



UK: Giving notice by FCA Connect to use, revise or cease using a sustainability label

July 10, 2024

United Kingdom

The FCA has updated its webpages with further information on

the sustainability label notification process using its Connect online system.

The FCA updated its webpage “[Sustainability disclosure and labelling regime](#)” on Monday 1 July 2024, with additional information on the notification process for the use of a sustainability investment label under its sustainability disclosure requirements (“SDR”) rules.

Why should I read this?

If you would like to use a sustainability investment label for a fund under the FCA’s SDR regime on or after 31 July 2024 you will need to notify the FCA beforehand, or as soon as reasonably practicable after adopting that label.

The FCA does not approve labels, but you must submit a notification when you use, revise or cease using a label through the FCA’s [Connect](#) notification and applications system.

Please note that this is in addition to any steps required to be taken under the broader regulatory or contractual regime surrounding your product. For example, FCA authorised funds are very likely* to require a separate process to amend their products from the Fund Authorisations gateway.

(*Although the FCA acknowledges the possibility that an authorised fund will already meet the requirements for an SDR label, in our experience this is unrealistic in the present market. As the disclosures become more commonplace it is feasible that this might be a possibility in the future.)

What information will you need to submit a notification?

The first requirement is to have login details to FCA Connect. Typically compliance personnel have the necessary access to Connect and will be able to access the relevant pages. The relevant person will need to access your Firm’s Notifications section.

The person completing the form will need the following information:

- **the nature of the application (using a label; revision to a label; or ceasing to use a label)**
- **the sustainability label you intend to use:**
 - **the four labels are:**
 - **sustainability focus**
 - **sustainability improvers**
 - **sustainability impact**

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- sustainability mixed goals
- on changing a label, this will be the new label
- on ceasing to use a label, you can choose ‘no label’
- the Product Reference Number (PRN) of the fund which the label applies to, which you can find in the prospectus or on the FCA register if needed
- the date you intend the change to take effect
 - for the first use of a label, this will be the date of first use

The sustainability labels are registered trademarks

The FCA has registered the four sustainability labels as trademarks. Submission of the form involves agreeing to trademark terms. These are extremely short form *“The FCA asserts its exclusive rights to the trademarked ‘investment label’ logo under UK law, prohibiting any unauthorised use, reproduction, or modification without the FCA’s prior written consent. By submitting this form, you agree to these trademark terms of use of the investment labels.”*

Despite the reference to trademark terms, to our knowledge, there is no equivalent of the GEN 5.1 Annex 1 (which sets out a general licence for the use of the Key Facts logo, and formerly the FSA logo).

Therefore the only formal permission to use the sustainability logos would be under ESG 4.1.1 R (2). This raises the possibility that a firm that generally fails to meet the requirements of ESG 4 will also be breaching a trademark licence. However, more specifically, firms need to also be alive to the explicit prohibitions in ESG 4.1.5 R:

“A manager that uses a sustainability label must not:

(1) use a sustainability label in a way that is misleading;

(2) claim in a public statement or to a client, either expressly or by implication, that:

(a) the FCA has conferred or approved the use of a sustainability label in relation to a particular sustainability product;
or

(b) the manager’s use of a sustainability label indicates that a sustainability product has been approved or endorsed by the FCA; or

(3) publish information in relation to the use of, or descriptors pertaining to, a sustainability label which contradicts the information that has been published by the FCA.”

Our Intellectual Property team suggests that firms taking a cautious approach should also consider carving out these trade marks from any IP licence, warranty and indemnity terms in contracts since the FCA has not formally provided firms with the ability to sub-license

these trademarks.

What else do you need to know?

We note that it is possible to enter a future effective date. This means that firms can plan their notification ahead of time (eg for a fund launch, or for one of the regulatory deadline dates such as 31 July 2024).

There does not appear to be any requirement to upload documents (although you may separately be required to file documents under other regulatory requirements – eg with a Form FN in the case of an authorised fund).

The FCA does not charge a fee for making the notification.

How can Eversheds Sutherland can help

We regularly advise clients on the growing number of ESG and responsible investing regulatory regimes and products. We work with key industry bodies in the ESG space to ensure we stay at the forefront of regulatory developments and understand the impacts such regulation is likely to have on the sector. We can, among other things, help scope whether products fall within existing and forthcoming regulatory regimes; advise on how to comply with these regimes, including crafting necessary disclosures; and provide bespoke training to help clients build internal awareness.

Our highly technical backgrounds and experience, combined with our geographic and cultural know-how, empower us to provide you with all of the IP-centric consulting and legal services you need wherever and however you need it. Whatever your needs, our lawyers have the experience and knowledge to maximize the value of your IP portfolio and protect your IP rights, from filing patent and trademark applications, assessing joint venture and transactional opportunities, to monetizing your IP and defending your IP rights in court and before government agencies. Above all, our team will work closely with you to develop effective global IP strategies most suited to your individual needs and company goals.

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