Impax Asset Management Group plc
7th floor
30 Panton Street
London
SW1Y 4AJ
United Kingdom

impaxam.com

Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Response to FCA Consultation Paper (CP) 22/20
Sustainability Disclosure Requirements (SDR) and investment labels

Introduction

Impax Asset Management ("Impax") appreciates the opportunity to submit this comment letter to the FCA's Consultation Paper 22/20 ("CP 22/20" or "the Consultation Paper").

Founded in 1998, Impax is a specialist asset manager, with approximately £38 billion as of 31 December 2022 in both listed and private markets strategies, investing in the opportunities arising from the transition to a more sustainable global economy.

Impax believes that capital markets will be shaped profoundly by global sustainability challenges, including climate change, pollution and essential investments in human capital, infrastructure and resource efficiency. These trends will drive growth for companies that Impax believes are well positioned and create risks for those unable or unwilling to adapt.

Impax seeks to invest in higher quality companies with strong business models that demonstrate sound management of risk. We offer a well-rounded suite of investment solutions spanning multiple asset classes seeking superior risk-adjusted returns over the medium to long term.

Impax has approximately 300 staff across its offices in the United Kingdom, the United States, Ireland and Hong Kong, making it one of the investment management sector's largest investment teams dedicated to sustainable development.

If you wish to follow up any aspect of our response, please contact Chris Dodwell at chrisdodwell@impaxam.com.

Summary

Impax supports the core objective of the FCA's proposed new rules of tackling greenwashing and thereby helping retail investors navigate an increasingly complex investment product landscape (see para 1.6). We also support the other aims and outcomes referred to in the paper including: the FCA's wish for 'the UK to be a trusted centre for sustainable investment and … at the forefront of sustainable investing internationally' (para 1.20); and the secondary outcomes of 'increased provision of sustainable investment products' and 'increased capital flows to sustainable activities' (see Figure 1 – Causal chain).

However, we are concerned that aspects of the current proposals may have unintended consequences which undermine the overall effectiveness of the new rules in achieving these objectives.

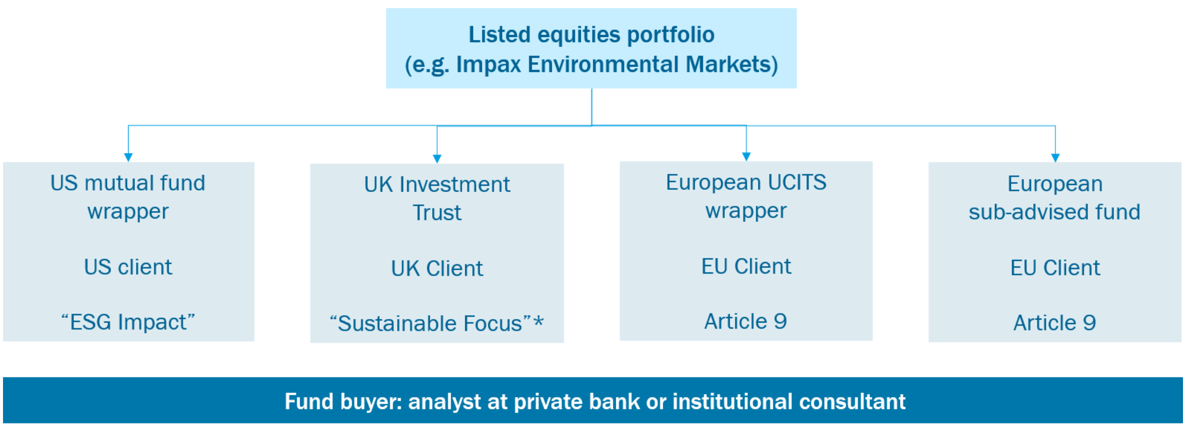
Our concerns fall into three main areas:

- Firstly, we are concerned that the introduction of **a non-hierarchical classification system distinguished by 'investor contribution mechanisms'** may be confusing for both retail investors and the wider market. As a specialist investor focussed on the transition to a sustainable economy for almost 25 years, Impax combines all three of the 'channels' described in the paper - stewardship and engagement, asset pricing and capital allocation - within a single investment philosophy and process. As a result, we feel that it is difficult to use these factors as the basis for differentiating individual funds. In addition, the FCA should acknowledge that retail investors are likely to treat the labels as a 'de facto' hierarchy regardless of the nuances in the classifications and not place too high a priority on the labels' non-hierarchical nature.
- Secondly, we are concerned that the proposed rules have **a low level of alignment with the existing and proposed international regimes**. As recognised in Appendix 1 of the Consultation Paper, investment managers looking to apply for the UK labels will need to meet additional cross-cutting and category-specific criteria to obtain the labels, leading to increased costs for those operating in the UK. This lack of international alignment is likely to result in different classifications and labels being given by different regulators to products based on the same underlying portfolios which will cause confusion for advisors and both retail and institutional end-customers (see the illustrative example set out in Figure 1 below). Were the UK regulatory system to be seen as an exception or outlier to emerging regulatory norms, it may reduce our ability to influence international standards such as the ISSB.

Figure 1 – Illustrative treatment of the same portfolio by US, UK and EU regimes

Inconsistent fund labelling regimes across markets likely to cause confusion for advisors and their clients:

- In this example one fund would not achieve a similar "positive impact" label in the UK as in US and EU despite containing the same portfolio holdings
- This risks causing confusion for advisors and their customers who deal with multiple geographies and fund types



*Fund unable to gain UK Impact label, which would align better with US and EU regimes, due to additionality criteria which excludes listed equities funds

- Finally, we are concerned that the **detailed tests for the individual labels may inadvertently exclude existing sustainable investment products** which would otherwise fit well with the FCA's descriptions of the regime (see overview at para 3.2). This may lead to an unintended reduction in the range of sustainable investment products available to retail investors, rather than the intended elimination of greenwashing through the raising of standards.

We believe that the concerns set out above can be addressed through a small number of changes to the proposed rules. These are set out below and described in more detail in our responses to the relevant consultation questions:

1. Sustainable Impact: Impax strongly believes that the concept of additionality should be removed as a requirement for the Sustainable Impact label as it would exclude funds engaged in secondary market trading (especially listed equities), limiting the universe of funds available to consumers under the label to a handful of illiquid investment trusts. If this change were adopted, this label would be open to a wider range of products meeting the description in the Consultation Paper, namely products with the aim of investing in solutions to environmental or social problems with an objective of making positive measurable contributions to these problems.

2. Differentiating between Sustainable Impact and Sustainable Focus: To allow consumers to compare products more effectively, Impax urges the FCA to align the 'purity thresholds' (i.e. the percentage of the product's assets which must meet the respective sustainability definitions) with those proposed by other international regulators, rather than introduce new, potentially confusing thresholds (such as the 70% proposed for Sustainable Focus). For Sustainable Impact, the purity level should be kept high (e.g. either 80% proposed for the SEC's Sustainability Impact classification or 100% used in Article 9 of the EU SFDR) with a lower level for the Sustainable Focus label (e.g. 50% recommended by ESMA in its proposed labelling regime). Other distinctions between these labels would still be retained (other than the additionality requirement – see above).

3. Entity-level disclosures: To avoid duplication of reporting, Impax encourages the FCA to permit firms to reference existing sustainability report and disclosures where it already exists, such as with the UK Stewardship Code and TCFD reporting, rather than requiring them to re-submit this information.

4. Distributors and sub-advisers: Impax encourages the FCA to learn from recent experiences in Europe where the SFDR rules can result in sub-advisors not being able to disclose their own definitions and processes, creating confusion and complexity for both market participants and customers.

We believe that these changes will both meet the stated objectives of the proposed rules and improve international alignment, thereby helping the UK's position as a centre for sustainability investing and its influence on other regimes and international standards. To demonstrate the impact of our suggestions on international alignment, we have collated our proposals for the UK and other regimes in a table in Appendix A to this response.

Please find set out below our responses to the specific questions posed in the Consultation Paper, which cover the points above and our views on other issues based on Impax's experiences to date.

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?

Impax generally agrees with the initial scope of firms, products and distributors outlined by the FCA. However, as a global firm with a global client base investing in assets around the world, we do not believe that the scope of the FCAs labelling regime should extend to overseas funds, unless the regime is amended to bring it into closer alignment with existing and proposed regimes in other markets. We have identified a number of suggestions which would achieve this outcome in our responses below and summarised those in Appendix A. Failure to address alignment with other jurisdictions would create further confusion in the market, where regimes such as SFDR and ESMA labelling in the EU are already in existence and operating.

In any event, we urge that any regulatory requirements in what is becoming a patchwork of national and regional approaches should be designed to be as interoperable as possible, as the FCA noted in paragraph 4.64, so that information provided to investors can be consistent and reliable.

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

We broadly agree with the proposed implementation timelines set out in the Consultation Paper which we feel will provide adequate time for the broader sustainable investment industry to provide services to investment managers to meet the requirements proposed by the FCA as well as reflecting the development of global guidelines such as ISSB guidelines.

However, we are concerned that it will not be possible to implement the proposed Sustainable Improvers label within the existing timeline without risking confusing retail investors or undermining the FCA's objective of tackling greenwashing. We would therefore encourage the FCA to drop this label or delay its introduction until lessons can be learned from the introduction of investment products in this area.

Q3: Do you agree with the proposed cost-benefit analysis set out in Annex 2? If not, we welcome feedback in relation to the one-off and ongoing costs you expect to incur and the potential benefits you envisage.

Impax believes that the costs (both one-off and ongoing) of the proposed regime on firms have been underestimated by the FCA, particularly with regard to the requirement on firms to review and update all fund documents and marketing materials in response the introduction of the labelling regime and rules around marketing.

In particular, the Consultation Paper does not take into consideration the costs to firms of third-party verification that may be incurred in the determination of a 'credible standard' of environmental or social sustainability required for meeting the proposed 70% thresholds for the Sustainable Focus label. There are also additional costs in sourcing data from companies and data providers to ensure compliance with the scheme and KPI and benchmark data.

In June 2022, Impax responded to an invitation from the FCA to provide information on the actions which firms would need to take to comply with the new requirements of SDR. In our response, we detailed the cost elements and benefits of the proposed regime and identified three issues about which we continue to have concerns:

1) The regime is likely to impose significant additional burdens for UK asset managers focusing on the transition to a sustainable economy coming on top of other new requirements (such as TCFD and the UK's Stewardship Code) and that the FCA should limit costs wherever possible and ensure that any additional costs are proportionate to the benefits they deliver.
2) The FCA should adopt a level playing field in reporting obligations across the financial sector, rather than inadvertently imposing greater burdens on those specialist investors which are focusing on the sustainable economy and thereby imposing a 'green premium' on their activities.
3) The FCA should consider how to limit costs to UK-based firms with international activities. We consider that the most effective way to do this would be to ensure a high level of interoperability across jurisdictions in terms of the disclosures requested.

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

We agree with the FCA that the definition of sustainability should be left to the marketplace with requirements on managers to explain their approach and report against it. The difficulty of creating a single taxonomy is demonstrated in many countries, including in the UK where technical and political considerations are delaying finalisation.

At Impax we invest in the transition to a more sustainable economy, particularly in companies that are supplying products and services that address or solve environmental and social problems. At the company level, we define a sustainable investment as a company with material exposure to an environmental or social product or service which also meets a minimum hurdle of ESG risk management (doing no significant harm). Engagement is used as a risk management tool where we believe improved management of ESG risks would add value to shareholders.

As a specialist investor focussed on the transition to a sustainable economy for almost 25 years, Impax recognises the 'investor contribution mechanisms' or 'channels' described in the Consultation Paper - stewardship and engagement, asset pricing and capital allocation. We also take note and report on the positive impact of the companies in which we invest – referred to by some as the 'enterprise contribution' [1]– which plays a major role in our clients' investment objectives. However, we feel that it is not appropriate to use these mechanisms as the basis for differentiating individual funds as many investment managers including Impax combine them within a single investment philosophy and analytical process. Instead, we would encourage the FCA to focus on practical ways to distinguish between the Sustainable Focus and Impact labels (see further responses to Q6a and Q6c below).

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?

Impax's preference would be for fund labels to be supplied by private sector organisations (see e.g. Lux Flag, etc.). However, given concerns about market failures relating to greenwashing, we recognise why the FCA and other regulators are introducing labelling and classification systems for sustainable investment products.

We support and agree with a classification system that clearly distinguishes labels and one that is based on intentionality which is felt will go towards managing consumer expectations. However, as set out in the Summary, we have concerns about the impact of the proposed rules, in particular that the level of inter-operability between the FCA's proposed approach, the SFDR and proposed SEC rules will pose significant challenges to advisors with clients across different jurisdictions (see, for example, Figure 1 above).

Impax has developed a number of proposed changes which we feel will provide more clarity to consumers and better align the current FCA proposals with current market practice (see detailed answers under 6a-c below).

[1] See WHEB's view on the FCA's proposals for Sustainable Disclosure Requirements (SDR) | WHEB (whebgroup.com).

Q6: Do you agree with the proposed distinguishing features, and likely product profiles and strategies, for each category? If not, what alternatives do you suggest and why? In particular, we welcome your views on:

a. **Sustainable Focus: whether at least 70% of a 'sustainable focus' product's assets must meet a credible standard of environmental and/or social sustainability, or align with a specified environmental and/or social sustainability theme?**

As outlined in our Summary above, we would urge the FCA to reduce confusion in the marketplace for consumers by aligning the 'purity thresholds' (i.e. the percentage of the product's assets which must meet the respective sustainability definitions) with those proposed by other international regulators, rather than introduce new, potentially confusing thresholds (such as the 70% proposed for Sustainable Focus).

For the UK Sustainable Focus label, we would recommend that lower 'purity' threshold than for Sustainable Impact, such as 50% which would align with ESMA's proposed threshold for funds wishing to use the term sustainability in fund names. (As set out in our response to Q6c, we believe that the purity level for Sustainable Impact label should be kept high and could be aligned with the US SEC fund naming rule at 80% or SFDR Article 9 expectation of 100%.)

Impax interprets the requirement for independent assessment of sustainability investment processes as similar to ISAE quality assurance, i.e. a third-party verification of the process we follow rather than a third-party definition of sustainability or what the process should be. Impax considers that the private sector is well-placed to develop and implement such definitions of sustainability and related classification systems/taxonomies. Impax designed one of the first environmental taxonomies in 1999 which later because the basis for FTSE Russell's Green Revenues Classification System. Until 2016, there was healthy competition between taxonomies developed and maintained by the private sector although the public sector has recently displaced this activity, often with sub-optimal outcomes. We believe that there is no absolute definition of green, so it is still healthy for different approaches to co-exist.

The quality assurance for Impax's investment process already includes the definition of the investable universe for our thematic funds which are derived from the Impax's proprietary taxonomies. We would be happy to share further details of this approach with the FCA as a possible example of industry best practice.

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?**

We do not agree with the inclusion of the Sustainable Improvers label as currently proposed. We believe there is currently a lack of consistent guidance and metrics on how to measure the performance and characteristics of funds in this category, specifically to the extent to which they are 'improving' and transitioning. There are also concerns with the requirement for upfront reporting on target setting and performance outputs where data may not be available. In practice almost all companies and portfolios would be able to claim improvement towards a more sustainable operating model, making this category potentially very large and undifferentiated to "mainstream" investment products.

In addition, we consider that it is difficult to quantify the effect that stewardship has on the performance of investments and prove causality, particularly outside of equity funds. Therefore, the requirement and measurement of performance in this area through the setting and reporting of KPIs will be difficult to satisfy. There is a risk that the requirement to show engagement with investee companies will become a 'box tick' for reporting purposes instead of meaningful, result driven collaboration.

Given that the current proposal for "Sustainable Improvers" may enable most funds to qualify thereby removing the differentiation that the fund labelling regime intends to introduce, we would encourage the FCA to drop this label or delay its introduction until lessons can be learned from the introduction of investment products in this area.

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?**

Impax supports the inclusion of this label and agrees with the retention of 'Impact' as the term is widely understood and recognisable to retail investors. The term 'Impact' will adequately reflect the objectives of the funds falling within this category.

Impax strongly believes that the concept of financial additionality should be removed as a feature of the Sustainable Impact label. The effect of retaining this requirement would be to exclude funds engaged in secondary market trading (especially listed equities) which would limit the universe of funds eligible to a handful of illiquid investment trusts. Given the high demand for positive impact investment funds by UK consumers this would not seem to be in their best interest.

If this change were adopted, this label would be open to a wider range of products meeting the stated consumer description i.e. with the aim of investing in solutions to environmental or social problems with an objective of making positive measurable contributions to these problems (see Table 2 of the Consultation Paper). Thousands of listed companies have products and services providing critical solutions to societal or environmental challenges, with quantifiable positive impact. While their products and services have significant positive impact and are critical in enabling the transition to a more sustainable and low carbon economy, these companies may not qualify for impact "additionality", because of the corporate or capital structure within which they operate. They can also offer compelling financial returns because of their well-positioned business models that provide critical solutions. We do not believe that it is the best interest of UK consumers to leave these companies outside of the Sustainable Impact classification.

In addition, to allow consumers to clearly distinguish the Sustainable Impact and Sustainable Focus labels, we urge the FCA to align the 'purity thresholds' (i.e. the percentage of the product's assets which must meet the respective sustainability definitions) with those proposed by other international regulators. For Sustainable Impact, the purity level should be kept high (e.g. either 80% proposed for the SEC's Sustainability Impact classification or 100% used in Article 9 of the EU SFDR). (As mentioned in our response to Q6a, a lower level could be used for the Sustainable Focus label e.g. the 50% recommended by ESMA in its proposed labelling regime).

Except for the additionality requirement (see above), the other distinctions between these labels would be retained, including the requirement for Sustainable Impact products to have a clear fund objective for the portfolio companies to deliver social and/or environmental benefits.

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

We agree with the proposal to not require a distinct label for 'non-sustainable' products. Introducing a 'non-sustainable' label may unduly disadvantage funds who integrate ESG into their strategy but may not qualify under one of the proposed labels. We further agree that the safeguard of consumer facing disclosures for both labelled and non-labelled funds will adequately protect consumers investing in non-labelled funds.

As noted in our answer to Q6b, we do not agree with the inclusion of the Sustainable Improvers label as currently proposed. We also note that existing funds which might be considered sustainable fall outside the scope of the labelling regime. Examples include (a) funds which apply exclusions based on ethical/moral values (which are already a significant part of the marketplace and are often requested by consumers seeking to avoid exposure to specific corporate activities) and (b) funds which integrate ESG risk analysis into security selection.

One possible solution could be to revert to the earlier proposal to establish an ESG Integration label (in line with the SEC's proposed approach). This could include both funds which might have fallen into the Improvers label as well as exclusion and ESG integration funds. Were such a label to be established, we would suggest that funds falling within it should not be permitted to use ESG/ Impact or sustainability terms in their names.

Q8: Do you agree with our proposed qualifying criteria? If not, what alternatives do you suggest and why? In your response, please consider:

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

Impax is supportive of the objectives the FCA is trying to achieve under the proposals, including the development of threshold criteria that firms must meet before using a sustainable investment label. Impax welcomes the requirement of an explicit sustainable objective but reiterates our concern over the prospect of the labelling regime excluding (a) funds which apply exclusions based on ethical/moral values and (b) funds which integrate ESG risk analysis into security selection (see also response to Q7).

Q9: Do you agree with the category-specific criteria for:

a. The 'Sustainable focus' category, including the 70% threshold?

Please see our response to Q6a, above.

We believe further guidance is needed by the FCA on whether meeting a 'credible standard' is assessed against an external standard or credible internal benchmarks, (that meet minimum standards). While acknowledging that internal benchmarks may have varying degrees of ambition, we support a reasonable approach to verification. In place of a new threshold of 70%, we support a threshold aligned to other regulatory regimes such as the 50% proposed by ESMA (see response 6a for more details).

b. The 'Sustainable improvers' category? Is the role of the firm in promoting positive change appropriately reflected in the criteria?

Please see our response to Q6b, above

c. The 'Sustainable impact' category, including expectations around the measurement of the product's environmental or social impact?

Please see response to Q6c, in particular the proposal to remove the "additionality" requirement.

Q10: Does our approach to firm requirements around categorisation and displaying labels, including not requiring independent verification at this stage, seem appropriate? If not, what alternative do you suggest and why?

As per our response to Q6a, Impax interprets the requirement for independent assessment of sustainability investment processes as similar to ISAE quality assurance, i.e. a third-party verification of the process we follow rather than a third-party definition of sustainability or what the process should be. The quality assurance for Impax's investment process already includes the definition of the investable universe for our thematic funds which are derived from the Impax's proprietary taxonomies. We would be happy to share further details of this approach with the FCA as possible example of industry best practice.

However, we do note that a requirement for third-party verification could have a disproportionate negative impact on smaller asset managers, who may have limited resources and that further support and guidance may need to be made available for them.

Q11: Do you agree with our proposed approach to disclosures, including the tiered structure and the division of information to be disclosed in the consumer-facing and detailed disclosures as set out in Figure 7?

Impax is broadly in support of the tiered structure and outline of the proposed disclosure regime. We believe the consumer facing disclosure will be effective and welcome the choice for investors to have access to more granular information should they wish to view the detailed product level disclosures. We do stress that clarity is required, as soon as possible, on what obligations will be placed on non-UK domiciled funds marketing in the UK to provide these disclosures.

We also seek clarification that managers without a retail license should not be required to make these additional disclosures as retail investors would not be able to access this information.

Q12: Do you agree with our proposal to build from our TCFD aligned disclosure rules in the first instance, evolving the disclosure requirements over time in line with the development of future ISSB standards?

Impax broadly supports the FCA's proposal that disclosures will seek to build TCFD aligned disclosure rules, before evolving over time beyond climate in line with global reporting standards, such as those being developed by the ISSB, which is still being developed. We are in general strongly supportive of the idea of alignment with widely recognized, global reporting frameworks, which will support consistency and interoperability across regions.

Q13: Do you agree with our proposals for consumer-facing disclosures, including location, scope, content and frequency of disclosure and updates? If not, what alternatives do you suggest and why?

We broadly support the proposals for consumer facing disclosures and agree with the proposed content and requirement that these should be mandated for both qualifying and non-qualifying funds (i.e., funds that do not qualify for one of the three labels).

However, we do not agree with the inclusion of proposed disclosures on 'unexpected investments'. As a matter of principle, a fund's constituents should be in line with its objectives and investment process so it should not contain any unexpected investments in our view. If necessary, this could be addressed by clarifying the existing rules rather than introducing a new requirement which is potentially subjective and will be difficult to interpret.

Q14: Do you agree with the proposal that we should not mandate use of a template at this stage, but that industry may develop one if useful? If not, what alternative do you suggest and why?

Impax agrees with not mandating a set template for disclosure at this stage, particularly in light of the issues faced by firms with regard to the EU SFDR's prescribed templates. Impax would support the development of an industry-led template, with involvement from the FCA, that would allow for a degree of flexibility in reporting in the short term with a view to developing a more prescribed template in the future,

Q15: Do you agree with our proposals for pre-contractual disclosures? If not, what alternatives do you suggest and why. Please comment specifically on the scope, format, location, content and frequency of disclosure and updates.

Impax agrees that sustainability-related features should be disclosed in pre-contractual documents and that products with sustainable investment related labels should include pre-contractual disclosures associated with the qualifying criteria.

Q16: Do you agree with our proposals for ongoing sustainability related performance disclosures in the sustainability product report? If not, what alternative do you suggest and why? In your response, please comment on our proposed scope, location, format, content and frequency of disclosure updates.

Impax believes that regular reporting on relevant and reliable metrics which demonstrate trends, direction of travel and context is more important than ongoing reporting of numerous metrics that may be spurious. Reporting should demonstrate that the investment manager is "doing what they say they are doing." More emphasis should be placed on reporting outcomes, as set forth in the UK Stewardship Code, rather than on policies.

Q17: Do you agree with our proposals for an 'on demand' regime, including the types of products that would be subject to this regime? If not, what alternative do you suggest and why?

Impax believes that an on-demand regime has the real potential to become unduly burdensome and urges that a single, annual disclosure will satisfy the needs of investors and managers sufficiently.

Q18: Do you agree with our proposals for sustainability entity report disclosures? If not, what alternatives do you suggest and why? In your response, please comment on our proposed scope, location, format, content, frequency of disclosures and updates.

Impax welcomes the FCA's willingness to adopt a flexible approach to incorporating TCFD entity reports into the proposed sustainability entity reports. In order to reduce the already considerable reporting burden on firms, we believe that this approach should be extended to other equivalent regimes including the UK Stewardship Code. We believe the Stewardship Code is a thorough reporting framework that is reviewed and assessed by FRC, a regulator, and that its twelve principles assess amply the effectiveness of a manager's sustainable investment and stewardship approaches and outcomes, with a significant focus on entity-level structures.

Q19: Do you agree with how our proposals reflect the ISSB's standards, including referencing UK adopted IFRS S1 in our Handbook Guidance once finalised? If not, please explain why?

Impax agrees with how the proposals reflect standards being develop by ISSB, including referencing UK adopted IFRS S1, with the caveat that the development of the ISSB standards is not complete. We are strongly in support of linkages to global reporting standards.

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

Impax supports the rationale underpinning the proposed 'anti-greenwashing' rule, but the FCA needs to provide more clarity on how it will operate in practice. The FCA should provide more detailed guidance addressing issues such as how it would affect overseas funds not subject to the labelling regime and how enforcement will be carried out, as well as examples to help firms with their navigation of the proposed requirements.

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

We broadly agree with the proposed product naming rules and agree that these provisions would aid in reducing greenwashing risk and help safeguard the integrity of the sustainable investment product labels, <u>provided that</u> the changes as outlined in our responses to Q5 and Q6 are adopted. Please see the chart provided in Appendix A for further clarification, particularly in regard to consistency with other global regimes.

IMPAX Asset Management

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

Impax agrees with many other commenters, that a complete prohibition on the use of ESG and sustainability terms in marketing material for funds that do not qualify for a label is overly restrictive. Given the FCA's proposal to remove the 'Responsible' category, a large portion of ESG integration funds would be prohibited from communicating how they are integrating ESG issues into their investment strategies and other processes in disclosures and marketing material. We strongly believe that flexibility is needed on this basis, particular as ESG and sustainability terminology evolve over time.

We also believe that funds not qualifying for labels must be permitted to highlight in their marketing material their use of globally recognised labelling frameworks and initiatives that are used widely in the global market. This would ensure that international frameworks such as the Climate Bonds Standard and Certification Scheme and standards endorsed by the International Capital Market Association are taken into account and recognised in some form within the UK's regime.

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

Impax believes that distributors should be captured in the scope of this rule, insofar as they should prominently display and make available the various labels that managers will ascribe to their products. We do not believe, however, that it is necessary to require the creation of additional consumer facing documents for distributor use and feel strongly that links to existing documents will suffice.

One area of confusion within the EU system is in the area of sub-advised funds and we would be keen that the UK learns from this experience. When a manager is appointed as a sub-advisor to a fund distributed by another firm the usual practice is for the investment process of the sub-advisor to be clearly communicated to the end investor as it is the best explanation of the fund's objectives and process. However, by requiring the overlay of the distributor's sustainability definitions to these third-party mandates, the investment process can become confusing for the end investor to understand. We would encourage the FCA to ensure that where a fund's portfolio management is delegated to a sub-advisor, the sustainability criteria, process and labels can also be delegated if agreed between the distributor and the regulator. We would be happy to discuss our experience further to ensure that the form of the final rule does not have any unintended consequences in this regard.

Impax also believes that the FCA's proposed labelling regime should not extend to overseas funds where there are already existing regimes in operation, e.g. across the EU and ESMA guidelines.

Q25 to Q31

Impax does not offer responses to these questions.

Appendix A – Alignment of international regimes after proposed changes

	EU	US	UK
	Article 9	*Impact* (rather than ESG Impact)	*Sustainable Impact*
High intentionality for positive social/ environmental outcome through investment and/or engagement	➢ Funds with social or environmental objective ➢ Agree 100% of portfolio companies considered "sustainable investments" i.e. delivering solution **and** doing no significant harm ➢ Can use sustainability/impact in name	➢ Funds which seek to achieve specific social or environmental benefits ➢ Agree 80% of portfolio companies display targeted sustainability characteristics ➢ *Recommend ability use sustainability/impact in name (SEC proposes 80% minimum)*	➢ Funds with a social or environmental objective ➢ *Recommend 80/100% of portfolio companies achieve investment manager's sustainability definition* ➢ *Recommend ability to use sustainability/impact terminology in name* ➢ *Recommend removing reference to additionality*
	Article 8	*Sustainability Focus* (rather than ESG Focus)	Sustainable Focus
Sustainability criteria and activities are incorporated and influence the investment process	➢ Funds promoting environmental and/or social characteristics ➢ *Agree ESMA recommendation of at least 50% of portfolio companies considered "sustainable investments"* ➢ Can use sustainability/ESG terminology in name	➢ *Recommend 50% of portfolio companies achieve manager's sustainability definition (SEC proposing 80%)* ➢ *Recommend ability to use sustainability/ESG terminology in name*	➢ *Recommend 50% of portfolio companies achieve manager's sustainability definition* ➢ *Recommend ability to use sustainability/ESG terminology in name*
	Article 6	ESG Integration	*ESG Integration* (rather than Sustainable Improvers)
Limited influence of sustainability on investment process; exclusions and hope for improvement sufficient	➢ No requirement for any individual company to be considered "sustainable", use of exclusionary criteria sufficient ➢ Can't use sustainability/impact/ESG in name	➢ Consideration of ESG factors alongside non-ESG factors ➢ *Recommend including exclusion funds* ➢ Agree cannot use sustainability/impact/ESG in name	➢ No requirement for any individual company to be considered "sustainable" but active goal towards improvement. ➢ *Recommend including exclusionary funds and removal of target setting* ➢ Agree cannot use sustainability/impact/ESG in name

- Existing/proposed criteria
- *Proposed amendments*

	EU	US	UK
Firm level processes	➢ Impax recognises existing requirements to Principal Adverse Impacts, good governance, engagement and significant votes ➢ *Recommends that investment managers have the ability to delegate responsibility to subadvisors*	➢ Impax recognises the proposed requirements relating to proxy vote reporting and ESG investment process disclosure in its Form ADV ➢ *Recommends that investment managers have the ability to delegate responsibility to subadvisors*	➢ *Recommends leveraging of existing reporting regimes, including: UK Stewardship Code, TCFD, Corporate Sustainability Targets)* ➢ *Recommend that investment managers have the ability to delegate responsibility to subadvisors*
Assurance requirements	➢ Oversight provided by Fund board of investment process versus prospectus disclosure ➢ Impax recognises the need for public disclosure of firm and fund level reports on a manager's website	➢ Oversight provided by Fund board oversight of investment process versus prospectus disclosure ➢ Fund documents are publicly available	➢ *Recommends the quality assurance of an investment managers process through use of existing standards or processes, such as ISAE or GIPS* ➢ Impax recognises the need for public disclosure of firm or fund level reports on a manager's website

- Existing/proposed criteria
- *Proposed amendments*