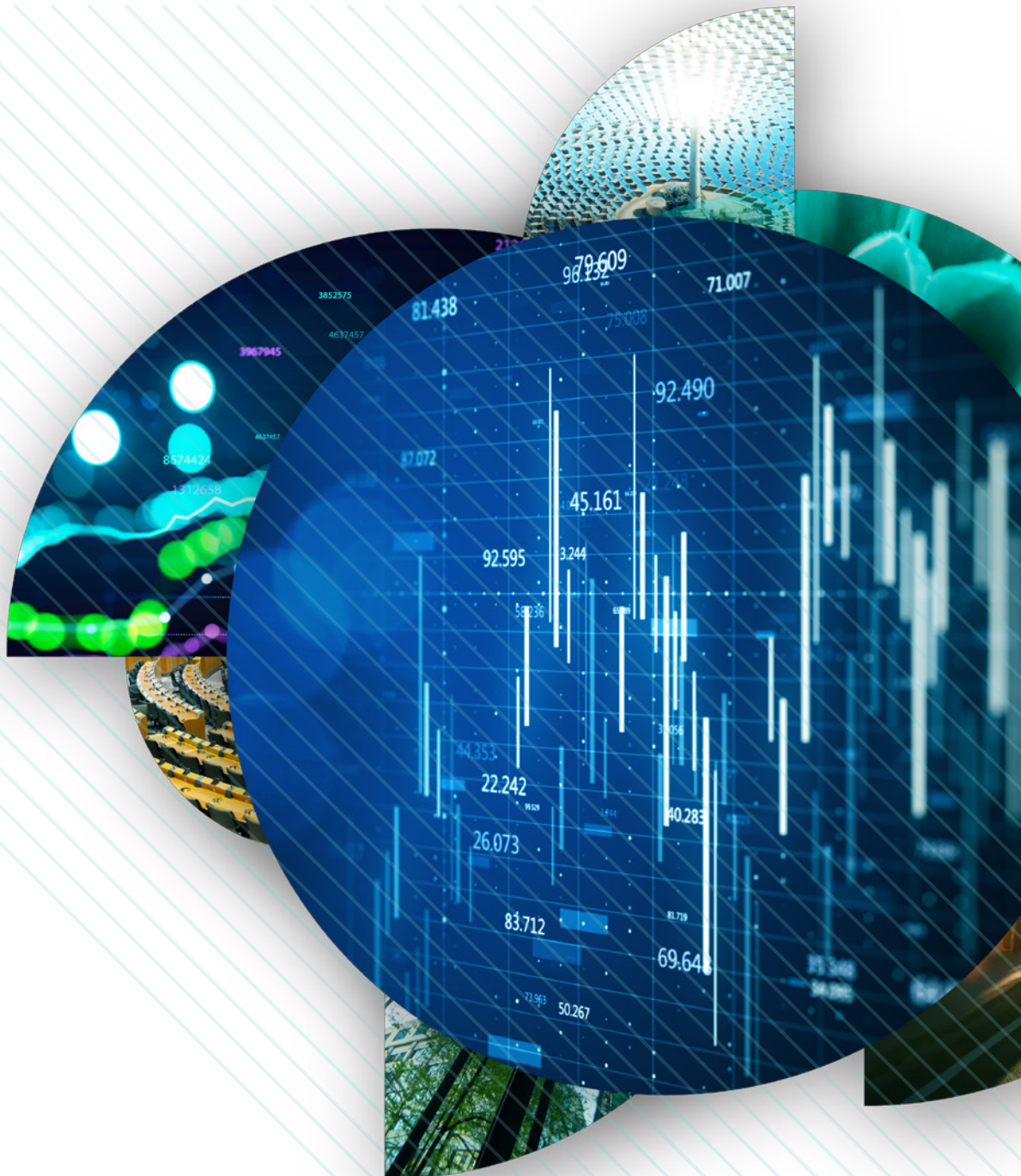


Financial Services regulatory ESG updaters

6 December 2024 – 6 January 2025



Introduction

Environmental, Social and Governance (**ESG**) is changing the landscape for financial institutions as a wide range of stakeholders including investors increasingly expect them to make their operations more sustainable. Financial services regulators also view ESG as a priority, embedding the principles of climate-related financial risks into their supervisory frameworks and dealing with institutions that may be making exaggerated or unsubstantiated sustainability-related claims that do not stand up to closer scrutiny (so-called 'greenwashing'). However, the key problem for institutions, particularly those operating cross border, is that there is limited uniformity in regulation, financial services regulators are at different stages in developing their ESG regulatory framework particularly in relation to disclosures and taxonomy. It is therefore critical that institutions monitor the latest announcements from the regulators.

The purpose of this updater is to track ESG regulatory developments from the period 6 December 2024 to 6 January 2025, from the United Kingdom, France, Europe Union, the Netherlands United States, Australia, and certain international regulators.

This month's highlights

18 December 2024 – Global D&I jurisdiction summary – updated

In recent years, diversity and inclusion (D&I) in the financial services sector has become a focus for regulators around the world. Individual regulators, however, have taken different approaches to D&I to reflect the local socio-economic environment. We have [provided](#) a high-level summary of the position across a number of key jurisdictions updating our table published on 6 December 2023.

11 December 2024 - Let's talk asset management: Episode 11 – UK SDR naming and marketing rules

In this latest episode of our podcast series, Let's talk asset management, Matthew Gregory, Haney Saadah and Simon Lovegrove discuss the FCA's 'naming and marketing' rules under the Sustainability Disclosure Requirements. These rules came into force on 2 December 2024 although some firms have taken the 'temporary flexibility' offered by the FCA which gives firms until 2 April 2025 to comply with the rules.

Listen to the podcast [here](#).



United Kingdom

18 December 2024 - FMSB transparency draft of SoGP on governance of SLPs

The Financial Markets Standards Board (FMSB) published for consultation a [Statement of Good Practice \(SoGP\)](#) on the governance of sustainability-linked products (SLPs) in transparency draft. The SoGP seeks to codify good practices for the governance of SLPs and support the adoption of consistent governance approaches across asset classes and jurisdictions. The deadline for comments on the transparency draft is 21 February 2025.

2 December 2024 - Some ESG milestones you may have missed in December

Introduction

On December 2, 2024, the United Kingdom (UK) reached a number of further environmental, social and governance (ESG) milestones.

Almost a year ago, the Financial Conduct Authority (FCA) published its final rules and guidance on Sustainability Disclosure Requirements (SDR) and investment labels. The new rules and guidance – set out in FCA Policy Statement 23/16 (PS23/16) – included an anti-greenwashing rule, four investment labels, and new rules and guidance for firms marketing investment funds on the basis of their sustainability characteristics.

The anti-greenwashing rule, which applies to all FCA-authorized firms and is located in ESG 4.3.1R of the FCA Handbook, took effect after a short delay on May 31, 2024, whereas the timing of the other measures were staggered.

The investment labels, as well as the rules on disclosure, naming and marketing, apply to "UK asset managers" (summarised in Table 15 of PS23/16) and cover consumer-facing disclosures, pre-contractual disclosures, ongoing product-level disclosures, and entity-level disclosures. The new rules focus on products offered by UK funds to retail investors in the UK, although pre-contractual, ongoing product-level and entity-level disclosures apply to products offered to both retail and institutional investors in the UK.

From July 31, 2024, a UK asset manager could voluntarily adopt one of the four new sustainability labels – Sustainability Focus, Sustainability Improvers, Sustainability Impact or Sustainability Mixed Goals – for a UK fund, although they have been under no obligation to do so. Additional rules for distributors – regarding labels, consumer-facing disclosures and notices on overseas funds for firms using labels – also came into force on this date.

December 2 milestones

December 2, 2024 was the date of two further key milestones. The rules for distributors regarding notices on overseas funds came into effect, as did – at least originally (more on that below) – the naming and marketing rules.

The purpose of the naming and marketing rules is to help consumers differentiate between products claiming to have sustainability objectives and using a label, and those that have sustainability characteristics without using or qualifying for a label.

According to these rules, a product that is marketed or sold based on sustainability-related terms but is without a label must have sustainability characteristics and its name must accurately reflect those characteristics, but the terms "sustainable," "sustainability," "impact," and any variation of those terms cannot be used. As per the anti-greenwashing rule and the FCA guidance that accompanies it (FG24/3), firms should also consider their product name as a whole and how a consumer may interpret it.

In terms of marketing, there are three key conditions. The first is that the anti-greenwashing rule and other financial promotions rules are met, and that firms consider in particular the FCA guidance in FG24/3. The second and third conditions concern the firm making relevant disclosures and a statement. Firms using sustainability-related terms in product names and marketing for products that are without a label must produce the same types of disclosures as for labelled products. This covers consumer-facing, pre-contractual, ongoing product-level and entity level disclosures. Firms using sustainability-related terms in product names and marketing must also publish a statement in a prominent place on the relevant digital medium where the product is offered, explaining why the product does not have a label.

Disclosures

In terms of disclosures, the key point to note is that the rules are in place to help consumers compare products more effectively and efficiently, potentially leading to greater competition between similar products.

Whilst the FCA has not created a template for the disclosures, it has specified the minimum information required and that firms must review and update their disclosures at least every 12 months. There is quite a useful table in Annex II of the PS23/16 setting out the FCA's final rules, which provides further information on both customer-facing disclosures and product-level disclosures. There is also ongoing work taking place on an industry template that readers may be familiar with.

Temporary flexibility

The original December 2, 2024 date for compliance turned out not to be quite as hard a deadline as many firms had originally thought. In a move widely welcomed by the UK asset management industry, on September 9, 2024, the FCA published a new webpage offering firms the opportunity to delay their compliance with the naming and marketing rules until 5pm on April 2, 2025.

In order to take advantage of what the FCA termed as 'temporary flexibility', firms could apply to the regulator to delay compliance with the new rules, as long as they had submitted a completed application for approval of amended disclosures – in line with rule 5.3.2 of the ESG sourcebook – for a UK fund by 5pm on October 1, 2024. This applied only to those using one or more of the terms 'sustainable', 'sustainability' or 'impact' – or a variation of those terms – in the name of a fund, who were intending either to begin using a label or to change the name of that fund. Firms should expect April 2, 2025 to be a hard deadline for compliance.

More on the naming and marketing rules can be found in episode 11 of our Let's talk asset management podcast series, [UK SDR naming and marketing rules](#).

Distributors

As mentioned above, December 2, 2024 was also a key date for distributors. Distributors were already subject to the anti-greenwashing rule and were required to communicate the existence of a label and provide access to consumer-facing disclosures (for both labelled and unlabelled funds) to retail investors. However, from December 2, 2024, distributors now also have to provide notice on overseas products clarifying that they are not subject to the UK SDR.

Next steps

For those firms that are not taking advantage of the FCA's temporary flexibility, the first set of ongoing disclosures for financial products will need to be published next year. PS23/16 also set out rules and guidance regarding sustainable entity reports and these reporting requirements are tiered based on the asset size under management (AUM):

- Firms with over £50 billion in AUM must publish their first reports by December 2, 2025.
- Firms with AUM between £5 billion and £50 billion have a later deadline of December 2, 2026 for their initial reports.

Overseas funds and Portfolio managers

The regulator said it will continue working with HM Treasury in relation to overseas funds offered by FCA-regulated firms. In perhaps the most surprising change, except for the anti-greenwashing rule, UK portfolio management was excluded from the rules in PS23/16. The FCA instead issued a separate consultation on portfolio management in April 2024 (CP24/8) and has now stated that it intends to publish a policy statement on implementation in Q2 2025.

Conclusion

Given that SDR is a flagship reform for the FCA, we can expect to hear more from the regulator in 2025 and firms should continue working towards the various deadlines and not expect any further instances of 'temporary flexibility'.

In this article, we have touched on two key components of SDR: labelling and distribution, and disclosures and reporting. However, there are other areas that are equally important, including governance, risk identification, policies and procedures, and enforcement. More on that to follow in the New Year.



European Union

13 December 2024 - Regulation on ESG ratings activities

There was published in the Official Journal of the EU (OJ), [Regulation \(EU\) 2024/3005](#) of the European Parliament and of the Council of 27 November 2024 on the transparency and integrity of ESG rating activities, and amending Regulations (EU) 2019/2088 and (EU) 2023/2859. The Regulation enters into force on the twentieth day following its publication in the OJ (2 January 2025). It applies from 2 July 2026.

13 December 2024 - ESMA Q&As on its guidelines on funds' names using ESG or sustainability-related terms

The European Securities and Markets Authority (ESMA) issued [Q&As](#) on the application of its guidelines on funds' names using ESG or sustainability-related terms.

Background

The Q&As cover green bonds, the convergence on "meaningfully investing in sustainable investments" and the definition of controversial weapons.

ESMA has decided to clarify the treatment of green bonds because of the imminent application of the European Green Bonds Regulation and the reference in the mandates in the Alternative Investment Fund Managers Directive and UCITS Directive noting that sectoral legislation takes precedence.

18 December 2024 - EIOPA- ECB joint paper on natural catastrophe risk management

The European Central Bank (ECB) and European Insurance and Occupational Pensions Authority (EIOPA) issued a [paper](#) which proposes a possible EU-level solution to address the widening gap in natural catastrophe insurance protection in Europe. The paper analyses 12 existing national natural catastrophe insurance schemes and how they employ private and public funds to address the protection gap. Building on existing national and EU structures, the paper spells out a possible EU-level solution composed of two pillars – an EU public-private reinsurance scheme and an EU fund for public disaster financing.

18 December 2024 - Categorisation of products under the SFDR

The Platform on Sustainable Finance, an advisory body to the European Commission, published a [briefing note](#) outlining how a categorisation system for sustainable finance products could be set up and calibrated. The Platform on Sustainable Finance will present the proposal in a webinar on 21 January 2025 from 13:00 to 14:00 CET.



France

17 and 30 December 2024 –AMF applies ESMA’s guidelines on funds’ names using ESG or sustainability-related terms

The Autorité des Marchés (AMF) will [apply](#) ESMA’s guidelines on funds’ names using ESG or sustainability-related terms. Subsequently, the AMF published the necessary [adaptations](#) to its Position-Recommendation DOC-2020-03 in light of the guidelines which make the necessary adjustments to the marketing materials section.



The Netherlands

There have been no reported updates this month.



United States- SEC and CFTC

There have been no reported updates this month.



Australia

17 December 2024 - Penalty hearing in ASIC ‘greenwashing’ proceeding against ActiveSuper

Greenwashing remains one of the Australian Securities and Investments Commission’s [\(ASIC\) core enforcement priorities](#) in 2025.

On 17 December 2024, there was a hearing before Justice O’Callaghan in relation to penalty and other relief following an earlier [Federal Court of Australia](#) decision finding that LGSS Pty Ltd, as trustee of the superannuation fund Active Super (**Active Super**), had engaged in ‘greenwashing’ by making false or misleading representations to members or potential members of the fund about the ethical and responsible exclusions it applied. Specifically, the Court found that Active Super published representations which were misleading and deceptive in relation to exclusions applied to gambling, coal mining, Russian entities and oil tar sands investments on its website, reports and disclosure documents.

The Court found that the representations made by Active Super were not subject to qualifications or caveats. As such, indirect holdings by Active Super in ‘excluded’ companies, in addition to direct holdings, were subject to the representations and held by the Court to be false or misleading.

The decision has been reserved.

18 December 2024 - ACCC final guide on sustainability and Australian competition law

The Australian Competition and Consumer Commission (ACCC) has released a [guide for sustainability collaborations and Australian competition law](#) (**Guide**). The Guide aims to inform businesses and other interested entities about the interaction between Australian competition law and sustainability collaborations.

Specifically, the Guide assists businesses and other entities to understand:

- When collaboration is likely to breach Australian competition law,
- If there is a risk of breaching the *Competition and Consumer Act 2010* (Cth) (**Act**), whether there is the option to seek an exemption from the ACCC.

The Guide clarifies the operation of the Act so that participation in lawful sustainability collaborations is not unnecessarily limited. Further, the Guide outlines various ACCC exemptions processes in situations where Australian competition law risks do arise. These exemptions include:

- Authorisation.
- Notification.
- Class exemption for collective bargaining.

The ACCC encourages businesses and other entities to make use of the Guide and their 5-step checklist to assess whether a proposed collaboration may raise competition concerns.

1 January 2025 - New sustainability and climate reporting requirements begin

Mandatory climate reporting requirements under the newly enacted *Treasury Laws Amendment (Financial Infrastructure and Other Measures) Act 2024* (Cth) will take effect for certain Australian businesses and financial institutions from 1 January 2025 as part of the first reporting cohort.

The new reporting requirements will require entities to prepare annual sustainability reports containing mandatory climate related financial disclosures. These reports should include, for example, the entity's metrics and targets related to climate and governance or risk management processes.

The first cohort of reporters are large entities that report under Chapter 2M of the *Corporations Act 2001* (Cth). This includes entities that are National Greenhouse and Energy Reporting (**NGER**) Reporters or entities that meet at least 2 of the following criteria:

- Consolidated revenue of \$500 million or more.
- \$1 billion or more in EOFY consolidated gross assets.
- 500+ EOFY employees.

While the mandatory climate reporting obligations will be phased in gradually from 1 January 2025 to 1 July 2027, the ASIC has stressed that all entities who will become subject to the sustainability reporting requirements should understand [how the new requirements apply](#) to them.

International regulators – FSB, IOSCO, Basel Committee, NGFS, SASB, IFRS, ISSB

There have been no reported updates this month.

Resources

ESG is high on the regulatory agenda. Businesses, governments, regulators, financial services firms and individuals all have a part to play in tackling climate change and this view is increasingly shared across society. In terms of financial markets, investors are increasingly seeking sustainable financial products and ESG investing, traditional investing combined with sustainable or otherwise philanthropic aims, has seen huge growth in recent years. Regulated firms are also seeking to improve their own ESG performance more generally to build stronger relationships with their stakeholders, including those who use their services. Whilst the growing emphasis on ESG presents opportunities for financial services providers, it also brings with it a number of risks, which need to be properly managed with a view to avoiding future regulatory investigations and enforcement.

We have produced a number of resources, including articles, podcasts and newsletters, to help clients navigate this evolving, complex landscape:



Financial services: Regulation tomorrow

Our blog, Financial services: Regulation tomorrow offers a convenient resource for those keeping track of the evolving and increasingly complex global financial services regulatory environment.



Financial Services Regulatory Developments in ESG

Developed by our global financial services regulatory lawyers and integrated risk advisory group, our Financial Services Regulatory Developments in ESG Hub provides resources and insights to help clients stay informed of key regulatory developments in the sector.



ESG and Sustainability Insights newsletter

Our ESG and Sustainability Insights newsletter brings together recent insights and resources on key topics affecting your business, including climate change and regulation, business and human rights, sustainable finance, energy transition and more.



Contacts

Global

Jonathan Herbst

Global Head of Financial Services,
London
+44 20 7444 3166
jonathan.herbst@nortonrosefulbright.com

Haney Saadah

Managing Director of Risk
Consulting, EMEA, London
+44 20 7444 2519
haney.saadah@nortonrosefulbright.com

Simon Lovegrove

Global Director of Financial Services
Knowledge, Innovation and Product,
London
+44 20 7444 3110
simon.lovegrove@nortonrosefulbright.com

Europe

Claire Guilbert

Partner, Luxembourg
+352 28 57 39 298
claire.guilbert@nortonrosefulbright.com

Floortje Nagelkerke

Partner, Amsterdam
+31 20 462 9426
floortje.nagelkerke@nortonrosefulbright.com

Sébastien Praicheux

Partner, Paris
+33 1 56 59 54 25
sebastien.praicheux@nortonrosefulbright.com

Anna Carrier

Senior Governance and Regulatory
Affairs Advisor, Brussels
+32 2 237 61 46
anna.carrier@nortonrosefulbright.com

Roberto Cristofolini

Partner, Paris
+33 1 56 59 52 45
roberto.cristofolini@nortonrosefulbright.com

Michael Born

Counsel, Frankfurt
+49 69 505096 421
michael.born@nortonrosefulbright.com

Andrew Lom

Global Head of Private Wealth and
Head of Financial Services, New York
+1 212 318 3119
andrew.lom@nortonrosefulbright.com

Steven Lofchie

Partner, New York
+1 212 318 3075
steven.lofchie@nortonrosefulbright.com

Salvatore Iannitti

Partner, Milan
+39 02 86359 429
salvatore.iannitti@nortonrosefulbright.com

William Troutman

Partner, Los Angeles
+1 213 892 9208
william.troutman@nortonrosefulbright.com

Australia

Helen Taylor

Partner, Sydney
+61 2 9330 8218
helen.taylor@nortonrosefulbright.com

Kate Green

Partner, Sydney
+61 2 9330 8928
kate.green@nortonrosefulbright.com

Elisa de Wit

Partner, Melbourne
+61 3 8686 6266
elisa.dewit@nortonrosefulbright.com

