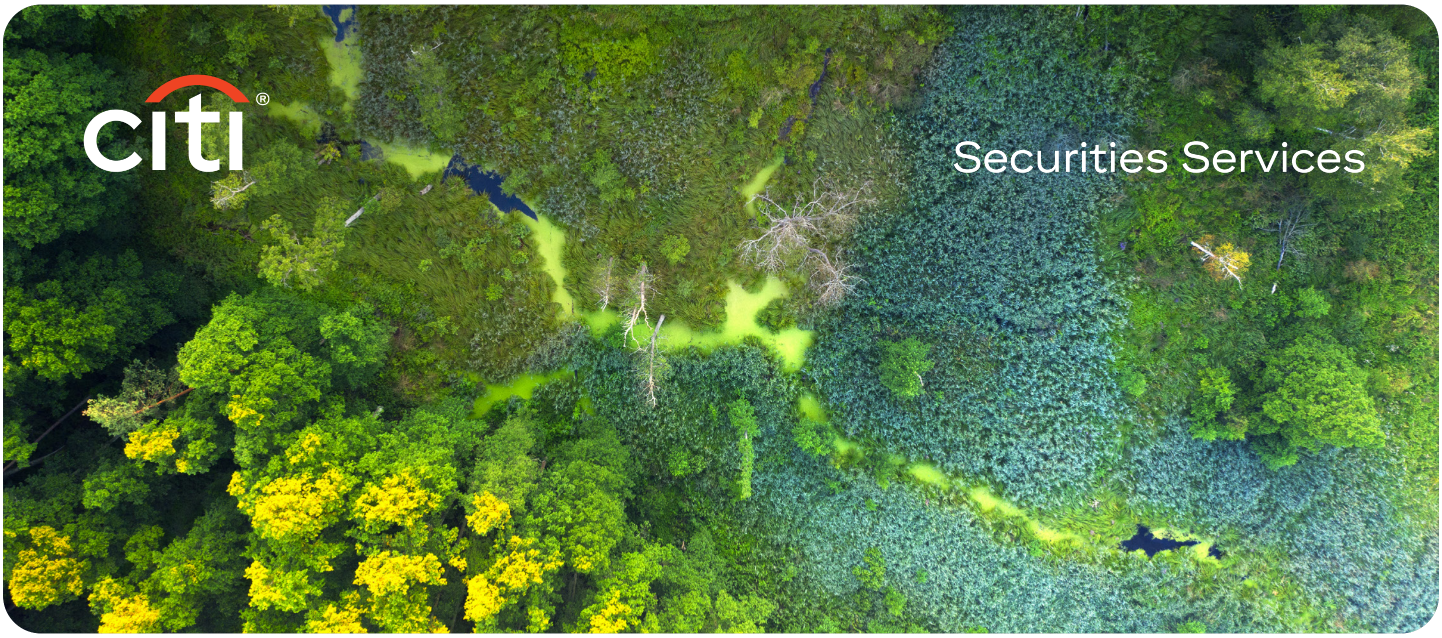


# UK FCA Confirm Sustainability Disclosure and Labelling Regime

On 28 November 2023 the UK's Financial Conduct Authority (FCA) published its Policy Statement (PS23/16) 'Sustainability Disclosure Requirements (SDR) and Investment Labels'.[1]

The FCA states that PS23/16 contains its final rules and guidance to, amongst other things, improve trust and transparency to the market for sustainable investment products and help consumers to navigate the market for sustainable investment products.

The FCA adds that the package of measures contained in PS23/16 put consumers at its heart and was tested with over 15,000 people. It also follows the UK regulators' Financial Lives Survey[2] , which highlighted that a significant majority of adults surveyed would like to invest in a way that protects the environment or has a positive social impact.

### The path to PS23/16

The FCA published its discussion paper, 'Sustainability Disclosure Requirements and investment labels'[3], back in November 2021, and this was followed by a consultation paper, CP22/20[4], bearing the same title, in October 2022. The comment period for the latter closed on 25 January 2023.

The FCA also provided the industry with an update in March 2023[5], confirming that stakeholders were broadly supportive of the proposals contained in CP22/20 and that at the same time respondents offered constructive feedback on specific elements of the package and drew out some practical challenges firms face.

As well as being informed by the 240 consultation responses it received, the FCA explained that PS23/16 was also informed by (amongst other things) the findings of the FCA's multi-firm review on the application of the Guiding Principles[6]; extensive engagement with key domestic and international stakeholders such as regulators, Government, industry, consumer groups and others; further testing with consumers and with firms and engagement with the FCA's independent statutory panels.

### PS23/16

The measures contained in PS23/16 are set out in the following chapters:

| | |
|---|---|
| **Chapter 4** | Anti-greenwashing rule. |
| **Chapter 5** | Investment labels: principles of the labelling regime and general criteria. |
| **Chapter 6** | Specific criteria for labels. |
| **Chapter 7** | Naming and marketing. |
| **Chapter 8** | Disclosures. |
| **Chapter 9** | Distributors. |
| **Chapter 10** | Scope of the regime. |
| **Chapter 11** | Implementation and operationalising the regime. |

## Anti-greenwashing rule (Chapter 4)

The FCA says in PS23/16 that its anti-greenwashing rule will apply *"to all FCA-authorised firms who make sustainability-related claims about their products and services"*, to *"reinforce that sustainability-related claims must be fair, clear and not misleading"* and *"consistent with the sustainability profile of the product or service".*

The FCA received some feedback from respondents requesting additional guidance on the anti-greenwashing rule. Therefore, alongside PS23/16, the FCA also published a Guidance Consultation, GC23/3 (covered in further detail at the end of this e-briefing).

The FCA says the anti-greenwashing rule will apply *"to all communications about financial products or services which refer to the environmental and/or social (i.e., 'sustainability') characteristics of those products or services"* and adds that *"sustainability-related references can be present in, but are not limited to, statements, assertions, strategies, targets, policies, information, and images"*.

The FCA's new anti-greenwashing rule and guidance come into force on 31 May 2024. The FCA explains that it "decided on an earlier implementation date for the anti-greenwashing rule and guidance than the rest of the SDR regime as it applies to all sectors", and the FCA "did not want to delay implementing the rule for the rest of these sectors". The FCA says it has "taken into account feedback and provided more time compared to [the FCA's] initial proposal" of becoming immediately effective.

## Investment labels: principles of the labelling regime and general criteria (Chapter 5)

In this chapter of PS23/16 the FCA *"summarises the feedback received on the overarching principles and features of the labelling regime"* which *"includes stakeholder feedback on the proposed general qualifying criteria for use of the labels, and confirmation of the final criteria"* the FCA is implementing.

The FCA says *"many respondents were concerned that funds invested with a combination of the attributes of the Focus, Improvers and/or Impact labels would not qualify for a label under the FCA's proposals"* and it agreed saying that *"products invested in a mix of assets that are already sustainable, have the potential to improve their sustainability over time, and/or aim to achieve a positive impact should have a place in the labelling regime"*.

The FCA explained this would give consumers a consistent approach when navigating the market for products seeking to achieve positive sustainability outcomes. The FCA outlines that, "following further consumer testing, the FCA added a new fourth label called *'Sustainability Mixed Goals'* to accommodate these products".

The FCA's four sustainability labels are:

- Sustainability Impact ™
- Sustainability Focus ™
- Sustainability Improvers ™
- Sustainability Mixed Goals ™

The FCA states that firms using the 'Sustainability Mixed Goals' label will need to *"meet the requirements under the specific criteria for each of the other three labels the fund is invested across"*. The criteria of the other labels being set out in Chapter 6 and the FCA discuss the Sustainability Mixed Goals' label further in Annex 2 of PS23/16.


The FCA states that in order to use a label, products must meet both the **general** and **specific** criteria relating to that label on an ongoing basis. Additionally, the FCA requires that firms must also meet certain requirements and make associated disclosures.

The FCA's general criteria fall under five key themes (as taken from the policy statement):

- **Sustainability objective**. All products using a label must have a sustainability objective to improve or pursue positive environmental and/or social outcomes as part of their investment objectives. Firms must identify and disclose whether pursuing the positive sustainability outcomes may result in material negative outcomes.
- **Investment policy and strategy**. Ordinarily, at least 70% of the product's assets must be invested in accordance with its sustainability objective, with reference to a robust, evidence-based standard that is an absolute measure of environmental and/or social sustainability. Firms must also identify and disclose any other assets held in the product for other reasons (e.g., cash, derivatives), including why they are held.
- **Key Performance Indicators (KPIs)**. Firms must identify KPIs to measure progress against the sustainability objective (these can measure the progress of the whole product or individual assets).
- **Resources and governance**. Firms must ensure there are appropriate resources, governance and organisational arrangements to support delivery of the sustainability objective.
- **Stewardship**. Firms must identify and disclose the stewardship strategy needed to support the delivery of the sustainability objective, including activities they expect to take and outcomes they expect to achieve. Firms must also set out an escalation plan to be able to take action when assets do not demonstrate sufficient progress towards the sustainability objective and/or KPIs. Assets subject to such action remain within the 70% threshold.

*For further details see Chapter 5 of PS23/16.*

## Specific criteria for labels (Chapter 6)

In CP22/20 the FCA proposed that, in addition to meeting the general criteria (see above), firms seeking to make use of the investment labels would additionally have to meet **label-specific criteria**. In responding and providing feedback, the FCA sets out the key features of each sustainability label.

The following label-specific criteria are taken directly from the policy statement:

*Summary of key features of a Sustainability Focus label*

- The sustainability objective must be consistent with an aim to invest in assets that are environmentally and/or socially sustainable, determined using a robust, evidence-based standard that is an absolute measure of sustainability.
- A minimum of 70% of a Sustainability Focus product's assets must meet that standard, and other assets must not be in conflict with the sustainability objective.
- For all labels, independent assessment to confirm the standard is fit for purpose may be obtained via either internal processes or third parties, provided that the chosen method is independent from the manager's investment process.
- The product may invest according to themes, provided that the requirements above are met.

*Summary of key features of a Sustainability Improvers label*

- The sustainability objective must be consistent with an aim to invest in assets that have the potential to improve environmental and/or social sustainability over time – determined by their potential to meet a robust, evidence-based standard that is an absolute measure of environmental and/or social sustainability.
- Firms will need to identify the period of time by which the product and/or its assets are expected to meet the standard, including short and medium-term targets. They must also obtain robust evidence to satisfy themselves that the assets have the potential to meet the standard.
- Firms' investor stewardship strategy should support delivery of the objective and help to accelerate improvements in sustainability over time.
- KPIs must be relevant to the product's sustainability objective and are therefore not prescribed. As with all labels, KPIs can demonstrate progress of the product or individual assets towards the sustainability objective.

*Summary of the key features of a Sustainability Impact label*

- The sustainability objective must be consistent with an aim to achieve a pre-defined positive measurable impact in relation to an environmental and/or social outcome.
- Firms must specify a theory of change setting out how they expect their investment activities and the product's assets to achieve a positive impact.
- Firms must specify a robust method for measuring and demonstrating the positive impact of both the assets the product invests in and the firms' investment activities.
- As with all labels, firms must have and carry out an escalation plan in cases where assets are not demonstrating sufficient progress towards the sustainability objective.

*For further details see Chapter 6 of PS23/16.*

## Naming and marketing (Chapter 7)

Chapter 7 of the policy statement summarises the feedback the FCA received on the naming and marketing rules which apply to products made available to retail investors that do not use one of the labels mentioned previously.

The FCA proposed in CP22/20 that these products "*would be restricted from using any sustainability-related terms in their product names and marketing*" and the "*requirements would not apply for the purposes of disclosing factual information in the pre-contractual disclosures, consumer-facing disclosures, or any other disclosure requirements the firm may be subject to.*"

In PS23/16, the FCA provides a summary of the relevant key features. These are (as taken directly from the policy statement):

*Summary of key features of the naming and marketing rules*

- All FCA-authorised firms are subject to the anti-greenwashing rule which requires that sustainability-related claims must be clear, fair and not misleading. This is consistent with the Consumer Duty's 'consumer understanding' outcome and forms the foundation of the FCA's naming and marketing rules for asset managers as well.
- Sustainability-related terms can only be used in product names and marketing if:
  - They use a label – provided that, where the 'sustainability focus', 'sustainability improvers' or 'sustainability mixed goals' labels are used, the word 'impact' is not used in the product's name, or
  - They do not use a label but comply with the 'Product name' and 'Marketing' sections below.

*Product name*

- The product must have sustainability characteristics and the product's name must accurately reflect those characteristics, **but the terms 'sustainable', 'sustainability', 'impact' and any variation of those terms must not be used**.
- Firms must produce the same types of disclosures as required for a labelled product.
- Firms must also produce and prominently publish a statement (on the relevant digital medium for the product and in the product-level disclosures) to clarify that the product does not have a label and the reasons why.
- In the case of a feeder fund, the product must only include in its name terms which are consistent with those used by the relevant master fund and the asset manager must provide clients with easy access to the disclosures referred to above and produce the relevant statement.

*Marketing*

- Firms must produce the same disclosures and statement as those required when sustainability-related terms are used in the name of a product.
- In the case of a feeder fund, firms must meet the same conditions as when sustainability-related terms are used in the name of the product (above).

*For further details see Chapter 7 of PS23/16.*

## Disclosures (Chapter 8)

In respect of disclosures, in CP22/20 the FCA *"consulted on a tiered approach, providing accessible information to retail investors and further detail to those who want to know more"*. The FCA proposed: consumer-facing disclosures, pre-contractual disclosures, ongoing product-level disclosures and entity-level disclosures.

In PS23/16, the FCA provides a summary of the relevant key features for disclosures. These are (as taken directly from the policy statement):

*Summary of key features of the consumer-facing disclosures*

- Firms must produce a clear, concise consumer-facing disclosure for (i) products with a label and (ii) or products using sustainability-related terms without a label.
- It must be located in a prominent place on the relevant digital medium (e.g., webpage, mobile app) through which the product is offered, and hard copies must be made available on request. It must not exceed 2 pages.
- The disclosure must include the following information:
  - Either the product's sustainability objective and label, or the statement to clarify that the product does not have a label;
  - The investment policy and strategy (including what the product will and will not invest in);
  - Relevant metrics;
  - Details of where a consumer can access other relevant sustainability and non-sustainability information; and
  - For the 'Sustainability Mixed Goals' label only, the proportion of assets invested in accordance with each of the other relevant labels.
- It must be reviewed and updated annually as appropriate. Disclosures for products with labels must, at a minimum, be updated to reflect progress towards achieving the sustainability objective.

*Summary of detailed product-level disclosure requirements*

- All products using a label or using sustainability-related terms in their naming and/or marketing without a label must include sustainability information in:
  - Pre-contractual disclosures (from the date the label is first used or by 2 December 2024 for products using the terms without a label), and
  - Ongoing product-level disclosures annually (after 12 months from either the date the label or terms are used).
- For products using a label, the information that must be disclosed is broadly associated with the qualifying criteria for the labels.
- For products not using a label, the pre-contractual and ongoing product-level disclosures must, at a minimum, include information relating to the investment policy and strategy and any relevant metrics.
- For the 'Sustainability Mixed Goals' label only, the disclosures must include the proportion of assets invested in accordance with each of the relevant labels, and the information required in relation to those labels.

*Summary of entity-level disclosure requirements*

- Consistent with the Task Force on Climate-related Financial Disclosures (TCFD's) and International Sustainability Standard Board's 4 pillars, firms are required to disclose their governance, strategy, risk management, and metrics and targets in relation to managing sustainability-related risks and opportunities.

- The TCFD's supplementary guidance for asset managers, International Financial Reporting Standards (IFRS) sustainability disclosure standard (IFRS S1), the Sustainability Accounting Standards Board Standards and Global Reporting Initiative Standards are documents that may be relevant for firms to help determine what to disclose.
- Where firms use labels or sustainability-related terms in their product names and marketing, they must also include details on their resources, governance and organisational arrangements in relation to those products.
- All firms with over £5 billion 'assets under management' must make these disclosures annually in a sustainability entity report, which builds from the TCFD entity report.
- Firms can cross-refer to disclosures made in a group, parent-level or other relevant report, provided the information is clearly signposted and other cross-referencing requirements are met.

*For further details see Chapter 8 of PS23/16.*

## Distributors (Chapter 9)

In this chapter, the FCA explains that distributors *"have a significant role to play in communicating sustainability-related information to consumers along the investment chain"* and therefore *"proposed that distributors (such as financial advisers and platforms) must ensure the labels and consumer-facing disclosures are made available to retail investors"*.

The FCA also proposed that distributors must *"place a prominent notice on overseas products, alerting retail investors that the product is based overseas and is not subject to the UK labelling and disclosure requirements"*.

In PS23/16 the FCA sets out the final requirements (as taken directly from the policy statement).

*Summary of requirements on distributors:*

- Distributors must communicate the labels and provide access to consumer-facing disclosures to retail investors, either on a relevant digital medium for the product or using the channel they would ordinarily use to communicate information.
- They must keep the labels and consumer-facing disclosures up to date with any changes that the firm makes to a label or the disclosures.
- Distributors must also include a notice on overseas products (i.e., recognised schemes – including Exchange Traded Funds) to clarify that they are not subject to the UK sustainable investment labelling and disclosure requirements.
- The notice must be (i) in a prominent place on the relevant digital medium, along with a link to the FCA webpage setting out more information for consumers, or (ii) communicated via the channel the distributor would ordinarily use.

*For further details see Chapter 9 of PS23/16.*

## Scope of the regime (Chapter 10)

In this chapter the FCA confirms that it is *"proceeding with the rules for UK funds as a starting point and intend to consult on applying the rules to UK portfolio managers in early 2024"*.

The FCA also states it has "*made some amendments within the rules to clarify that they only apply in respect of UK firms and products*" adding it will "*continue to work with HMT on the approach to overseas funds*".

In response to stakeholder feedback, it will continue work to "*develop proposals for pensions products and insurance-based investment products in the medium term, engaging with the Department for Work and Pensions and The Pensions Regulator*", and rules were amended to allow feeder funds to use a label "*where the predominant purpose of the feeder is to reflect the sustainability objective of the master fund.*"

In relation to other clarifications concerning scope, the FCA confirms (as taken directly from the policy statement):

- Closed-ended AIFs under regulation 74 of the Alternative Investment Fund Managers Directive (AIFMD) UK Regulation (i.e., those that are closed-ended and make no additional investments after 22nd July 2013) are exempt from the definition of a sustainability product;
- Listed investment trusts are in scope of the naming and marketing rules to the extent that the product is listed and marketing sustainability characteristics to prospective retail clients; and
- Overseas funds and firms are not in scope. The rules only apply to UK firms and their UK-domiciled products marketed in the UK. Entity-level disclosure rules apply to UK firms, capturing their approach to managing sustainability risks and opportunities in respect of UK and overseas funds managed from the UK.

*For further details see Chapter 10 of PS23/16.*

## Implementation and operationalising the regime (Chapter 11)

In PS23/16 the FCA states, in response to stakeholder feedback, that it is proceeding with "*a staggered implementation timeline that aims to balance the need to address potential harm as early as possible, while acknowledging the time firms of all types and sizes may need to operationalise the requirements.*"

It sets out the implementation timeline as follows (as taken directly from the policy statement):

| Element of the regime | Timelines | |
|---|---|---|
| **All firms** | | |
| Anti-greenwashing rule | 31 May 2024 | This gives all firms additional time to consider the guidance that we are consulting on Guidance Consultation (GC23/3). |
| **Firms using product labels** | | |
| Labels, consumerfacing, pre-contractual disclosures and naming and marketing rules | From 31 July 2024 | This allows firms that are ready to use labels earlier than 12 months after the PS is published to do so. Consumer-facing and pre-contractual disclosures must be published at the same time as the label is first used, and relevant naming and marketing rules must be met . |
| Ongoing product-level disclosures | From 31 July 2025 (public)<br>From 2 December 2025 (on demand) | Ongoing product-level disclosures must be either (i) published 12 months after the label is first used and annually thereafter, or (ii) provided to eligible clients on demand from 2 December 2025. |
| **Firms using sustainability-related terms without product labels** | | |
| Naming and marketing rules, consumer-facing and pre-contractual disclosures | 2 December 2024 | This allows a 12-month implementation period to produce relevant disclosures and statements. Firms must still comply with the anti-greenwashing rule from 31 May 2024. |
| Ongoing product-level sustainability disclosures | From 12 months after the terms are first used | Ongoing product-level disclosures must be produced annually. |
| **Distributors** | | |
| Labels, consumer-facing disclosures, notice on overseas funds | From 31 July 2024 (where firms are using labels)<br>2 December 2024 (notice on overseas funds) | The notice on existing overseas funds must be included by 2 December 2024. |
| **Firms with above £5 billion in AUM** | | |
| Entity level disclosures | 2 December 2025 (largest firms)<br>2 December 2026 (smaller firms) | The rules apply to larger firms (asset managers with above £50 billion in AUM) first and to smaller firms (with above £5 billion in AUM) one year later. |

Source: FCA PS23/16, Table 17.

In respect of operationalising the regime, the FCA confirms (as taken from the policy statement):

- When using a label, firms must use the graphic prescribed by the FCA. The ability to download the graphic will be connected to the notification process for use of a label.
- Firms must use the FCA's online notification and applications system to notify it before, or as soon as reasonably practicable after using a label, or revising or ceasing to use a label.
- Independent verification for using a label is not required. However, the FCA will keep this under review. The FCA will apply its usual supervisory and enforcement approaches.

## PS23/16 Annexes

Also contained in PS23/16 are three annexes. In Annex 1, as context, the FCA sets out the rationale for the design of its Sustainability Disclosure Requirements and investment labels regime. It says with "*the overarching objective to design a regime that will 'inform and protect consumers and improve trust in the market for sustainable investment'*".

In Annex 2 the FCA provides an overview of most of its final rules and guidance. The FCA says that it "*aims to support firms in familiarising themselves with the overarching requirements and how they might be applied in practice*".

The FCA adds however, it is not intended to be comprehensive e.g., "*it does not include rules relating to publication or data requirements. Firms must refer to the final rules and guidance in Appendix 1*" of PS23/16. The FCA says the "*examples and expectations on how certain areas of the regime (in particular the labelling criteria) might apply are for illustrative purposes only and do not include the level of detail or full criteria that would need to be met to qualify for a label*". The FCA reiterates that firms must "*assess each of their products against the rules in Appendix 1*" of PS23/16.

Lastly, in Annex 3, the FCA addresses the regime's international compatibility, covering a number of jurisdictions. In CP22/20 the FCA provided a mapping of its proposals to requirements in certain other countries (such as the EU SFDR and US SEC's proposals). The FCA says its assessment has "*broadly remained the same*". However, to help firms it has provided an updated analysis of the criteria for labels in line with its final rules.

*For further details see Chapter 11 of PS23/16.*

## GC23/3

On the same day as PS23/16 was published, the FCA released its Guidance Consultation on the Anti-greenwashing rule (GC23/3). The FCA state that the guidance is "*designed to help firms that make sustainability claims about products and services better understand [the FCA's] expectations under the anti-greenwashing rule and other existing, associated requirements*".

GC23/3 describes that the anti-greenwashing rule requires "*FCA-authorised firms to ensure that any reference they make to the sustainability characteristics of their financial products and services are consistent with the sustainability characteristics of the product or service and are fair, clear and not misleading.*"

Questions contained in GC23/3 are as follows:

- Q1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we (FCA) do to provide clarity?

- Q2: Do you have any comments on the proposed guidance including the examples given?
- Q3: Do you agree that the guidance should come into force on 31 May 2024?

The deadline for firms to respond was 26 January 2024.

As previously stated, the FCA proposes for the guidance to come into force on the same day as the anti-greenwashing rule (31 May 2024).

## Looking forward/leading the way

In the foreword to PS23/16, the FCA stated that "raising the bar with these new rules is a crucial cornerstone" of its ESG strategy, and furthers the objectives set for the FCA by Parliament (to protect consumers, enhance market integrity, support competition in financial services, and its secondary objective to support UK competitiveness and economic growth).

Additionally, the FCA's rules also support the UK Government's ambition for whole-of-economy Sustainability Disclosure Requirements and the UK's target to reach net zero by 2050.

With the final rules now published, impacted firms, including asset managers and distributors, need to scope out in earnest their implementation plans.

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[1] See https://www.fca.org.uk/publication/policy/ps23-16.pdf

[2] See The Financial Lives survey | FCA

[3] See DP21/4: Sustainability Disclosure Requirements (SDR) and investment labels (fca.org.uk)

[4] See CP22/20: Sustainability Disclosure Requirements (SDR) and investment labels (fca.org.uk)

[5] See FCA updates on its Sustainability Disclosure Requirements (SDR) and investment labels consultation | FCA

[6] See Testing how Authorised Fund Managers are embedding the Guiding Principles in ESG and sustainable investment funds | FCA

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