

# Response form for the Joint Consultation Paper concerning ESG disclosures





## 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:

- contain a clear rationale; and
- 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<sup>1</sup>. 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.

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<sup>1</sup> 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	State Street Global Advisors
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	North-America

## Introduction

***Please make your introductory comments below, if any:***

<ESA\_COMMENT\_ESG\_1>

State Street Global Advisors, the investment management arm of State Street Corporation, welcomes the joint European Supervisory Authorities' (ESAs) draft Regulatory Technical Standards ("RTS") under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector ("SFDR"), and appreciates the opportunity to provide comments directly to the European Securities and Markets Authority (ESMA).

We have been a strong proponent of the European Commission's 2018 Sustainable Finance Action Plan and, in particular, the overarching objective of the SFDR, which is to enhance transparency as to how and where sustainability risks are considered in investment decision-making processes. While the ESAs' effort to support this objective with the rapid development of these draft RTS is highly commendable, there are a number of practical challenges that financial market participants ("FMPs") will face when complying with the SFDR – these are summarised further below and referenced throughout this submission.

There are also a number of industry responses that we have contributed to and refer ESMA to for further detailed comments, notably, the European Fund and Asset Management Association ("EFAMA"), the Investment Association, Irish Funds, SIFMA-AMG and ICI Global. In short, the main challenges stem not only from the sequencing of sustainable finance regulatory initiatives, which has exacerbated the unrealistic timeframe for implementing the SFDR, but also the prescriptiveness of the proposed RTS which further complicates FMPs' ability to comply within the narrow timeframe.

### ***ESG data will be a major challenge for implementing the SFDR***

Access to reliable, comparable and consistent ESG data has been a persistent barrier to widescale ESG integration to date. While we appreciate both the EU Commission and the ESAs are pertinently aware of this challenge, the fact remains that the ability for FMPs, like State Street Global Advisors, to comply with the extremely technical requirements of the SFDR is reliant on there being sufficient quality ESG data on the companies in which we invest. This is largely because of the wide range of datapoints that FMPs will be required to obtain in order to satisfy the SFDR requirements. As it stands, FMPs would need to source a considerable amount of additional data from third party vendors, after attempts to source it directly from investee companies prove unsuccessful. In any event, this exercise will be rather costly, especially if the underlying required datapoints are overly complex. Any over-reliance on third parties will present its own challenges. For instance, there is already some disparity across data vendors regarding reporting done by companies on the same indicators; additionally, vendors' company coverage is often limited (especially with regards to companies domiciled outside of the EU) and so the reliability of the information cannot always be assumed.

These challenges featured prominently in the results of State Street Global Advisors' own analysis of its current sustainability data providers. While we found that we can source some data to address most of the

datapoints, the information does not always precisely correspond to the specific indicators proposed. This is, in part, due to the limited applicability of very specific indicators to all companies, regardless of their industry, sector or geography. Other initiatives such as the review of the Non-Financial Reporting Directive (“NFRD”) as well as any intended future actions to support market development as part of the Renewed Strategy should, in theory, go some way in addressing the anticipated data gaps. In reality, however, the expected timing of the 2018 sustainable finance initiatives means that they will not be completed until well after FMPs are expected to begin complying with the SFDR.

More pertinently, the NFRD review will only solve for data gaps disclosed by European listed companies subject to the NFRD. While the Commission recently consulted stakeholders on a possible extension of the scope of the NFRD – that is, beyond large EU public interest entities with >500 employees to include a broader set of European companies as well as companies outside of the EU in certain instances – the apparent lack of international regulatory coordination on such matters means significant data gaps are likely to persist for some time. This will be highly problematic for FMPs running global portfolios like State Street Global Advisors. In addition, we think that it needs to be considered how the RTS might interact with legislative initiatives on ESG disclosures in other jurisdictions, such as Hong Kong or Singapore. This is why it is essential that there is some degree of alignment between the SFDR and internationally recognised frameworks, such as the Financial Stability Board’s Taskforce on Climate-related Financial Disclosures (“TCFD”) and the Sustainability Accounting Standards Board (“SASB”). The forthcoming International Platform on Sustainable Finance is a good opportunity, in our view, for the EU Commission, the ESAs and national supervisors to prioritise discussions with global regulators to coalesce around a common set of reporting standards and metrics.

### ***Principal Adverse Impact (PAI) reporting must keep focus on materiality***

While we fully understand ESMA’s intention with these RTS is to enhance the comparability of ESG disclosures, and think that the draft RTS provide a helpful catalogue of all possible sustainability indicators, mandating 34 PAI indicators (typically expressed using 2 different metrics and require number datapoints to calculate) would simply overwhelm investors and undermine the overall objective of ensuring sustainability considerations are factored into investment decisions.

The level 1 text of the SFDR requires that FMPs identify, prioritise, and disclose relevant PAIs and explain what actions they are taking to address them. This appears to envisage a more principles-based approach to PAI reporting, inclusive of a process whereby FMPs perform an assessment on the basis of materiality, rather than rigid disclosure against an extensive list of mandatory indicators. We therefore fail to see how FMPs will be able to effectively satisfy the stated aim of the level 1 text if the majority of indicators are, essentially, mandatory.

In addition, such a prescriptive approach would be at odds with the aforementioned internationally-accepted principles of sustainability/ESG-related reporting – the TCFD and SASB frameworks – which place considerable emphasis on materiality. We have previously referred the EU Commission to the SASB framework, which utilises a Materiality Map<sup>2</sup> to support FMPs disclosure material ESG information. Taking this into consideration, in addition to the known data challenges, we urge ESMA to afford FMPs a degree of flexibility, or ‘optionality’, with regards to the mandatory nature of the proposed indicators.

### ***Compliance timeline must be aligned with other sustainable finance initiatives***

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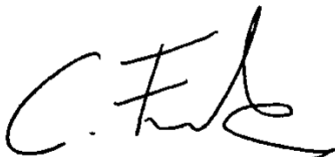
<sup>2</sup> <https://materiality.sasb.org/>

All of these points clearly rationalise the need to revisit the SFDR compliance timetable. Without a deferral of the level 1 application date, FMPs would only have matter of weeks to consume final technical requirements and reflect them in technological enhancements to existing reporting structures as well as policies and procedures. We recognise that ESMA is working within strict timelines prescribed by the level 1 text, and reiterate that their efforts to deliver these draft RTS quickly is very welcome. However, the outstanding draft templates for the product level (pre-contractual and periodic reporting) disclosures further jeopardises the ability for FMPs to comply with the SFDR on time. Furthermore, as noted, we think that it is highly impractical to expect all FMPs to, in the first instance, engage investee companies to source the additional required data. This presents a myriad of challenges for large, globally-active FMPS, not just in terms of the time needed to engage companies, but also because of the lack of awareness around these new requirements FMPs will be required to help investee companies understand them so that they can provide the relevant information. Even the alternative step whereby FMPs can source information from (reliable) sustainability data providers would mean that FMPs need to build the appropriate technological infrastructure to support reporting. It is therefore imperative that there is sufficient clarity on these technical requirements to enable FMPs the prepare for implementation and allocate necessary resources, which requires sufficient lead-time for planning purposes. We therefore fully support the Chair of the ESAs' recommendation to revisit the level 1 application in a recent letter to the European Commission, and agree with industry suggestions to defer the current 10 March 2021 application date until, at least, 1 January 2022.

This would give FMPs and the companies in which they invest a more appropriate timeframe to prepare for implementation. It would also cater for the anticipated delay in ESMA's delivery of the final RTS (expected beyond the end of 2020) as a result of the COVID-19 pandemic. Furthermore, we think that there could be a high demand placed on the national supervisory community given the SFDR pre-contractual disclosure (e.g. prospectuses) requirements. As ESMA will be aware, the approval of prospectus updates tends to entail iterative conversations between national competent authorities and FMPs, even on matters that are well-established from a regulatory perspective. Furthermore, a lengthier lead-time would ensure greater consistency with the other sustainable finance initiatives – especially the first set of disclosures under the EU Taxonomy Regulation and imminent changes to the investment due diligence requirements under the UCITS and AIFMD frameworks. Ultimately, the success of the SFDR could, perhaps, be measured by its ability to help accelerate the EU's sustainability transition, as it seeks to better inform investors about sustainability impacts. It could, however, be counterproductive if the impracticality and unduly burdensome nature of the requirements in fact deter FMPs from offering sustainability-related products.

Enclosed you will find detailed comments, as well as suggested areas for further clarification by ESMA on the specific questions raised. We hope that you find this submission useful and please do not hesitate to contact me should you have any questions.

Yours sincerely,



**Carlo M. Funk**

Head of ESG Investment Strategy, EMEA  
State Street Global Advisors  
<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>

No, we do not agree with the proposed approach. ESMA has provided a helpful catalogue of sustainability indicators. However, rendering a positive value for any adverse impact indicators, automatically, as a ‘principal’ adverse impact is simply not appropriate, nor accurate in terms of actual risk posed. In reality, not every adverse impact can be ‘principal’, in other words *material*. Some issues – such as *deforestation, hazardous waste, exposures to areas of high water stress, natural species*, etc. – are fairly specific, and only relevant to companies in certain industries. This is evidenced by the limited existing company coverage for those datapoints. Yet, the proposed approach would require FMPs to mandatorily disclose against all Table 1 indicators regardless. Ultimately, this would not provide for meaningful disclosure of PAIs, especially as the underlying data supporting disclosures will be in an aggregated format.

First, as we point out in our introductory remarks, these draft RTS need to better reflect the persistent challenges FMPs face in accessing quality ESG data. The proposed list of 34 PAI mandatory indicators would require most FMPs to source vast amounts of additional data, which will bear significant costs from a sourcing perspective in addition to building the supporting technology, with limited benefit to end-investors vis a vis the sustainability profile of investments. Moreover, throughout the level 1 text of the SFDR, there is reference to sustainability impacts that are “material or likely to become material”<sup>3</sup>. Article 4(2)(a) of the SFDR further specifies that FMPs are required to identify and prioritise principle adverse impacts and indicators. These references clearly indicate flexibility as to which indicators FMPs consider to be material for their investment decisions, and in turn those they disclose against to describe which actions are taken to address identified PAIs. This concept of materiality clearly embedded in the level 1 text appears somewhat absent in the proposed level 2 approach. Furthermore, although we welcome the EU’s efforts to establish international precedent on sustainability-related matters, the proposed approach is juxtaposed: widely-accepted international standards for sustainability reporting, such as the TCFD and SASB frameworks, place considerable emphasis materiality.

Second, Annex I refers to the PAI Statement at entity level, that is, the fund management company or investment firm level from our perspective. However, many of the indicators specified as mandatory are relevant only for specific products or strategies. While some of these indicators could be usefully compared across similar types of products to help investors make a comparison, their aggregation at entity level does not lend itself to enabling investors to make an informed decision on any product. In fact, we think that it would be of little benefit to end-investors to require such disclosure at the entity level, beyond a disclosure of the policies that SFDR require. Much of the aggregated indicator data at entity level will likewise not be useful in comparing the ESG approach or performance of different FMPs as fund management companies or investment firms offer a wide range of investment solutions. We are concerned that presenting such a vast amount of mandatory indicator information (typically under two separate measures) in this way could overwhelm and confuse investors, potentially leading them to make erroneous judgements on the sustainability profile of financial products and FMPs.

The Level 1 text refers to disclosing in “qualitative or quantitative terms”, but the qualitative aspect is less reflected in the proposed approach, which primarily relies on an overly wide list of indicators. Since the PAI Statement will be provided at the entity level, the disclosure must be relevant to that level. Our view is that disclosure at entity level lends itself to a more qualitative, principles-based approach with a focus on a smaller range of universally applicable indicators.

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<sup>3</sup> Recital 16, Recital 18, Recital 23 of SFDR

We therefore support various industry responses that recommend ESMA instead proposes a subset of broader environmental and social metrics, which would be relevant across industries and asset classes, and for which there is readily available data today (EFAMA identifies 4 environmental KPIs and 2 to social KPIs which we endorse). Only metrics that can be applied broadly should be prescribed as mandatory Key Performance Indicators (KPIs). All other indicators should be included as voluntary additional KPIs, disclosed as relevant and on a ‘best-efforts basis’.

<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>

No, we do not consider that the proposed approach sufficiently takes into account the size, nature, and scale of FMP’s activities and the type of products they make available. Specifically, mandating 32 indicators from Table 1, as well as one indicator from Table 2 and one from Table 3 for every entity required, is disproportionate.

As we note in our response to question 1, as well as additional issues raised in the industry responses that we have endorsed, fund management companies, and in particular investment firms providing segregated mandates, offer a wide range of strategies where the investment restrictions and guidelines are determined by the client. Client appetite for ESG integrated investment strategies varies, as does the appropriateness and significance of material ESG considerations with each strategy. Accordingly, this will skew the pertinence and appropriateness of disclosure at the entity level and is not proportionate to the type of strategy or product offered, e.g. in relation to liability-driven investing (LDI).

<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 indicated in response to Questions 1 & 2, while we think the list of indicators set out in these draft RTS are helpful, we urge ESMA to consider various industry responses calling for a reduced subset of mandatory indicators that can be universally applied across companies and sectors – at least until the review of the NFRD and other complementary initiatives have been completed and embedded. Further, it is highly recommended that ESMA seek some degree of consistency with existing international standards in term of calculating a measure for each principle adverse impact. For example, the draft RTS propose FMPs use revenue as a denominator rather than assets/market value. This must be addressed to avoid regulatory arbitrage given there are regulatory frameworks for disclosing material ESG information under development across the globe.

<ESA\_QUESTION\_ESG\_3>

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

<ESA\_QUESTION\_ESG\_4>

We are generally supportive of the ESMA’s objective to harmonise ESG disclosure requirements aimed at FMPs as increased comparability would, to some extent, aid investors’ decision-making. However, the proposed reporting template, as drafted, is likely to cause confusion for end-investors, and at the very least overload their ability to consume the additional data. This is due to the vast amounts of data to be reported (around 80 datapoints), with little correlation to the relevance of the indicators to specific sustainability



objectives of the financial product or FMP. We are concerned that this will lead to a ‘tick-box’ compliance exercise. ESMA should consider limiting the overall number of universally applicable indicators to ensure disclosure is meaningful for end-investors.

We reiterate the need for an approach that allows for reporting in a qualitative nature. In particular, our analysis of existing datasets showed that the company coverage of third party providers of sustainability data is somewhat limited (see response to question 9), and so the reporting template would need to be updated to allow FMPs to clearly articulate data coverage in order to ensure full transparency to regulators and end-investors.

<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>

As previously stated, we do not agree that all of the identified indicators would support the objectives of the SFDR in terms of providing for meaningful disclosure, nor do we agree with the proposed approach to have 34 mandatory indicators (typically expressed using two different metrics). Instead, we urge ESMA to consider recommendations from various industry groups, particularly EFAMA, on a reduced subset of universally applicable indicators.

In addition, we strongly advise against the inclusion of forward-looking indicators, certainly not ‘scope 4 emissions’ given the ongoing difficulties with calculating ‘scope 3 emissions’ due to, largely, absent data and consistent methodologies for calculating such emissions. While such indicators may help to inform adverse impact assessments, credible and meaningful methodologies for such forward-looking analysis are not yet available. There is also a risk that forward-looking indicators would be mostly speculative.

<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>

We agree that, in time, there would be value in including a measure of carbon emissions relative to the EU 2030 climate and energy framework target. However, again, this is an evolving area of sustainability reporting, which is rather complex given the formula would include consideration of a ‘scope 3’ emissions, where there is limited data that can be considered reliable. ESMA should therefore intend for such metrics to be a progressive goal of level 2 standards, leveraging international calculations for measuring a company’s carbon footprint (e.g. the TCFD framework), with the option for FMPs to disclose on a voluntary basis.

<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>

We think that requiring a 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 is overly burdensome. One measurement is sufficient in our view – to be performed, depending on the indicators, either as a percentage of aggregate investments or the share of the investee companies (the latter is preferred where the policies in place are to be considered).

<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>

As with previous responses, we think that the current list is helpful and comprehensive, so advise ESMA to refrain from including any “more advanced indicators or metrics” at this stage. Additionally, we note that such a measure would not be consistent with the essence of PAI reporting as it would indicate a positive (rather than negative) contribution to GHG reduction.

<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>

We do agree with the goal of delivering broad social KPIs but refer to our response to Question 1 which supports industry comment letters calling for two socially-orientated metrics. These would relate to companies’ adherence to international norms established under the United National Global Compact Principles, that is, the share in investments in investee companies that are a) not a signatory and b) found to be in serious breach of those Principles.

We analysed existing sustainability datasets available through State Street Global Advisors’ third party vendors, and found that while most of the proposed datapoints can be sourced, often several providers are required to satisfy one datapoint though. The exercise also revealed that the data may not always be complete, or lacks integrity where company coverage is limited. More importantly, there were some datapoints, such as *policies and measures for preventing trafficking in human beings*, where we were unable to source any data as this doesn’t appear to be a requirement in any local legislation. We therefore urge ESMA to seriously consider industry calls to adopt broader social indicators, moving the proposed list of social indicators (KPIs 17 – 32) to the subsequent Tables.

Once the Taxonomy has been completed in addition to the review of the NFRD, both of which are expected to focus on corporate disclosure of social attributes, ESMA would be better positioned to review the list of indicators and identify those most relevant across companies and industries. Although, as noted, this would only solve for disclosure in relation to large public interest entities currently.

<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>

Requiring historical comparisons of PAI disclosures for up to 10 years would not be appropriate. Traditional financial statements usually incorporate comparatives on a 1, 3 or 5 year basis, and we think this would be more appropriate. Increasing the frequency of comparatives would serve to do little other than to further

dilute the ESG data landscape. Put plainly, we see no benefit in FMPs disclosing this level of detail, nor do we think there are adequate historical datasets to be able to achieve meaningful disclosure on this in the short-term.

<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>

The RTS require a mandatory reporting template to be used for the statement on considering principal adverse impacts of investment decisions on sustainability factors as they relate to the relevant reference period. To monitor the effect of an investment that has been bought and sold during the reference period, and its potential contribution to adverse impacts over the year, is a highly complex calculation – requiring FMPs to take into account every purchase and sale across all portfolios. Notwithstanding our opinion that FMPs would not engage in any intentional “window-dressing” to alter the PAI reporting, regulators have a number of supervisory tools at their disposal to validate whether there is indeed any window-dressing.

<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 agree with ESMA’s aim to introduce greater comparability to ESG disclosures and think that the provision of templates can be generally helpful. However, there needs to be caution when prescribing 1) pre-contractual and 2) periodic templates for financial products. Any such templates must be sufficiently malleable to take account of different types of financial products. These templates should be issued for consultation with stakeholders as soon as practical to ensure they are fit for purpose.

Should ESMA pursue an approach whereby it prescribe such mandatory templates, we think this should allow for qualitative (rather than solely quantitative) disclosure, especially in respect of pre-contractual templates. Under the level 1 text of the SFDR, FMPs are required to make such disclosure via pre-contractual documentation, and so a more qualitative approach would be consistent with certain existing disclosure requirements. The use of specified headings/sections pertaining to these new disclosures enables easier review of prospectuses. However, given constraints with the overall length of the Key Information Document, for example, we remind ESMA that there is no room for lengthy, complex, heavily data-driven disclosures.

We also support various industry responses to this question highlighting issues with the single deadline referenced for periodic reporting, given this could unintentionally result in some funds having to report on a reference period starting before SFDR becomes application. We fully agree that ESMA should clarify this in the final RTS by clearly stating that Articles 36 through 52 shall apply to periodic reports covering reporting periods starting from 1 January 2022.

<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>

See response to question 12.  
<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>  
See response to question 12.  
<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>

We generally agree with the balance achieved in the draft RTS and underline the fact that while sustainability risks and opportunities are fast evolving, FMPs are poised to accelerate their identification and prioritisation of these risks vis-à-vis the investments they make. It would be prudent to ensure FMPs can easily adapt corresponding disclosures.

A high-level approach to such issues might be appropriate for widely available pooled vehicles. ESMA should, however, be mindful of the fact that website disclosures for pre-contractual information and *ex post* periodic reporting is problematic for segregated mandates in light of confidentiality concerns. As such, we would favour clear and concise (qualitative) disclosure in pre-contractual documentation.

<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 broadly agree with ESMA's view that more clarity is needed on the delineation between Article 8 and Article 9 products. In addition to the extensive comments provided by industry associations on ambiguities across Article 8 and 9 products, we would appreciate a specific clarification from ESMA that Article 8 products would not capture products where the corresponding investment strategy applies a simple overlay, or exclusion/negative screen (e.g. tobacco).

As ESMA points out elsewhere in the draft RTS, there are a myriad of approaches to ESG investing. Some strategies specifically seek a sustainability outcome, and we agree that these should fall under the definition of Article 8 products. However, there are countless investment strategies that can be categorised as 'ESG screening', meaning they apply a very simplistic overlay to an investment strategy in order to screen out certain securities from the investible universe. We do not think that it is appropriate for those products to be subject to Article 8 requirements, primarily because the corresponding investment policy does not make any claim to achieve a sustainability/ESG outcome.

There is a clear distinction that can be drawn between those simple strategies, and those products "promoting specific ESG characteristics" or "pursuing [a] sustainable investment objective". As part of the investment process, the investment management team will use ESG data alongside other quantitative data to construct the portfolio but the ESG data point is not a dominant determinant influencing the asset allocation, nor does the strategy display a fundamentally enhanced ESG profile following the integration. In other words, the

ESG screened strategy is only intended to be one of the various considerations to be taken into account during the investment process in order to screen out certain securities in which the fund may invest to achieve its investment objective. ESG factors will not become a “key investment focus” of the fund following the implementation of securities screening based on the ESG screened strategy.

Nevertheless, FMPs often decide to retain full transparency in the naming conventions of such funds, as well as the promotional materials. The rationale behind this approach is that the corresponding investment objective is not to improve ESG characteristics or outcomes but simply to screen out certain securities from the investible universe. The ESG screened strategy alone is not considered sufficient to classify a product in line with Article 8 of the SFDR. The investment objective of those simple ESG-screened strategy (to generate capital growth over the medium to long term through investment while exhibiting lower volatility and a reduced impact from market drawdowns) remain unchanged.

As such, we support EFAMA’s recommendation to amend Recital 21 by removing the direct link to the regulatory documents and, instead, emphasise the concept of intentionality. That is, Article 8 disclosures should be triggered when a financial product is marketed as featuring the integration of distinct ESG characteristics, while, at the same time, clarifying that firm-wide ESG characteristics (meaning simplistic ESG screen(s) or ESG integration) should not by default qualify the product as an Art. 8 product. Furthermore, while the definition of Article 8 and Article 9 products is contained in the level 1 text of the SFDR, we agree with industry positions that suggest this is something that should be clarified in the level 2 (or level 3 - Q&As/Guidelines) requirements.

<ESA\_QUESTION\_ESG\_16>

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

<ESA\_QUESTION\_ESG\_17>

The graphical representation splits the total investments between the proportions that are sustainable or contribute to the attainment of environmental / social characteristics promoted by the financial product from other objectives. As a general observation, any ‘look-through’ requirements tend to be problematic and introduce further time considerations into the process. We would favour less detailed graphical representations that specify what the fund intends to do, not necessarily what the fund will do. In addition, the requirement to produce graphical representations must be subject to a materiality threshold, especially as an investor would need to further ascertain how different investments relate to a fund’s overall strategy. Therefore, we recommend only requiring this where a fund makes up more than 10% of a given portfolio.

<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>

Subject to our above on segregated mandates, graphical representations should be a voluntary requirement and subject to a materiality threshold, as explained above. It would be appropriate to allow FMPs to house these on their company websites.

<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>

Yes, this would be a helpful measure given the Taxonomy Regulation excludes investments in solid fossil-fuels. As the overarching classification system is a dynamic tool, we would suggest that ESMA refrains from extending disclosure in the same way to other sectors, including nuclear energy. This can be reviewed once the Taxonomy Regulation is fully embedded into the EU regulatory framework.

<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>

We do not have specific comments on this question beyond broader comments that we have already made as regards the challenges of some of these disclosures in relation to segregated mandates.

<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 think that it would be inappropriate to invoke these specific indicators at this time because of the challenges that FMPs will face in the absence of consistent, pan-European “good governance practices”. Fund managers already have well developed policies in place that have evolved over many years and are based on existing legislation, notably the recently updated Shareholders Rights Directive (SRD) II.

We agree with EFAMA’s response to this question that such approach would likely amount to ‘gold-plating’ the definition of Article 8 products in the EU. From a global index manager perspective, our stewardship programme governs the interaction with investee companies on such matters, the highlights of which are clearly presented in a comprehensive annual Stewardship report. We think that this is both sufficient to satisfy the requirement of the level 1 text of the SFDR and commensurate with the overall spirit of the Regulation.

Furthermore, we would like to take the opportunity to comment on the need for pan-European high-level governance principles, which can be broadly applied across investee companies. State Street Global Advisors has extensive experience in stewardship and engaging investee companies on good governance practices, having created our own principles in the absence of consistent EU-level guidelines. As such, we would thoroughly welcome further discussion with ESMA on this matter.<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>

The draft RTS would appear to diverge from other EU sustainable finance initiatives; in particular, with regards to alignment with the “do no significant harm (DNSH)” principle under the Taxonomy Regulation, which importantly embeds a concept of materiality. We fully agree with the ESAs that the relationship between the concepts of the DNSH principle introduced in the Taxonomy Regulation and the notion of PAI in the SFDR requires clarification. Although, while ESMA has suggested that this is something that the Commission might look at in the future, we see the clarification as necessary during the implementation phase of the EU sustainable finance regime. This is essential as a means of ensuring a coherent regulatory framework that works for all stakeholders concerned. We would like ESMA to consider further the possibility of alignment of the PAI Statement template with the DNSH criteria under the Taxonomy Regulation.

<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>

We see no merit in defining ESG investment strategies at the EU level. Widely-used ESG investment strategies are well-understood, at least across the global investment management community if not broader financial services sector. As an example of clearly defined ESG investment approaches, we refer ESMA to the Chartered Financial Analyst (CFA) Institute.

State Street Global Advisors largely adopts an ‘ESG integration’ approach which systematically incorporates ESG research and analysis, alongside traditional financial factors, to inform investment decisions, with a view to delivering increased financial returns.

There is value, however, in ESMA clarifying how each of widely used ESG investment strategies correspond to the Article 8 SFDR definition of an ESG product, namely, products that are underpinned by an investment strategy seeking to promote specific ESG characteristics. Specifically, as stated, we would welcome clarification through an ESMA Q&A/Guidelines that Article 8 is not intended to apply to investment strategies that apply a simple negative screen or ESG integration methodology (see response to question 16).

<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>

We agree with the idea of including the top investments in periodic reports, however, this should only cover the top 10 holdings, rather than top 25, which would be in line with industry best practice. There will also need to be consistent application as to how FMPs are expected to measure the top holdings, given the SFDR proposes to use a different denominator that what is typically used in international best practice, as we have already stated above.

<ESA\_QUESTION\_ESG\_24>

- : **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.**

**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);**  
**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);**  
**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**  
**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.**

<ESA\_QUESTION\_ESG\_25>

a) We agree that this indication is useful information for investors and should be included in pre-contractual disclosure. We believe that any such indication of a reduction should be viewed as indicative rather than a specific investment restriction unless disclosed as such by the fund sponsor or agreed specifically with the client (in the case of portfolio management products) as there may be unexpected consequences on investment outcomes of treating failure to reach such threshold as a material investment breach requiring immediate rectification.

b) Notwithstanding our concerns in requiring FMPs to implement such a policy given there are no European guidelines on "good governance practices" (see answer to Q21), State Street Global Advisors has developed a set of generic principles that it applies to assess the governance arrangements of investee companies. This informs our ongoing stewardship activities, the culmination of which are summarised in a comprehensive annual Stewardship Report. This report is made publicly available on the company website and is produced in line with national stewardship codes. Where these reports are being produced, it would be prudent to allow FMPs to sign-post them in pre-contractual documentation but retaining the location of the report on the website. This would reduce any unnecessary burden on FMPs that are already in line with international best practice.

c) We agree that this level of detail is better included in the website disclosure, particularly as it may evolve over time and website disclosures lend themselves to more ready and regular updates.

d) As these relate to data sources, the availability of which are rapidly evolving, we believe these are more appropriately dealt with in website disclosures, which lend themselves to more ready and regular updates.

<ESA\_QUESTION\_ESG\_25>

- **: 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 promoted 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>

The use of derivatives varies between efficient portfolio management purposes, such as hedging, to achieving highly specified investment outcomes. Derivative usage is already well-documented and disclosed in



the prospectus and investment policy. Nevertheless, we think that requiring FMPs to address each distinct sustainability objective is disproportionate, as the policy should adequately explain how instruments are used to meet the objective of the fund. We therefore recommend that ESMA introduces a materiality threshold as previously stated.

<ESA\_QUESTION\_ESG\_26>

- **: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?**

<ESA\_QUESTION\_ESG\_27>

While we do not have detailed comments on the preliminary impact assessment at this time, there are two overarching points that warrant further consideration when assessing the cost of SFDR compliance:

- Sourcing sufficient quality ESG data: FMPs will need to source, in a limited timeframe, numerous datapoints to satisfy SFDR requirements: sought, first, from investee companies direct (thus additional human capital to carry out engagement); otherwise, FMPs can rely on existing sustainability reporting datasets from third party vendors, if available, otherwise they will need to acquire additional data licences to plug any data gaps (where available); and
- Building reporting infrastructure: FMPs will need to undertake extensive technological enhancements to existing reporting structures, having to also curate new datasets, in order to meet enhanced reporting requirements.

It is difficult for FMPs to approximate costs of compliance in light of these points. It is also important to highlight that costs will be different across FMPs, most likely disadvantaging smaller FMPs. Depending on the scale of costs involved, this may deter FMPs from offering Art 8 or Art 9 products or incentivise managers or sponsors to investigate ways of recouping these costs.

<ESA\_QUESTION\_ESG\_27>