15 July 2020

**Additional comments on the European Commission’s consultation on its renewed sustainable finance strategy**

ICI Global[[1]](#footnote-1) appreciates the opportunity to provide additional information in response to the European Commission’s consultation on its renewed sustainable finance strategy.[[2]](#footnote-2) We provide below additional comments on Questions 28, 52, and 91.

**Additional comments on 28 (on establishing a minimum standard for ESG/sustainable funds aimed at retail investors)**

The focus should be on transparency and investor choice rather than minimum standards (e.g., in line with the EU Taxonomy). This will allow the market to continue to drive the evolution of sustainable investing.

We caution that a minimum standard would likely narrow the existing diversity of sustainable investing strategies and reduce investor choice, without corresponding investor protection benefits. The diverse spectrum of strategies exists to meet a wide range of client demand. Each asset manager has a proprietary investment process, and the variety of approaches to sustainable investing reflect managers’ unique value propositions. Standardizing sustainable investing also would not take into account the variety of approaches funds take to sustainable investing, including engagement with portfolio companies. Narrowing the scope of sustainable or green funds may also reduce investor demand for these funds if they are viewed as niche rather than mainstream products.

Investors benefit when sustainable funds provide clear disclosure for an investor to be able to understand the distinctions among different types of strategies so they can choose the strategy that best fits their needs. We note the Commission already has required extensive sustainable fund disclosure under the new Disclosure Regulation requirements. It should evaluate whether this enhanced transparency assists investors before jumping to the conclusion that more action is needed.

We have additional concerns about the effectiveness of restrictive standards given the current size of the universe of pure “sustainable” or “green” investments. For example, the current universe of Taxonomy-aligned investments is expected to be quite small. It is important for managers to be able to incorporate a broader understanding of sustainability considerations across a larger segment of the market, rather than focusing solely on a few small green companies. Crowding investors into niche products with a small investable universe runs counter to the Commission’s objective of mainstreaming sustainable finance.

As a final point, we caution that creating prescriptive standards risks codifying today’s understanding of sustainability. Sustainable investing is an area that is evolving quickly, and a minimum standard has the potential to hinder product innovation. Before concluding that regulatory action is needed, we urge the EC to first conduct a study of fund labels in the EU to determine whether there is a market failure and, if any, the merits of regulatory intervention such as the imposition of minimum standards.

**Additional comments on Question 52 (on better measuring the sustainability impact of financial products)**

Given the lack of data and continued development of this area, we strongly urge caution around any further work to measure the impact of financial products on sustainability factors. Requiring disclosure of data that is not yet well-developed will result in meaningless disclosure at high cost with no benefit to investors.

The concept of sustainability impact is still developing. For example, there are significant concerns around how to define or measure different sustainability impacts, how to weigh or balance one sustainability impact in relation to another, and the potential for conflict when considering various sustainability impacts in relation to an investor’s economic interests or other preferences (see our response to Question 91). The data that would be used to measure sustainability impact is still being developed, with the NFRD review beginning to contemplate how companies can measure and report sustainability impact. We note that the NFRD does not currently require companies to disclose the sustainability impact related information that asset managers will need to meet the new disclosure requirements under the Disclosure and Taxonomy Regulations. This lack of data is extremely problematic in the context of the proposed Disclosure Regulation RTS, which would require asset managers to disclose over 30 different impact-related indicators for all of their investments.

**Additional comments on Question 91 (on adapting rules on fiduciary duties to require asset managers to consider and integrate adverse impacts of investment decisions on sustainability)**

We recognize the EC’s interest in increasing asset managers’ focus on sustainability impacts, but we do not see merit in amending rules on fiduciary duties, best interests of investors/the prudent person rule, or risk management and internal structures and processes in sectorial rules to directly require them to consider and integrate adverse impacts of investment decisions on sustainability.

Asset management is based on an agency relationship: asset owners hire asset managers to invest assets on their behalf. Asset managers act as fiduciaries, which means acting in the best interests of the client and faithfully executing the investment mandate provided by the client. Asset managers invest within the guidelines specified by their clients for a given mandate as set out in the investment management agreement. For regulated funds, a fund’s manager invests in accordance with investment objectives and policies that are established by the fund’s offering or constituent documents. In both contexts, the client or fund investor assumes the risk of investing rather than the asset manager. It is therefore essential that asset managers make investment decisions on behalf of their clients/investors only and invest in a manner that they assess will best achieve a client’s mandate or a fund’s stated investment objectives.

Sustainability impact, on the other hand, is a separate and distinct concept from fiduciary duty; integrating this notion with fiduciary duty shifts the focus from the client/investor to the EU’s broader policy objectives. Incorporating adverse impacts of investment decisions on sustainability into general obligations of asset manager to their clients therefore would fundamentally alter an asset manager’s core duty to put the client first. In fact, an asset manager’s fiduciary duty generally means it must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own interest or other interests. We are concerned that changes to that basic covenant between an asset manager and client could reduce the client’s confidence in an asset manager. At a time when retail participation in the capital markets is critical to a robust recovery from the COVID-19 crisis and to the EU’s objective of diversifying funding beyond banks, we do not believe that reducing clients’ confidence in those who can help navigate their participation would be in the EU’s interest.

In addition, it is essential that the Commission carefully consider all the potential ramifications before introducing a radical and fundamental change to a well-established legal doctrine and potentially creating conflicts with an asset manager’s duty to act in a client’s best interest. Without an adequate framework for addressing potential new conflicts, it is unclear how asset managers would navigate this new legal obligation. For example, if an asset manager must consider adverse impact on sustainability, regardless of a fund’s investment objective, how should an asset manager balance these obligations or weigh them against each other, especially in relation to an investor’s economic/financial interests or other preferences?

Moreover, we are concerned that directly requiring asset managers to consider and integrate adverse sustainability impacts into investment decisions could create legal conflicts for EU asset managers advising clients in other jurisdictions. A European asset manager advising a non-EU client would be forced to reconcile two different concepts of fiduciary duty—one that focuses solely on the investor’s best interest, and the other that more broadly includes environmental and social sustainability impact (separate from investment returns). European asset managers would have to manage these potentially conflicting obligations, particularly if the clients have not indicated a preference to incorporate adverse impacts into investment decisions. A change of this magnitude has the potential to impact negatively the European asset management sector.

Mandatory inclusion of adverse sustainability impact in fiduciary duty also risks damaging European asset managers’ competitiveness. Mandatory inclusion of adverse sustainability impact would eliminate the ability for an investor to choose whether and how an asset manager considers adverse sustainability impact in the client’s investments. Instead, the EU would impose those considerations for all investors, irrespective of their preferences. Non-EU clients who do not want a policymaker-mandated approach to consideration of adverse sustainability impact in their investment portfolio may choose non-EU asset managers and markets that permit wider ranges of product offerings and a less prescriptive approach to sustainable investing.

We urge the EU to continue its current approach of incorporating adverse impact in targeted sustainable finance legislation to achieve the EU’s objectives. SFDR Article 4, for example, requires financial market participants, including UCITS managers when they consider principal adverse impacts of investment decisions on sustainability factors, to disclose a statement on due diligence policies on those impacts, taking due account of their size, the nature and scale of their activities, and the types of financial products they make available. This proportionate approach accounts for investor mandates and investment objectives and would apply the obligation when appropriate to the investment strategy of the portfolio.

1. [ICI Global](http://www.iciglobal.org) carries out the international work of the [Investment Company Institute](https://www.ici.org/), the leading association representing regulated funds globally. ICI’s membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US$31.3 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC. [↑](#footnote-ref-1)
2. *See* Consultation on the renewed sustainable finance strategy (8 April 2020), *available at* <https://ec.europa.eu/info/consultations/finance-2020-sustainable-finance-strategy_en>. [↑](#footnote-ref-2)