JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

Date: 23 April 2020
ESMA 34-45-904

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter "SFDR") and in particular on the specific questions summarised in Section 3 of the consultation paper under "Questions to stakeholders".

Comments are most helpful if they:

1. contain a clear rationale; and
2. describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

Q1 Insert your responses to the questions in the Consultation Paper in the present response form.

Q2 Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.

Q3 If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.

Q4 When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.

Q5 The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading 'Your input - Consultations' by **1 September 2020**.

Q6 Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[1]. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

[1] Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Standard Life Aberdeen
Activity	Investment Services
Are you representing an association?	☐
Country/Region	UK

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
Standard Life Aberdeen plc is one of the world's largest investment companies, created in 2017 from the merger of Standard Life plc and Aberdeen Asset Management PLC. Operating under the brand Aberdeen Standard Investments, the investment arm manages £455.6 billion (€501.2 billion) of assets, as at 30 June 2020. It has a significant global presence and the scale and expertise to help clients meet their investment goals.

We are headquartered in Scotland and listed in London, with around 6,000 employees in over 50 locations worldwide. We have operations in global financial capitals and important regional centres, which bring us closer to our clients and customers around the world, and provide invaluable knowledge and insight to share with our people.

We welcome the opportunity to provide our comments on the proposed regulatory technical standards (RTS). In our response below, we highlight our main views which (in short) include:

1. Principal adverse impact

- The objective by the regulator to achieve comparability of financial market participants in terms of their adverse impact at entity level is not realistic at this point in time given in particular the lack of (standardised) ESG data.
- Even if indicators are non-material to holdings, asset managers – in line with the proposed approach - will have to dedicate considerable time and resource to obtain relevant data and make assessments rather than focussing on identifying, assessing and addressing the actual adverse impacts of their holdings.
- It is unclear how the assessment should be done for derivatives and the indicators are not tailored to certain assets like real estate or government bonds.
- In our view, entity level disclosure should focus on the approaches on how adverse impact is identified, assessed and addressed. The indicators to assess adverse impact at entity level should not be mandatory but asset managers should have the flexibility to choose from the proposed list of indicators and use other indicators.
- We agree that there is value in greater disclosure, especially where standardised ESG information is available and disclosure particularly against greenhouse gas emission indicators is key

from our point of view. We consider though that there is a lot more value in doing this at the product level.

2. Differentiation between products that integrate sustainability risks and Art 8 products

- The ESA's interpretation of the scope of Art 8 products is too broad and we fear could be counterproductive to the intention to introduce more elements of sustainable finance in mainstream finance, for instance, the approach to exclusions will be a disincentive to applying exclusions.
- Only where sustainability considerations impact portfolio construction with a view to achieving a certain environmental or social outcome, a product should fall under the scope of Article 8 products. In line with this, a product with exclusions should fall under the Article 8 only where exclusions are applied with a view to achieving a certain environmental or social outcome. Where the intention is to reduce or avoid negative impact on financial returns, for instance, the product should not be considered an Article 8 product.
- Recital 21 should be deleted as it could be interpreted in a way that captures products that integrate sustainability risks (and opportunities) into the investment process under the Article 8 category.

3. Mandatory use of EU Climate Benchmarks for Art 9 products with carbon reduction emissions as objectives

- We do not believe that the use of an EU Climate Benchmark is mandatory under the level 1 Regulation.
- Making EU Climate Benchmarks mandatory for Article 9 products that aim to reduce carbon emissions would remove any possibility for innovation in this space. It would give benchmark providers a disproportionate impact in terms of determining what investments will lead to reduction of carbon emissions. Benchmarks, however, are based on backward data whereas we focus on future carbon emission reduction targets of investee companies.
- Requiring financial market participants to explain how the product complies with the methodology for EU Climate Benchmarks, if these benchmarks are not available, would appear to result in mandatory exclusions for Article 9 products that aim to reduce carbon emissions (see EC delegated acts which include a number of exclusions for Paris-aligned benchmarks). This would be problematic for a fund that has the target to reduce carbon emissions by supporting the transition and that may be invested in companies that do not yet meet the desired standards.
- It is not clear how EU Climate Benchmarks should be used where a fund has both social and environmental objectives.

4. Good governance

- We suggest that the ESA do not further specify good governance for Art 8 products but provide asset managers with flexibility in terms of their governance assessments.

- While we think asset manager should always assess and encourage good governance practices in investee companies, there are companies that are critical to achieving climate targets but they may lag behind with regards to certain governance aspects.

5. Do no significant harm (DNSH) assessment

- We note that a too prescriptive approach to 'do no significant harm' could negatively impact investments in companies that are on the path of transitioning to more sustainable practices and activities.
- While alignment to the Taxonomy DNSH concept seems sensible, we note that the DNSH concept under the Taxonomy is not yet sufficiently developed.

<ESA_COMMENT_ESG_1>

- **: Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an "opt-in" regime for disclosure??**

<ESA_QUESTION_ESG_1>
General comments on proposed indicators

We consider it useful to have a list of indicators of adverse impact and generally agree with the list of indicators provided by the European Supervisory Authorities (ESAs). We are, however, concerned that these indicators should be applied in a mandatory way and regardless of their materiality to a specific holding. We consider it crucial that asset managers have the flexibility to focus their attention on those indicators that are relevant to their holdings; and their choice of indicators will depend on the context in which investee companies operate, including the type of industry sector, the geographic location, the main markets etc. Even if indicators are non-material to holdings, asset managers – in line with the proposed approach - will have to dedicate considerable time and resource to obtain relevant data and make assessments rather than focussing their attention on identifying, assessing and addressing the actual adverse impacts of their holdings. **We believe that the focus of disclosure should be on how asset managers approach and manage adverse impact and the robustness of their approach**.

With regards to whether these indicators should always lead to adverse impact, we believe that this should not be the case. For instance, according to the ESA proposal the absence of certain company policies would automatically mean that this company has an adverse impact. Indicators of policies, however, only provide insight as to whether a policy is in place which - from an adverse impact assessment perspective - may be useful but not necessarily the relevant consideration. For instance, the risks of corruption or slavery depend to a large extent on the context in which a company operates, including the geographic location and the type of industry. The indicator whether a corruption (or another) policy is in place is therefore not always meaningful. **Asset managers need to focus their assessment on understanding how the investee company approaches an issue and how effective that approach is, and only from that assessment the asset manager can determine if there is adverse impact.** We understand that comments can be added to explain a value given against an indicator, however, this would not be reflected when the data is presented at an aggregate level and is likely to be confusing for investors.

It is also worth noting that the outcome of the assessment of some of the indicators could depend on factors which are beyond the investee company's actual practices. For example, the indicator of 'number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws' will also be determined by the robustness of the judiciary system in a country and not necessarily only by the practice of a company.

The draft RTS state in recital 5 that "it is appropriate to standardise certain common adverse impacts which are considered to be measurable to provide a common reference point for the purposes of identifying which of those impacts are principal." **We challenge that adverse impact disclosure at entity level will allow investors to compare financial market participants' adverse impacts, at least not at this**

point in time. Comparability of adverse impact at entity level is not realistic for a number of reasons, including : the current lack of standardisation in terms of calculating and disclosing ESG data by investee companies; the draft RTS acknowledge that where data is not available financial market participants will have to make 'reasonable assumptions'; some of the proposed wording is suggestive, for instance, 'severe' can be interpreted in different ways; asset managers invest globally, with most countries having no requirements for standardised non-financial reporting in place, and this adds an additional difficulty in achieving comparability. Hence, due to the lack of standardised data there will be unavoidably inconsistencies on how adverse impacts are captured which reduces the ability to compare financial market participants.

We consider that there is more value in disclosing the policies and approaches to adverse impacts as opposed to reporting quantitative data at an aggregate level. We believe that such an approach would also be **more reflective of the level 1 Regulation** which – as the ESAs also point out in their preliminary impact assessments – is generally focussed on the disclosure of policies. In addition, paragraph 2(a) of Article 4 states that financial market participants must disclose "information about their policies on the identification and prioritisation of principal adverse sustainability impacts and indicators;". In our understanding this implies that a financial market participant should have the flexibility to decide which indicators to use and on which adverse impacts to focus the attention as opposed to being bound by a standardised list of indicators.

We fully agree that there is value in greater disclosure, especially where standardised ESG information is available and disclosure particularly against greenhouse gas emission indicators is key from our point of view. We consider though that there is a lot more value in doing this at the product level.

ESG data availability

We also want to stress the **lack of available ESG data**. For many of the proposed indicators no market based solutions to obtain this data are currently available. Also, direct engagement with investee companies may not necessarily result in obtaining all the requested data. Especially for SMEs, it will be very challenging to provide all the requested data and the proposed approach to adverse impact disclosure could negatively impact investments in SMEs. While we support enhanced disclosure of non-financial information by companies a lot of the required information will not be available in the short to medium term. In addition, non-financial reporting requirements are most advanced in the EU and the availability of ESG data reduces, at times significantly, outside the EU.

In view of the need to further develop ESG data to an appropriate standard of quality and reliability, we are concerned that the ambitious entity level disclosure does not at this stage provide benefits that could outweigh the costs, especially in view of the **legal and operational risk that both regulators and asset management firms will have to manage**. Financial market participants have a duty to provide non-misleading information to investors and are held accountable for their public disclosure. The proposed principle adverse impact disclosure requirement is likely to create a significant legal risk for financial market participants who will rely on non-standardised and incomplete data for their assessments. Equally, national competent authorities will be hampered in their ability to ensure accurate information is

provided to the market and consequently in fulfilling their supervisory duties. The draft RTS will create an expectation by the market which for the foreseeable future cannot be met.

We are fully supportive of a proposal put forward by European trade bodies, including EFAMA, to create a **centralised electronic register for ESG data** that would facilitate access to such data of EU based companies. However, such a register will not resolve the difficulty of obtaining relevant data for non-EU companies.

Finally, the '**hierarchy of behaviour'** with regards to the gathering of ESG data (draft RTS, Article 7 paragraph 2) does not reflect current practices and given the number of companies asset managers need to assess and the resources required for this, obtaining data from external providers is key and this should be fully acknowledged. We also like to highlight that third party data providers use publicly available data and therefore we do not see the need for the proposed hierarchy of behaviour regarding sourcing ESG data.

Testing of the indicators

We are aware of the tight timing to which the ESAs are subject but should the ESAs decide to maintain the mandatory approach in terms of adverse impact indicators, we suggest that a **real life test of the proposed indicators is first conducted** to better understand the outcome of an adverse impact assessment against the proposed indicators.
<ESA_QUESTION_ESG_1>

- **: Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?**

<ESA_QUESTION_ESG_2>
We consider that the proposed approach to measuring adverse impact **does not sufficiently take account of the different asset classes and instruments funds and portfolios are invested in**, for instance, the proposed indicators focus on equity and corporate bonds but are not tailored to other asset classes such as real estate or government bonds. It is unclear how adverse impact should be measured for government bonds and no solution is offered for this. The draft RTS do also not specify how principal adverse impact should be assessed for derivative instruments. It is worth highlighting that derivatives do not provide capital to companies but are a financial risk tool.

We note that for private market activities the necessary ESG data are currently not readily available and we expect challenges for the data collection particular by SMEs. Asset managers further invest globally and ESG data availability differs across jurisdictions and most countries outside the EU do not have mandatory non-financial disclosure requirements in place.

We also note that the adverse impact disclosure requirements do not take account of the level of engagement with investee companies which varies according to asset classes and investment strategies, and no engagement is undertaken where there is indirect exposure through, for instance, derivatives.

<ESA_QUESTION_ESG_2>

- **: If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?**

<ESA_QUESTION_ESG_3>
As mentioned under question 1, we do not believe that adverse impact of financial market participants' investment decisions at an entity level can actually be compared. This should better be done at product level and provided there is sufficient data available to measure against the indicators. The **disclosure of adverse impact at entity level should therefore focus on the approach that asset managers use to identify, assess and address principal adverse impacts** using the proposed list of indicators as a (non-exhaustive) toolbox.
<ESA_QUESTION_ESG_3>

- **: Do you have any views on the reporting template provided in Table 1 of Annex I?**

<ESA_QUESTION_ESG_4>
See answer to question 1. In addition we would like to highlight that the reference to 'weighted averages' for some of the indicators is impracticable as ESG data is normally reported once a year by investee companies. References to weighted averages should be deleted.
<ESA_QUESTION_ESG_4>

- **: Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies´ GHG emissions)?**

<ESA_QUESTION_ESG_5>
While we agree with most of the proposed indicators (though noting the lack of data in relation to several of them) we would like to stress that some of the indicators could have a limited value (see examples provided in answer 1). We would also like to highlight potential shortcomings of a pre-determined list of indicators given the **dynamic nature of the sustainability debate**. For instance, the ESAs have included 'gender diversity' as an indicator but companies today focus on diversity issues in general, and particularly ethnic diversity.

We note that there are also other indicators that may be useful - depending on the type of company and the context - to capture the nuances of companies' practices in relation to sustainability. For instance, we engaged with a company on its lobbying campaign in relation to its government's climate change policy.

We do not suggest that the current list of indicators should be expanded but the above examples highlight that a **mandatory static list is not appropriate for adverse impact assessment and that this could even reduce efforts by asset managers to develop processes that will allow them to identify and assess risks as they change**. We therefore urge the ESAs that the indicators will not be applied in a mandatory way.
<ESA_QUESTION_ESG_5>

- **: In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?**

<ESA_QUESTION_ESG_6>
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<ESA_QUESTION_ESG_6>

- **: The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?**

<ESA_QUESTION_ESG_7>
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<ESA_QUESTION_ESG_7>

- : **Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?**

<ESA_QUESTION_ESG_8>
Given the lack of data, we do not think it is appropriate to include more advanced indicators.
<ESA_QUESTION_ESG_8>

- **: Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?**

<ESA_QUESTION_ESG_9>
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<ESA_QUESTION_ESG_9>

- **: Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?**

<ESA_QUESTION_ESG_10>
We consider ten years for historical comparison too lengthy and suggest a timeframe of three years instead.
<ESA_QUESTION_ESG_10>

- **: Are there any ways to discourage potential "window dressing" techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?**

<ESA_QUESTION_ESG_11>

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<ESA_QUESTION_ESG_11>

- **: Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?**

<ESA_QUESTION_ESG_12>
We support the use of templates in enhancing consistent disclosure that allows clients to make meaningful comparisons between financial products. Any such template would need to:

- ensure alignment can be maintained with other key client disclosures that whilst outside the direct scope of the Sustainability-related Disclosure Regulation must remain aligned such as KIID documents which may themselves also have space constraints when translated into certain languages;
- if mandatory from day 1, be made available for use in a timely manner. For example, a dual registered product in Hong Kong and Luxembourg would, in order to meet the 10 March 2021 deadline, need to make regulatory submissions of updated prospectuses to the Hong Kong regulator no later than 10 November 2020. For these types of funds, both regulators need to approve the prospectus updates.

<ESA_QUESTION_ESG_12>

- **: If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?**

<ESA_QUESTION_ESG_13>
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<ESA_QUESTION_ESG_13>

- **: If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.**

<ESA_QUESTION_ESG_14>
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<ESA_QUESTION_ESG_14>

- **: Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?**

<ESA_QUESTION_ESG_15>
Use of derivatives

It is unclear how sustainability considerations should be made for derivatives, especially FX instruments or Treasury futures which may be used for risk mitigation by Article 8 and 9 products.

Use of EU Climate Benchmarks

Articles 31, 35 and 48 of the draft RTS suggest that for Article 9 products that have carbon emissions reduction as their objective the use of EU Climate Benchmarks (if available) is mandatory. We do not believe that this is a requirement in the level 1 Regulation and are concerned about a mandatory use of EU Climate Benchmarks. This would be incredibly prescriptive in terms of what can be invested in. **It would remove any possibility for innovation in this space. It would give benchmark providers a disproportionate impact in terms of determining what investments will lead to reduction of carbon emissions**. **Benchmarks are, however, based on backward data whereas we focus on future carbon emission reduction targets of investee companies.**

The draft RTS further state that where EU Climate Benchmarks are not available, financial market participants "shall explain how the financial product complies with the methodological requirements set out in Articles 19a [EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks], 19b [Requirements for EU Climate Transition Benchmarks] and 19c [Exclusions for Paris-aligned Benchmarks] of Regulation (EU) 2016/1011". In light of the adoption of the Delegated Regulation on minimum standards for EU Climate Transition benchmarks and EU Paris-aligned benchmarks by the European Commission, and Article 12 therein defining the exclusions for Paris-aligned Benchmarks, we understand that Article 9 products that have carbon emissions reduction as their objective will have to exclude from their investments companies listed in paragraphs 1 and 2 of Article 12 of the Delegated Regulation.

If this reading is correct, we would like to highlight that this could be problematic for investments in companies that are in the process of transitioning. **A fund that has the target to reduce carbon emissions by supporting the transition may be invested in companies that do not yet meet the desired standards and could fall under the list of companies mentioned under Article 12 of the Delegated Regulation on minimum standards for EU Climate Transition benchmarks and EU Paris-aligned benchmarks.**

It is further **unclear how the EU Climate Benchmark should be used by a fund that has social objectives alongside climate objectives**.
<ESA_QUESTION_ESG_15>

- **: Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.**

<ESA_QUESTION_ESG_16>
We are concerned over the suggested interpretation as to what constitutes products that integrate sustainability risks (and opportunities) into the investment decision-making process and products that promote social or environmental characteristics (Article 8) and products with sustainable objectives (Article 9). Amongst others, we believe that some of the **suggestions around the scope of Article 8 products, in particular, will be counterproductive to the attempt of introducing more sustainability considerations into mainstream, non-ESG specialised finance**.

- **Integration of sustainability risks as a fundamental element of a product**: In our understanding a product that integrates sustainability risks into the investment decision-making process is not subject to the enhanced disclosure requirements for Article 8 products. We understand though that, according to the ESAs, where the integration of sustainability risks is key to the product such a product could meet the Article 8 criteria. We are concerned that this interpretation of the scope of Article 8 products could be a disincentive for asset managers to develop and enhance their integration of sustainability risks into their investment decision-making and reduce efforts to make the consideration of sustainability risks a fundamental part of all their investment processes. **We believe that only where sustainability considerations impact the portfolio construction with a view to achieving a certain environmental or social outcome, a product should fall under the scope of Article 8 products.**

- **Recital 21 and the marketing of integration of sustainability risks and opportunities into investment decision-making**: We are concerned over recital 21 and **suggest that this recital is removed from the final RTS**. According to recital 21, "Financial products with environmental or social characteristics should be considered to be promoting, among other characteristics, environmental or social characteristics, or a combination thereof, when information provided to clients, in marketing communications or in mandatory investor disclosures (…), references sustainability factors that are taken into consideration when allocating the capital invested of the product." We believe that this wording could be interpreted in a way that products that focus on integrating sustainability risks and opportunities into the investment process and reference this process in marketing material could be captured by Article 8. These products do not intend to promote environmental or social characteristics but look at sustainability from a financial return perspective. If those products were to be deemed Article 8 products, asset managers would have to refrain from any reference on the consideration of sustainability risks and opportunities in their marketing communications. We do not believe that this would support the objective of promoting robust integration practices across the industry. Again, we believe that only where sustainability considerations impact the portfolio construction with a view to achieving a certain environmental or social outcome, a product should fall under the scope of Article 8 products.

- **Exclusions**: We understand that the European Commission and the ESAs intend to consider as an Article 8 product any product that applies exclusions, unless these are legally required. We strongly believe that a limited number of exclusions should not be the prevailing consideration to determine whether a product constitutes an Article 8 product. Clients might ask for exclusions because they believe this investment is not fit for the future as opposed to achieving an environmental or social outcome. We are concerned that **the proposed approach to exclusions will effectively result in a disincentive for financial market participants to apply any exclusion policy to some or all of their products**. We also feel that this interpretation could be **misleading for investors** if a product is marketed as an Article 8 product but only limited exclusions are attached to it (even if the criteria used will have to be disclosed). Only products where exclusions are applied with a view to achieving a certain environmental or social outcome should fall under Article 8 but not those where exclusions are applied with a view to reducing or avoiding negative impact on financial returns.

- **Taxonomy alignment of sustainable investments**: While the Sustainability-related Disclosure Regulation does not reference Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (EU Taxonomy Regulation), we understand that policymakers expect that sustainable investments are Taxonomy compliant. We note that this could be an **objective for the future but in the short to medium term there are some significant practical hurdles to this**, notably the lack of green revenue data reported by companies, and the large proportion of industries and economic activities in the investment universe where the EU has not (yet) defined carbon/sustainable thresholds and eligibility. These are typically in sectors that do not have significant carbon risks and opportunities (therefore difficult to put a threshold on sustainable activities), yet these are generally benign industries. The EU Taxonomy eligibility criteria therefore need to broaden out across all industries and economic activities.

<ESA_QUESTION_ESG_16>

- **: Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?**

<ESA_QUESTION_ESG_17>
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<ESA_QUESTION_ESG_17>

- **: The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?**

<ESA_QUESTION_ESG_18>
We are concerned that the requirement of graphical presentations in pre-contractual information could be interpreted as a binding commitment. For the investment manager it is not practicable to predict the portfolio composition in detail at the pre-contractual stage. The portfolio composition is likely to change over time and it would not be appropriate to include such a graphical representation in pre-contractual disclosure material.
<ESA_QUESTION_ESG_18>

- **: Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?**

<ESA_QUESTION_ESG_19>
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<ESA_QUESTION_ESG_19>

- **: Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?**

<ESA_QUESTION_ESG_20>
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<ESA_QUESTION_ESG_20>

- **: While Article 8 SFDR suggests investee companies should have "good governance practices", Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including "sound management structures, employee relations, remuneration of staff and tax compliance". Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?**

<ESA_QUESTION_ESG_21>
We strongly believe that a financial market participant should, regardless of the type of product, assess and encourage good governance practices in investee companies, including the specific details mentioned in relation to sustainable investments.

However, we suggest to **allow flexibility on the concept of 'good governance practices' in the context of Article 8 products**. We often find governance shortcomings in SMEs, including lack of board diversity, or remuneration focussed on the company's founder. In addition, too strictly set criteria for good governance could restrict investments in companies that are on the path to transition but may not necessarily meet all outlined governance aspects, especially if they are operating in emerging markets where standards on governance may be different to those in the EU. We note that there are a number of companies that make a critical contribution to achieving climate targets but they may lag behind with regards to certain governance aspects.

We also note that the draft RTS require financial market participants to describe "any potential minimum environmental or social safeguards" applied for those investments in Article 8 and Article 9 portfolios that are not sustainable. We note that any more prescriptive approach to this could restrict investments, for instance, in companies that are on the path to transition as they may not yet meet these minimum safeguards.
<ESA_QUESTION_ESG_21>

- **: What are your views on the preliminary proposals on "do not significantly harm" principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?**

<ESA_QUESTION_ESG_22>
We consider that any too prescriptive approach to 'do no significant harm approach' could have unintended consequences. For instance, a fund with the objective of supporting the transition of companies may allocate capital to companies that meet the objective of transitioning but might still be involved in fossil fuel or other harmful activities, for instance, through a sister company. We are experiencing this in particular in emerging markets. The 'do no significant harm' assessment has to be reflective of companies' transitioning processes.

While we are generally supportive of aligning the concept of 'do no significant harm' in the Sustainability-related Disclosure Regulation to the 'do no significant harm' assessment in the EU Taxonomy Regulation, we note that there is still little consensus across the industry as to how to measure 'do no significant harm' under the EU Taxonomy and a lot of work still needs to be done. At the moment, the 'do no significant harm' assessment would be largely based on proxies on various 'E' and 'S' controversies compiled by groups such as MSCI ESG and FTSE Russell.
<ESA_QUESTION_ESG_22>

- **: Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?**

<ESA_QUESTION_ESG_23>
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<ESA_QUESTION_ESG_23>

- **: Do you agree with the approach on the disclosure of financial products' top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?**

<ESA_QUESTION_ESG_24>
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- **: For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.**

1. **an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);**
2. **a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);**
3. **a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and**
4. **a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.**

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- **: Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives pro-**

moted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?

<ESA_QUESTION_ESG_26>
We do not believe that there should be a specific section on derivatives as it is unclear how sustainability considerations should be made for derivatives, especially FX instruments or Treasury futures which may be used for risk mitigation by Article 8 and 9 products.
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- **: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?**

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