

APPENDIX: RESPONSES TO CONSULTATION QUESTIONS

Element 1: Scope of Sustainable Investment Product Labelling

Question	ACSI response
1. <i>Is the definition of financial product in the Corporations Act appropriate as the basis for the kinds of investment products captured by this regime?</i> a. <i>Should the scope be narrowed to certain types of financial products (such as products with an investment component e.g. superannuation or managed investment schemes), and if so, on what basis?</i> b. <i>Should there be any exclusions of types of financial products?</i> c. <i>Conversely, does this approach miss any financial products that should be captured by the regime?</i>	ACSI believes that a narrower focus than 'financial products' may be needed for the regime to work as intended in the superannuation system. Members of superannuation funds often have the ability choose between various investment options, sometimes including options which are specifically marketed as 'sustainable' (or similar). These investment options are generally not stand-alone 'financial products' as defined by the Corporations Act. We encourage Treasury to develop an approach so that any new requirements apply to superannuation funds at the investment option level. We note that 'investment option' has been defined in the section 1017BB of the Corporations Act, in respect to portfolio holdings disclosure requirements.

2. <i>Is the approach of using a non-exhaustive list of 'sustainability' terms appropriate for this regime?</i>	ACSI agrees with the principle of leveraging a non-exhaustive list to determine whether an investment product is considered to be marketed as 'sustainable'. This approach could provide clarity while allowing for flexibility to uphold the intent of the reforms. However, it will be important to carefully define what it means to 'use' these terms in marketing. There is a risk that an expansive interpretation could inadvertently capture products or investment options which are not specifically marketed as 'sustainable'. The approach should be guided by Treasury's intention not to capture claims made about strategies that apply broadly across a fund such as ESG integration or investor stewardship. To provide more certainty and support a pragmatic approach, we therefore suggest that any new requirements or guidance are clear about how investment products or options are captured – for example where they use relevant terms in their name.
3. <i>Should terms relating to the governance and social elements of ESG be in the scope of this regime? Why?</i>	For consistency, the new regime could capture terms related to governance and social considerations alongside environmental factors. However, the potentially varied interpretation of certain social or governance-related terms stresses the need to carefully define what it means to 'use' a defined term. Applying the new regime for example in relation to the name of investment products or options would provide more certainty and mitigate the risk that governance or social terms will inadvertently capture products or options which are not specifically marketed as 'sustainable'.

4. <i>Are there any terms in the non-exhaustive list that create unintentional consequences and should not be included? Are there any terms missing?</i>	As above, several of the proposed terms could create unintentional consequences if the scope of the regime is not carefully limited. For example: - 'ESG' and 'responsible' are commonly used by superannuation funds to describe investment approaches which are used as part of determining the best financial interests of their members. - Superannuation funds often discuss 'climate', 'decarbonisation' and 'nature' as financially material risks and opportunities which inform investment approaches. In the contexts described above, the use of these terms does not imply that an investment option is specifically marketed to members as 'sustainable'. Concentrating any new requirements on the name of investment products or options could mitigate the risk of capturing products beyond the policy intent. In addition, it may be challenging to appropriately define the range of terms with the precision required in legislation and therefore we consider that leveraging existing regulatory requirements (such as the misleading or deceptive conduct provisions) along with additional guidance may be an appropriate option.
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Element 2: Consumer-facing disclosures

Question	ACSI response
5. Do you support the introduction of mandatory consumer-facing disclosure obligations?	ACSI supports the principle of improving investment product or option-level disclosures to support consumers. While key features are already disclosed by product issuers, there are opportunities to standardise the presentation of sustainability features to an audience who may not have an in-depth understanding of approaches to sustainable investment and support comparability. There may be options to efficiently achieve this outcome without imposing prescriptive, mandatory disclosure requirements (continued in next question).
6. How could voluntary templates achieve the policy objectives?	Standardisation of product-level disclosure expectations in regulatory guidance, leveraging the existing misleading or deceptive conduct provisions, could enhance the quality and comparability of information available to retail investors and superannuation members, while minimising the complexity and compliance burden that could be associated with new legal requirements. For example, one option would be to publish a model disclosure template in regulatory guidance that articulates actions funds can take to provide useful information to their beneficiaries and support their efforts to refrain from engaging in misleading or deceptive conduct. This could also build on themes identified through ASIC's surveillance work (such as those set out in ASIC information sheet 271: <i>How to avoid greenwashing when offering or promoting sustainability-related products</i>).
7. Which of the above design options do you support, and why? a. If you support a prescriptive approach, what specific elements of the CFD should be mandated? b. If a principles-based approach is preferred, what should be included in the principle-based template for CFD requirements?	ACSI supports a hybrid approach. A fit-for-purpose disclosure template would involve some standardisation to promote comparability and aid consumer understanding. However, there should be flexibility in the template to allow issuers to accurately describe a diverse range of investment products or options.

8. <i>Would you support mandating that product issuers disclose their direct and indirect investment exemptions in the CFD requirement?</i> c. <i>Does the exclusions list featured in Box 2 (p.13) capture an appropriate range of companies, industries, or activities?</i>	One challenge in designing a consumer-facing disclosure template is the need to clearly convey key information while maintaining conciseness. Where relevant, the coverage of an exclusion policy may be a relevant consideration for prospective investors, including which assets are excluded, which asset classes are covered by the exclusion and whether indirectly held assets are covered by the exclusion. Given the diversity in how exclusions may be implemented across a diversified portfolio, we suggest that a principles-based approach should guide the disclosure of these details. In relation to the disclosure (or omission) of details in a standardised disclosure, we note that existing prohibitions against misleading or deceptive statements provisions can manage the risk of false or misleading statements.
9. <i>What are other considerations should the Government consider if it progresses with the introduction of mandatory consumer-facing disclosure obligations?</i>	The Government should be cognisant of the compliance costs that could be associated with additional mandatory disclosure requirements. For example, the proposed calculation of thresholds (as discussed below) could introduce operational complexity. We encourage the Government to balance the need for enhanced consumer information with compliance burden or risk so that there is no chilling effect on the market. Compliance costs could be mitigated by focusing on policy implementation through regulatory guidance. Any proposed disclosure framework should be subject to further consultation to ensure it is fit-for-purpose and does not introduce unintended consequences. Potential elements, such as disclosure of a sustainability-related goal or objective, should be carefully designed to support alignment with existing regulatory requirements, including the Product Disclosure Statement requirements, the best financial interests duty for superannuation funds and the misleading or deceptive conduct provisions.
11. <i>When and how should the CFD be provided to the client/potential client?</i>	It may be useful to for issuers to provide the CFD as part of the existing Product Disclosure Statement. Treasury could also consider ways to encourage superannuation funds to make the CFD available where existing members may compare and switch investment options. This could include relevant sections of a superannuation fund's website or app.

Element 3: Thresholds

Question	ACSI response
12. Should a threshold be prescribed (option 1) or only require there to be disclosure (option 2)? a. Which option best ensures the credibility of the labelling regime? b. If option 1 is adopted what is the appropriate threshold in the Australian context?	From a consumer perspective, quantitative thresholds (either as a minimum benchmark or as a disclosure requirement) could oversimplify assessments of sustainable investment options. For example, a higher percent threshold figure could give consumers an incorrect impression that a particular investment option is higher quality or has greater non-financial impact. There is also a risk that thresholds could encourage a 'checkbox' approach to product design. In contrast to thresholds, principles-based disclosure expectations could help consumers better understand how products are constructed, could support easier comparison and could allow consumers to assess alignment with their preferences and values. Existing misleading or deceptive conduct provisions provide for a robust, principles-based expectation that an investment product or option is 'true to label'. Calculation of a threshold also raises some operational challenges, particularly in a multi-asset investment option which may employ several sustainable investment strategies. If thresholds are considered, we would prefer the approach focus on disclosure rather than imposing a minimum threshold that could constrain product design.
13. How should a threshold be calculated under option 1 and 2? What assets should contribute to threshold, and how should the different impacts that investments could have on sustainability be considered?	Given the diversity of sustainable investment products and investment approaches, it may be difficult to establish a prescriptive methodology that is universally applicable. Therefore, if a threshold was adopted, we believe that a principles-based approach should allow for product issuers to establish a methodology to calculate their alignment with a sustainability objective. The robustness of this approach could be supported by existing misleading or deceptive conduct provisions.
15. Should direct and indirect investments be treated differently for the purposes of the thresholds? a. How would compliance with thresholds be evidenced in regard to indirect investments?	If a threshold was adopted, we do not believe that 'indirect investments' (i.e. externally managed) assets need to be treated differently. The compatibility of externally managed assets with a particular sustainable investment strategy will depend on the investment manager's mandate and how it is overseen on an ongoing basis. If sustainability-related representations are made regarding a pool of externally managed assets, there are existing 'true -to-label' obligations under misleading or deceptive conduct provisions.

16. Is there a role to adopt a mechanism which governs the assets not contributing to the threshold (sub option a)? a. What are the advantages and disadvantages of adopting the UK's criteria? b. What are the advantages and disadvantages of specifying classes of investment as being ineligible for products covered by the labelling framework similar to the EU's proposed framework? c. Which option should be preferred?	ACSI believes that the options discussed could introduce unnecessary complexity and legal uncertainty. <i>UK approach:</i> We do not see a need to restrict investment approaches by establishing a requirement that 'other' assets do not conflict with a stated sustainability objective. Determining which assets are in 'conflict' could create unnecessary complexity as existing misleading or deceptive conduct provisions provide for a robust, principles-based expectation that an investment product or option is 'true to label'. We note that ASIC information sheet 271: <i>How to avoid greenwashing when offering or promoting sustainability-related products</i> includes guidance and examples which illustrate potentially misleading claims. This provides an indication of how the current law may address 'conflicting' assets. <i>EU approach:</i> We support a principles-based regime that supports a range of sustainable investment approaches and objectives. Therefore, we do not support the EU approach of prescribing specific asset types which must be excluded.
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Element 4: Evidentiary assessment

Question	ACSI response
17. Do you support a principles-based approach to evidentiary assessment requirements for financial products marketed as 'sustainable' or similar? Why or why not? a. If not, what alternative approach would you prefer and why?	ACSI supports a principles-based approach to describing sustainability features. Consistent with the existing law and regulatory enforcement, it is necessary that product issuers be able to substantiate claims made about the sustainability characteristics of the investment products or options they offer. This requirement should remain anchored in current misleading or deceptive conduct provisions to support clarity, consistency and efficiency. Prescriptive evidentiary requirements risk adding complexity and may not offer sufficient flexibility to capture the broad range of possible sustainable investment objectives and approaches. A principles-based approach supports ongoing relevance as the sustainable investment landscape evolves.
18. If applicable, what types of evidence do you currently rely on to substantiate sustainability-related claims for financial products (if possible, please include information on internal methodologies, third-party data, standards or certifications). a. What is the relationship between the labelling regime and industry standards? Should a labelling regime prescribe specific standards? If yes, which?	A range of approaches can be used to substantiate sustainability-related claims made about investment product or options. We support a principles-based regime that does not prescribe specific evidentiary requirements. We note that within the superannuation system, portfolio holding disclosure obligations require the disclosure of the assets held in relation to each of the fund's investment options (see Corporations Act section 1017BB). This provides for public accountability on the implementation of certain sustainable investment strategies, including the implementation of screens.
19. How can a principles-based regime ensure sufficient consistency across products and issuers, while still allowing flexibility in evidentiary methods?	ACSI supports enhancing consistency in disclosure expectations, rather than in product design. This would allow consumers to understand and compare various products without prescribing any particular approach.

20. <i>Are there particular challenges in evidencing certain sustainable investment approaches?</i> a. <i>If so, how should a principles-based regime accommodate these differences?</i>	Principles-based disclosure expectations should provide flexibility to accurately describe various sustainability-related approaches.
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