

THE
INVESTMENT
ASSOCIATION

In association with

EVERSHEDS
SUTHERLAND

TIMING CONSIDERATIONS FOR SDR IMPLEMENTATION

AUTHORISED FUNDS

February 2024



ABOUT THE INVESTMENT ASSOCIATION (IA):

The Investment Association champions UK investment management, supporting British savers, investors and businesses. Our 250 members manage £8.8 trillion of assets and the investment management industry supports 126,400 jobs across the UK.

Our mission is to make investment better. Better for clients, so they achieve their financial goals. Better for companies, so they get the capital they need to grow. And better for the economy, so everyone prospers.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital.

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks and shares ISAs.

The UK is the second largest investment management centre in the world, after the US and manages 37% of all assets managed in Europe.

The Investment Association (the "**Association**") has made available to its members the Time Considerations for SDR Implementation Guidance (the "**Guidance**") in collaboration with Eversheds Sutherland (the "**Collaborator**"). The Guidance has been made available for information purposes only to provide timing considerations and guidance for preparing an FCA application relating to the changes made to funds in consequence of SDR, if required.

The Guidance does not constitute professional advice of any kind and should not be treated as professional advice of any kind. Firms should not act upon the information contained in the Guidance without obtaining specific professional advice. The Association accepts no duty of care to any person in relation to this Guidance and accepts no liability for your reliance on the Guidance.

This Guidance cannot supplant any UK or EU legislation, the Financial Conduct Authority rules or guidance or any other relevant rule, regulation, guidance, recommendation or law that may be relevant or applicable, and firms should ensure that they understand and comply with those requirements. Firms should contact the Association if they have questions about the Guidance.

All the information contained in this Guidance was compiled with reasonable professional diligence, however, the information in this Guidance has not been audited or verified by any third party and is subject to change at any time, without notice and may be updated from time to time without notice. Neither the Collaborator nor the Association nor any of its respective directors, officers, employees, partners, shareholders, affiliates, associates, members or agents (the "**Parties**") accept any responsibility or liability for the truth, accuracy or completeness of the information provided, and do not make any representation or warranty, express or implied, as to the truth, accuracy or completeness of the information in the Guidance.

The Parties are not responsible or liable for any consequences of you or anyone else acting, or refraining to act, in reliance on this Guidance or for any decision based on it, including anyone who received the information in this Guidance from any source and at any time including any recipients of any onward transmissions of this Guidance. Certain information contained within this Guidance may be based on or obtained or derived from data published or prepared by third parties. While such sources are believed to be reliable, the Parties assume no responsibility or liability for the accuracy of any information obtained or derived from data published or prepared by third parties.

INTRODUCTION

The FCA is introducing the Sustainability Disclosure Requirements (SDR) as part of its efforts to promote sustainability and responsible investing in financial products and services but also to combat deceptive or misleading marketing practices related to the sustainability characteristics of financial products, known as greenwashing.

SDR's measures, to varying degrees, compel financial firms to be more transparent about their products' sustainability characteristics and to ensure that the claims made are proportionate and justified. This transparency aims to empower investors to make more informed choices aligned with their sustainability goals.

However, for retail products and services in the UK, the new rules go further than mere disclosure and effectively reshape how firms will be able to describe some offerings. SDR sets baseline standards for products to be able to use certain language in financial promotions. This means that SDR requires significantly more substance than other regimes, including (at least for the time being) the Sustainable Finance Disclosure Regulation (SFDR) in the EU.

Raising the bar with the new rules is a crucial cornerstone of the FCA's ESG Strategy and a major milestone for the UK investment management industry.

2024 represents a key year for firms with many implementation dates throughout the year. Understandably, firms have concerns around timing and while it isn't possible to cover all scenarios – with each matter to be considered on its own merits – this paper aims to help illustrate various timing considerations, outlining what needs to be prepared for an FCA application, if required, and when.



OVERALL TIMELINE

										2023	
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

GP23/3 published

PS23/16 published

2024											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

GP23/3 consultation closes

Anti-greenwashing rule applies

Labels available

Naming and marketing rules apply

SDR consumer disclosure rules apply

Distribution rules apply

2025											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

Entity level SDR disclosures for firms with >£50bn AUM

Ongoing sustainability-related performance information

On demand regime begins

2026											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

Entity level SDR disclosures for firms with £5-50bn AUM

APPLICATIONS TO THE FCA

- The new investment labels will apply from 31 July 2024. The labels are a voluntary regime and this date is not a deadline. Firms can choose if and when to apply the labels from that date.
- The FCA has been clear that it will not be approving the labels themselves, but the FCA will need to approve the changes made to the funds in consequence of SDR – for example, to make them eligible for a label, or to meet the new marketing requirements. We envisage that some products may want to reduce disclosure to de-emphasise sustainability and this too may need FCA approval. Where these applications are being submitted before 31 July 2024, and therefore the label itself cannot be added, it will nevertheless be helpful to flag that the application is in pursuit of a particular label.
- We envisage that some products may want to reduce disclosure to de-emphasise sustainability and this too may need FCA approval.
- Our understanding is that, at least for the early wave of applications, the FCA may want to discuss firms' proposals upfront prior to the application process. This will allow the FCA to raise any initial questions and give comments ahead of the clock starting on the one month application period.
- Notifications of any SDR-related changes to funds should be assessed in the usual way based on COLL 4.3, 8.3.6 or 15.5. Please see the following page for further information on this.



WHAT NEEDS TO BE PREPARED FOR AN FCA APPLICATION?

REQUIRED DOCUMENTS

FCA application form

SDR-related upgrades to prospectuses are expected to trigger FCA applications made on the usual Form 21 / 251 / 261Q. While the FCA is in the process of updating these forms more broadly, this is not specifically with SDR in mind and there are no specific considerations presently. Most of the relevant material could in any case be captured in the investment objective, policy and strategy sections of the forms.

Constitutional document

A change to a fund's objective (e.g. inclusion of non-financial objective) would often need to be reflected in the constitutional document (e.g. instrument of incorporation).

Prospectus

The prospectus will need to be updated to reflect all of the new mandatory disclosures required and any changes to the investment objectives / policy to reflect SDR requirements.

UCITS KIID / NURS KII / PRIIPs KID

If any revisions to investment objective / policy / strategy / benchmark need to be reflected in the KIID, it will need to be updated and one specimen per fund provided with the application.

The SDR label cannot be put on the KIID.

Investor notification

If the investment objective, policy, strategy etc of a fund are being amended, it will be necessary to engage with investors. The FCA will expect to see the notification.

The degree of engagement with investors follows the process in COLL 4.3. Changes are expected to be categorised as 'significant' (requiring 60 days' notice) or 'notifiable' (requiring contemporaneous or reasonable pre-notice) rather than 'fundamental' (requiring an EGM).

Model portfolio and stress testing

Where changes are being made to a fund's investment policy, the FCA will expect to see a revised portfolio and stress testing results to accompany it.

Solicitor's certificate

If the constitutional document is being amended, the application will need to be accompanied by confirmation from a solicitor that the document remains compliant.

OPTIONAL DOCUMENTS

Prospectus disclosure checklist

This is not presently mandatory but we expect that most firms will prepare this as part of their drafting process. This could be used to cross refer to specific rules in the ESG Sourcebook and show how the criteria for a specific label have been met.

The FCA does not expect to require this or to need to request it.

MANDATORY DOCUMENTS NOT INCLUDED IN THE APPLICATION

Consumer factsheet

We understand that the FCA does not want to see consumer factsheets filed as part of the FCA application nor subsequently. These may of course be sampled as part of FCA supervision work.

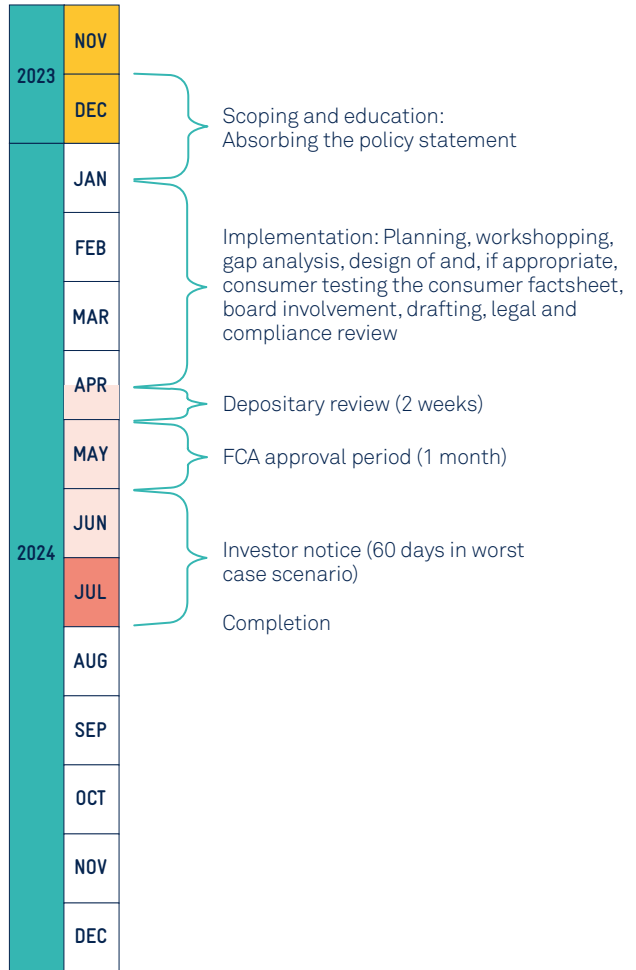
For firms that want to adopt a label shortly after FCA approval, however, this only releases a short amount of additional working time.

Record of the basis on which the label has been used

ESG 4.1.6 R requires managers to record the basis for using a label which then has to be kept updated.

ILLUSTRATIVE TIMELINE FOR USE OF LABELS IN JULY 2024

For the most ambitious funds that want to adopt a label in July, preparations need to be underway as soon as possible.

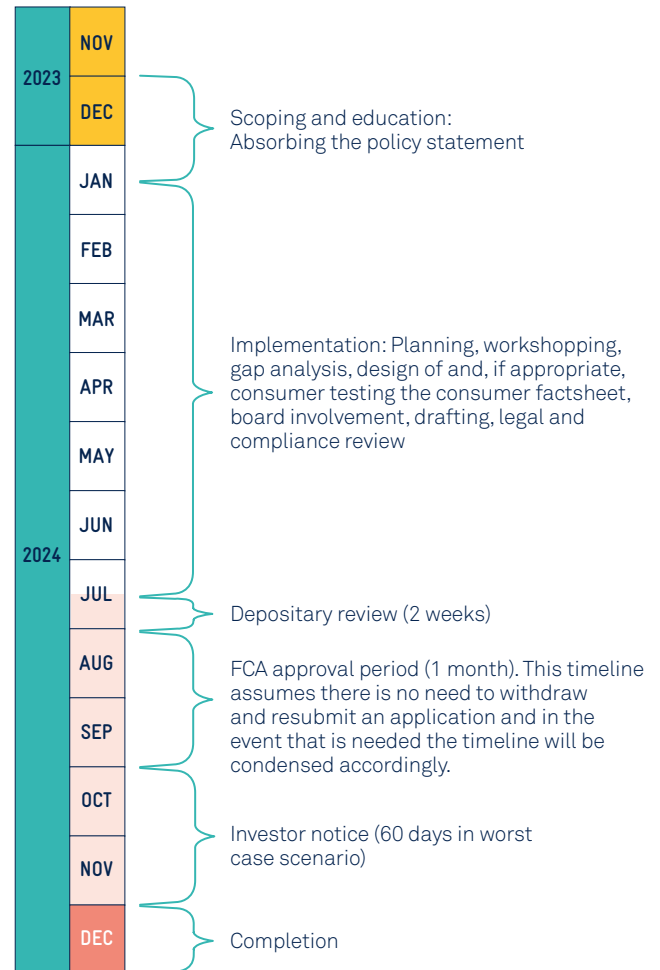


ILLUSTRATIVE TIMELINE FOR LABELS AND DISCLOSURES

This timeline provides an illustrative example of when decisions need to be reached for labels and disclosures for funds that opt to have a label. December is also the deadline firms have for making disclosures for non-labelled products in scope of the requirements.

We imagine that most types of firm will need a reasonable lead time to plan the changes to their products and implement them after whatever external engagement is required (whether that is depositary, FCA, or investors).

Authorised funds in particular could lose a significant amount of time to these processes (as illustrated). It will be important to liaise with stakeholders (e.g. depositaries) early so that they have visibility of what is coming.





The Investment Association

Camomile Court, 23 Camomile Street, London, EC3A 7LL

www.theia.org

@InvAssoc

February 2024