BlackRock

June 2024

ESG Policy Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Submitted via email to: cp24-8@fca.org.uk

RE: CP24/8: Extending the Sustainability Disclosure Requirements (SDR) regime to Portfolio Management

BlackRock[1] is pleased to have the opportunity to respond to the Financial Conduct Authority (the 'FCA') consultation on extending SDR to portfolio management services.

As an asset manager, BlackRock is a fiduciary that manages investments on behalf of retail and institutional investors across a range of markets and asset classes. The money we manage is not our own – it belongs to our clients, the asset owners, who choose their own investment strategies and products from our broad range of offerings.

BlackRock's investment approach is rooted in our fiduciary duty: we start with our client's objectives, seeking the best risk-adjusted returns, underpinned by research, data, and analytics. We apply that same approach to sustainability - we create investment solutions that meet the diverse needs of our clients and seek optimal risk-adjusted returns and outcomes in line with their individual investment choices.

Sustainable investing and navigating the transition to a low-carbon economy are a priority for many of our clients in the UK and globally, and we therefore welcome the opportunity to comment on the issues raised by this consultation. We will continue to contribute to the policy dialogue on this and other topics in the best interests of our clients, the end-investors, and asset owners.

Yours faithfully,

David Hickey
Head of UK Sustainability
david.hickey@blackrock.com

Muirinn O'Neill
Government Affairs & Public Policy
muirinn.oneill@blackrock.com

[1] BlackRock is a leading provider of investment, advisory and risk management solutions, and has been active in the UK for over 50 years. Our purpose is to help more and more people experience financial well-being.

Overview

BlackRock is supportive of the FCA's intentions to help build consumer trust in financial markets and efforts to help consumers make informed decisions that are aligned with their investment preferences.

As the consultation paper notes, the SDR regime has been developed primarily to help retail investors navigate the sustainable investment landscape as it pertains to them. Our understanding is that the proposals to extend the regime are primarily aimed at these retail investors.

The scope of the consultation paper, however, seems to go far beyond this and there is a risk of inadvertently capturing a number of products which have completely different characteristics and client bases. We would therefore ask the FCA to make the focus of this extension clearer in the final rules.

In line with this, given the fundamental changes to the proposed rules for portfolio managers from those which were consulted on in CP22/20, we believe the timeline for implementation proposed in CP24/8 is unfeasible. Instead, we suggest that firms are given 12 months from the publication of the Policy Statement to implement these new rules.

***

1. **Do you agree with the proposed scope of our regime? If not, what alternative scope would you prefer and why?**

The SDR labelling regime and accompanying naming and marketing rules are designed to enable retail investors searching for sustainable products to have confidence that their investments are sustainable and that investment approaches follow one of the four strategies captured by the sustainability labels.

Our understanding is that the purpose of the proposed extension to portfolio managers is to create a level playing field those providing portfolio management offerings to retail investors, but the scope proposed in CP24/8 seems to go far beyond this and could easily be interpreted as being more wide reaching.

Professional clients

We welcome the FCA's statement that firms offering portfolio management services to professional clients can opt into the labelling regime and associated disclosures, but will not be subject to the naming and marketing requirements.

Professional clients have a higher level of knowledge and sophistication in investment decision-making. It is therefore appropriate that they do not fall within scope of the naming and marketing rules, which in turn means that the portfolios do not require additional sustainability related pre or post contractual disclosures.

However, while it is possible that the proposed rules can be read to mean that the additional disclosures are required only where the manager is providing portfolio management services directly to retail clients, we would ask the FCA to make this completely clear in the final rules.

We would also note that, even with this clarification, investment managers may still be required to make disclosures and support clients with reporting for clients further down the intermediation chain, so that they can draft their own Consumer Facing Documents. It is important to take this into consideration when thinking about implementation timelines.

Treatment of investments in segregated accounts

A significant challenge experienced by the industry when implementing SFDR was how to meet classification and disclosure requirements in respect of segregated accounts, where the manager is required to track a benchmark index, but also to exclude investments on the relevant client's restricted list (as updated from time-to-time), but without any additional information provided as to the reasons for the constituents' exclusion.

As these arrangements are typically entered into with professional clients, we do not believe the FCA intended to capture such arrangements in the scope of this regime (unless, of course, the professional client chooses to opt in). However, it would be good to receive confirmation of this from the FCA, even in circumstances where there may be an end-retail investor further down the intermediated distribution chain.

Life and pension products

In PS23/16, the FCA stated that it will continue work to develop proposals for pensions products and insurance-based investment products in the medium term. However, the drafting of CP24/8 does not make sufficiently clear that these products are not in scope.

For example, it appears that life contracts are captured in scope of the proposed rules. Paragraph 1.5 within CP24/8 states this extension applies to firms managing investments. In the FCA Handbook, this term is defined as including 'assets (that) consist of or include any security, structured deposit or contractually based investment…'. In accordance with Article 3(1) of the Regulated Activities Order (Interpretation), contractually based investments include life policies.

There is therefore a concern that products, including unit-linked life funds, are caught under this proposed regulation. This does not seem to be the intention of PS 23/16 and insurance products are not mentioned in CP24/8, our assumption is therefore that this is unintentional. It would be helpful for the FCA to clarify this in the final rules.

Linked to this, in relation to pension products, BlackRock has a combination of DB and DC scheme clients in the segregated account space. We would ask for clarity as to whether a manager can treat the trustees of the schemes, which are professional clients, as a client and avoid looking through to the members of the schemes.

We would also ask for clarity as to whether the marketing rules apply if a firm is providing portfolio management services and a scheme is performing the marketing activity in relation to the scheme members. We would ask for further information regarding what constitutes marketing in this regard.

Model portfolios

We understand that the FCA is looking to extend SDR to portfolio management services that take the form of model portfolios. In relation hereto, we believe that model portfolios which are provided or otherwise made available to professional and retail clients that do not involve any portfolio management services are outside scope of SDR.

For instance, if a firm provides a model to a professional client, the underlying funds of such a model would be in scope of SDR, but we believe that the model itself would not be in scope of SDR unless the firm providing the model is also providing portfolio management services which are in line with the model provided by said firm.

Moreover, if an execution only platform makes available models available to retail clients of the execution only platform, such models should not be in scope of SDR since the execution only platform would not be providing portfolio management services to such retail clients who decide to invest in those models. Based on the reading of the CP, we assume that the models would not come into scope of SDR even if sustainability related terms are used to describe such models since no portfolio management services are being provided.

However, we would welcome the FCA's views of the scope of SDR to model portfolios which do not involve portfolio management services, but where such models may be provided on an advisory basis, execution only basis, or based on marketing of the funds forming part of the models.

Carve-out for funds, AIFMs, ManCos, and firms outside of the UK

We support the carve-out provided to portfolio management for funds, AIFMs, ManCos, and for firms outside the UK.

In relation to sub-advised mandates, we would welcome the FCA's confirmation that chains of sub-delegation are outside scope even if services by one entity are not provided directly to the ManCo of a fund. For instance, where a ManCo has sub-delegated portfolio management services to investment manager X, which in term sub-delegates portfolio management services to investment manager Y.

In this instance, the portfolio management services provided by investment manager Y could be in scope of SDR since the investment management agreement with investment manager X is not the ManCo of the fund. However, we believe that the FCA intends for such portfolio management services to be outside scope of SDR.

The carve-out for firms outside the UK becomes less clear in relation to clause 3.6 of the consultation, which highlights that "some portfolio management activities may take place in branches based overseas". With this in mind, we would ask for further clarity as to whether a mandate would fall into scope if it was with a UK entity, but portfolio management was sub-delegated to a non-UK entity.

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

We have significant concerns with the proposed implementation timeline.

Given the fundamental changes to the proposed rules for portfolio managers from what was consulted on in CP22/20, we believe the proposed timeline is unfeasible, and that portfolio managers will need more time to prepare for implementation of the FCA's updated rules for portfolio management.

Instead, we suggest that the implementation date applies from 12 months after the final rules for portfolio management services are published.

3. **Do you agree with our approach to labelling portfolios, including the threshold and assessment requirements? If not, what alternatives do you suggest and why?**

We welcome the threshold reduction from the original proposal in CP22/20 from 90% to 70% - as this puts the required threshold for portfolio management services in line with that required for funds in PS23/16.

We would ask for clarification on the treatment of unlabelled portfolio management products given the guidance in ESG 4.3.6 that 'the sustainability characteristics of a sustainability product should be material to that product, for example, at least 70% of its assets should have sustainability characteristics'. This would appear to suggest that the 70% threshold also applies to unlabelled portfolio management products, we would request the FCA provides clarification on this point.

As with the case for funds**,** we ask that the FCA clarifies in the final rules that portfolio offerings with a label are allowed to invest in non-UK funds which are not currently subject to UK SDR regulation. Should HMT decide to apply (elements of) SDR to overseas funds following its consultation, we would request the same approach be adopted for overseas portfolio management services.

4. Do you agree with our approach to naming and marketing? If not, what alternative approach would you suggest and why?

We agree that firms offering portfolio management services to professional clients should not be subject to the naming and marketing requirements and associated disclosures.

Professional clients have a higher level of knowledge and sophistication in investment decision-making and therefore it is appropriate that they do not fall within scope of the naming and marketing rules. We also note that any marketing of portfolio management services to professional clients will in any case still be subject to the anti-greenwashing rule.

5. Do you agree with our proposed approach to disclosures, including the tiered structure? If not, what alternative do you suggest and why?

As mentioned earlier, the rules can be read to mean that the additional disclosures are required only where the manager is providing portfolio management directly to retail clients, we would ask that the FCA is explicit on this point in the final rules.

Regarding entity-level reporting, firms above the £5bn AUM threshold are already subject to mandatory TCFD reporting. The FCA notes in CP24/8 that it is introducing entity-level disclosures specifically for portfolio managers that build on the TCFD requirements already in place.

Where these disclosures go beyond the TCFD entity-level reporting requirements that already exist for portfolio managers, we would question their utility.