The Investment Association
Camomile Court, 23 Camomile Street,
London, EC3A 7LL

+44 20 7831 0898
responsible.investment@theia.org
theia.org
@InvAssoc @The Investment Association

Mr Chris Fidler
CFA Institute
915 East High Street
Charlottesville, VA 22902
USA

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RE: Response to the Consultation Paper on the Development of the CFA Institute ESG Disclosure Standards for Investment Products

About the Investment Association
The Investment Association (IA) represents over 250 UK-based investment management firms who collectively manage assets totalling £8.5 trillion, of which 43% is managed on behalf of overseas clients. The UK investment management industry is a key part of both the UK and EU's financial ecosystems, helping millions of individuals save for the long-term and enabling them to enjoy a more prosperous retirement. The UK investment management industry is the largest in Europe and the second largest globally.

Overarching Comment

We agree with the CFA Institute's assessment that "many market participants are concerned that inconsistency and variation in ESG-related terms, investment approaches, and disclosures have led to confusion and misunderstanding between investors and asset managers that may, over time, lead to erosion of trust in the industry". We are also supportive of efforts to coalesce around developing standards, bringing consistency and clarity to how the industry communicates the sustainability-related credentials of its responsible and sustainable investment products.

Furthermore, we appreciate the CFA's acknowledgement of existing standards, as well as those in development, with a view to avoiding duplication and to help ensure alignment, where appropriate. We would additionally suggest that the CFA consider how best it can coordinate with the efforts underway by IOSCO in this space.

As reflected in the consultation, significant work is already underway by the IA to bring greater clarity and consistency to the use of terminology, namely the development of the

IA's Responsible Investment Framework last year as well as a dedicated focus on communication at fund level this year. Alongside our proactive work as an industry, our members are also managing extensive incoming regulatory change from the EU Sustainable Finance Action Plan, alongside growing national requirements, including for example from the French regulator for distribution into the French market via their AMF Doctrine. For reference, please see in Appendix the IA's response to the European Supervisory Authorities' (ESAs) joint consultation on ESG disclosures as well as our sustainable finance regulatory requirements overview document. In short, the number of moving parts when it comes to changing expectations and new requirements related to product-level ESG disclosures at present is significant and unprecedented.

We understand that the first draft of the standard is expected to be published in May 2021. At present, the fast-evolving regulatory landscape creates significant challenges for the development of a standard set of principles for established industry best practice. The uncertainty around how firms will be required to describe product features, as well as how such products should be offered to investors, makes it difficult to assess definitively the most appropriate language to use with investors at this time. Industry best practice should be given time to develop, following the implementation of incoming regulatory requirements, before developing a standard on product-level ESG disclosure.

For this reason, whilst the IA is supportive of a number of the elements of the CFA's proposal – which we set out in more detail below – our key priority at this time is to work closely with CFA Institute to ensure work on product-level disclosures is undertaken at an appropriate pace as well as being sensibly sequenced, and that any new expectations reflect the regulatory requirements and growing expectations that are incoming.

Finally, we have concerns around the proposal for independent verification. Whilst some level of assurance is likely to be useful in principle, we have questions around the extent to which independent verification brings genuine added value in practice, despite layering on additional costs for clients. Furthermore, such additional costs are likely to impact smaller firms disproportionately. It is also unclear how the proposed third-party verification would interact with firms' existing obligations to obtain approval from their national regulators on disclosures. We are keen to understand the proposed verification process in more detail, including its interaction with existing regulatory obligations, before offering more developed views on this part of the proposal.

More Detailed Comments on the Proposal

1. Reflections on the ESG-related features proposed in the consultation

The proposed ESG-related features set out in the consultation – copied below – are broadly aligned with the components of the IA Responsible Investment Framework:

- ESG Integration
- ESG-Related Exclusions
- Best-in-Class (included under the umbrella of "Sustainability Focus" as per IA framework)
- ESG-Related Thematic Focus (included under the umbrella of "Sustainability Focus" as per IA framework)
- Impact Objective
- Proxy Voting, Engagement, and Stewardship.

We welcome this as a helpful step towards coalescing around emerging standards and best practice. Nevertheless, we have additional comments and suggestions regarding some of the specific features:

i. ESG integration and Proxy Voting, Engagement, and Stewardship

In keeping with the stance taken by the European Commission and demonstrated by the layout of the IA Responsible Investment Framework, "ESG integration" and "Proxy Voting, Engagement, and Stewardship" should not be treated in the same way as the other proposed ESG features. The other four features will typically be used to indicate specific sustainability-related outcomes, whilst ESG integration and Proxy Voting, Engagement, and Stewardship will typically relate to a firm's investment processes across different investment strategies.

ii. Overly narrow approach to motivations behind exclusions

We have concerns that the definition of "exclusions" is too heavily focused on the use of exclusions to pursue moral or ethical considerations and that it fails to consider that exclusions may be used much more broadly in relation to ESG matters. For example, exclusions are widely used to limit exposure to sectors with high exposure to climate risks. "Benefits" should therefore not only be confined to moral principles like "ethical principles, values, religious beliefs, and/or societal norms", as this fails to recognize that exclusions can be applied based on environmental risks or other financially-material ESG factors.

2. Sound high-level principles

We note that the high-level principles on which the IA is developing its own best practice guidance are very similar to the set of design principles consulted on by the CFA. Both our developing guidance and the CFA's proposal seek to help investment managers implement clearer and more consistent customer communications using existing frameworks as a basis.

3. Target audience for disclosures

The CFA may also wish to consider whether different approaches are needed depending on the client audience. While many of the principles suggested in the draft document will be understandable for institutional investors, some of the suggested terminology may not be well understood by retail investors, for whom ESG remains a fairly new concept.

We also note that "retail investors" is defined as part of the wider concept of "individual investors" which might not necessarily match the client categorisation framework in EU regulations. In this respect, we would suggest further refining these definitions to avoid areas of ambiguity, for example, when defining the benefits of the guidelines to retail investors.

4. Concerns with approach to investor motivations

We note that the proposal identifies five distinct ESG-related investor needs and associated motivations (Table 2 on page 24). These are then matched to ESG-related features (Table 3 on page 25). This appears to be intended to help match investors with products suited to their needs. Making links between ESG-related need, motivation and product is currently a topic of extensive debate and there are significant outstanding questions around what this process should look like. More time is needed for industry best practice to develop in this space, including in relation to incoming regulatory requirements. In particular:

i. Regulatory frameworks relating to investor needs

Incoming changes to the MiFID Suitability Assessment will impact the way financial advisers are able to interpret clients' needs and motivations – and these are currently still under development. The consultation on amendments to the Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors and preferences into product governance obligations (part of MiFID) indicates that the European Commission is still in the process of developing a detailed definition of "sustainability preferences", as well as an interpretation of the way investment firms providing advice should consider these preferences as part of clients' overall needs.

The IA has raised concerns around the currently proposed definition of "sustainability preferences", given that it narrows the universe of sustainability-related products further than the categories set out in Regulation (EU) 2019/2088 (commonly known as the "Sustainable Finance Disclosure Regulation" or "SFDR"). This in turn reduces the scope of investment approaches and products which could be offered to investors in line with their needs and goals. The IA has engaged closely with the development of the proposed amendment, given its final outcome will impact the flexibility given to advisers to communicate ESG characteristics to their clients. By extension, the Commission's final decision on this will shape the way investment advisers can interpret and deliver on clients' needs and motivations.

ii. Uncertainty around product features and required disclosures

Industry is still seeking clarification of the different product categorisations according to incoming EU rules. The Sustainable Finance Disclosure Regulation (SFDR) introduces different categories of products: products that have sustainable investment as their objective ("Article 9 Products"), products that promote an environmental or social characteristic ("Article 8 Products"), and products that are neither Article 8 nor Article 9.

While the ESAs intended to bring greater clarity on these distinctions in the draft regulatory technical standards (RTS), the product categorisation according to Article 8 and 9 remains unclear. Our positioning on this issue can be found in our response to Question 16 in Appendix to this letter.

iii. Potential restrictions on the language used

Firms will not have free rein to use language as they wish in fund disclosures. The draft RTS indicate that the majority of firms' disclosures will be required to follow a template which necessitates the use of specific language to some degree. Whilst industry is asking for greater flexibility with regard to these templates, the templates are nonetheless very likely to directly impact the preparation of regulatory documents and websites. Furthermore, as disclosures should remain consistent across documents, it will de facto impact marketing material as well.

iv. Complex interaction between investors' motivation and product categorisation

Whilst the table on page 25 of the consultation provides a helpful starting point for thinking about how investors' motivations could map to certain products, there is significantly more complexity in drawing connections between investor motivation and the outcomes of a product. Two clients may have different motivations and still be suited to the same product. For example, a client may wish to maximise their returns by investing in a strategy that manages its financially material ESG risks. Another client may be motivated by a commitment to save the planet through their consumer choices. Both clients may be suited to the same product that pursues a strategy aligned to the goals of the Paris Agreement, despite having arrived at that point via different motivations. Indeed, it may also be a mixture of these motivations that could lead to different clients being suited to the same product.

5. **Timing**

We understand that publication of the CFA's exposure draft is expected in May 2021 and a final draft of the standard is planned for as early as November 2021. Given that financial market participants will have been required to publish product-related disclosures under SFDR from March 2021 as well as more broadly the strong and sustained focus that is expected from policy makers, we have concerns that the issuance of industry guidance would be premature. It runs the risk of being inconsistent with regulations that would continue to be under consideration.

Moreover, potential issues with new regulation – once implemented – and their impact on market behaviours may only come to light some time after the requirements' implementation. The timing of the issuance of the CFA guidance could make it difficult to address any difficulties that firms will encounter in practice.

Concluding Remarks

Improving the consistency and clarity of investment managers' sustainability-related disclosures to help investors identify the responsible and sustainable investment products that match their preferences is a key priority for the UK investment management industry.

It is important that any such standard builds on established industry best practice and takes account of implemented – and soon to be implemented – regulatory requirements. We have concerns around the ability to build global standards for industry best practice when such expectations and requirements are currently in a state of flux.

We reiterate the importance of coalescing around existing standards but caution the speed with which this should be carried out. We welcome the opportunity to share developing views with the CFA Institute as our members implement incoming regulatory requirements and best practice emerges.

Yours sincerely,

Galina Dimitrova
Director, Investment and Capital Markets, the Investment Association

Appendix – Investment Association Response to the ESAs' Joint Consultation on ESG Disclosures

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association (IA) represents over 250 UK-based investment management firms who collectively manage assets totalling EUR 8.7 trillion, of which EUR 2 trillion is on behalf of continental European clients. The UK investment management industry is a key part of both the UK and EU's financial ecosystems, helping millions of individuals save for the long-term and enabling them to enjoy a more prosperous retirement. The UK investment management industry is the largest in Europe and the second-largest globally.

Introductory Remarks

The Investment Association (IA) is supportive of the European Supervisory Authorities' efforts to improve disclosures by financial market participants and financial advisers on "relevant information regarding [their] due diligence policies to allow end investors to make informed decisions" (RTS Impact Statement p.69).

More broadly, the IA has engaged with European authorities across the legislative proposals that followed the Action Plan of 2018 and continues to welcome the commitment that EU authorities demonstrate to facilitating the transition to a more sustainable future. Our industry is committed to making a success of the practical implementation of these ambitions and to making the thought-leadership demonstrated in the 2018 Action Plan a reality.

On the question of disclosures, IA members are taking forward proactive work to improve the clarity and consistency of their disclosures to investors – whether this be on their firm-wide approaches to the management of sustainability risks and opportunities as well as adverse impacts or on describing the particular characteristics of dedicated sustainability-related funds.

At the end of last year, the IA published the first ever industry-agreed Responsible Investment Framework to help articulate clearly and consistently the different ways in which investment managers contribute to sustainability through responsible investment. The Framework is increasingly being used as a reference point across different jurisdictions as well as helping to bring clarity to investors. Its publication represents the endorsement of the IA's more than 250 investment management firms, including multiple firms headquartered in continental Europe. This year, the IA is building on the Framework to develop guidance on the communication of responsible investment characteristics of funds. The initial findings of this work are set out in more detail under our response to Q.13 below. We would be very happy to share more information on the Framework with you as well as on the development of our best practice guidance.

Key Messages

1. **Principal Adverse Impacts Template in Annex I**

We have concerns the proposed rules are not entirely in keeping with the spirit of the Level 1 or the ambitions of the Action Plan. Specifically, the proposed approach to disclosure of principal adverse impacts does not support financial market participants to identify and prioritise *principal* adverse sustainability impacts and indicators (Regulation (EU) 2019/2088, Article 4 (2) (a)). Instead, it prescribes the assessment of specified adverse impacts and indicators – forgoing proportionality or materiality considerations – and by consequence precludes firms from making their own assessment of adverse impacts in a way that is truly meaningful to how they take account of these issues in practice.

We also have concerns that aggregate scores against indicators at entity-level will not necessary help investors make informed decisions around their specific investment choices. Qualitative measures should be permitted to provide a more meaningful and genuinely useful picture of the firm.

We fear the binary nature of the rules means firms will find themselves having to disclose that they make no consideration of adverse impacts, without this necessarily being the case.

Finally, the proposed rules are not applicable for certain asset classes to comply with, in full, for example, real estate – meaning they will have to use the caveat – again, without this reflecting reality.

<u>Proposed Alternative</u>

In line with the request made by our European counterpart, the European Fund and Asset Management Association (EFAMA), ideally, we would ask that the ESAs allow firms the requisite flexibility to identify and prioritise principal adverse impacts through fully optional indicators. This should focus on disclosure of asset managers' policies and approaches to measuring and addressing adverse impact.

Should this not be possible, we propose two significant revisions to the proposed approach:

1/ In line with our European counterpart, EFAMA, we propose a reduced list of mandatory indicators (Please see our answer to Question 3 for details of these indicators);

2/ Added flexibility for firms to be able to provide an explanation of their assessment of indicators in cases where a purely quantitative assessment would not be useful to investors.

Furthermore, we do not support a weighted average calculation for principle adverse indicators and would propose that they are instead calculated at a specific reference date. This simplified and clear approach would help support greater consumer understanding.

<u>Rationale</u>

a. Our proposed alternative will allow firms to the flexibility to explain their approach, where necessary, to ensure investors are able to make informed choices;

b. It ensures that only indicators that are genuinely meaningful at entity level are mandatory to disclose, avoiding misleading and confusing investors with calculations that may not be reflective of the underlying strategy that they may choose;
c. It ensures that the approach is doable by the vast majority of firms, removing the unintended consequence of a large number of firms having to disclose a statement at entity-level saying they make "no consideration of sustainability adverse impacts" when this is not, in fact, the reality.

Timing

We would welcome confirmation that we have understand correctly that if an adverse impact statement is being prepared by a group on behalf of its subsidiaries then one statement will suffice and that such a statement is to be published by 30 June.

2. Pre-Contractual Disclosures

We have concerns around the proposal to use a prescriptive template for pre-contractual disclosures and the extent to which this could genuinely help end-investors to make informed decisions in keeping with their preferences and goals. Templates, by their nature, may not provide the requisite flexibility to disclose on the broad range of sustainable investment approaches that investors want.

Instead, we would prefer an integrated approach to product-level disclosures, which seeks to bring greater clarity and consistency to the ways in which investment managers communicate the sustainability characteristics of their funds through existing sections of pre-contractual disclosures. Firms may wish to supplement this with additional disclosures to help investors understand the features of their products.

Pre-contractual disclosures for sustainable investment characteristics should build on key messages from existing regulatory expectations and from consumer research (see our response to Question 13 for more details). They should help investors identify the sustainability characteristics of their funds by integrating these details into the fund's investment objectives, policy and strategy. This should cover:

a. In what way a product has environmental or social characteristics and/or pursues sustainability objectives to generate positive impact alongside financial return.
b. How this is reflected in investment objective, if at all
c. How the investment strategy intends to achieve the objective, including any restrictions or deviations from the investment policy
d. A description of the investment process, including an explanation of how manager discretion is applied, i.e. whether sustainable investment constraints on the fund are binding or otherwise

3. Periodic Reporting

We are advocating for the removal of the weighted average calculation in periodic reports in favour of calculations made at a point in time, in line with calculations included in existing reporting.

For periodic reports at fund level, we would also welcome clarification we have understood correctly from Article 51 that the requirements should be applicable for the annual periods beginning on or after 1 January 2022 with the first reports issued after January 2023.

4. Treatment of Different Products

We have concerns that the categorization of products as either Article 8 or 9 remains unclear and runs the risk of confusing investors as they seek to choose products that align to their investment goals. Wherever possible, we ask the ESAs to reflect the categorization of products as per the IA Responsible Investment Framework.

We would also welcome an adaptation of the rules to the different types of financial products (i.e. portfolio management).

5. Do No Significant Harm Principle ("DNSH" Principle)

We have concerns around the application of DNSH as proposed in the RTS, in that it is potentially confusing for investors and could also provide a disincentive to invest even a portion of a product or portfolio into investments that are pursuing sustainability objectives due to the additional exclusion burden it imposes.

6. Timing Concerns

Industry recognizes the urgency with which the European Commission is seeking to transform practices in financial services and that this urgency has only been reinforced by the recent Covid Crisis.[1] At the same time, it is crucial that incoming changes to the system are given requisite time to be brought in in a meaningful way and to be sequenced appropriately to ensure that they are as effective as possible and that end-investors are protected and not misled. For this reason, we wanted to indicate our support for your letter to the Commission asking for a review of the March deadline.

A postponement of the application date to January 2022 would give firms more time to obtain necessary data, adjust their systems and communicate in one go to investors. It would also sequence well with other incoming requirements, including the EU Taxonomy disclosures and the imminent new rules on the integration of sustainability risks and consideration of principal adverse impacts in investment decisions, which we understand are likely to be effective from end of 2021. Should a postponement not be possible, consideration should be given to other measures, including regulatory forbearance.

7. Data Concerns

We have concerns around the availability of ESG data. In particular, in the case of the principal adverse impact indicators, it is simply unavailable as yet. Firms are reluctant

[1] As demonstrated in the European Commission Strategy Consultation 2020, p.3

to make disclosures based on data that is not robust, and which could be potentially misleading for clients.

Responses to the Survey Questions

Entity-level disclosures

Question 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?

IA Response:

We have serious concerns around the approach proposed in Chapter II and Annex I. Specifically, we have concerns that it is not in keeping with the spirit of the Level 1 text in that it does not support financial market participants to identify and prioritise *principal* adverse sustainability impacts and indicators (Regulation (EU) 2019/2088, Article 4 (2) (a)). Instead, it prescribes the assessment of specified adverse impacts and indicators – forgoing proportionality and materiality considerations - and by consequence precludes firms from making their own assessment of adverse impacts in a way that is truly meaningful to how they take account of these issues in practice.

Moreover, we have concerns around the ability of what are in effect aggregate scores of a firm's portfolios to provide a meaningful and genuinely useful picture of the firm as a whole's behaviour. Certainly, it is helpful to understand in a qualitative sense how firms assess principal adverse impacts across their business, but the proposed focus on aggregate quantitative measures conflates the risk management processes of a firm with the choices of its investors. Firm-level calculations do not help consumers choose the right product for them, and these numbers may be misleading as consumers could buy a product that is in fact the main driver of that particular indicator.

Furthermore, the binary nature of either having to comply with disclosing adverse impacts as proposed in Annex I or having to provide a statement entitled "No consideration of sustainability adverse impacts" (Joint Consultation Paper, Article 11) will be misleading for investors if a financial market participant does indeed assess adverse impacts but simply not in the way prescribed by the tables in Annex I.

Finally, whilst it would already be problematic for any asset class to comply with the full list of impacts and indicators set out even Table I of Annex I, for certain asset classes and approaches some indicators are simply not applicable. For example, real estate cannot disclose on gender pay gap, as whilst significant in the context of investee companies, this metric cannot be applied to a building. In fact, and to extend this example, proposed indicators 17-22 that apply to social and employee matters are all applicable for companies but not applicable in the context of real assets. Therefore, given the proposed approach does not provide flexibility to deviate from the prescribed template – irrespective of asset class, materiality or proportionality – financial market participants would find themselves having to state they take no consideration of adverse impacts, despite this not being an accurate representation of their actions – ultimately misleading investors as we note above.

Building on the Proposed Approach set out in Annex I

To help us build on the proposed approach and develop a revised approach that can work well in practice and harnesses existing expertise in the sustainable finance market, it is helpful to refer back to the ambitions of the March 2018 Action Plan.

Action 7 sets out that asset managers and institutional investors would be required to increase transparency towards end-investors on how they integrate sustainability factors in their investment decisions, in particular as concerns climate change-related risks (Action Plan 2018, p. 9).

We wholeheartedly support such efforts to empower end-investors to make informed decisions based on increased transparency from asset managers and institutional investors.

Comparability is one important part of this, and we understand the desire to bring about consistency of disclosures to this end. However, comparability should not be pursued at the expense of meaningful disclosures. Moreover, comparability is not the main objective of the entity-level disclosures, according to Level 1 – that is the focus of the product-level disclosures.

Instead, if disclosures at an entity-level are to be meaningful, they must accurately portray how financial market participants integrate sustainability factors in their investment decisions in line with the ambitions set out in the Action Plan and reflected in the nature of the Level 1 text. Specifically, they should correspond to how financial market participants identify and prioritise principal adverse impacts in practice.

Under our response to Question 3, we propose a revised approach to support the requirements set out under Articles 4(2) (a), (b), (c) and (d) of the level 1 text.

Question 2

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?

IA Response:

No, as per our response to Question 1, the approach does not build in the requisite flexibility to be effectively applied to different businesses.

In terms of size, the approach laid out would disproportionally disadvantage smaller businesses who will not be able to access the data that larger firms have the resources to do so, as the cost of an ESG data set for companies is not dependent on the size of the financial market participants buying the data. Having the flexibility to provide a qualitative assessment of principal adverse impacts, in cases where data and/or methodologies are lacking and/or still being developed, would alleviate this burden.

We have also already mentioned the particular difficulties for certain asset class to comply with the rules, and the likelihood of firms specializing in such approaches having to produce a statement saying that they take no consideration of sustainability adverse impacts, despite this not being true.

Question 3

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?

IA Response:

We are broadly supportive of proposed Articles 5, 7, 8, 9, 10, 12 and 13 as set out in the consultation and are comfortable that these provide the requisite detail to Article 2 (a), (c) and (d) of Regulation 2019/2088.

Our proposed revised approach to Article 6 and its accompanying tables in Annex I is as follows:

We are supportive of the way in which the table format sets out disclosures on adverse impacts in a consistent way across financial market participants' websites, namely a summary followed by details of the assessment of principal adverse sustainability impacts using a table with consistent column headings (Adverse sustainability indicator, Metric (expressed in market value), Impact (year n), Impact (year n-1), Explanation).

Moving beyond the benefits of consistency in layout and format of the information, in line with the request set out by our European counterpart, the European Fund and Asset Management Association (EFAMA), we would ask that the ESAs allow firms the requisite flexibility to identify and prioritise principal adverse impacts through fully optional indicators. This should focus on disclosure of asset managers' policies and approaches to measuring and addressing adverse impact.

Should this not be possible, we propose two significant revisions to the proposed approach:

1. That the number of mandatory indicators is reduced to cover only those that are meaningful at an entity level. Please see below our suggestion for which indicators this should include. We would be very happy to engage with you further on the list of indicators to ensure they facilitate the necessary comparability between firms whilst being sufficiently informative at an entity level. As the IA set out in its response to the review of the Non-Financial Reporting Directive (NFRD), it is critical that the final list of indicators aligns with the available information from investee companies. We would ask the Commission to consider this crucial link in its next steps, including on NFRD.
2. Alongside a reduction in the number, we would ask that the approach allows firms to be able to provide an explanation of their assessment of indicators, in cases where a purely quantitative assessment would not be useful to investors, for example where methodologies are still in their infancy, and quantitative assessment alone could be misunderstood and/or where there is a particularly stark lack of available data. This more qualitative approach will be helpful to provide clear explanations to investors, given that the concept of "principal adverse impacts" is still relatively new and unfamiliar. We think it would be helpful to enlarge and put greater emphasis on the "Explanation" column of the table or even to add some form of "Additional comment" column. It should also be permissible for firms to indicate the proportion of assets for which they have considered a particular indicator (% AUM) to be able to include the

calculation in the table. The explanation column can then provide extra detail on the firm's assessment to not consider across all products.

List of Suggested Indicators

Reiterating the request made by our European counterpart, EFAMA, we would suggest the following six key indicators, including 4 environmental and 2 on social and employee matters, could qualify for mandatory disclosures:

Environmental indicators

- Adverse sustainability indicator 1 (carbon emissions, broken down by scope 1 and 2): Generally considered relevant for all assets. According to the feedback from our members, data for scope 3 emissions is largely not available. Data providers offer assumptions on scope 3 emissions that vary greatly and do not represent a suitable basis for calculation of indicators that shall be compared by investors. Moreover, the issue of double-counting within scope 3 and between scope 2 and scope 3 emissions is not yet sufficiently addressed.

- Adverse sustainability indicator 2 (carbon footprint for scope 1 and 2 emissions): Generally considered relevant for all assets. Calculation methodologies for scope 1 and 2 are established in the market but are asset class specific. The suggested methodology is based on the investee company's enterprise value which is not fully adequate for direct equity investments.

- Adverse sustainability indicator 5 (total energy consumption from non-renewable sources and share of non-renewable energy consumption): Generally considered relevant for all assets, even though data is not readily available across all sectors. Data on GWh consumption is less available than percentages and would require further costs and efforts to be obtained.

- Adverse sustainability indicator 7 (energy consumption intensity): Generally considered relevant for all assets, even though data is not readily available across all sectors. Data on GWh consumption is less available than percentages and would require further costs and efforts to be obtained.

Social and employee, respect for human rights, anti-corruption and anti-bribery indicators

Many of the indicators proposed in this section are only applicable to investments in companies and are too granular to be assessed based on ESG data as currently available. Therefore, as an alternative, we suggest using the following high-level mandatory KPIs in order to report on the relevant aspects of portfolio investments in companies:

- No signatories to UN Global Compact (share of investments in investee companies that have not committed to the UNGC principles)

- Severe controversies/breaches of UN Global Compact (share of investments in investee companies that have been involved in severe violations of the UNGC principles)

All remaining indicators currently included in table 1 should be made optional and moved to tables 2 and 3, respectively.

Firms will then be able to use the proposed indicators in the remainder of the table to help with further analysis and assessment as is proportionate and relevant to their investment, in particular, on a sector-by-sector basis.

<u>Rationale</u>

This would:

a. Allow firms to explain their approach to ensure investors can understand what firms are doing, helping them make informed choices as to where they put their money;
b. Ensure only those indicators that are genuinely meaningful at entity level are mandatory to disclose, ensuring investors are not confused or misled by calculations that may not be reflective of the underlying strategy that they may choose.
c. Ensuring the approach is doable by the vast majority of firms will also remove the unintended consequence of having to disclose a statement at entity-level saying they make "no consideration of sustainability adverse impacts" when this is not, in fact, the reality. Removing the otherwise binary nature of compliance with Annex I will help to incrementally encourage firms to disclose more and more in line with the Tables, as business practices develop and as data becomes increasingly available.

Question 4

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

IA Response:

To reiterate the views we share in our response to Question 1, we have serious concerns around the reporting template provided in Table 1 of Annex I. Specifically, we have concerns that it is not in keeping with the spirit of the Level 1 text in that it does not support financial market participants to identify and prioritise *principal* adverse sustainability impacts and indicators (Regulation (EU) 2019/2088, Article 4 (2) (a)). Instead, it prescribes the assessment of specified adverse impacts and indicators – forgoing proportionality or materiality considerations - and by consequence precludes firms from making their own assessment of adverse impacts in a way that is truly meaningful to how they take account of these issues in practice.

Moreover, we have concerns around the ability of what are in effect aggregate scores of a firm's portfolios to provide a meaningful and genuinely useful picture of the firm as a whole's behaviour. Certainly, it is helpful to understand in a qualitative sense how firms assess principal adverse impacts across their business, but the proposed focus on aggregate quantitative measures conflates the risk management processes of a firm with the choices of its investors. Firm-level calculations do not help consumers choose the right product for them, and these numbers may be misleading as consumers could buy a product that is in fact the main driver of that particular indicator.

Furthermore, the binary nature of either having to comply with disclosing adverse impacts as proposed in Annex I or having to provide a statement entitled "No consideration of sustainability adverse impacts" (Joint Consultation Paper, Article 11) will be misleading for investors if a financial market participant does indeed assess adverse impacts but simply not in the way prescribed by the tables in Annex I.

Finally, whilst it would already be problematic for any asset class to comply with the full list of impacts and indicators set out even Table I of Annex I, for certain asset classes and approaches it not all indicators are applicable. For example, real estate cannot disclose on gender pay gap, as whilst significant in the context of investee companies, this metric cannot be applied to a building. In fact proposed indicators 17-22 that apply to social and employee matters are all applicable for companies but not applicable in the context of real assets. Therefore, given the proposed approach does not provide flexibility to deviate from the prescribed template – irrespective of asset class, materiality or proportionality – financial market participants would find themselves having to state they take no consideration of adverse impacts, despite this not being an accurate representation of their actions – ultimately misleading investors as we note above.

We propose an alternative approach in our answer to Question 3.

Question 5

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)?

IA Response:

Forward-looking indicators, or targets, form an important part of financial market participants' assessment of the sustainability of their investments.

One of the most important sets of disclosures that firms will increasingly be looking for from their investee companies are clearly set out paths to transition, including forward-looking indicators of how, for example, high emitting sectors, will be transitioning their business models over the coming years.

These targets should be science-based and measurable. For example, firms may wish to refer to the IPCC trajectories on CO2 reduction.

However, we would point out that these forward-looking indicators are typically positive and correspond to the progress of companies towards transition. This would of course not be in keeping with the nature of "principal adverse impacts", and it would be confusing to investors if we conflate these in any prescribed approach.

Question 6

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?

IA Response:

Whilst this would be helpful in theory, existing methodologies for such calculations would be too underdeveloped to form mandatory disclosures at this stage.

This would also be very challenging when dealing with investee companies with operations outside of the EU Emissions Trading System.

Question 7

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?

IA Response:

Some investors may be interested in such a measure, but its simple nature runs the risk of misrepresenting the ways in which financial market participants are contributing to sustainability.

For example, if a financial market participant invested a large share of its investments in companies with a particular issue, this should not be presented in such a way that would deter investors from investing their money with that firm. The financial market participant in question may in fact have a large share of its investments in such companies with a view to engaging with them to support their transition to Paris-alignment. Any such numbers without accompanying explanatory narrative would be meaningless.

Moreover, the inclusion of further granularity in the proposed disclosures runs the risk of overloading investors with information and disengaging them.

Question 8

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?

IA Response:

Indicators to help assess whether a company is not on a path to transition would be helpful, but it is unclear exactly what this should look like. It will be important that methodologies to develop these kinds of indicators are given time to develop before their mandatory application.

Question 9

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?

IA Response:

Clearly, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters are incredibly important. Indeed, investment managers will take account of social matters as part of their investment decision making with a view to generate long term returns for clients.

We have concerns that – given their importance – seeking to define them "at the same time" as the environmental indicators may not allow sufficient time to scope them appropriately and accurately and with the requisite flexibility to reflect how they are taken account in practice.

There are a number of initiatives and frameworks that already prove helpful tools to financial market participants, including, for example, the work of the World Benchmarking Alliance and Share Action's Workforce Disclosure Initiative. The IA also supports the Sustainability Accounting Standards Board (SASB) framework, which includes social indicators.

The Investment Association also has a section on human capital management in its Long Term Reporting Guidance which may be helpful (pp.12-14).

We would ask the ESAs and the Commission endorse and build on existing practices in the market. Please see the IA response to NFRD for more details.

Question 10

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?

IA Response:

We do not see merit in disclosing such a long timeframe for adverse impact disclosures. Ten years is too long a period of time for these comparisons to be genuinely meaningful given the fast pace of developments in sustainability that lead to changing norms and standards.

This is a complex assessment which involves various components. This kind of comparison over such a long time period of time would not be clear for investors to understand. A shorter period of time would produce a more easily comprehensible comparison.

Furthermore, to improve consistency with product-level requirements, the comparative period should not be longer than the recommended holding period under PRIIPs, i.e. between 3 and 5 years. This would match how long products are likely to be held by an investor.

Question 11

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?

IA Response:

We would not encourage additional methods targeted at discouraging window dressing. Investment managers have duties to act in the best interests of clients. It would already be a serious breach of investment objectives and limits to buy and sell investments to manipulate how sustainable a portfolio looks at a particular point in time and goes against these duties by putting the reputation of the firm or manager ahead of the interests of the client.

On this basis, we also challenge the use of weighted average as a basis for calculation of PAI indicators over the entire reference period regarding all investments at the entity level. First, in practice, a weighted average would mean that calculation should be made continuously for aggregated holdings when investee companies data provision, as envisaged NFRD, suggests an annual reporting. Therefore, to enhance clarity for investors but also provide an accurate depiction of the principal adverse impact figures, we would advocate for the entities to provide this data at a specific point in time with specific reference date such as the year-end.

Second, such an approach is aligned to the existing disclosures made available to investors, as it is the case, for example, for annual reports. We believe that figures calculated according to that principle would be better understood by investors, especially considering that principal adverse impact is already a new concept.

Moreover, in the same vein as the existing documents, further clarity can be brought by highlighting material changes in the top 25 holdings during the period and explain the figures from one year to another.

Product Level Disclosures

Question 12

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

IA Response:

The IA is supportive of efforts to improve the comparability of products through more consistent disclosures. Comparability however should not be achieved at the expense of meaningful disclosures that empower consumers to make informed decisions about where they put their money.

Sustainability information should ideally be integrated into how a firm describes its products. Improvements to disclosure practices should focus on supporting firms to improve the clarity with which they communicate the responsible or sustainable investment characteristics of their products through existing disclosure structures. Please see our answer for Question 13 for more details of how industry is taking forward this work in practice.

Firms may also find it helpful to disclose additional detail outside of regulated pre-contractual disclosure documents, where this helps investors to understand the nature of a firm's investments.

Nevertheless, we have concerns with the development of additional templates as by their nature they may hamper the necessary flexibility to make disclosures that are relevant to the full range of responsible and sustainable investment products that are on offer. Different investors will have a wide range of sustainability preferences, and any mandatory templates need to help these investors choose the right products for their particular needs and goals. In short, any mandatory templates must at the very least help facilitate end-investor *choice*, instead of simply guiding investors to "sustainable investments".

Question 13

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

IA Response:

As we state above, our preference would not be templates. Our preference would be for any work towards consistency of disclosures to focus on integrating sustainability information into existing disclosures. Nevertheless, if templates are being produced, we would like to share with you emerging industry thinking around communication of sustainable and responsible investment characteristics at fund level with a view to making these disclosures as helpful to consumers as possible.

Industry's work on communication of sustainable and responsible investment at fund-level builds on our Fund Communication Guidance of February 2019. This Guidance drew key messages from existing regulatory expectations on fund disclosures as well as from consumer research – copied below.

These key messages can be applied to all funds, including sustainable products, to help empower consumers to make informed choices about where they put their money.

Key Messages from Regulation

- Managers should set clear objectives so customers know what to expect from their fund.
- The language used to describe fund objectives should be clear, succinct and comprehensible to retail customers.
- Although the KIID/KID must be consistent with the prospectus, the language used in KIIDs/KIDs and other material does not need to mirror that in the prospectus.
- In most cases, KIIDs should include a description of the investment strategy (in addition to the objectives and policy).
- Key information disclosure should aid comparison between different funds.
- Managers need to consider whether they should provide information in these documents which goes beyond what is stated in the prospectus.
- Firms must disclose in the prospectus and the KIID whether the fund is managed in a way that includes or implies reference to a benchmark.

Key Messages from Consumer Testing

Accessibility and setting tone

- Pay close attention to what may constitute 'jargon' and try to minimize this as far as possible.

- Customers want information to be more accessible on provider websites and as up-todate as possible, particularly execution-only customers who may also look for more accessible data than what is included in PDF attachments to manage their own spreadsheets.

Concision and precision

- Short simple explanations can aid understanding. Regardless of knowledge base, many customers can be confused by too much detail, particularly if new technical terms are introduced.
- Customers prefer precise rather than vague terms, for example, 'acceptably low' or 'predominantly' are not very helpful without qualification.
- Percentages are helpful but ideally would add up to 100%, for example where allocations are broken down. It is recognised that this will not always be possible, for example where investment limits are being set out.

Importance of narrative

- Coherent and well-articulated narrative goes a long way to helping customers understand what they are buying.

Role of layout

- Although there are constraints on the layout of the KIID and the KID, there are still improvements that can be made to layout, for example using bullets and section headers in bold to sig

Application to Sustainable Products

Applying this thinking to responsible and sustainable investment products specifically, industry is developing best practice guidance for disclosure focused on the following elements:

1. In what way a product has environmental or social characteristics and/or pursues sustainability objectives to generate positive impact alongside financial return.
2. How this is reflected in investment objective, if at all
3. How the investment strategy intends to achieve the objective, including any restrictions or deviations from the investment policy
4. A description of the investment process, including an explanation of how manager discretion is applied, i.e. whether sustainable investment constraints on the fund are binding or otherwise

To assist in the disclosure of Point 1, the IA has produced its Responsible Investment Framework, which sets out the different ways in which investment managers contribute to sustainability through responsible investment. The right hand side of the Framework sets out fund-level components. Firms are able to take this as a starting point to describe the ways in which their product has environmental or social characteristics.

Furthest left of fund-level components are "exclusions". These can be used to describe environmental or social characteristics of funds, if they go beyond the firm-level policies of a financial market participant and form a key part of the product. That is to say, if a product excludes controversial weapons only, this should not count as an "environmental or social characteristic" and it should not be categorised as an Article 8 product.

Next to exclusions is "sustainability focus". This overarching term is used to group products that proactively include investments on the basis of sustainability criteria, for example, sustainability-themed funds, best in class approaches or positively tilted funds. All of these can be said to display environmental or social characteristics and would be categorised as Article 8 products.

Furthest right on the Framework is "impact investing". This would be used to categorise Article 9 products that pursue sustainability objectives.

Any mandatory pre-contractual or periodic disclosures should focus on facilitating disclosures in line with the key messages set out above.

Question 14

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.

IA Response:

We understand that the templates are intended to be inserted into existing documentation but to sit separately from existing disclosures.

As per our response to Question 13, we would prefer any incoming regulatory requirements to focus on bringing consistency and clarity to sustainability information that is to be integrated into existing disclosures, for example, the investment objective and investment policy.

Question 15

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?

Precontractual disclosures should be kept clear and meaningful. They should refer to what is binding for that particular fund. They should include only the information that is most relevant to investors to enable informed decision making.

We support the approach whereby extensive disclosures at product-level are on the firm's website, provided that other documents refer to the link where such information can be found.

Specifically, sectoral policies and governance policies should be on the website.

Question 16

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.

IA Response:

Product categorization according to Article 8 and 9 remains unclear and firms are working hard to interpret the categorizations based on available information to date. The industry is grateful to the ESAs for their efforts to bring clarity to these distinctions through the inclusion of Recital 21. Below are additional suggestions from industry intended to bring even greater clarity to these differences.

As we mention in our response to Q.13, the IA has published its Responsible Investment Framework. Taking this Framework as a starting point, below we seek to bring additional clarity to the distinctions between Article 8 and 9 products.

Article 8 products	**Article 9 products**
Products that have any form of sustainability focus, including: - Sustainability-themed - Best in class Positive tilt	Environmental impact products, i.e. those that pursue an environmental objective and measure progress against this, alongside generation of a financial return
Products that apply exclusions that are specific to that fund could be brought into scope of Article 8 if these exclusions form a key feature of that fund.	Social impact products, i.e. those that pursue a social objective and measure progress against this, alongside generation of a financial return
Application of firm-wide exclusions policies should *not* result in all of a firm's funds being caught by Article 8 requirements. Firm-wide exclusions are not used to help investors choose that particular fund.	
We agree that funds' references to how they take account of sustainability risks under Article 6 of SFDR should *not* inadvertently bring them into scope of Article 8 requirements.	
We support the ESAs clarification that only selection criteria for underlying assets that apply on a binding basis should bring funds into scope of Article 8 (or potentially 9).	

Additional Points of Clarification

Article 8 Products and "sustainable investments"

Requiring Article 8 products to disclose the proportion of sustainable investments runs the risk of conflating investment objectives for Article 8 products with those for Article 9 products. This disclosure should not be a requirement for Article 8 products.

Instead, it should be dependent on whether this information is relevant to the investment strategy of the particular Article 8 fund. Otherwise, this obligation runs risk of confusing investors who may not be seeking sustainable investments as per Article 9 products.

By extension, we would also ask that the warning proposed in Article 16 (1) of the draft RTS be removed as, again, it is potentially misleading for investors who are not seeking Article 9 approaches.

Article 9 Products and Climate Benchmarks

We have concerns over the proposed mandatory use of EU Climate benchmarks by Article 9 products that have as their objective to reduce carbon emissions. This is too prescriptive and takes away any possibility of innovation. Furthermore, it results in benchmark administrators using backward-looking data to determine how to achieve carbon emissions. By contrast, investment managers assess this on a forward-looking basis. This makes investment in transition companies impossible.

Overarching Comment

As an overarching comment, given SFDR is intended to avoid greenwashing, the predominant consideration in deciding whether a product falls under Article 8 requirements (or possibly Article 9 requirements) should be the extent to which their fund is described as having environmental or social characteristics in its documentation.

Question 17

Do the graphical and narrative descriptions of investment proportions capture indirect in-vestments sufficiently?

IA Response:

We have concerns that splitting out proportions of investment may not be particularly clear or meaningful for end-investors.

Dividing an investment product into pieces that are deemed sustainable, as having social or environmental characteristics, and other does not help to communicate the overall objective or strategy of the fund.

It will be more helpful to describe the objective and investment process of the fund as a whole as opposed to breaking it down into these categorisations. These categorisations presume the end-investor is already well acquainted with the Taxonomy. In effect, it puts too heavy a burden on the investor to decipher the meaning of these proportions. Instead, it should be the responsibility of the financial market participant – to explain the objective and strategy of the product in a clear and meaningful way.

Question 18

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?

IA Response:

We agree that a standard approach for graphical representations in this context will be misleading to investors. As noted in our responses to Questions 13 and 16, where we set out the different ways in which products can have environmental or social characteristics, Article 15 (2) would apply to a wide variety of products.

A standard graphical representation, in this case, would not help comparability and limits the meaningfulness of such disclosures.

We are therefore against the establishment of a standard graphical representation. We would welcome a less prescriptive approach – one which permitted any such graphical representation to be supplemented by narrative explanation with an emphasis on meaningfulness rather than comparability alone.

Question 19

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?

IA Response:

We would rather the disclosure requirements capture exposure to *all* fossil fuel sectors (not just solid) as discussed at the hearing you kindly held on 2 July. Specifically, we propose that the sectoral disclosure required in Articles 15 and 41 covers both solid and non-solid fossil fuels.

Question 20

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

IA Response:

We have concerns that the rules do not take sufficient account of the differences between products. In particular, we have concerns around the treatment of "portfolio management", whereby each individual model portfolio would be subject to the same obligations as a fund, despite their bespoke nature. The level of granularity for such disclosures would likely need to be reduced to treat this proportionately.

Question 21

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 in-vestment 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?

IA Response:

It is sensible that an understanding of good governance should not differ between Article 8 and Article 9 products. To this end, any handling of good governance in the rules should be the same for both Article 8 and Article 9 products.

The aspects listed under Article 2(17) are certainly a helpful indication of what may be meant by "good governance practices". Having said this, we would caution against seeking to define a blanket approach to what good governance means with any further granularity.

It is important that the regulation helps to propel the growing momentum for financial market participants to consider good governance of investee companies across their investment strategies and not just in Article 8 or 9 products. To do this, the approach taken mustn't be too granular or prescriptive.

A principles-based approach to good governance which takes account of the business structure of each particular investee company works best to ensure governance is assessed in a meaningful way. For example, it is unhelpful to dictate the ways in which a company should ensure employee relations are good. Some may be unionized; others may have staff forums etc. Each approach has its own merits which will differ in effectiveness between business models.

Finally, there are particular challenges that come from looking at good governance at product level. How financial market participants ensure their products meet good governance standards must remain flexible. Financial market participants need to be able to work together with investee companies to improve their governance practices without such companies necessarily being excluded from a sustainable portfolio. For example, there could be instances where an environmentally sustainable product contains companies which are experiencing challenges around board diversity at a particular point in time. It is important that financial market participants engage with these companies to help them improve their practices to remain on a trajectory to better governance if we are to improve practices across the system.

Question 22

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?

IA Response:

We have significant concerns around the "do not significantly harm" principle as proposed.

We understand that the ESAs have been asked to "further specify the details of the content and presentation of the information in relation to the principle of 'do no significant harm'" and that the RTS pertaining to this should be "consistent with the content, methodologies, and presentation of the sustainability indicators in relation to adverse impacts as referred to in Regulation (EU) 2019/2088 [SFDR]".

We also recognise that it is particularly challenging to reconcile the concept of "do no significant harm" pertaining to economic activities as per the Taxonomy with the concept of principal adverse impacts that occur at the level of investee company conduct.

Nevertheless, we see the approach as currently drafted as moving away from the spirit of how the "do no significant harm" concept is set out in the Taxonomy Regulation, including the fact that it relates to economic activities and introduces too great a focus on behavioural requirements pertaining to principal adverse impacts, despite only having to remain "consistent" with them.

The currently proposed approach would impact the disclosures for Article 8 products, in that the proposed requirement to disclose *"This product does not have as its objective sustainable investment"* is confusing for investors. Given that the product does indeed have social or environmental characteristics, this kind of disclosure encourages a binary distinction between sustainable and, by extension, unsustainable, which does not help to articulate the many different types of sustainable products that are available to investors.

Moreover, article 16 (2) imposes significant restrictions on funds that invest in even a small portion of "sustainable investments". By requiring such funds to (a) take account of the full range of indicators set out in Annex 1 and (b) exclude certain investments from their portfolio should be they be deemed to harm sustainable investment objectives that the product is not seeking to pursue, we run the risk of disincentivising financial market participants from incrementally changing their holdings to become gradually more sustainable.

Proposed Solution:

We propose that the concept of "do no significant harm" retains continuity with the concept as set out in the Taxonomy Regulation, that is:

- it relates to products seeking to pursue sustainable investments, i.e. those that pursue sustainability objectives
- it relates to economic activities that are deemed to harm sustainability objectives according to the Taxonomy
- it does not require further activity relating to adverse impacts

Question 23

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?

IA Response:

We agree that it can be confusing for investors to understand the diverse range of sustainable and responsible approaches that exist in the market today, but we would not advocate for the ESAs to define these approaches.

Instead, financial market participants should be required to set out their strategy clearly and consistently, drawing on the terms laid out in the IA Responsible Investment Framework.

In November 2019, the Investment Association published its Responsible Investment Framework to explain how investment managers carry out responsible investment, having carried out an extensive period of consultation with its membership (the IA has over 250 members who collectively manage EUR 8.7 trillion), including firms from across Europe and the world.

The Framework demonstrates that whilst firms carry out ESG integration, corporate engagement activities and exclusions at a firm-level, they may also apply different approaches at a product-by-product level. These product-level ESG investment strategies include:

- Exclusions, for example:
    - Values-based
    - Norms-based
    - Poor sustainability
    - Poor ESG assessment
- Sustainability focus, for example:
    - Sustainability-themed
    - Best in class
    - Positive tilt
- Impact investing

All of the above are have agreed definitions in an appendix to the Framework.

We would be very happy to share more information on this with you as a reference point that has received endorsement representing over 250 investment management firms, including multiple firms headquartered in continental Europe.

Question 24

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?

IA Response:

We understand the reasoning behind asking for average holdings and appreciate the risk of "window dressing", should a financial market participant seek to manipulate how their holdings look at a point of time.

However, we do not think that the action proposed to prevent this risk is justified, given the confusion it would cause to investors.

The proposed calculations would appear in a report alongside the portfolio statement as prescribed, within periodic reports required under UCITS and AIFMD, which is based on holdings at the year-end. Moreover, many different marketing materials also list largest holdings at a point in time. This confusing picture is only exacerbated by the figures having to be calculated for holdings that make up 50% of the portfolio on average over the year.

These calculations must be changed to a snapshot at the balance sheet date.

If any financial market participant were to seek to manipulate a particular view of their underlying holdings, that particular individual should be called out as and when it occurs. It does not benefit investors to change things for all market participants before such a situation has even arisen. We would suggest that disclosures be made for any material changes in the top 25 holdings during the year in place of using a weighted average. This alternative solution would address window-dressing concerns whilst being practical from an operational perspective as well as informative.

Question 25

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.

a) 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 dis-closure Articles 17(b) and 26(b);

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);

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

d) 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 dis-closures under Article 17.

IA Response:

We are in favour of having product level disclosures on the website. It would make the information both accessible to investors and easily updatable.

However, as mentioned in our response to Question 13, our preference would be for sustainability information to be embedded in existing disclosures for pre-contractual disclosures.

Considering this, we believe provisions in pre-contractual documents, specifically KIIDs, should be succinct and meaningful. To achieve that purpose, we would not advocate for extensive disclosures, as described above, in such pre-contractual documents. Prospectuses and KIIDS could refer back to the website.

Question 26

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)?

IA Response:

We do not agree with the proposal to include information on how the use of derivatives meets the environmental or social characteristics or sustainable investment objectives as a separate section and do not see an additional benefit in separately disclosing the use of derivatives from the rest of the investments.

Adequate disclosure requirements are already in place within the UCITS rules regarding a product's use of derivatives. Considering that such use is part of the overall strategy of the fund, we believe that this disclosure should be integrated with the graphical and narrative explanation of the product's portfolio.

We would, therefore, suggest that the draft RTS is amended to remove provisions in relation to how the use of derivatives meets the environmental or social characteristics or sustainable investment objectives as these are integrated de facto within the existing provisions on investment strategy.

Question 27

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

IA Response:

According to the "pros" stated under the ESA's preferred option, "common minimum obligations on identification and disclosure of adverse impacts" is assessed as allowing for "some tailoring of approach to size, nature, scale of activities" (p. 71). Unfortunately, we have concerns that whilst this may be the case theoretically, what is being proposed is too granular to facilitate this end. Instead, the result is the disclosure of information that is not always relevant to investors and therefore runs a high risk of providing confusing and misleading information to them. We worry that this is in conflict with the stated objective to "disclose relevant information […] to allow end investors to make informed decisions" (p. 69 final paragraph).

We are keen to work together with the ESAs and other relevant European authorities and policy makers to ensure that we build on this starting point for discussion to ensure investors are equipped with the meaningful disclosures they need to make informed decisions that match their particular goals and preferences and look forward to picking up on any of the points we make above to provide further detail.