for investors to understand what proportion of their portfolio is not yet green and where urgent action is required. We would also encourage the FCA to consider the extent to which social investment frameworks might also represent a suitable standard for firms to utilise, include any future UK Social Taxonomy.

## Naming and marketing rules

*Question 7: Do you agree with our proposal to only introduce labels for sustainable investment products (ie to not require a label for 'non-sustainable' investment products)? If not, what alternative do you suggest and why?*

Limiting the regime to three sustainable labels is a sensible approach that will help to avoid confusion. We note the increased importance of getting the new naming regulations right in both boosting consumer confidence and preventing greenwash, since non-sustainable products will not receive a label. We outline our views in more detail in our answer to Question 21.

*Question 13: Do you agree with our proposals for consumer-facing disclosures, including location, scope, content and frequency of disclosure and updates? If not, what alternatives do you suggest and why?*

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<sup>17</sup> MISSION ZERO: Independent Review of Net Zero, Rt Hon Chris Skidmore MP, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1128689/mission-zero-independent-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128689/mission-zero-independent-review.pdf)

<sup>18</sup> International Platform on Sustainable Finance, Annual Report 2020, [https://finance.ec.europa.eu/system/files/2022-11/221109-ipsf-annual-report\\_en.pdf](https://finance.ec.europa.eu/system/files/2022-11/221109-ipsf-annual-report_en.pdf)

Yes. In particular, we welcome the new disclosure around unexpected investments whereby firms will provide a summary of the types of holdings that firms would reasonably expect consumers to find inconsistent with the sustainability objective. This disclosure is even more significant as the proposals currently stand e.g. the low 70% threshold for sustainable assets in the Sustainable Focus label (our views are outlined in more detail in our response to Question 9). We also agree that where firms do not know this information they should conduct consumer testing to better understand the types of holdings their consumers would or would not expect the product to invest in. The consultation paper is not clear on how, if at all, the FCA expects to collect information on firms' approaches here. Following the introduction of the new regime, **we recommend the FCA reviews the extent to which firms using sustainability labels, and which have made a disclosure of unexpected investments, have actively conducted consumer testing.**

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

Yes. As we have already commented, we strongly welcome the general anti-greenwashing requirement and its immediate implementation following the publication of the Policy Statement in June 2023. This is a particularly helpful measure to mitigate against potential harms until the full introduction of the labelling regime. Morningstar consider greenwashing, and confusion around greenwashing, as a major risk to sustainable finance in 2023.<sup>19</sup> However, for the anti-greenwashing rule to be effective in protecting consumers it must go further. Firstly, as we have already noted in this response, this is a sustainable investment labelling regime, rather than a green investment labelling regime. The consultation paper outlines the purpose of the anti-greenwashing rule is that the marketing of financial products in the UK is clear, fair and not misleading. We fully agree with the thrust of this proposal, but making it clear that this applies across all sustainable investments and all ESG themes would better achieve this. Therefore **we recommend the FCA introduce a general 'anti-sustainability washing' rule.**

Secondly, we were unclear on whether the FCA's proposals for the anti-greenwashing rule would apply to managers of both retail and institutional funds. The consultation paper rightly prioritises better outcomes for consumers, in-line with the new Consumer Duty and the FCA's objective to protect consumers. We consider automatically-enrolled pension savers to be amongst such consumers and **we recommend that the anti-greenwashing rule be applied to firms offering auto-enrolment products.**

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

*Question 22: Do you agree with the proposed marketing rule? If not, what alternative do you suggest and why?*

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<sup>19</sup> Morningstar, 5 Threats to Sustainable Investing in 2023, <https://www.morningstar.ca/ca/news/230209/5-threats-to-sustainable-investing-in-2023.aspx>

*Question 26: Do you consider the proposed naming and marketing rules set out in Chapter 6 to be appropriate for pension products (subject to a potentially lower threshold of constituent funds qualifying for a label). If not, why? What would be an appropriate threshold for the naming and marketing exemption to apply?*

We broadly agree with the proposed naming and marketing rules and the need for prohibited terms to ensure marketing is accurate and does not mislead consumers. The list of prohibited terms included in the CP should not be considered an exhaustive list, and the final list of terms should be flexible enough to grow as sustainability language develops over time. We would also support further guidance from the FCA on where such terms may and may not be used: It cannot be the case that a firm without a sustainability label is prohibited from using e.g. the word “governance” anywhere in fund literature. Equally, given the firm name may be one of the first things a retail investors reads or hears about a product, it is important the naming rule should apply to firm names too. Finally, we also support the naming rules be extended to cover funds used for automatic-enrolment and would support these rules being implemented within the timeframe outlined for the rest of the regime. **We recommend the FCA conducts a review on the effectiveness of the new product naming rule and prohibited terms 12 months after they come into force.**

*Question 27: Are there challenges or practical considerations that we should take into account in developing a coherent regime for pension products, irrespective of whether they are offered by providers subject to our or DWP's requirements?*

These proposals are geared towards tackling greenwashing for consumers and to avoid investments into products which may be marketed inaccurately or mislead retail investors. While we welcome this aim, we would also strongly support the extension of this approach to funds used for automatic-enrolment. The latest figures from DWP show that, since its inception 10 years ago, over 10.7 million employees are paying into workplace pensions with the number of savers aged between 22-29 doubling since 2012. ShareAction strongly welcomes the success of automatic-enrolment, and we are keen to ensure its continued success over the next 10 years. We see a risk that, given the current cost of living crisis and soaring inflation, any potential scandals resulting from mis-marketed pension products or stranded assets could serve to undermine the pensions system. In particular such scandals have the potential to drive up opt-outs, further exacerbating the lack of adequacy of income in retirement for many pensioners. Therefore **we recommend the FCA work with DWP to explore how the sustainable investment labelling regime could be extended to apply to pension products.**

I hope our views are clear, but please do not hesitate to contact us if you have any questions.

Yours sincerely,

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