

Real Estate Association SDR Working Group

Guidance response to FCA CP22/20

General comments for Executive Summary

1, In the past decade, the sustainability challenges of the real estate industry have increasingly been in the spotlight. According to the World Economic Forum, buildings account for nearly 40% of global greenhouse gas emissions, 50% of the world's energy consumption and 40% of raw material use. The UK's Department for Business, Energy & Industrial Strategy (BEIS) states¹ that one of the most difficult decarbonisation challenges the nation faces is the built environment and that commercial (including industrial) buildings pose a particular challenge as they account for a third of UK emissions from the built environment.

The buildings use very different amounts of energy, usually dependent on the size of the building. In England and Wales, only 7% of the buildings are larger than 1,000sqm; however, they consume over 53% of all the energy used by commercial buildings and are responsible for the associated carbon emitted from these buildings. Forecasts indicate that approximately 80% of all UK buildings in 2050 have already been built, so a major task is retrofitting existing buildings and determining how to measure and report these decarbonisation efforts.”

2, We understand – and support - the consumer protection focus of the Consultation Paper, as well as the FCA reinforcing the following principles:

- anti-greenwashing;
- the “fair, clear and not misleading” promotion condition;
- naming and marketing rules; and
- distribution rules.

3, We welcome the FCA:

- requesting detailed disclosures, targeted at a wider audience (e.g. institutional investors or retail investors) related to:

“Ongoing sustainability-related performance information including key sustainability- related performance indicators and metrics, in a sustainability product report” [FCA SDR CP paragraphs 1.22 and 3.2]

- indicating that its proposals are a starting point and which will be developed over time – given the FCA proposes:

“to add more specificity to both product-and entity-level disclosure requirements as the ISSB develops its sustainability disclosure standards”. [FCA SDR CP paragraph 5.2]

In response to a request from the FCA for input on the development of real estate-specific metrics, we were pleased to have made this 13th April 2022 submission: <https://www.tcfhub.org/resource/submission-proposals-esg-metrics-for-real-estate>

The aim of the submission is to provide consistent, transparent, and comparable reporting and disclosure both across the UK, as well as internationally, for real estate portfolios, covering all real estate asset classes. We proposed that the reporting and disclosure should be aligned with TCFD guidelines and the UK Sustainability Disclosure Requirements.

As indicated in that submission, policy - alongside technological advances and industry ambitions for ESG performance – is evolving, ESG metrics for real estate will need to be updated, and we suggest that accordingly the FCA regulations from time to time should be revised to reflect the updates.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970519/performance-based-policy-framework-ci-buildings--strategy-paper.pdf

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We append to this response an updated submission (to that of 13th April 2022) reflecting current technological advances and industry ambitions for ESG performance (including more details on social metrics). We look forward to progressing the dialogue with the FCA to consider market implementation of metrics of this nature – subject to the FCA:

- undertaking its own consultation process; and
- further updating the ESG metrics for real estate as and when appropriate, again subject to the FCA undertaking its own consultation process.

International coherence (4.64 – 4.67 & Annex 1:1. – 6.)

We welcome the FCA looking to map its proposed labels to disclosure requirements within the EU SFDR. However, there are concerns in the market with this mapping approach: for instance, there are a number of SFDR Article 8 products which will not meet the criteria to qualify for a SDR sustainable label (particularly since the proposal for a “Responsible” label has been dropped). It is important that these products are still able to accurately disclose their sustainability characteristics, despite not qualifying for a label.

Although the requirements do not directly map across, we welcome a number of improvements in the SDR (e.g. the recognition of transitioning investments as qualifying for a label).

Chapter 3 – Overview, scope and timings

Q1: Do you agree with the proposed scope of firms, products and distributors under our regime. If not, what alternative scope would you prefer, and why?

We agree with the proposed scope of firms, products and distributors under the regime.

We would ask for clarity on whether the reporting at the entity level should be for the in-scope firms, as detailed in Table 1. Where these firms are part of larger UK and global organisations would the entity-level reporting be expected to be at the firm or parent company level? Given that entity-level reporting will build on the TCFD entity report, will this be the same corporate entity as is providing TCFD entity reporting?

We have concerns that it is proposed that overseas funds would not be in scope for the regime initially. This has two principal effects: (i) overseas funds do not benefit from the proposed product labels; and (ii) overseas funds are not subject to the restrictive naming and marketing rules. This could potentially create inconsistency in the market and on this basis, we would suggest that overseas funds marketed in the UK are brought into the regime at the same time as UK funds.

Q2: Do you agree with the proposed implementation timeline? If not, what alternative timeline would you prefer, and why?

We agree with the proposed implementation timeline.

Q3: Do you agree with the proposed cost-benefit analysis set out in Annex 2? If not, we welcome feedback in relation to the one-off and ongoing costs you expect to incur and the potential benefits you envisage.

In the context that firms are already complying with costs associated with disclosure requirements within the EU SFDR, we are concerned with the additional cost burden arising from the SDR regulatory framework.

Chapter 4 – Classification and labelling

Q4: Do you agree with our characterisation of what constitutes a sustainable investment, and our description of the channels by which positive sustainability outcomes may be pursued? If not, what alternatives do you suggest and why?

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We agree that a key attribute of a sustainable investment product is an explicit environmental and/or social objective and this sustainability objective should sit alongside the financial return objective. Also, this objective should be expressed in specific and measurable terms.

Section 4.7 of the consultation paper states that the outcomes that any investment can achieve for the environment and/or society will reflect both the enterprise contribution and investor's contribution. Enterprise contribution is not appropriate for investment in real assets; real asset funds contribute directly to the sustainability outcomes of the assets they hold.

Box 3 of the consultation paper describes the various direct and indirect channels or mechanisms by which a firm may contribute to a positive sustainability outcome. We have suggested below how these could work for real asset funds.

Active investor stewardship and engagement

Real estate investors could influence the environmental and social performance of their assets through active engagement and through participation in system-wide initiatives rather than by exercising voting or other rights or through shareholder activism. We would be grateful for clarification of the meaning of "system-wide initiatives".

The UK Stewardship Code says the following in relation to real estate and infrastructure:

The investment market has changed significantly since the publication of the first UK Stewardship Code. There has been significant growth in investment in assets other than listed equity, such as fixed income bonds, real estate and infrastructure. These investments have different terms, investment periods, rights and responsibilities and signatories will need to consider how to exercise stewardship effectively in these circumstances

Some of the principles in the UK Stewardship Code are not written with real estate funds in mind. For those principles, we propose that the real estate associations work together and, with the Investment Association (IA) and FRC, produce standards and examples appropriate for investing in real assets. This would consider the whole life cycle of the assets and the intervention of the asset managers at the acquisition, operational and disposal stages. This would include how the asset managers engage with occupiers; how they invest in making physical changes to their assets and the operational management of the assets.

Influencing asset prices and the cost of capital

As mentioned in section 4.12 of the consultation paper, the asset pricing/cost of capital mechanism may be stronger in less-liquid segments of the market. Asset managers of real estate funds could influence asset prices and the cost of capital by 'screening in' assets that have strong sustainability credentials, and 'screening out' those that do not.

Seeking a positive sustainability impact by allocating capital to underserved markets or addressing market failures

If aligned with their objectives, real assets funds could direct capital to projects and activities that offer solutions to environmental or social problems with the explicit aim of achieving a positive, measurable sustainability impact.

Q5: Do you agree with the proposed approach to the labelling and classification of sustainable investment products, in particular the emphasis on intentionality?

If not, what alternatives do you suggest and why?

We support the introduction of a classification and labelling regime to help consumers (i.e. retail investors) navigate the market for sustainable investment products.

Section 2.14 of the consultation paper states that "intentionality" means "the investor's deliberate intention to achieve the product's stated objective". We note that there is currently no definition of intentionality in the Guidance and we request the FCA to consider whether they should be offering guidance on this point.

Using the definition for intentionality in section 2.14, we would like clarity on whether "stated objective" means that funds will have to update their current objectives to include sustainable objectives for a fund to qualify for a sustainable label. This would not be an easy process; potentially requiring regulatory and investor approval. This could lead to only new funds using the labels.

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Investor demand for a sustainable label may mean that fund managers feel it is worth the effort to change their funds' objectives. However, this cannot be guaranteed. For example, funds with US investors will need to strike a balance between the desire for a sustainable label and the requirements of certain US investors, who might be restricted from investing in products with sustainability objectives listed alongside financial objectives.

We are pleased that the FCA have stated that there is no hierarchy between the proposed labels. It is important that this is made clear to investors. We would not want investors to believe that one label is better than another. We do note, however, that in the absence of a clear distinction between the three labels, there is a risk of a hierarchy being created where managers choose certain labels over others.

Q6: Do you agree with the proposed distinguishing features, and likely product profiles and strategies, for each category?

If not, what alternatives do you suggest and why? In particular, we welcome your views on:

When AREF presented to DLAG they provided them with examples of real estate funds that would meet the proposed labels in DP21/4. We would have liked the product profiles for each of the labels proposed in the consultation to include an example of a real asset fund that would meet each label. We have liaised with members of our associations and would be happy to provide some examples if helpful.

- a. ***Sustainable Focus: whether at least 70% of a 'sustainable focus' product's assets must meet a credible standard of environmental and/or social sustainability, or align with a specified environmental and/or social sustainability theme?***
- b. ***Sustainable Improvers: the extent to which investor stewardship should be a key feature; and whether you consider the distinction between Sustainable Improvers and Sustainable Impact to be sufficiently clear?***

As mentioned in our response to Q4, we would recommend updates to the UK Stewardship Code to ensure it is appropriate for real asset funds. This would provide real asset funds with standards to enable them to meet the requirements of this label.

We note that, for example, a number of real asset funds that meet Article 8 of SFDR will not qualify for this label due to the intentionality requirement even if, for example, they have a 5-star rating from GRESB and/or a net zero pathway objective. This could lead to confusion and questions from investors.

The type of real asset funds that we believe should be able to meet the criteria for the "Sustainable Improvers" label include ones that look to improve existing assets rather than build new.

- c. ***Sustainable Impact: whether 'impact' is the right term for this category or whether should we consider others such as 'solutions'; and the extent to which financial additionality should be a key feature?***

Many of the most impactful real asset funds will be those that look to improve existing assets rather than build new. For example, transitioning brown buildings is a main component in achieving net zero goals, should funds doing this be labelled as "impact" or "improver" funds?

Where there is potential overlap of this nature, this leads to a risk of creating a hierarchy of labels, as fund managers have the ability to choose their labels. On this basis, we would recommend more clarity and differentiation between the labels.

Section 4.42 of the consultation paper mentions the Long-Term Asset Fund which provides a UK authorised open-ended fund structure that enables investment in long-term, illiquid assets. We would also draw the FCA's attention to the Professional Investor Fund (PIF) which is a proposal for an unauthorised contractual scheme that HM Treasury is considering as part of its review of the UK Fund Regime. This would be a UK fund structure that enables investment in long-term, illiquid assets and supports investment in sustainability solutions. It will benefit from being efficient to operate, particularly for SME managers; and offering a speed to delivery solution that is important when launching vehicles that can support investment in sustainability solutions.

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Q7: Do you agree with our proposal to only introduce labels for sustainable investment products (i.e., to not require a label for 'non-sustainable' investment products)?

If not, what alternative do you suggest and why?

We agree with the proposal to only introduce labels for sustainable investment products.

Q8: Do you agree with our proposed qualifying criteria?

If not, what alternatives do you suggest and why? In your response, please consider:

- **whether the criteria strike the right balance between principles and prescription**
- **the different components to the criteria (including the implementing guidance in Appendix 2)**
- **whether they sufficiently delineate the different label categories, and;**
- **whether terms such as 'assets' are understood in this context?**

We agree that there should be a high bar for the labels but we wonder if this has been set too high. There will be a lot of funds that won't be able to obtain the labels (including certain Article 8 SFDR products, which may have to change the objectives of the fund to qualify for a label). These products will nevertheless be subject to restrictive naming and marketing rules under the SDR proposals.

We recognise, and welcome, the consumer-focus with the FCA's proposed qualifying criteria, and welcome the opportunity to develop from the SDR base appropriate criteria applicable for real estate products for institutional investors.

Under the general criteria for applying labels in the draft Handbook text, ESG 3.2.3. (3) (a) states that:

(3) A firm must:

(a) have in place key performance indicators (KPIs) for the purposes of measuring a sustainability product's ongoing performance towards achieving its sustainability objective, which are:

(i) credible, rigorous and evidence based;

(ii) relevant to, and aligned with, the sustainability product's sustainability objective;

The real estate associations produced a paper on ESG metrics for real estate which was provided to the FCA, along with TCFD and ISSB, dated 13 April 2022. We will be updating that paper and will aim to produce a standard set of KPIs for real estate assets. This will consider SFDR metrics too.

Q9: Do you agree with the category-specific criteria for:

- **The 'Sustainable focus' category, including the 70% threshold?**
- **The 'Sustainable improvers' category? Is the role of the firm in promoting positive change appropriately reflected in the criteria?**
- **The 'Sustainable impact' category, including expectations around the measurement of the product's environmental or social impact?**

Please consider whether there any other important aspects that we should consider adding

We have no further comments at this stage.

Q10: Does our approach to firm requirements around categorisation and displaying labels, including not requiring independent verification at this stage, seem appropriate?

If not, what alternative do you suggest and why?

We would ask what enforcement mechanism the FCA plans to put in place for a firm that uses the incorrect label or does not meet some of the requirements for a label they are using.

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We note that the FCA is not introducing mandatory requirements for firms to seek independent verification of their labelling at this stage. Although we note that the FCA, in the consultation, encourage firms to seek independent verification. We anticipate that as audit firms are auditing periodic disclosures for SFDR, they may do the same for SDR.

We expect that there will be demand from investors for firms to use the sustainable labels for their funds. As well as ensuring the funds have the appropriate sustainable objectives (see our response to Q5), firms will require additional compliance resources to ensure the proposed criteria have been met in full and the appropriate disclosures are made.

Chapter 5 - Disclosures

Q11: Do you agree with our proposed approach to disclosures, including the tiered structure and the division of information to be disclosed in the consumer-facing and detailed disclosures as set out in Figure 7?

While we agree in general with the proposed approach to disclosures, we note that it can present some sector-specific challenges to implement for real estate.

Q12: Do you agree with our proposal to build from our TCFD-aligned disclosure rules in the first instance, evolving the disclosure requirements over time in line with the development of future ISSB standards?

We agree with the proposal.

Q13: Do you agree with our proposals for consumer-facing disclosures, including location, scope, content and frequency of disclosure and updates? If not, what alternatives do you suggest and why?

We agree with the proposals and, in particular, are encouraged by the fact that sustainability disclosures can and should be made even for investments that are not able to use one of the proposed labels.

Q14: Do you agree with the proposal that we should not mandate use of a template at this stage, but that industry may develop one if useful? If not, what alternative do you suggest and why?

We agree with the proposal and would welcome the opportunity to help develop a template or further guidance specific to the real estate sector.

Q15: Do you agree with our proposals for pre-contractual disclosures? If not, what alternatives do you suggest and why. Please comment specifically on the scope, format, location, content and frequency of disclosure and updates.

We agree with the proposals and, in particular, as we noted in our response to Q13, are encouraged by the fact that sustainability disclosures can and should be made even for investments that are not able to use one of the proposed labels, but where sustainability-related features are integral for a firm's investment policy and strategy.

Q16: Do you agree with our proposals for ongoing sustainability-related performance disclosures in the sustainability product report? If not, what alternative do you suggest and why? In your response, please comment on our proposed scope, location, format, content and frequency of disclosure updates.

We agree with the proposals and support the accountability and transparency obligation that they imply.

Q17: Do you agree with our proposals for an 'on demand' regime, including the types of products that would be subject to this regime? If not, what alternative do you suggest and why?

We agree with the proposals although in this, as well as in other proposals we would encourage the FCA to explicitly provide for an opportunity to cure any breaches after notice of potential non-compliance before further enforcement action is taken.

Q18: Do you agree with our proposals for sustainability entity report disclosures? If not, what alternatives do you suggest and why? In your response, please comment on our proposed scope, location, format, content, frequency of disclosures and updates.

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We agree with the proposals although we believe further clarity should be provided regarding, for example, whether the 'entity' referred to is a UK company or a global group (and whether it is the same entity as is providing TCFD entity reporting).

Q19: Do you agree with how our proposals reflect the ISSB's standards, including referencing UK-adopted IFRS S1 in our Handbook Guidance once finalised? If not, please explain why?

We agree with the proposals although we believe further clarity regarding the scope of potential application of the SASB standards for real estate information would be helpful.

Chapter 6 - Naming and marketing

Q20: Do you agree with our proposed general 'anti-greenwashing' rule? If not, what alternative do you suggest and why?

We agree with the proposals although in this, as well as in other proposals we would encourage the FCA to explicitly provide for an opportunity to cure any breaches after notice of potential non-compliance before further enforcement action is taken.

We also note that challenges can arise in implementing standards to areas where specific local definitions necessarily apply, e.g., what income thresholds are used to determine what constitutes 'affordable' housing?

It would be very helpful if the FCA were to create a mechanism by which guidance could be sought in cases of uncertain application and any guidance given communicated publicly, for example through the quarterly FCA bulletin.

Q21: Do you agree with our proposed product naming rule and prohibited terms we have identified? If not, what alternative do you suggest and why?

We agree with the proposed product naming rule and prohibited terms for product labels.

We would note that whilst this is manageable and achievable for new products, we have concerns about how existing products that potentially include prohibited terms will comply. We would suggest a period of conformance to enable compliance.

Q22: Do you agree with the proposed marketing rule? If not, what alternative do you suggest and why?

We do not agree with the restriction on the use of the prohibited terms within marketing.

We note that paragraph 6.15 of the consultation paper allows for use of these terms where factually describing sustainability-related investment policies and strategies that are integral to a firm's investment policy and strategy. It is not clear, however, how this interacts with the general prohibition on these terms in marketing (as set out in paragraph 6.12 of the consultation paper) – for example, when certain statements are contained in a marketing document, such as a PPM. Additionally, these terms are also materially important to the performance of the fund and therefore are fundamentally required to be integrated into any consumer-facing documentation.

Examples of common uses of these terms that are essential to be able to include in marketing to provide a factual view of an ESG integrated investment strategy:

- If the manager is a signatory to PRI and score
- If the manager is a signatory to Net Zero Asset Managers Initiative
- Manager's own net zero carbon pathway or responsible investment strategy, often aligned to the UN SDGs
- GRESB (Global Real Estate Sustainability Benchmark) rating for the product
- Green building certifications case studies and statistics. BREEAM, Net Zero Carbon Building Standard, NABERS, LEED,

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- kWhr of renewable energy generated (renewable is not listed as a prohibited term, but the list provided is not exhaustive)

As such, we would propose that the use of these terms should be prescribed/limited to factual description of actions and a disclaimer should be used to clarify that the inclusion of this information does not imply or import a sustainable product label. In the case of existing funds, we would like to discuss with you further the implications of compliance with these requirements and appropriate scope for grandfathering reliefs.

We believe that prohibiting these terms would have unintended consequences:

- Funds may no longer be able to describe the investment and governance actions they are taking as part of an ESG integrated investment strategy. The FCA cites these actions as being increasingly expected and a required standard. Accordingly, this would have the result of undermining the expected approach from the FCA, disadvantaging those non-labelled products and arguably undermining the wider ESG agenda, as there is less incentive for these managers to focus on ESG integration as they are unable to disclose this to their investors.
- Products which have already ensured that they are SFDR-compliant by accurately disclosing their sustainability characteristics may not be able to use this prospectus language to market in the UK. This could result in UK investors receiving less information than EU investors, for example, leaving them less informed when making an investment decision.
- Application to solely retail investors could lead to a significant mismatch between disclosures provided to professional investors and those provided to retail investors, potentially resulting in retail investors receiving less information on the ESG characteristics of the products that they invest in.

In addition, there is a need to ensure consistency between these requirements and those which currently apply to fund products (including other UK regulations).

Q23: Are there additional approaches to marketing not covered by our proposals that could lead to greenwashing if unaddressed?

We are concerned about the mismatch between UK retail products and overseas retail products (particularly ones outside of SFDR) that would be created by this proposed approach. Such mismatch could then be compounded with the delay in the launch of complementary rules covering overseas funds which are marketed in the UK. As a result, UK retail funds could be at a significant disadvantage when marketing a product in the UK which does not meet the criteria for an SDR label and is subject to the restriction on the use of the prohibited terms in the product name or marketing materials. Such restrictions would not apply to overseas funds, which could create a distorted market.

The other issue that we have concerns about is the unofficial application of consumer facing disclosures in retail products into institutional products. We understand that the FCA will be consulting separately on institutional products, but we would suggest that from a harmonisation and implementation perspective, such rules should come in to force near-simultaneously to avoid market-implied application.

Chapter 7 - Distributors

Q24: Do you agree with our proposals for distributors? If not, what alternatives do you suggest and why?

We agree that where products have a sustainable investment label, distributors must display the label prominently on the relevant digital medium and provide access to the accompanying consumer-facing disclosures.

We also agree that where prohibited sustainability-related terms are used in relation to the naming and marketing of overseas products that are recognised schemes, distributors must place a notice on that product, alerting retail investors that: "This product is based overseas and is not subject to FCA sustainable investment labelling and disclosure requirements". We also support the proposal that the notice be accompanied by a hyperlink to the FCA webpage which will set out what the labelling and disclosure requirements are for retail investors that wish to know more.

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As per our responses to Q23 above, we would propose that, the permanent approach for overseas products is expedited (where possible) to avoid creating a two tier system.

Chapter 8 – Next steps

***Q25: What are your views on how labels should be applied to pension products?
What would be an appropriate threshold for the overarching product to qualify for a label and why?
How should we treat changes in the composition of the product over time?***

We agree that labels should be applied to pension products and we would expect the rules to be consistent with the application of the labels for funds and portfolio management.

We appreciate the challenges with the fact that investment profiles change as the consumer moves nearer to retirement. However, we would expect the constituents of a consumer's pension should be meeting the sustainability requirements in the rules even if the type of underlying funds being invested in may change overtime.

***Q26: Do you consider the proposed naming and marketing rules set out in Chapter 6 to be appropriate for pension products (subject to a potentially lower threshold of constituent funds qualifying for a label)?
If not, why?
What would be an appropriate threshold for the naming and marketing exemption to apply?***

We do consider the proposed naming and marketing rules set out in Chapter 6 to be appropriate for pension products, subject to the responses we have given to Q20-Q23.

Q27: Are there challenges or practical considerations that we should take into account in developing a coherent regime for pension products, irrespective of whether they are offered by providers subject to our rules or DWP's requirements?

We have no comments on the challenges or practical considerations the FCA should take into account in developing a coherent regime for pension products, irrespective of whether they are offered by providers subject to our rules or DWP's requirements. However, we do agree that the FCA should consider the interaction between labels and disclosures by firms in scope of FCA rules and disclosures by firms in scope of DWP requirements.

Q28: To what extent would the disclosures outlined in Chapter 5 be appropriate for pension providers ie do you foresee any challenges or concerns in making consumer-facing disclosures, pre-contractual disclosures and building from the TCFD product and entity-level reports?

We agree with reducing the burden for providers by not requiring them to provide sustainability disclosures in more places than they would already be required to. As our members are not pension providers, we are unable to provide any comments on challenges for pension providers in making the disclosures required in Chapter 5.

***Q29: Do you agree that the approach under our TCFD-aligned product-level disclosure rules should not apply to products qualifying for a sustainable investment label and accompanying disclosures?
Would it be appropriate to introduce this approach for disclosure of a baseline of sustainability-related metrics for all products in time?***

We have no comments on whether the provisions relating specifically to the calculation of product-level metrics would be necessary in respect of products qualifying for a sustainable investment label and the accompanying disclosures. Neither do we have any views on whether it would be appropriate to introduce these provisions when expanding the regime to introduce a baseline of sustainability-related metrics that firms would be required to disclose for all products, irrespective of whether or not they have a label.

Q30: What other considerations or practical challenges should we take into account when expanding the labelling and disclosures regime to pension products?

As our members are not pension providers, we are unable to provide any other considerations or practical challenges that should be taken into account when expanding the labelling and disclosures regime to pension products.

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Q31: Would the proposals set out in Chapters 4-7 of this CP be appropriate for other investment products marketed to retail investors such as IBIPs and ETPs. In your response, please include the type of product, challenges with the proposals, and suggest an alternative approach.

We have no further comments at this stage.