Sustainable Finance Regulation - Financial Market Participants: Comparative Analysis for Switzerland

E4S White Paper
2023- 6

Financial Market Participants: Comparative Analysis for Switzerland

White Paper 3 - E4S Series on Sustainable Finance Regulation

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July 2023

Many thanks to Yvonne Lenoir-Gehl, Jean-Samuel Hofmann, Michel Jaccard and Juan Lopez-Villarejo for the review, to Jordane Widmer for the graphic design, and to the language service at Pictet for the translation. Many thanks as well to our partners Marc Briol (Pictet), Marie-Laure Schaufelberger (Pictet), Laure Castella (Retraites Populaires) and Jean-Christophe Van Tilborgh (Retraites Populaires) for the insightful discussions.

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Executive summary

Over the past years, financial market participants have seen increased regulatory pressure on sustainability-related topics. Whether in Europe, North America or Asia, regulators have started implementing regulations to fulfil three main objectives: (1) improve transparency on the sustainability characteristics of financial products, (2) promote classification systems for financial products based on their sustainability characteristics, and (3) require the integration of clients' ESG preferences in advisory services. The following analysis considers these three objectives, how they are being fulfilled in Switzerland and in foreign jurisdictions, and how regulators can improve the status-quo in Switzerland.

First, regulation can improve transparency on the sustainability characteristics of financial products. Higher transparency can mitigate greenwashing risk and standardisation of disclosed information can enhance comparability across products. In Switzerland, most sustainability requirements around financial actors and products are not hard state law, but rather market-based and voluntary guidelines. The Federal Council has recently been more proactive, enhancing the existing industry self-regulations. It has also mandated the Federal Department of Finance to propose disclosure requirements for sustainable financial products and services and is pushing for sectoral agreements for net-zero targets.

Despite Switzerland's regulatory dynamics and tradition, there is still a margin for improving the Swiss framework on sustainability-related disclosures of financial market participants in light of regulatory developments in the EU and the US. Recommendations to the Swiss regulators include: (1) considering the interoperability of disclosure frameworks across jurisdictions, e.g., through substituted compliance; (2) ensuring that financial market participants can access data on investee companies for their reporting obligations; and (3) focusing on transparency for decision-useful information by establishing disclosure requirements (a) at the product and provider level, (b) with science-based metrics, (c) considering engagement policy, and (d) on the potential of investee companies to improve their sustainability performance.

Second, regulation can promote classification systems for financial products based on their sustainability characteristics. Clarity around the product characteristics and objectives help ensure that end-investors buy products that fit their needs. It also improves the trust in the market. While foreign regulators such as the EU, the US, the UK and China have started proposing rules for classifying and labelling products, namely funds and bonds, Switzerland plays a waiting game and adopts a market-based approach.

For funds' classification, the upcoming proposal from the Federal Department of Finance (fall 2023) should include a more precise definition of sustainable financial products and services. Considering international developments, recommendations for this proposal include: (1) setting a definition with minimum environmental and social standards; and (2) proposing a classification system for products with an impact and a transition objective, by adopting an already-existing framework or creating its own based on name rules, i.e. the use of sustainability terms such as "green" in fund names, or labels.

For green-bond classification, Switzerland should not necessarily develop new Swiss criteria for eligible green-bond activities, as done in certain foreign jurisdictions. It should rather encourage following the market-based approach applied in the issuance of the Swiss Green Sovereign Bonds and promote green-bond certifications.

Third, regulation can require the integration of sustainability preferences of clients in advisory services. Requiring information on clients' sustainability preferences helps ensure that advisers act in the best interest of their clients, by offering products that meet clients' sustainability preferences along with their financial ones. In Switzerland, advisers do not have explicit requirements for inquiring clients' sustainability preferences. However, industry associations, such as the Swiss Bankers Association, have developed self-regulation relating to ESG integration in the advisory process.

Swiss regulators could better fulfil this objective by (1) introducing common requirements applicable to all financial advisers for the explicit request and integration of clients' ESG preferences in the advisory process and (2) providing education to investors on sustainability investment opportunities.

KEY TAKEAWAYS

Financial markets participants have seen increased regulatory pressure on sustainability-related topics, in Switzerland and abroad. These regulations aim to fulfil three main objectives:

1. **Improve transparency on the sustainability of financial products.** Despite the Federal Council's push for enhancing self-regulations, there is still a margin for improving the Swiss disclosure framework on sustainability-related information - namely on interoperability, data availability and relevance of information disclosed.
2. **Promote a classification system for financial products based on their sustainability characteristics.** For investment funds, Swiss regulators should publish a more precise definition of sustainable financial products. For green bonds, Switzerland should encourage a market-based approach in the short term, adopting existing criteria for issuances, and certifications.
3. **Integrate clients' ESG preferences in advisory services**. While Swiss advisers do not have explicit requirements for inquiring clients' sustainability preferences, industry associations have developed self-regulation relating to ESG integration in the advisory process. Swiss regulators could complement this framework with common requirements and investor education.

E4S SUSTAINABLE FINANCE REGULATION SERIES

This E4S Series on Sustainable Finance Regulation investigates regulatory developments in Europe and beyond and discusses the implications for Swiss corporate and financial market actors, regulators, and civil society. **Swiss Subsidiary Tradition in Light of Foreign Approaches** sets the stage in assessing regulatory objectives and comparing regulatory approaches for sustainable finance across jurisdictions. **Corporates: Comparative Analysis for Switzerland** compares sustainability-related reporting regulation targeting corporate actors across jurisdictions and provides recommendations for the Swiss context. In a third white paper, **Financial Market Participants: Comparative Analysis for Switzerland,** the series highlights the specificities and implications for financial market actors.

1 INTRODUCTION

Over the past years, financial market participants have seen increased regulatory pressure on sustainability-related topics across jurisdictions. In 2018, the European Union (EU) adopted a holistic approach through the EU Action Plan on Sustainable Finance [1]. Under this Action Plan, EU regulators published the Sustainable Finance Disclosure Regulation (SFDR) [2] for improving transparency on the sustainability characteristics of financial products (Section 2.1). They have also proposed rules for naming funds with ESG- and sustainability-related terms (Section 3.1.2.3), and a standard for green bond issuance (Section 3.2.3). Finally, EU regulators adapted already-existing regulations on advisory services for considering sustainability preferences of clients (Section 4.1). In the United States (US), the Security and Exchange Commission (SEC) is taking the lead in providing a disclosure framework on sustainability matters for US market participants (Section 2.2). The SEC has also been the initiator of name rules on sustainability-related terms for funds, based on their investment approach towards sustainability (Section 3.1.1). Other major markets for sustainable products and services are also developing regulatory frameworks. For instance, the Financial Conduct Authority (FCA) of the United Kingdom (UK) has recently published a proposal of labels for sustainable financial products and related disclosure obligations (Section 3.1.3). China has rather taken a focus on green bonds with its Green Bond Endorsed Projects Catalogue (Section 3.2.2).

In that context, Switzerland has adopted a market-based approach relying on - but also enhancing - self-regulation issued by industry associations [3]. At the end of 2021, the Federal Council called for action to prevent greenwashing, specifically to *"promote uniform definitions of sustainability impacts"* [4]. Since then, industry organisations have been publishing various guidelines and self-regulations to improve transparency. In its position from December 2022 [5], [6], the Federal Council noted that the measures taken by the industry were insufficient and outlined a definition of a sustainable financial product. It also mandated the Federal Department of Finance (FDF) to present a proposal for disclosure requirements for sustainable financial products and services. At the same time, the Federal Council is also pushing for sectoral agreements on sustainability-related disclosures for financial products. In parallel, the Swiss Confederation issued sovereign green bonds, indirectly proposing guidance on green-bond issuance to private and public actors (Section 3.2.4). Considering advisory services, Swiss law provides no legal obligation to require and integrate clients' ESG preferences, but certain industry associations have addressed this topic with clear guidelines for their members (Section 4.2).

Generally, these regulations related to sustainable financial products and services aim to fulfil three main objectives: (1) improve transparency on the sustainability characteristics of financial products (Section 2), (2) promote classification systems for financial products based on their sustainability characteristics (Section 3), and (3) require the integration of clients' ESG preferences in advisory services (Section 4). Improved transparency on the sustainability characteristics of financial products can mitigate greenwashing risk, and standardisation of disclosed information can enhance comparability across products. A classification system for financial products brings clarity and helps ensure that end-investors buy products that fit their needs, and improves the trust in the market. The integration of clients' sustainability preferences in advisory services helps ensure that advisers act in the best interest of their clients, by offering products that meet clients' sustainability preferences along with financial ones.

This paper considers these three objectives, analyses how they are being fulfilled in Switzerland and in foreign jurisdictions, and proposes recommendations to regulators on how to improve the status-quo in Switzerland. The studied foreign jurisdictions have been selected based on their relevance for the Swiss market but also depending on their approach in fulfilling the objectives mentioned above. To contribute to the current debate, this paper focuses on regulation relating to both sustainable financial products and services, and financial market participants who sell them, in force or in consideration as of June 2023.

2 IMPROVING TRANSPARENCY ON FINANCIAL-PRODUCT SUSTAINABILITY

Requiring disclosures on the sustainability characteristics of financial productsis critical to orient financial flows towards sustainable products. Increased transparency can mitigate greenwashing risk and the standardisation of disclosed information can enhance comparability across products. Jurisdictions have different disclosure approaches, but the degree of disclosure required generally depends on how the sustainability characteristics of the financial products are advertised. The EU regulator has set company-level and product-level disclosure requirements through its famous *Sustainable Finance Disclosure Regulation* (SFDR) [2]; whose associated Art. 6, 8 and 9 define disclosure requirements of products based on their advertised sustainability characteristics and objectives (Section 2.1). In the US, the Securities and Exchange Commission (SEC) is taking the lead on financial market participants' sustainability-related disclosure. The SEC recently proposed disclosure obligations depending on how environmental, social and governance (ESG) matters are integrated in a financial product's investment strategy (Section 2.2). In Switzerland, the Federal Council is maintaining its subsidiarity tradition but is also taking action to complement voluntary self-regulations and guidelines from industry organisations (Section 2.3). However, there is still a margin for improvement at the disclosure level and more binding measures are required for a successful transition of the economy with the help of financial markets (Section 2.4).

2.1 THE EU AS THE FRONT-RUNNER OF SUSTAINABLE FINANCIAL PRODUCT DISCLOSURES

In the SFDR, the starting point for disclosing information related to sustainable financial products is defining what a sustainable investment is. Adopted in November 2019 and in force since 2021, the SFDR provides an explicit definition of what a sustainable investment is in the context of disclosure: an investment in an economic activity that (1) contributes to an environmental objective or to a social objective provided that (2) such investments do not significantly harm (DNSH) any of those objectives and that (3) the investee companies follow good governance practices.[1] With this definition in mind, the SFDR aims to improve product transparency for end-investors by establishing disclosure requirements for both companies and financial products, depending on how the financial product's sustainability profile is being advertised on the EU market (Section 2.1.1) [7, p. 417f.], [8, p. 173]. Over the past year, the EU regulator has tried to clarify the specificities of the SFDR but some limits persist (Section 2.1.2).

[1] The exact definition is the following: "'sustainable investment means an investment in an economic activity that contributes to an environmental objective, as measured, e.g., by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.", [2, Art. 2 no. 17].

2.1.1 Disclosure requirements at company level and at financial-product level

The SFDR establishes company-level transparency obligations which apply to all financial market participants[2] and financial advisers based in the EU, or those who market their products to EU clients.[3] In particular, they must disclose how the key negative impacts of financial products on sustainability factors, i.e. principle adverse impacts (PAI), are addressed (Art. 4), how sustainability risks are integrated into the investment decision-making process (Art. 3) and how remuneration policies of the financial market participants are adapted to the integration of sustainability risks (Art. 5). For example, an asset manager investing in companies' stocks must disclose how she is addressing the fact that these companies (1) may have a negative impact on the environment, (2) their business might be exposed to environmental risks (e.g. floods), which can have a negative effect on the returns for her clients and (3) how her remuneration integrates these risks.

The SFDR also establishes product-level transparency obligations for financial products distributed in the EU. All financial market participants distributing and marketing these products are required to disclose information on them depending on how their sustainability aspects are being advertised: **Art. 9** concerns products with a sustainability objective; **Art. 8**, products promoting sustainability characteristics; and **Art. 6** products that do not integrate sustainability in the investment process.

For all types of financial products and according to Art. 6 and Art. 7, which focuses on adverse impacts, a financial market participant needs to disclose in pre-contractual information how products integrate sustainability risks on a comply-or-explain basis and if and how they consider PAI on sustainability factors.[4] For example, an asset manager selling a thematic investment fund investing in food companies must disclose information on the fund's impact, e.g. carbon footprint, the exposure of companies' business to e.g. flood risks and how these risks are reflected in the companies' - and hence the fund's - value.

For financial products under Art. 8 and 9, financial market participants are required to disclose additional information to the client via every communication medium, which means pre-contractual information, reports, and on the website. This includes disclosures related to the product characteristics, the investment strategy, the methodologies for measuring the environmental and social characteristics promoted and their limits, as well as the engagement policy.[5]

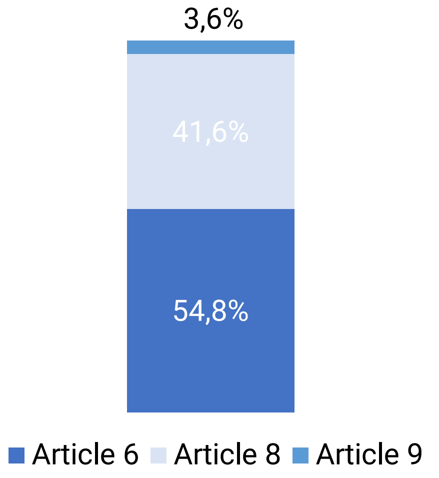
[2] This refers to insurers, investment firms, pension institutions, and fund managers [2, Art. 2 no. 1].

[3] Execution-only financial market participants are excluded from the SFDR scope, as they only provide services on the initiative of the client, mostly addressing non-complex financial products, and do not advertise specific funds.

[4] PAI are "impacts of investment decisions and advice that result in negative effects on sustainability factors" [2, Para. 20 Preamble].

[5] At the firm level described under Art. 4 SFDR, financial market participants will need to disclose, among others, brief summaries of engagement policies to reduce principal adverse impacts. These brief summaries should include (1) the indicators for adverse impacts considered in the engagement policies and (2) how those engagement policies will be adapted where there is no reduction of the principal adverse impacts over more than one period reported on [9, Art. 8]. For financial products under Art. 8 and Art. 9 and when engagement is part of the product's strategy, the financial market participant has to describe the engagement policies implemented [9, Arts. 35 and 48]. In its recent Consultation paper, the European Supervisory Authorities further developed these product-level disclosure requirements on engagement policies and proposed the disclosure of additional information, such as the strategy of dialogue, voting-right exercise, escalation plan, when financial products have GHG emission reduction targets [10, Arts. 29 and 42a].

Figure 1: Split of financial products sold in the EU based on their disclosure type and by number of funds



Note: As of March 2023. Based on data collected from prospectuses on 97.6% of products available for sale in the EU excluding money market funds, funds of funds and feeder funds. Source: Morningstar, 2023 [11].

Figure 1 presents the split of EU products under Art. 6, 8 and 9 and Appendix 1 describes, for these three articles, the criteria for financial products, the associated disclosure requirements and an example of a product that has to comply with such requirements. The SFDR ensures the disclosure of sustainability-related information: it is not meant to provide a labelling of financial products based on specific sustainability themes (Section 3.1.2) [12, p. 713 ff.].

The European Supervisory Authorities[6] **clarified how SFDR-related information should be disclosed through Regulatory Technical Standards** (RTS) and regulatory guidance. In April 2022, they published the so-called Level 2 RTS [9],[7] supplementing the SFDR (so-called Level 1) and specifying the content and modalities of its transparency obligations, e.g. of the DNSH criteria, environmental and social objectives. The RTS ensure that the information published is sufficiently clear, concise and visible.[8] Applying from 1 January 2023, these standards brought clarity on the uniform interpretation and application of the requirements for products under Art. 8 and Art. 9 [9, Art. 68]. The European Supervisory Authorities subsequently tried to bring more clarity on the SFDR specificities through Questions and Answers (Q&A) documents.[9] In April 2023, they published a joint consultation reviewing the latest RTS and proposed to broaden the disclosure framework and address some technical issues with PAI and financial-product disclosures [17]. Considering these updated regulatory expectations, financial market participants have revised their products' classification over the past months.[10]

2.1.2 Ambitious but still room for improvement

Financial market participants under the SFDR might struggle with the data gathering required to comply with their reporting obligations, until the full implementation of

[6] These are the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

[7] An amendment was introduced to update the template disclosures about exposure of financial products to investments in fossil gas and nuclear energy activities [13].

[8] In particular, these RTS introduce models for: 1) the declaration of the main PAIs, 2) pre-contractual information for Art. 8 financial products, 3) pre-contractual information for Art. 9 products.

[9] On the one hand, the Q&A of July 2021 clarified that financial products under Art. 9 must only invest in sustainable investments as defined in Art. 2 no. 17 SFDR [14]. On the other hand, the Q&A of November 2022 indicated that broad market indices can no longer be used as a reference benchmark for financial products under Art. 9 [15], as they are not considered ambitious enough to fulfil sustainability objectives and to ensure that Art. 9 financial products truly support the transition of the real economy [16].

[10] Ahead of the application of Level 2 RTS, certain financial market participants downgraded their financial products from Art. 9 to Art. 8 requirements. Morningstar estimated that more than 300 Art. 9 financial products were downgraded in Q4 2022, representing EUR 170.1 billion of AuM [18]. Over Q1 2023, this trend has stabilised but about 260 Art. 6 products were upgraded to Art. 8 [11].

the *Corporate Sustainability Reporting Directive* (CSRD) in 2028. Currently, companies which disclose sustainability-related information do it either on a voluntary basis or under the *Non-Financial Reporting Directive* (NFRD), which has less detailed requirements than the CSRD. For more information, please refer to the second paper of this series [19]. As a result, financial market participants under the SFDR only have access to voluntary disclosures or those of the NFRD. They therefore may have to conduct their own research to meet SFDR reporting obligations, until the CSRD is fully covering supply chains by financial year 2028 [2].[11] Even after this period, there is no guarantee that the content of companies' sustainability-related reports, their scope and their recurrence will be sufficient to provide financial market participants with the information that they need [8, p. 181]. Aside from this time gap, the SFDR will also be a challenge for providers of private-investment products, such as private-equity or venture-capital funds given the difficulties in sourcing ESG data of private firms - as they are not yet covered by the CSRD (Box 1) [20].

[11] The CSRD is expected to fully apply from financial year 2028 and reports are expected to be published in 2029, meaning that related data will not be available before 2029.

BOX 1: PRIVATE EQUITY FIRMS: BETWEEN DATA GATHERING CHALLENGE AND SUSTAINABILITY INTERESTS

Private equity firms subject to the SFDR are required to disclose how their financial products negatively impact the environment and society , i.e PAI, are addressed on a comply-or-explain basis. A significant portion of private equity firms are however exempted because they have less than 500 employees; an exemption criterion under these requirements [21], [22].

Besides, the majority of private equity firms appears to have opted for "explain", i.e. no consideration of PAI of investment decisions on sustainability factors. Considering product-level disclosure, most private equity funds implementing the SFDR seem to disclose under Art. 6, according to a survey by LGT Capital Partners. Only 3% and 10% of funds have disclosed information according to Art. 9 and 8 respectively [23]. This indicates that the industry cannot ensure data gathering for reporting or that it is not putting sustainability at the top of its agenda and has not yet developed a wide offer for sustainability-themed products [21], [24].

The SFDR currently does not provide for direct applicable sanctions for non-compliance.[12] Its supervision and enforcement remain in the hands of Member States' authorities. However, divergent interpretations and implementations can lead to heterogeneous sanctions throughout the EU market [26, p. 205], bearing the risk of weaker compliance in countries with less resources, e.g. in the form of less administrative capacities. Additionally, as the RTS disclosure modalities are only applicable since January 2023, both the costs of compliance and the costs of non-compliance with the SFDR cannot be exactly assessed yet [27].

While SFDR is a disclosure framework, it can be mistaken for a labelling mechanism. Art. 8 and Art. 9 of the SFDR require that financial market participants disclose information about the sustainability claims of their products, but do not help assess the sustainability profile of products. Although it is well complemented by the EU Taxonomy Regulation for environmental disclosures (Appendix 2), the SFDR does not impose minimum sustainability requirements nor define the concept of sustainable investment. According to the French Financial Market Authority (AMF), the SFDR created discrepancies between investor expectations and real-life practices and could fuel greenwashing [28]. Minimum standards could well-complement current regulation. These aspects, relating to product classification, are developed in Section 3.1.

2.2 Security and Exchange Commission taking the lead in providing a disclosure framework for US market participants

The US has adopted a different approach from the one of the EU. The SEC recently proposed to amend disclosure rules for financial market participants, requiring additional information on ESG investment practices via the *Proposal for Enhanced Disclosures by Certain Investment Advisers and Investment Companies About ESG Investment Practices* (Proposal for Enhanced Disclosures) [29]. Published in June 2022, the Proposal for Enhanced Disclosures aims at facilitating disclosure of consistent, comparable and decision-useful ESG-related information[13] for clients of advisory and investment firms [32]. It should be applicable to investment advisers and management investment companies that are registered with the SEC [33].

Contrary to the SFDR in the EU, the Proposal for Enhanced Disclosures does not provide for company-level disclosure requirements. It only includes disclosure requirements at the financial-product level based on the intensity of the integration of ESG factors in the financial product's strategy (Section 2.2.1). This Proposal has been met with positive reactions and suggestions for improvements (Section 2.2.2), namely on disclosure framework harmonisation, classification-system clarifications, the scope for basic ESG disclosures and engagement-policy considerations.

[12] For example, the Taxonomy Regulation merely calls on EU Member States to establish "effective, proportionate and dissuasive measures and sanctions" [25, Para. 55 Preamble].

[13] Considering financial reporting, decision-useful information are "types of information that are likely to be most useful to the existing and potential investors, lenders and other creditors for making decisions about the reporting entity on the basis of information in its financial report" [30]. A similar approach can be taken with sustainability reporting: it should help investors to make better informed decisions and promote a capital allocation taking sustainability aspects into consideration [31].

2.2.1 Disclosure requirements at the financial-product level

In the US, the degree of disclosure requirements depends on the importance of ESG factors in the financial product's strategy, rather than how it is being marketed, as done in the EU's SFDR (Section 2.1.1). The proposed amendments identify three types of funds based on the ESG strategy pursued: Integration Funds, ESG Focused Funds, Impact Funds (Table 1).

The choice of ESG strategy defines the information to be disclosed in prospectuses, annual reports and brochures.[14] The Proposal for Enhanced Disclosures also requires additional information on GHG emission metrics for ESG-Focused Funds considering environmental factors; which provides investors with consistent and comparable information across these specific funds [33].[15] Contrary to the EU, there is no disclosure requirements on how the products impact the sustainability factors for all funds [2, Art. 7]. The comment period for the Proposal for Enhanced Disclosures closed in August 2022 and final action is expected in October 2023 [32].

Table 1: SEC Proposal for Enhanced Disclosure and its categories of ESG funds

		Characteristics	**Disclosure requirements**
Integration Funds	1	Consider one or more ESG factors along non-ESG factors in investment decisions	Describe how ESG factors are incorporated into the investment process
	2	ESG factors are not necessarily decisive compared to other factors when selecting or excluding investments	
ESG-Focused Funds	1	Focus on one or more ESG factors by using them as a significant or main consideration in selecting investments or in engaging with portfolio companies	Provide detailed disclosures, including an overview of the ESG strategy
Impact Funds	1	Subcategory of ESG-Focused Funds that aims to achieve one or more specific ESG impacts with related ESG benefits	ESG-Focused Funds' requirements
			Disclose the progress in achieving the stated ESG impacts

Source: SEC, 2022 [34].

[14] To make it easier for investors to understand and compare information, the Proposal provides for a tiered disclosure framework, with a summary in the prospectus and more detailed information in the prospectus or elsewhere.

[15] These GHG emission metrics do not consider Scope 3 emissions.

2.2.2 Reactions and suggestions from the market

Given the disclosure frameworks already in place internationally, some market actors are calling for the SEC's alignment with other initiatives. In response to the Proposal, the United Nations Principles of Responsible Investment (UN PRI), an initiative trying to harmonise sustainable investments globally, recognised the SEC efforts in aligning disclosure requirements with other jurisdictions and encouraged close collaboration with foreign regulators. Similarly to the SFDR, the Proposal for Enhanced Disclosures suggests financial product categorisation for disclosure requirements and is aligned with the Task Force on Climate-related Financial Disclosures (TCFD).[16] It is also following an adoption timeline in line with the *Sustainable Disclosure Requirements* of the UK's Financial Conduct Authority (FCA) (Section 3.1.3) [35].

The SEC puts a special emphasis on proxy voting considerations, but additional or modified disclosure requirements would be beneficial. To avoid proxy-washing, ESG-Focused Funds' managers would need to disclose proxy voting and engagement information based on specific metrics, such as the percentage of ESG-related resolutions for which the Funds voted in favour or the percentage of issuers with which the investment manager has held ESG engagement meetings [29], [33]. However, these metrics are more quantity-over-quality oriented, which can defy the purpose of shareholder stewardship and long-term value generation. Additional disclosures on shareholder proposals led or co-led by the investment manager or on the narrative on the proxy voting could also be useful information for investors [35].[17]

Some market participants are asking that all financial products be subject to the Integration-Fund disclosure requirement. Among the proponents for general application of these requirements, some are arguing that investment managers have a responsibility to consider financially-material[18] ESG factors, others believe that the non-integration of ESG factors in investment decision-making also constitutes material information for investors when selecting a financial product [37] [35]. This approach would be similar to the EU's SFDR Art. 6 disclosure requirements (Section 2.1.1).

Some investors with less expertise might wrongly perceive categories as a guarantee of a sustainable product. Products reporting under the Integration Fund category would consider ESG factors in the same way as macroeconomic trends or firm-level factors in the investment selection.[19] So, in reality they might give little

[16] The TCFD framework refers to the recommendations for climate-related disclosures, which the Swiss Climate Ordinance under Art. 964 a-c CO refers to, as explained in White Paper 2 [19].

[17] In comparison, the EU regulator set out general transparency requirements on shareholder engagement activities applicable for any fund, as part of the Shareholder Rights Directive II [36]. It requires the publication of (1) an engagement policy, describing the monitoring and dialogues with investee companies, the exercising of voting rights and the collaboration with other shareholders, as well as of (2) an annual report on the implementation of this policy, describing the financial market participant's voting behaviour including the use of proxy voting recommendations, or publicly disclose a clear and reasoned explanation of why they have chosen not to comply with one or both of these requirements [36, Art. 3g]. The SFDR simply refers to this directive and does not request the disclosure of additional metrics as opposed to the SEC Proposal for Enhanced Disclosures [2, Art. 4 para.2c)].

[18] Recall from [19]: Beyond information on financial risks relevant to traditional investors (single materiality), new regulations require companies to disclose relevant information on the risk of climate change or other sustainability-related issues on the company, as well as a company's business's impact on the environment (impact materiality), whether it has financial consequences for the company (financial materiality) or not (double materiality).

[19] According to the UN PRI, "all funds [...] should consider ESG factors as part of their fiduciary duties and financial risk management" and "market participants that do not consider ESG factors in their investment practice [as required for products in the Integration Fund category] can be at risk of ignoring material issues, and thus violating their fiduciary duties" [35].

consideration to ESG factors [35]. Also, ESG screening, e.g. excluding tobacco companies from a portfolio, is so far considered as "a significant or main consideration" of ESG factors in the investment selection, to the same level as shareholder engagement. Such a broad variety of products reporting under the ESG-Focused Fund category can be confusing for investors [35]. The SEC *Proposed Amendment to the Name Rule*, requesting certain criteria for funds with ESG or related terms in their name, could bring some clarity on what can be considered an ESG or sustainable investment according to the regulator (Section 3.1.1).

2.3 Switzerland: A subsidiarity tradition that is starting to accelerate

The Federal Council is taking action while maintaining its subsidiarity tradition, following what it deems as insufficient voluntary initiatives from industry organisations. End of 2021, the Federal Council called for action to prevent greenwashing, namely to *"promote uniform definitions of sustainability impacts"* [4]. In response, industry organisations have published various guidelines and self-regulations to answer the transparency needs of the industry, considering sustainability characteristics of financial products and practices (Section 2.3.1). In its position from December 2022, the Federal Council noted that the measures taken by the industry so far were insufficient and outlined a definition of a sustainable financial product, which is now being discussed [5], [6]. The Federal Council is also trying to set ambitious climate targets beyond self-regulation, via new disclosure requirements for sustainable financial products and services and the conclusion of voluntary sectoral agreements (Section 2.3.2) [4], [38].

2.3.1 Industry-set sustainability disclosures responding to the Federal Council call

Swiss financial-industry organisations have answered to the Federal Council's call for action on sustainability-related disclosures for preventing greenwashing and for filling gaps in existing regulations. The Swiss Financial Market Supervisory Authority (FINMA), the Asset Management Association Switzerland (AMAS), the Swiss Association of Pension Funds (ASIP) and Swiss Sustainable Finance (SSF) have published binding and non-binding disclosure guidelines, self-regulations and best-practice information to their members and the overall Swiss financial market. Appendix 3 develops the major initiatives of these four organisations on the topic.

Industry organisations have also collaborated closely with governmental bodies to create the Swiss Climate Scores (SCS) [39]**.** Introduced in mid-2022, the SCS were created by the Confederation with the support of industry experts, methodology providers, NGOs and academia [40]. They establish transparency requirements on the Paris-alignment of financial products based on six indicators,[20] built on existing, internationally recognised standards and including forward-looking elements.[21] They show the current status of the investment products or portfolios of globally active companies as well as the degree to which these companies are expected to meet their climate goals. The Federal Council has recommended that financial actors create transparency in all financial products and investment portfolios by means

[20] These indicators are (1) GHG emissions; (2) exposure to fossil fuels; (3) verified net-zero commitments; (4) net-zero management; (5) global warming potential (optional); (6) credible climate dialogue.

[21] The template for practical analysis according to the SCS can be found here on the AMAS website [41].

of comparable and meaningful climate compatibility indicators [4], and to use the Swiss Climate Scores "where appropriate" [42]. While implementation is still in its infancy, about ⅓ of Swiss asset managers plan to publish the SCS in the future, according to the Swiss Sustainable Investment Market Study 2023 [43]. So far, the SCS involve no formal controls on the application of the indicators, and are still under development.[22, 23]

2.3.2 Federal Council turning the screw

The Federal Council has recently been more proactive, enhancing the existing and recently introduced industry self-regulations. The Federal Council has mandated the Federal Department of Finance (FDF) for the elaboration of a proposal for disclosure requirements for sustainable financial products and services (Section 2.3.2.1) and is pushing for sectoral agreements on this topic (Section 2.3.2.2).

2.3.2.1 Upcoming proposal of disclosure for sustainable financial products?

The FDF has been mandated to propose disclosure requirements for sustainable financial products and services by the Federal Council. In order to avoid greenwashing and to provide the clarity needed for investment decisions of financial market participants, the Federal Council has proposed a definition for sustainable financial products or services in December 2022 (Section 2.3.2.1) [6]. The definition of sustainable financial products and services and associated disclosure requirements will have to be concretised by the FDF, which will present a proposal to the Federal Council at the end of September 2023. The proposal developed by the FDF should allow for effective implementation and, in case of violation of the disclosure obligations, grant legal remedies to clients, investors and insured persons [6, p. 4]. It should be binding to the entire financial market, when selling financial products and giving financial advice, as well as in subsequent reports [6, p. 3].

This proposition should be translated into state-binding disclosure regulations but the Swiss regulatory process is a long and arduous one, compared to that of industry self-regulations (Box 2).[24] The enacted proposal of the FDF will need to be validated by the Parliament and by the population and, although it was brought forward at the initiative of the Federal Council, effective application could take years.[25]

2.3.2.2 Sectoral agreements for sustainability reporting and industry reluctance

In parallel, the Federal Council is trying to set more ambitious sustainability targets via the conclusion of voluntary sectoral agreements, beyond self-regulation [4]. Through the Environmental Protection Act (EPA) and the Federal Act on the Reduction of CO2 Emissions (CO2 Act), the Swiss Confederation has the power to promote the conclusion of private law agreements between the members of an entire industry, so-called sectoral agreements [48, No. 153], [49, Art. 3 para. 4], [50, Art. 41a]. Since the adoption of the Climate and Innovation

[22] The composition and application of the indicators, including their dissemination to other asset classes, is being monitored by the FDF [5, p. 17], [40, p. 4]. While currently in the pilot phase, the Swiss Climate Scores could be expanded to cover more asset classes as well as potentially biodiversity in the future.

[23] Globalance was the first bank to publish the Swiss Climate Scores for all its AuM in March 2023 [44].

[24] In view of the new obligations that such a proposal would introduce, the authors consider that only legislation in the strict sense is open, to the exclusion of an ordinance based on art. 182 para. 2 of the Federal Constitution [45].

[25] Half of Swiss legislative procedures last 33 months at most and the average duration is about 51 months, or about four years, of which about two-thirds is taken up by preparatory work at the level of the federal administration and the FC, the rest being devoted to parliamentary deliberations and the post-parliamentary phase [46], [47]. The current guidelines for a definition for sustainable financial products and services proposed by the FC is even before the preparatory work at the FC level.

Act on the 18th June 2023, this power is explicitly provided precisely to make financial flows compatible with climate objectives [51, Art. 9].

Sectoral agreements are a type of supervised self-regulation at the industry level but not sources of state law (Appendix 4). They would aim to achieve public law objectives related to biodiversity and GHG emissions [52, p. 16]. These objectives and their associated roadmaps can be defined independently by the sector, negotiated between the Confederation and each sector, or defined by the Confederation unilaterally [53]. The objectives within these agreements would not only be binding for members of a specific industry association, but for the entire sector, and without the need for transposition into Swiss domestic law [48, No. 157], [50, Art. 41a para 3]. In the financial industry, their achievement would be regularly assessed through PACTA tests (Appendix 5) [53].

So far, industry associations have been opposed to sectoral agreements. Membership in net-zero alliances under the Glasgow Financial Alliance for Net Zero (GFANZ) is an example. Over the past years, the Federal Council has been encouraging the financial sector to join net-zero alliances as they enable members to report on comparable indicators. Considering Swiss financial firms' membership, industry associations indicated that "*Switzerland is playing a proactive role and is on the right track*" [54] and that objectives "*could be better achieved by pursuing current and planned activities outside the scope of industry agreements*". Despite the opposition of the sectoral associations concerned and the multiple voluntary efforts outlined above [54], the Federal Council maintains its willingness to reach such agreements in order to complement self-regulations - maybe pending the implementation of the state-binding regulation mentioned above [5].[26]

2.4 Recommendations for Switzerland

Despite Switzerland's subsidiary regulatory tradition, there is a margin for improving the Swiss framework on sustainability-related disclosures of financial market participants, considering foreign developments. Recommendations to the Swiss regulator include (1) considering the interoperability of disclosure frameworks across jurisdictions (Section 2.4.1), (2) ensuring data availability related to investee companies (Section 2.4.2), and (3) requiring transparency on decision-useful information (Section 2.4.3). A forthcoming analysis will complement these recommendations with the opinions of market and policy experts.

2.4.1 Considering the interoperability of disclosure frameworks

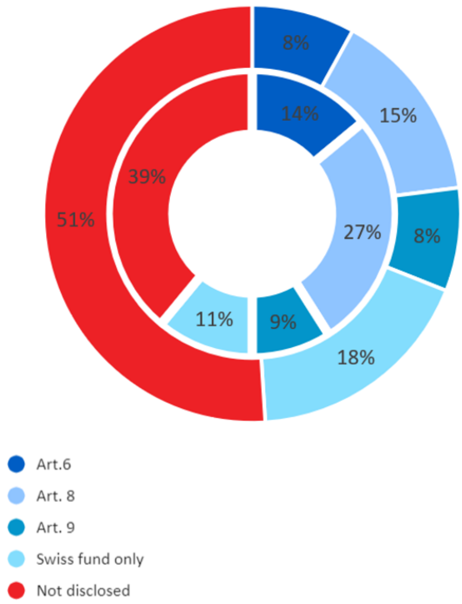
The Swiss regulator should focus on the interoperability with other jurisdictions. Swiss financial firms falling under the scope of a Swiss framework for sustainability-related disclosure are likely to be subject to similar regulations in other jurisdictions. Two third of Swiss banks and asset managers have the legal obligation to comply with the EU regulation, but only few disclose under the SFDR Art.6, 8 and 9 so far (Figure 2) [43, p. 46].[27] When

[26] The FDF has been instructed to set up a working group together with the Federal Department of the Environment, Transport, Energy and Communications (DETEC), the Federal Department of Economic Affairs, Education and Research (EAER), the FINMA, and representatives from the affected industries and civil society to determine the best way to implement the Federal Council's position on the prevention of greenwashing. It is important to ensure that the chosen solution is applied across the financial market, is binding and enforceable, and provides clients with legal remedies. By 30 September 2023 and based on these activities, the FDF is to present the Federal Council with a plan and concrete proposals for putting the Federal Council's position on the prevention of greenwashing into practice [6, p. 4].

[27] Swiss financial institutions operating in the EU, i.e., that have a subsidiary, actively seek clients, or market or

developing its framework (Section 2.3.2.1), the Swiss regulator should therefore balance its objectives for pursuing disclosure requirements with the obligations under the SFDR and the SEC's Proposal. It should also consider developments in other markets relevant for Switzerland, while remaining suitable for Swiss market participants.

Figure 2: Classification of funds based on the EU's SFDR by Swiss asset managers in 2021 and 2022 (in % of AuM; n=44)



Note: **Outer** circle – data from **2022**; **inner** circle - data from **2021**

Source: SSF Sustainable Investment Market Study (2023) [43].

For example, one could imagine a framework with substituted compliance with other jurisdictions, in particular the EU.[28] For instance, Swiss financial market participants with disclosure requirements in the EU and Switzerland could choose to comply with the EU disclosure framework and be automatically compliant with the Swiss one as well. This would be particularly beneficial for larger asset managers under the risk of double reporting burden.[29,30] For small financial market participants who are not exposed to other jurisdictions, the ideal system would be a simplified local disclosure standard, compatible with international reporting requirements, such as under SFDR or the SEC Proposal (if adopted), to avoid that disclosure data cannot be used along the supply chain.

2.4.2 Ensuring data availability related to investee companies

The Swiss regulator should align timelines and scopes for the reporting obligations of investee companies and that of financial market participants. In particular, it should ensure that data related to invested companies is available at the time of reporting for financial market participants. This would avoid what is currently observed in the EU, where there will be difficulties for reporting under the SFDR until the full application of the CSRD. Even after the full application of the CSRD, unclarities remain as to whether the required information

manage a financial product in the EU, are required to disclose under the SFDR. Financial market participants who seek clients on European soil in a passive manner are not subject to European regulation. However, the distinction between passive and active business activity is difficult to prove in practice and may represent a legal risk for Swiss companies: [55, Paras. 54 and references]; [56, p. 15] , [26, p. 205], [57, p. 5].

[28] The UK, as well as Singapore, could also be sources of inspiration, given the market similarities or their relationship with the EU. The UK Financial Conduct Authority (FCA) has recently proposed Sustainability Disclosure Requirements and investment labels (SDR), intending to prevent greenwashing and help investors navigate the sustainable-product market more easily, namely through explicit labelling with an associated supervision. While this system along with the FCA's intent differs from the EU and US approaches, the FCA is "working to maintain coherence between [its] proposals, the SFDR requirements and the SEC's proposals" [58]. Singapore is envisaging to explicitly accept the EU disclosures as an advanced alternative [59].

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from financial market participants will match the information disclosed by firms. Recommendations related to reporting obligations of companies have been proposed in previous work [19].

The regulator should also consider an approach for private funds, for which data on investee companies is more challenging to access and sustainability not always at the top of the agenda. Below are two examples of tools that could help investors collect information on the companies they invest in.

The Legal Innovation for Sustainable Investments Foundation (LISI Foundation) created the Impact Term Sheet Template, an open-source legal template for direct equity investments issued by a company to investors in exchange for growth funding [60]. Annex 2 of the Impact Term Sheet proposes transparent, harmonised reporting requirements for investment deals.

Levo is an online tool for startups and SMEs to assess, monitor, and improve their sustainability and impact. Levo's Dashboard View gives investors an overview of the sustainability status of the companies they back in real time. This feature facilitates reporting by enabling investors to visualise their portfolio's sustainability and track its progress [61].

On a larger scale, Swiss regulators should further encourage Swiss companies to support the Net-Zero Public Data Utility (NZPDU) and closely follow the establishment of the European Single Access Point (ESAP). In June 2023, leading Swiss financial institutions agreed to test the NZPDU platform, which is administered by the international, multi-stakeholder Climate Data Steering Committee (CDSC). The platform aggregates corporate data on scope 1, 2 and 3 emissions, and emissions reduction targets, which can be freely accessed [62]. In addition, the European Union has provisionally agreed on the ESAP platform in May 2023, and will publish all corporate financial and sustainability-related information about EU companies and EU investment products by summer 2027 [63].

2.4.3 Requiring transparency on decision-useful information

Switzerland can learn from other jurisdictions how to create transparency on decision-useful information[31] and build trust in the market, while balancing financial market participants' constraints. Avenues worth exploring include (1) establishing disclosure requirements on sustainability for any type of fund at the product and provider level (2) developing science-based disclosure requirements, (3) considering engagement policy disclosures within its regulatory framework, and (4) helping provide transparency on the transition potential of investments that are not necessarily expected in sustainable finance products. These last elements would be particularly relevant if the Swiss regulator were to set an impact category and a transition category as described in Section 3.1.5.2 .

General disclosure requirements for all funds. Any type of funds should disclose sustainability-related information because it represents information that is financially material for the investment decision-making, whether sustainability factors are part of the investment strategy or not, as it's done under the SFDR (Section 2.1.1). Additionally, the Swiss disclosure framework should consider both provider- and product- level disclosures, as they are both relevant to the investor when selecting a product. The Asset Management Association Switzerland's (AMAS) self-regulation

[31] Decision-useful information on sustainability of financial products should follow concepts similar to those of financial reporting: the information disclosed on the product should be relevant for the client's investment decision, comparable with other products, verifiable and understandable for the client [30].

(Appendix 3), which applies only to its members and adherents, considers both these dimensions, but does not require sustainability-related disclosures for all financial products, solely for sustainable financial products. FINMA's recognition of this self-regulation as a minimum standard could diffuse these requirements in the Swiss industry (Box 2).

Disclosures on science-based metrics. Financial products with stated environmental impact objectives should disclose science-based metrics, as they help tracking the achievement of relevant environmental impact. The EU included this specificity in taxonomy-related disclosures: financial-market participants need to publish their financial products' contribution towards science-based and Paris Agreement-aligned indicators and thresholds, as defined by the Technical Screening (Appendix 2). The SEC Proposal for Enhanced Disclosures also requires additional requirements for ESG-Focused Funds (Section 2.2.) (Table 1), although they so far appear much less extensive compared to the EU requirements. In Switzerland, the recently introduced and Task Force on Climate-related Financial Disclosures (TCFD)-inspired Swiss Climate Scores could fulfil such a role, if required for financial products with environmental-impact objectives and in particular if they comply with other jurisdictions' requirements (Section 2.3.1).[32] As of today, they remain voluntary, still have limits,[33] and take a different approach - that is more climate-oriented and forward-looking compared to the EU's SFDR.

Disclosures on engagement policy and results. Financial products that advertise a transition objective should disclose their engagement policy and results. A Swiss disclosure framework should include obligations pertaining to active ownership, given its impact potential and predominance within sustainable investment strategies, as underlined by the Federal Council [6]. These considerations should focus on the engagement strategies and its specificities but also on the outcomes of engagement activities [35]. Such disclosures, including the escalation process in case engagement is unfruitful, is particularly important for firms targeted for their transition potential to make sure that the talk is being walked.

Disclosures on unexpected investments in sustainable products. Financial products that advertise sustainability characteristics could disclose portfolio investments that might be perceived unsustainable but are part of a transition strategy. Similar to the UK Financial Conduct Authority (FCA) [58], Swiss regulators could also consider requiring information on "unexpected investments", i.e., investments that are generally not associated with sustainability objectives such as fossil fuel companies. Disclosure obligations could include the type of investment at hand, e.g., its sector, and an explanation as to why it is held within the financial product. This type of disclosure would help build trust and provide increased transparency on the product, by avoiding mismatched expectations for the end-investors. In certain cases, it could however lead to potential greenwashing because of the lack of threshold for what might be considered "unexpected" [66].

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[32] If the voluntary Swiss Climate Scores cannot contribute to other jurisdictions' disclosure requirements, they might (1) not necessarily bring clarity to investors, especially non-Swiss that are unfamiliar with the framework - hence defying the purpose of understandability - and (2) be less attractive for non-Swiss market participants advertising funds in Switzerland, as they might prefer to disclose under their own jurisdictions' requirements [64].

[33] For example, the "global warming potential" indicator has been categorised as optional, and several financial market actors have stated not using it currently due to limited reliability and data weakness around forecasts [65].

Box 2: FINMA's recognition of self-regulation as minimum standards: a compromise

Self-regulations are constantly being updated, in particular to fulfil the Federal Council's expectations in accordance with the national sustainable finance strategy and to avoid further binding regulation. Contrary to binding obligations which enhance standardisation, compliance and enforcement, self-regulations remain flexible in light of constant methodological and regulatory developments.

FINMA has the authority to recognise professional organisations' self-regulation as a minimum standard [67], [68, Arts. 6 and 7 para 3]**.** If it does so, the self-regulation does not merely apply to members of the organisation who issued it, but becomes binding for all actors in the industry, regardless of whether they are members of the association that issued the self-regulation.[34] FINMA would consequently have to implement the self-regulation in its supervision rules. FINMA's recognition is thus a tool that can encourage the dissemination of recognised standards. It harmonises and unifies the applicable standards across the industry and requires a simple and adaptive procedure. As of today, most recognised self-regulation is issued by AMAS and the Swiss Bankers Association (SBA) (Section 4.2.2 and Appendix 3).[35] FINMA did not yet recognise any professional organisations' self-regulation relating to sustainability as a minimum standard. FINMA can only recognise norms that constitute *minimum standards*, i.e. that are generally recognised by the industry participants. When recognising such regulation, FINMA cannot impose stricter requirements than what the self-regulation norms provide [70, p. 201 N443 and references].

FINMA's recognition could be a compromise between mere self-regulation and hard law to regulate sustainability-related disclosures of financial market participants, in the short term (Section 2.3.2.1)**.** In particular, recognition of AMAS self-regulation on transparency and disclosure for sustainability-related collective assets would make disclosure on sustainability-related information at the sustainable financial product level and on the organisation of product management at the level of financial market participant binding for all (Appendix 3). Such a recognition would help actors adapt to disclosure requirements in the short term without the need to resort to binding state law, which is more time-consuming and difficult to adjust. However, in the author's opinion, the absence of sustainability-related disclosure requirements applicable for any type of product in AMAS self-regulation impedes the relevance and materiality of the information in the hands of investors and is therefore not, for the long-term, the most efficient framework.

[34] For example, FINMA recognised the Guidelines of the Swiss Banking Association (SBA) on the treatment of assets without contact and dormant assets held at Swiss banks. Consequently, these Guidelines are binding for each Swiss bank, even if they are not members of the SBA.

[35] The recognised self-regulation is available online: [69].

3 CLASSIFYING FINANCIAL PRODUCTS BASED ON THEIR SUSTAINABILITY CHARACTERISTICS

Financial products with more or less extended sustainability characteristics can be marketed with sustainability-related terms, such as “sustainable”, “green”, or “ESG”, in their name or marketing materials. Some financial market participants may however make misleading sustainability-related claims about their products, driving consumers to buy products opposing their needs and reducing the trust in the market for sustainable financial products [58], [71].

Because of the unclarity around sustainable financial products, regulators have started proposing rules for classifying and labelling products, namely for funds (Section 3.1) and bonds (Section 3.2). Each of the following subsections develop approaches across various jurisdictions, compared to the Swiss approach, and provide recommendations to Swiss regulators on the classification of funds and bonds.

3.1 RULES FOR FUNDS NAMES AND LABELS: IS A “SUSTAINABLE FUND” A SUSTAINABLE FUND?

Regulators in Europe and North America have recently been developing rules for fund names and labels to help investors navigate the market of sustainable financial products. Within these jurisdictions, two criteria are generally required to allow a financial product to be referred to using sustainability-related terms: (1) the proportion of sustainable investments within the product and (2) the definition of these sustainable investments. For instance, a rule might provide that a fund named “Green Fund” needs to invest (1) at least 90% of the fund’s capital in (2) companies that have a positive impact on the environment, for being allowed to have “Green” in its name.[36]

Another approach is to prohibit the use of certain sustainability-related terms in product names without a credible label - just like organic labels in the food industry for products with names like “organic” or “bio”.

Developments of name rules and labels for funds answer the market’s demand for an investor-friendly classification system, as observed with the misuse of the Art. 6, 8 and 9 of the SFDR (Section 2.1.2). Sections 3.1.1, 3.1.2 and 3.1.3 develop on the approaches applied in the US, the EU and the UK, respectively, and Table 4 summarises these approaches. Section 3.1.4 considers the position of Switzerland compared to these jurisdictions and Section 3.1.5 proposes recommendations to the Swiss regulators and industry associations.

3.1.1 The US Amendment to the Name Rule, a baby step towards classifying funds

In July 2022, the SEC issued a *Proposed Amendment to the Name Rule*, which, as it stands today, requires SEC-registered investment companies whose names suggest a focus on a particular type of investment strategies to adopt a policy of investing at least 80% of the value of their assets in those investments.[37]

The SEC's proposed amendments would extend the requirement to any fund whose name includes ESG and similar terminology which would encompass terms such as “socially responsible investing,” “sustainable,” “green,” “ethical,” “impact” or “good governance” [72]. That means that, under this amendment, the “Impact Fund” of a SEC-registered asset manager would need to invest at least 80% of the value of the fund assets with an “impact”

[36] Through these rules, jurisdictions can remove uncertainty across these two criteria, namely by setting this first criteria while leaving some flexibility to fund providers in the definition of the second.

[37] This value does not include cash and cash equivalents when their value is up to the notional amounts of the fund’s derivatives instruments.

investment focus. Firms managing funds within the scope of the proposed amendments should maintain written records of various documents, including investments in the 80% basket and the basis for including them, as well as the value of such [72].

But even if a fund complies with this rule, its name could still be misleading. The proposed amendment does not prescribe how the fund should invest the remaining 20%, nor forbids negative impacts on sustainability factors outside of its investment focus. The SEC specified that the proposed amendment "*is not intended to be a safe harbour for materially deceptive or misleading names*" [72]. This means that the "Impact Fund" mentioned above could invest the remaining 20% of the value of its assets in tobacco and fossil-fuel firms and still comply with the amendment, which should be adopted in October 2023 [73].

3.1.2 The EU SFDR misunderstood as a classification system and the ESMA's tentative solution

Similarly to the SEC *Proposed Amendment to the Name Rule*, the EU has been trying to clarify its position on the classification of funds. With the entry into force of the SFDR, the EU introduced what qualifies as a sustainable investment (Section 3.1.2.1) as well as a classification system for disclosure purposes - with its Art. 6, 8 and 9. This classification system was rapidly (and wrongly) used to assess the sustainability profile of funds (Section 3.1.2.2), bringing confusion in the market. In November 2022, the ESMA released a proposal for funds with ESG- and sustainability terminology to fill this market need for a classification system on the sustainability of financial products (Section 3.1.2.3).

3.1.2.1 A large definition of sustainable investments: innovation and confusion

With the SFDR, the EU regulator has introduced a definition for sustainable investments, for the disclosure purposes (Section 2.1).[38] As a reminder, it says that a sustainable investment (1) contributes to an environmental objective or to a social objective provided that (2) such investments do not significantly harm any of those objectives (DNSH Principle), and that (3) the investee companies follow good governance practices. This definition is large and financial market participants have flexibility in its application, including in methodologies assessing if an investment is sustainable.

This definition encourages innovation in product development and management but can also create confusion on how investments support the transition to an environmentally and socially responsible economy. Various methodologies can be used by financial market participants for defining if an investment is sustainable. This means that two financial products with the same environmental objective, e.g. promoting circular economy, could use very different methodologies assessing how investments, e.g. shares of Patagonia, within each product fulfil this objective. Two main methodologies have arisen: a revenue-based approach and a pre-defined threshold approach - the latter lowering the criteria for qualifying as a sustainable investment.[39] Given the recent regulatory clarifications and proposals [17], the pre-defined threshold approach is likely to dominate in the future, as it would be the only way to meet the requirement for Art. 9 financial products i.e. that they are

[38] Through these rules, jurisdictions can remove uncertainty across these two criteria, namely by setting this first criteria while leaving some flexibility to fund providers in the definition of the second.

[39] In a revenue-based approach, if 10% of the revenues of a company, e.g. Patagonia, contributes to a environmental or social objective, e.g. promoting circular economy, then the 10% of the investment in the company, e.g. 10% of the value of the investment in Patagonia shares, is considered sustainable. In a 10% threshold approach, if 10% or more of Patagonia's revenue contribute to promoting circular economy, then 100% of the investment in Patagonia shares is considered sustainable. In both case, this is provided that the DNSH criteria is respected [11], [74].

composed at 100% of sustainable investments [11].

3.1.2.2 Misuse of SFDR Art. 8 and 9 and recommendation for minimum standards

The SFDR and its Art. 6, 8 and 9 can be mistaken for a labelling scheme on sustainability characteristics of financial products. The SFDR classification system is not equivalent to a labelling as it does not provide requirements relating to the quality and content, it only provides indications for transparency obligations [12, p. 713 ff.].

Despite the SFDR's transparency focus, market actors have provided recommendations for improvement to reduce the gap between investors' expectations of Art.8 and 9 funds and real-life practices and to mitigate greenwashing risk. The French Financial Market Authority (AMF) has recently suggested the introduction of minimum standards on environmental impact for financial products reporting under Art. 8 and 9 of the SFDR [28]. In particular, Art. 9 products "*should exclude investments in fossil fuel activities that are not aligned with the European Taxonomy*" [75]. Furthermore, Art. 8 products should guarantee that investments in such activities "*meet strict conditions that ensure that these activities are engaged in an orderly transition*", i.e. through a credible and executed transition plan [28].

3.1.2.3 ESMA proposal for funds with ESG- and sustainability terminology

The ESMA is currently trying to fill the market need for a classification system on sustainability of financial products and to answer the AMF suggestions. In November 2022, it published *Proposed Guidelines on funds' names using ESG or sustainability-related terms* [76].

It proposes the introduction of two rules. First, it proposes minimum thresholds for the use of ESG- and sustainability-related terms in funds' names. In particular, "if a fund has any ESG-related words in its name, [...] at least 80% of its investments should be used to meet the environmental or social characteristics or sustainable investment objectives in its investment strategy". That means that a fund called "Climate Change Solutions Fund", with "climate change" being an ESG-related term, complies with the proposed rule only if it invests at least 80% of its value in investments with the specific environmental and social characteristics it promotes. Second, "if a fund has the word "sustainable" or any other term derived from the word "sustainable" in its name, it should allocate within the 80% of investments [mentioned above] [...] at least 50% of sustainable investments as defined in the SFDR [2, Art. 12 para.17] (Table 4). ESMA's Proposal thus introduces the Do No Significantly Harm (DNSH) Principle as it is part of the definition of "sustainable investments" of the SFDR. For instance, a "Sustainable Society Fund" which invests 80% of the fund's value in investments with the specific environmental and social characteristics promoted by the fund but only 20% in sustainable investments, does not qualify for having "sustainable" in its name [76], [77].

It also proposes minimum safeguards for all investments in funds with such names. They would need to exclude investments based on the exclusion criteria of the Paris-aligned Benchmarks (Box 3), which namely include criteria for fossil-fuel firms [77]. Critics argue that this rule would be too restrictive, especially for funds with broader ESG characteristics or funds with a social objective, as it would prevent them from investing in, for instance, transitioning energy firms. Some also suggested applying minimum standards based on the Climate Transition Benchmarks (Box 3), which are less stringent and allow investing in the transition [78].

However, market actors and advisory bodies remain critical, specifically in regard of the lack of consideration for transition financing,[40] the lack of consideration for specific assets supporting the effective risk management of portfolios,[41] the data availability for ensuring compliance with these criteria,[42] and the lack of clarity on what constitute a sustainability and ESG-related term [80].

Box 3: EU Benchmark Regulation setting minimum standards for low-carbon benchmark

A benchmark is a reference to assess investments' performance. Market indices include broad market indices, geography-, segment, and asset-specific indices as well as indices with a combination of these specificities, such as the MSCI Europe Information Technology Index or S&P China Bond Index. In recent years, various indices focusing on sustainability themes have emerged, such as the S&P 500 Net Zero 2050 Paris-Aligned ESG Index and MSCI ACWI Sustainable Impact Index.

However, the heterogeneity of approaches by benchmark providers makes it difficult for users, such as fund managers, to compare and choose benchmarks for their investment strategy, and therefore lowers adoption of low-carbon benchmarks. The EU Benchmark Regulation aims at answering these challenges [81].

The EU Benchmark Regulation provides minimum standards for two types of benchmarks based on the commitments of the Paris Agreement: EU Climate Transition Benchmarks (EU CTB) and EU Paris-aligned Benchmarks (EU PAB). The former is constructed so that the resulting portfolio is on a decarbonisation path; and the latter so that the resulting portfolio's transition pathway is aligned with the Paris Agreement targets. The Benchmark Regulation sets minimum standards common to both benchmarks and related to reference temperature scenarios, equity allocation in specific sectors, calculation of GHG intensity and absolute emissions, methodology for calculating indirect emissions and decarbonisation trajectory for the benchmarks. It also sets minimum standards for each type of benchmark related to their GHG levels and exclusion criteria (Table 2) [82].

[40] "There is a risk that a portfolio that invests in a sector that needs to transition on a high impact scale (energy sector for instance) may not be compliant [namely with the Paris-aligned Benchmark's minimum safegards], whereas a portfolio invested in more neutral sectors would be compliant while having possibly considerably much less impact on the green deal objectives" [79], [80].

[41] BlackRock underlined that many portfolio managers often utilise exposures including cash, derivatives and other assets in order to meet their objectives and manage risk for their clients. Minimum thresholds should be calibrated in a way that does not limit fund managers in their ability to navigate changing market environments [80].

[42] The SMSG advised the ESMA to follow a two-step approach: (1) between now and full completion of the CSRD and ESRS (providing the necessary data at the firm-level), it should define more qualitative guidelines and clarify definitions of concepts used under SFDR, and, (2) once data are available and the regulatory framework is completed it should then carry out a revision of these guidelines with introduction of quantitative thresholds [79].

Table 2: Minimum standards specific to each type of benchmarks

	Climate Transition Benchmarks	**Paris-aligned Benchmarks**
Reduction of GHG levels (including direct and indirect emissions)	The benchmark should have a GHG intensity or absolute GHG emissions that is <u>30%</u> lower than the investable universe	The benchmark should have a GHG intensity or absolute GHG emissions that is <u>50%</u> lower than the investable universe
Exclusion criteria for investee companies	• Active in controversial weapons • Active in tobacco production • Violating UNGC Principles or OECD Guidelines for Multinational Enterprises • Harming one or more environmental objectives (DNSH Principle)	• Criteria of CTB • With ≥1% of revenues from coal • With ≥10% of revenues from oil • With ≥50% of revenues from gas • With ≥50% of revenues from electricity generation with a GHG intensity of ≥100g CO2 e/kWh
Disclosure requirements	• Benchmark methodology • Exclusion policy	

Note: *Controversial weapons* as referred to in international treaties and conventions, United Nations principles and, where applicable, national legislation. *Environmental objectives* refer to the environmental objectives of EU Taxonomy [25], hence to climate change mitigation or adaptation, sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems. *UNGC* refers to the <u>UN Global Compact</u> [83]

3.1.3 The UK advocating for labels in a consumer-based approach

Considering European and American developments, the UK's Financial Conduct Authority (FCA) proposed new rules to help consumers navigate the landscape of sustainable investment products, protect them from greenwashing, and build trust. Through its Proposed Sustainable Disclosure Requirements (SDR) published in October 2022, the FCA proposes labels (Section 3.1.3.1) as well as name restrictions (Section 3.1.3.2) for all investment products - primarily those marketed to UK retail investors [58], [84].

3.1.3.1 Labels

The three proposed labels help distinguish sustainable financial products based on their sustainability objective and on how they aim to achieve these objectives. The labels - Sustainable Focus, Sustainable Improvers and Sustainable Impact - are developed in Table 3.

Table 3: Labels proposed by the UK FCA and examples of investment products

	Description	Example
Sustainable Focus	Invests mainly in assets that are sustainable for people and/or planet, with an objective to maintain high sustainability standards[43]	Product investing in companies that make a positive contribution to improving young people's educational achievement through innovation while avoiding investment in companies with unsustainable business practices
Sustainable Improvers	Invests in assets that may not be sustainable now, with an aim to improve their sustainability for people and/or planet over time[44]	Product with a broad and diversified exposure to developed and emerging equity markets that overweights shares of companies with a clear decarbonisation plan and climate track-record, and ensures the commitments of companies, e.g through engagement
Sustainable Impact	Invests in solutions to problems affecting people or the planet to achieve real-world impact, with an explicit objective to achieve a positive and measurable sustainability impact	Product financing the construction of wind farms in Mongolia, which will increase the access to renewable energy and reduce the country's carbon footprint

Source: FCA, 2022 [58].

To qualify for one of these three labels, financial products must meet general and specific criteria. General criteria cover five principles: sustainability objective, investment policy and strategy, key performance indicators (KPIs), resources and governance, and investor stewardship. Specific criteria develop what fund managers need to do to adhere to these principles and to the specific label that the fund managers want to qualify for. For instance, Sustainable Impact products need to develop a theory of change[45] and an escalation plan when the expected impact no longer seems plausible.

Contrary to the ESMA proposal mentioned above (Section 3.1.2.3), the labels would not require that investee firms do not harm other sustainability objectives - for now. The FCA considers that the DNSH approach from the SFDR *"may be too restrictive at this stage"*. It however recommends fund managers to consider whether trade-offs or adverse environmental or social impacts might arise from pursuing the fund's sustainability objectives [58]. The UK Green Technical Advisory Group, which

[43] Negative screening or basic ESG tilts alone do not qualify for this label and the following ones but in combination with other strategies it could [58].

[44] Assets are selected based on their potential to become more sustainable, namely in response to active ownership, that is with dialogue with shareholders or voting results in general assemblies [58].

[45] A theory of change is a method that explains how a given intervention, e.g. investment, is expected to lead to a specific development change, e.g. positive environmental impact, drawing on a causal analysis based on available evidence [85].

provides non-binding advice to the UK regulator for the UK Green Taxonomy, is considering the implementation of the DNSH concept. If adopted, this could open the door to such considerations as part of the FCA's SDR [86], [87].

Certain actors have raised improvement points and a need for clarifications, namely on the scope of application [88], [89], the overlapping between labels and their implied hierarchy,[46] the labelling process [88], or the methods to calculate thresholds for Sustainability Focus labels [88].

3.1.3.2 Naming rule and prohibition

Product providers would also be restricted to use certain sustainability-related terms in product names and marketing materials except if products have one of the sustainable investment labels mentioned above [58]. These terms include among others "ESG", "climate", "impact", "sustainable", "sustainability", "responsible", "green", "SDG", "Paris-aligned", or "net-zero". Also, products that have a label that is not "Sustainable Impact" would be prohibited from using "impact" in their product name or marketing materials. This would ensure that products' content and their declared sustainability objectives are aligned.

[46] A product strategy could have an overlap between more than one product label, leaving the choice of label to the manager. This overlap could create a hierarchy between the labels. The Sustainable Impact label could for instance be better perceived by an investor than the Sustainable Improvers label, hence creating competitivity implications [89].

Table 4: Specificities of proposed naming rules across jurisdictions (presented in the chronological order of publication)

Jurisdiction	Regulation	Scope Products with…	Criteria 1 ... should hold …	Criteria 2 … of investments that meet …	Restriction to harm other sustainability objectives?
US	**SEC Proposed Amendment to the Name Rule**	A naming that includes "ESG" or related terms	≥ 80%	An investment policy in accordance with the naming that the naming suggests	No
EU	**ESMA Proposed Guidelines on funds' names**	A naming that includes "ESG" or related terms	≥ 80%	Environmental or social characteristics or sustainability characteristics (as defined in the SFDR Appendix I and II)	Yes
		A naming that includes "sustainable" or related terms	≥ 50% (of the 80% above)	The sustainable investment definition (as defined in the SFDR Art. 2(17))	Yes
UK	**FCA Proposed Sustainable Disclosure Requirements**	A Sustainable Focus label	≥ 70%	A credible standard of environmental and/or social sustainability or align with a specified environmental and/or social sustainability theme.	No
		A naming that includes sustainability-related terms	A Sustainable Focus, Sustainability Improvers or Sustainability Impact label	-	No
		A naming that includes "impact"	A Sustainable Impact label	-	No

Source: SEC (2022), ESMA (2022), FCA (2022), Clarify AI (2023) [58], [72], [77], [90].

3.1.4 Switzerland playing a waiting game

In December 2022, the Federal Council proposed a first definition for sustainable financial products or services. In order to avoid greenwashing and to provide the clarity needed for investment decisions of financial market participants, the Federal Council considers it necessary to adopt a common and clear understanding of what constitutes a sustainable product or service [91]. As the adoption of a taxonomy in the Swiss context has been discarded at least until 2025,[47] the Federal Council has recently outlined the features of a financial product or service being promoted as sustainable or having sustainability characteristics [6].

In addition to financial objectives, such product or service should pursue one of the following investment objectives [6, p. 3]: (1) align with one or more specified sustainability goals; or (2) contribute to the achievement of one or more specified sustainability goals.[48] The Federal Council provides the examples for each of these objectives: "A sustainable financial service with an alignment objective could, e.g., invest exclusively in equities and bonds of companies whose transition plans are all aligned with the goal of limiting global warming to 1.5° Celsius compared to the pre-industrial age. A product aimed at contributing to the achievement of a sustainability goal will typically apply an impact investment approach (incl. real estate investments), a credible active ownership approach or a combination of the two" [6, p. 3].[49] As for its associate disclosure requirements (Section 2.3.2.1), the definition of sustainable financial products and services will have to be concretised by the Federal Department of Finance (FDF), which will present a proposal to the Federal Council at the end of September 2023 [6].

Aside from this definition, the Swiss regulator is examining the creation of a new category of a social-impact collective scheme. Currently, the FDF[50] examines how the introduction of a new category of investment collective scheme could widen access to social impact investment to a larger number of people [5, p. 20]. As it stands, social-impact investment mainly targets institutional investors, foundations and family offices. Opening up this type of investment to private players would increase the flow of capital into social-impact investments.

3.1.5 Recommendation for Switzerland

In 2022, jurisdictions have proposed rules for financial products with sustainability-related terms in their names as well as labels. These proposed specifications have the objective to help investors navigate the sustainable-investment landscape and reduce greenwashing through enhanced transparency. The Swiss regulator is currently looking into the matter and should publish a proposal laying out a more precise definition of sustainable financial products and services and associated

[47] Switzerland considers the adoption of a taxonomy not necessary to achieve its Paris Agreement objectives. In particular, the FC considered that the implementation of the PACTA tests (Appendix 5) and the Swiss Climate Scores (Section 2.3.1) was able to bring the necessary science-based data and transparency to market actors on firms across all sectors [4, p. 12].

[48] Sustainability goals should be (1) determined against a widely used framework (e.g. the SDGs); (2) described by the financial service provider in terms of approach taken; (3) transparent via periodic, easily-accessible (e.g. published online), transparent, and comparable publications; (4) aligned with climate targets based on international and national commitments, via recognised and relevant indicators, such as the Swiss Climate Scores; as well as (5) verified by an independent third party [6, p. 3].

[49] By engaging in active ownership, or investing in directly controlled assets such as real estate, fund managers can exert directly measurable impact, as opposed to the impact which investee companies target through their business model. The Swiss industry is improving engagement practices accordingly, and AMAS has published environmental indicators on real estate via the circular 04/2022 [92].

[50] In collaboration with FINMA, the industries concerned, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) and the Federal Department of Economic Affairs, Education and Research (EAER).

requirements in fall 2023. Considering international developments, recommendations for this proposal include (1) setting a definition with minimum standards (Section 3.1.5.1) and (2) proposing a classification system for products with an impact objective and with a transition objective (Section 3.1.5.2).

In a forthcoming analysis, the recommendations and approaches proposed below will be complemented with the position of leading industry and governmental actors.

3.1.5.1 Setting a definition of sustainable products with minimum standards

The definition of sustainable investments outlined by the Federal Council should be more ambitious. As it stands, the Federal Council's position does not specifically require a differentiation between environmental and other sustainability objectives, nor takes into account the potential negative effects of an economic activity in which the financial product invests on the other objectives of sustainable development (Do Not Significantly Harm (DNSH) Principle) [6, p. 3]. Hence, financial products with underlying investments aligned with one sustainability goal would be considered sustainable, regardless of their potential negative impact on one or more other sustainability goals. An example could be a fund investing in coal plants with outstanding working conditions, hence contributing to social goals while aggravating CO2 pollution [93].

To be considered sustainable, financial products could comply with minimum standards, as proposed in the European Securities and Markets Authority's (ESMA) proposal and by the Autorité des marchés financier (AMF) for the SFDR (Section 3.1.2.3 and Section 3.1.2.2). By establishing environmental and social criteria for sustainable financial products, the Swiss regulator would ensure that a sustainability objective does not replace another one, while by-passing a DNSH rule which can be challenging to implement.[51] Such minimum standards can include minimum safeguards of human rights, e.g. the OECD Guidelines for Multinational Enterprises, or minimum compliance with the Paris Agreement or the Kunming-Montreal Biodiversity Convention.

3.1.5.2 Proposing a classification system for impact and transition financing

Aligning with other jurisdictions, Swiss regulators could propose a more precise classification of financial products depending on their objective and ambition. Regulators could introduce a category for financial products with a clear impact objective, which considers more than just sustainability risk integration (impact category), and another with a transition objective (transition category).

An impact category could include financial products that have an impact objective and report accordingly. Several jurisdictions have set or are setting an impact category for financial products or related disclosures: the EU with its Art. 9 (Section 2.1.1), the US with the ESG-Impact Funds (Section 2.2.1) and the UK with the Sustainable Impact label (Section 3.1.3.1) among others. The Federal Council touches this aspect with the condition of contributing to the achievement of a sustainability goal. An impact category specifying towards which objective the financial product is working could require additional disclosure requirements depending on the stated objective, similarly to what is required in the aforementioned jurisdictions. Products in the impact category could be required to publish e.g. a theory of change and an escalation plan when the expected impact no longer seems plausible, as required in the FCA's proposition of Sustainable Impact label (Section 3.1.3.1).

[51] The DNSH criteria as defined by the EU can present some limits namely the lack of high-quality data and the lack of defined threshold for compliance [94].

A transition category would include financial products that aim to invest in projects that might not be considered sustainable from a social or environmental perspective today but have the potential to improve over time. It aims to identify companies that are transitioning and facilitate investing in them and thus promotes and encourages firms to become more sustainable, namely through active ownership. The UK FCA has recently proposed such a category, called Sustainable Improvers. Some critics however underlined its potential for becoming a "*catch-all for ESG funds, with a related risk of greenwashing*" if no extended guidance is provided for the disclosure of active ownership actions, escalation process and results [95].

To do so, the Swiss regulator could either adopt an already-existing classification system or create its own, considering interoperability of established disclosure frameworks. The Swiss regulator should build upon existing classifications to ensure a uniform understanding of the industry and avoid constantly changing definitions and interpretations. In addition, as proposed by the UK's FCA, it should ensure the harmonisation of disclosure requirements with a classification system to avoid confusion in the market, as observed in the EU (Section 2.4.3).

This classification system could take the form of name rules or labels. In the EU and in the US, the gap between investors' expectations and the real characteristics of the fund is filled by the creation of fund name rules, which are less demanding for the industry but not as investor-friendly as labels. Labels, such as suggested by the UK FCA ("Sustainable Focus", "Sustainable Improvers" and "Sustainable Impact" (Section 3.1.3.1 and Table 3), are particularly attractive if the objective of the classification system is to decrease greenwashing and help investors navigate the landscape of sustainable financial products. They require additional efforts from the industry but could bring more clarity to investors. In the absence of labels, the Swiss regulator should make sure that the classification system provides minimum safeguards of sustainability - contrary to what has been proposed by the SEC - to avoid misleading investors.

3.2 GREEN BONDS: WHAT DOES "GREEN" MEAN?

Green bonds are the predominant sustainable-debt instrument on public markets (Box 4). As an activity-based instrument, proceeds of green bonds are allocated to investments in environmentally friendly projects. For instance, the proceeds of a green bond issued by a bank could be only allocated to bank loans financing the construction or renovation of Minergie buildings [96].[52] However, markets have been raising questions over how "green" green bonds actually are [98].

The market first developed guidelines and certifications, and further regulation and requirements around green bonds are now developing in several jurisdictions. The first guidelines were brought forward by the industry in 2014, with the voluntary *Green Bond Principles* (GBP) of the International Capital Market Association (ICMA) and the Climate Bond Initiative's certifications (Section 3.2.1). Shortly after, China published guidelines for issuing green bonds and its first *Green Bond Endorsed Projects Catalogue* (Section 3.2.2). In 2019, the EU proposed the creation of a voluntary *EU Green Bond Standard* (EU GBS), which is still under development (Section 3.2.3). The analysis below will develop these three regulatory frameworks, their requirements, and how they consider that a bond can be labelled as green. Section 3.2.4 provides an overview of the Swiss position in that context and Section 3.2.5 proposes recommendations to Swiss regulators.

BOX 4: SUSTAINABLE-DEBT INSTRUMENTS

Sustainable debt is a fixed-income instrument with environmental or social purposes. It can be classified in two broad categories: activity-based or behaviour-based debt instruments. Activity-based debt instruments finance or refinance environmental and/or social projects and include green bonds and loans, as well as social and sustainability bonds. Behaviour-based debt instruments, such as sustainability-linked bonds or loans, rely on firm-level ESG targets and link them to the instrument's financing characteristics, such as coupon rates [99].

3.2.1 Industry at the forefront

The industry mixes voluntary standards and certifications for green bonds. The ICMA's GBP are considered the industry standard for green-bond transparency and provide a first definition of what a green bond is (Section 3.2.1.1). However, no mandatory external review is required for ensuring that disclosure recommendations are respected. To improve credibility, various market organisations, including the Climate Bond Initiative (CBI), have developed environmental certifications (Section 3.2.1.2).

3.2.1.1 The Green Bond Principles, first recommendations to build upon

According to the GBP, green bonds should align with specific core components (see below) and exclusively finance eligible green projects. The GBP introduce

[52] "Minergie is a Swiss construction standard for new and modernised buildings. It is jointly supported by the economy, the cantons and the federal government. Its focus is on the comfort of building occupants at home and in the workplace, as well as on energy efficiency, quality and maximum preservation of value" [97].

categories for eligible green projects, which include - but are not limited to - renewable energy, energy efficiency, green buildings, pollution prevention and control projects, conservation projects for terrestrial and aquatic biodiversity, clean transportation, sustainable water and waste water management, and climate change adaptation projects [100].

The GBP provide voluntary process guidelines for green-bond issuance developed in 2014 by a consortium of investment banks under the administration of the ICMA. The GBP recommends transparency and disclosure and aims to promote the integrity of the green-bond market [101]. They provide two key recommendations for transparency: (1) the publication of a Green Bond Framework pre-issuance and (2) the publication of external reviews pre-issuance as well as post-issuance.

The Green Bond Framework should indicate how the green-bond issuance follows the four components necessary to align with the GBP. These components and associated disclosure recommendations are:

Use-of-proceeds	Description of the use-of-proceeds
Process for project selection and evaluation	(1) Environmental objectives of the project (2) Why the project can be considered as an eligible green project (3) Social and environmental risks associated with the project
Management of proceeds	Process for tracking and disclosing on the net proceeds of the green bond
Reporting	Annual information on the green projects that have been financed by the proceeds, including the description of the projects, the amount that has already been allocated, and the potential impact.

External reviews should be provided pre-issuance as well as post-issuance. Pre-issuance, external reviewers should assess the alignment of the Green Bond Framework with the GBP, while, post-issuance, they should verify the internal tracking and the allocation of the green-bond proceeds to the eligible green projects [100]. In July 2022, the ICMA published a *Guide for External Reviewers* providing voluntary guidance on ethical standards for external reviewers, as well as on the organisation, content and disclosure of their reports [102]. External reviews are all the more important given that the GBP are voluntary and the responsibility of their application lies with the issuers.

3.2.1.2 Industry-based certifications

Certifications for green bonds help increase credibility of issuers following the GBP through additional reporting**.** Aside from providing the Green Bond Framework pre-issuance and the reporting and external reviews post-issuance, issuers willing to have their green-bond certified need to carry out two steps: (1) hire a certification verifier for pre- and post-issuance certification and (2) provide an additional annual report showing the conformity of the green bond with regards to the certifier standards, for instance the Climate Bond Standard (CBS) from the Climate Bond Initiative. This generally incurs additional costs.

The Climate Bond Standard is a voluntary labelling scheme for green bonds and for entities certifying that they are consistent with the goals of the Paris Agreement [103]. They build upon the ICMA's GBP and their core components and set sectoral eligibility criteria, e.g criteria for the solar sector, which specify what asset can be financed through a CBI-certified green bond

[104]. For instance, a bond financing onshore solar electricity generation can be certified as a green bond under the CBS as long as the facility does not have more than 15% fossil fuel back up [105]. These criteria were established as part of the CBI Taxonomy [106]. One limit of the CBS is that it does not prescribe for an ongoing monitoring and verification post-issuance: the frequency of post-issuance reporting is left at the discretion of the bond issuer [101], [107].

3.2.2 The Chinese Green Bond Endorsed Project Catalogue

In China, there are four main types of green bonds, administered by different regulatory agencies and subject to different requirements: (1) Financial bonds, administered by the People's Bank of China (PBoC); (2) Corporate bonds, administered by the China Securities Regulatory Commission (CSRC); (3) Non-Financial Corporate Debt Instruments, administered by the National Association of Financial Market Institutional Investors (NAFMII) and (4) Enterprises bonds, administered by the National Development and Reform Commission (NDRC).

Jointly announced by the PBOC, the NDRC and the CSRC, last updated in 2021 and currently under review, the Green Bond Endorsed Project Catalogue (Green Bond Catalogue) unifies the Chinese green bond market by defining the eligible projects and fields [108]. The 2021 version of the Catalogue [109] covers six sectors,[53] each divided into specific programs. A specific "description/condition" for each program helps make the framework more operational, but some lack specific scientific-based metrics and criteria.[54,55] Under this Catalogue, for instance, a bond financing onshore solar electricity generation can be certified as a green bond as long as (1) the relevant regulations on photovoltaic manufacturing and (2) photovoltaic clean production assessment are complied with [109, Sec. 3.2.1.2].

While harmonisation exists on the projects eligible for green bonds, management of proceeds, transparency and external review requirements differ between the types of bonds. Depending on the type of bond issuers, between 50% and 100% of proceeds must be allocated to green projects, and environmental monitoring and reporting might be either required, encouraged or not required at all. For example, issuers of corporate green bonds must allocate at least 70% of proceeds to eligible green projects.[56] They are also required to report on the use-of-proceeds on an annual basis as well as to monitor and report on environmental impacts with a frequency at their discretion [107, p. 4]. Pre-issuance and post-issuance external reviews are encouraged by some Chinese regulatory authorities, but are not mandatory.[57]

3.2.3 European Green Bond Standard

In addition to the widespread use of GBP and CBI's standard, the EU is currently developing a regulatory framework for the voluntary use of a more stringent European Green Bond Standard (EUGBS).[58]

[53] (1) Energy Saving and Environmental Protection Industry; (2) Clean Production Industry; (3) Clean Energy Industry; (4) Ecology and Environment-related sector; (5) Sustainable Upgrade of Infrastructure; (6) Green Services. The 2023 draft proposes the following sectors: (1) Energy-efficient and carbon-reducing industries; (2) Environmental protection industry; (3) Resource recycling industry; (4) Clean Energy Industry; (5) Ecological protection, restoration and utilisation; (6) Sustainable Upgrade of Infrastructure; (7) Green Services [110].

[54] While for certain programs, criteria are very specific, others do not provide for detailed requirements and leave a wide margin of appreciation. For example, compare Program 1.4.1.2 to Program 3.2.2.2 from the Green Bond Catalogue [109].

[55] From 2021, coal and fossil fuels are excluded from the eligible projects.

[56] The remaining 30% can be used only to repay loans or invest in working capital [107, p. 5].

[57] On the comparison of monitoring, reporting and verification of green bonds in China [107, Tbl. 2 page 5].

[58] On 6 July 2021, the European Commission introduced a legislative proposal for a European Green Bond Standard [111]. On 28 February 2023, trilogue negotiations ended with a provisional agreement [112]. This agreement still needs to be confirmed and adopted by the EU Parliament and Council before it is final and will start applying one year after its entry in force.

This framework aims to ensure the application of uniform requirements to the use of the designation "European green bonds" or "EuGB"[59] within the EU, and to establish a simple registration and supervisory system for external reviewers. The EUGBS are intended to be usable by any bond issuer (including corporates, governments, supranationals) both within and outside the EU [113, p. 11].

The green bonds' proceeds must exclusively be allocated to economic activities that meet the requirements of the Taxonomy Regulation (TR), provided that the sectors concerned are already covered by it. Thus, the economic activities which the green bonds relates to must (1) make a substantial contribution to one or more of the environmental objectives set in the TR; (2) not significantly harm one of these objectives; (3) be carried out in compliance with the minimum safeguards referred to in the TR [25, Art. 18]; (4) comply with the Technical Screening Criteria (TSC), which were already mentioned in a previous analysis [113, Arts. 6 and preamble 8]. For the sectors not yet covered by the TR and for certain specific activities, the EUGBS Provisional Agreement provides for a "flexibility pocket" of 15%, so that green bonds can be used from the beginning of the application of the EUGBS [112].[60] For example, a bond financing onshore solar electricity generation can be certified as a green bond since this economic activity substantially contributes to climate change adaptation according to the TR [114, p. 91f.], as long as (1) it complies with the science-based TSC;[61] (2) it does not harm the other environmental objectives of the TR (DNSH Principle) [114, p. 91f.]; and (3) it complies with minimum safeguards [25, Art. 18]. The necessary actions and expenditures for an economic activity to meet the TR as well as the period of time needed to transform assets to align the related economic activity with the TR must be detailed in a taxonomy-alignment plan [113, Arts. 6 and preamble 12].

Issuers of European green bonds are subject to transparency and external review obligations to provide investors with the necessary information to evaluate the environmental impact of green bonds and compare. Pre-issuance reporting[62] and post-issuance reporting[63] are mandatory and subject to external review. After the full allocation of the proceeds and at least once, issuers must publish an impact report [113, Art. 10]. Templates are provided to ensure the relevance and comparability of the information [113, Apps. 1–4]. Issuers must maintain these reports on their website until maturity of the bonds [113, Art. 13]. External reviewers are subject to conditions and requirements, must register to the ESMA and are subject to ESMA's supervision.

The Provisional Agreement provides for some voluntary disclosure requirements for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU which thus do not meet the EUGBS requirements. This aims to help prevent greenwashing in the green bonds market in general [112].

[59] Please note that the *EUGBS* refer to the Framework and *EuGB* to European green bonds as securities.

[60] The use and need of the flexibility pocket will be reviewed.

[61] Technical screening criteria for climate change adaptation objectives include (1) implementation of adaptation solutions and (2) identification of climate risks and vulnerability of the economic activity; (3) climate projections and assessments of impacts; (4) the adaptation solutions implemented.

[62] Issuers must publish the European green bond factsheet on its website with the pre-issuance review by an external reviewer, before the bond can be offered to the public (pre-issuance review) [113, Art. 8].

[63] On a yearly basis until the full allocation of the proceeds, issuers must publish the European green bond annual allocation report, at least the first one following full allocation of bond proceeds being subject to review by an external reviewer (post-issuance review) [113, Art. 9].

Box 5: Common Ground Taxonomy

The *Common Ground Taxonomy* [115] **aims to provide interoperability between Chinese and European green bond standards**. Developed by the International Platform on Sustainable Finance and last updated in June 2022, the Common Ground Taxonomy identifies commonalities and differences between some features of the EU TR and the China Catalogue.[64] It aims to help actors understand the activities that could be covered under the respective taxonomies and might serve for the comparability and future interoperability of green bond issuance based on taxonomies. As of today, the scope of the Common Ground Taxonomy only covers substantial contribution criteria for climate change mitigation. Other eligibility features such as DNSH are not covered at this stage. The Common Ground Taxonomy might be further extended to cover other sectors, environmental objectives, or eligibility features as well as other jurisdictions [115, p. 33 ff.].

3.2.4 Switzerland's first steps towards a green bond framework

In Switzerland, there is no legal framework for the issuance of corporate green bonds. Nonetheless, self-regulation on Swiss financial markets subjects green-bond flagging to specific conditions. On the SIX Swiss Exchange, bonds must (1) be aligned with the GBP and (2) listed on the Climate Bonds Initiative's Green Bond Database [116]. The minimum ticket for issuing bonds is CHF 100'000 [117]. If the issued bonds meet those requirements, they will be automatically flagged as "green" by SIX.

In 2022, the Federal Council issued the first Swiss sovereign green bonds - or the *Green Confederation Bonds*.[65] Before the issuance, the Federal Council published the Swiss Green Bond Framework [118, p. 7]., in line with the ICMA's GBPs and put in place pre-issuance and post-issuance external reviews. The Green Bond Framework develops a list of categories of projects which may qualify as Eligible Green Projects[66] and to which the proceeds may be allocated [118, p. 8f.]. It provides for an exclusion list stating which sectors cannot receive allocations of proceeds from the Green Confederation Bonds.[67] The Framework further establishes a process for selection of eligible green expenditures, requirements for the management of proceeds, and reporting according to the ICMA's GBPs. The Federal Council showcased to the market how this framework works by using it to issue the first Swiss sovereign green bond. Allocation and impact reporting will be annually published on the website of the Swiss Confederation, from the year following issuance. A pre-issuance external review and a post-issuance external review are provided [118, p. 14]. The pre-issuance external review was issued in July 2022 and is valid for subsequent sovereign green bond issuance as long as there is no material change to the Swiss Green Bond Framework [119]. It also includes an assessment of

[64] The European and Chinese taxonomies display differences and similarities. China addresses climate change mitigation less explicitly due to its development focus, but nonetheless multiple climate and environmental criteria in the Catalogue [109, Sec. 3.4.3] contribute to climate mitigation. Indeed, the Common Ground Taxonomy includes the manufacturing and building sectors, and thus covers 72 climate change mitigation activities with shared "substantial contribution" criteria in total. The EU and China taxonomies differ significantly in how they integrate DNSH criteria and minimum standards, which are thus not covered under the current common ground taxonomy.

[65] Sovereign green bonds provide an additional sustainable asset class for investors and encourage the issuance of green bonds by other public and private actors. They do not directly generate more public spending in environmental projects, since political investment decisions are made independently from bond issuance. Instead, they constitute indirect investments in projects that are more environmentally beneficial [118, p. 7].

[66] Namely (1) clean transportation, (2) agriculture, forestry, natural landscapes and biodiversity; (3) green buildings and energy efficiency; (4) renewable energy; (5) international cooperation; (6) research, innovation and awareness raising.

[67] Namely exploration, manufacturing and transport of fossil fuels as well as nuclear power (fission) [118, p. 11f.].

consistency of the issuer's strategy with the green bond [120, p. 15ff.].

Although the Swiss Green Bond Framework is not directly applicable to the private sector, it provides guidance to corporate issuers. Based on the approach of the Confederation, green bonds should (1) have their proceeds allocated to eligible green projects which should contribute to the achievement of an environmental objective [118, p. 8]; (2) provide pre-issuance external reviews assessing the alignment with the chosen green-bond standard [118, p. 14]; (3) provide post-issuance external reviews verifying how the use-of-proceeds have been allocated standard [118, p. 14]; (4) be consistent with the issuer's sustainability strategy.

Regulations might soon incentivise social impact investments. Currently, the Federal Department of Finance (FDF) is examining the possibility of amending regulations relating to financial markets to include a new category of collective investments, or funds, that would also open up *social* impact investments to as many investors as possible. This would mean that a private investor would be able to invest in funds specifically pooling social impact firms or projects.

3.2.5 Recommendations for Switzerland

The different green bond frameworks analysed in this paper have advantages and disadvantages. The voluntary Green Bond Principles (GBP) are widely accepted by the industry but might mislead investors as they do not provide any guarantee on the quality of the green bond (Section 3.2.1.1). The Climate Bond Standards (CBS) go a step further towards clarity and credibility: they ensure that the use-of-proceeds respect the requirements set by the CBS through certification of the green bonds. (Section 3.2.1.2). The Chinese Green Bond Catalogue provides a list of eligible activities for green-bond financing but leaves a margin of appreciation to determine whether some economic activities fall into the list. There is no general requirement for reporting or external reviews, which impedes credibility (Section 3.2.2). The EU Green Bond Standards (EUGBS), if adopted, would constitute the most demanding framework for green bond issuance. In addition to having to contribute to an environmental objective, the eligible economic activities must respect the Do No Significant Harm (DNSH) Principle, the Technical Screening Criteria, and minimal safeguards. However, the EUGBS is a complex framework and difficult to apply (Section 3.2.3). In this context, for the time being, Switzerland should not necessarily develop new Swiss criteria for eligible activities of corporate green bonds, but rather encourage the market-based approach applied in the issuance of the Swiss Green Sovereign Bonds and promote green-bond certifications, while closely following the international harmonisation attempts around the Common Ground Taxonomy. These recommendations and approaches proposed below will be complemented with the position of leading industry and governmental actors in a forthcoming analysis.

Switzerland would not necessarily have to develop Swiss criteria for eligible activities. The foreign frameworks and international standards already implemented and used by the industry provide sufficient indications and flexibility in what projects could be eligible for green-bond financing. Considering that Switzerland's green-bond market is relatively small,[68] the advantage resulting from developing and adopting an extended Swiss-made green-bond taxonomy would probably be low compared to the related costs [122, p. 89 ff and 93]. If it were to define such a taxonomy, it should however be based on the definition of "sustainable investment product and service" that is currently being

[68] The size of Swiss green-bond market is of USD 12.1 bn, compared to USD 380 bn in the US [121].

developed by the Federal Council in order to ensure harmonisation and coherence.

The Swiss regulators should rather support the market-based approach applied in the issuance of the Swiss Green Sovereign Bonds. The Swiss Green Sovereign Bonds follow the GBP and, as such, (1) have their proceeds allocated to eligible green projects which should contribute to the achievement of an environmental objective; (2) provide a pre-issuance external review assessing the alignment with the chosen green-bond standard; and (3) provide post-issuance external reviews verifying how the use-of-proceeds have been allocated. Its pre-issuance external review also provides an indication of (4) the consistency of the green bond with the issuer's sustainability strategy.[69] This fourth aspect is particularly relevant for reducing greenwashing risk and increasing trust in the green-bond market. Without it, an issuing firm could, for instance, use the proceeds of its green bond to finance the refurbishment of a commercial building for improving energy-efficiency, while offering indoor skiing services in this same building.

The Swiss regulators should also promote green-bond certifications. Green-bond certifications set guarantees for the quality of the green bond. An additional certification targeting the issuer and not the allocation of use-of-proceeds of the green bonds, as offered by the Climate Bond Initiative (CBS Entity Certification), could provide an indication of the consistency between the issuer's strategy and the green bond. This however imposes an additional administrative burden.

[69] This could include e.g. the assessment of the credibility of net-zero transition plans of the issuer's verticals.

4 INTEGRATING THE SUSTAINABILITY PREFERENCES OF CLIENTS IN THE ADVISORY SERVICES

Once financial products are named according to the sustainability characteristics they promote, investors shall have access to investments that match their sustainability preferences. End-investors seek advice from financial advisers[70] to manage their capital. In this relationship, advisers are subject to a fiduciary duty towards their client:[71] they must act prudently, in the interest of their client and in accordance with the purpose for which investment powers are granted. In the exercise of the fiduciary duty, consideration of sustainability factors is growing. As of today, sustainable finance regulations do not provide for any general obligation to invest a client's capital in sustainable financial instruments or to manage clients' capital in a sustainable way. Sustainable finance regulation rather contributes to ensuring that end-investors are informed and advised on the sustainability risks and opportunities relating to their investment; and that their money is managed accordingly.

Financial advisers may be required to seek, understand and incorporate clients' ESG preferences into investment advisory. In the EU, existing binding regulations focusing on ESG risk integration and ESG preferences explicitly require advisers to take into account sustainability in their activities (Section 4.1). In Switzerland, hard law does not introduce specific sustainability-related obligations so far, but self-regulations are trying to achieve a similar result (Section 4.2). Section 4 focuses on financial advisers, i.e. persons that offer clients financial advice about investing. There are many different kinds of advisers. Pension funds provide a critical mass for investment and part of their business is advising clients. Regulatory developments related to pension funds and sustainability in their advisory services will be briefly addressed in Box 6.

4.1 THE EU FRONTRUNNER IN REQUIRING THE INTEGRATION OF CLIENTS' ESG PREFERENCES

In the EU, financial advisers are required to take sustainability into account in the investment process of their clients. In 2021, the EU amended the Financial Instruments Directive (MiFID II) [125], [126] through Delegated Regulation (EU) 2021/1253 (MiFID II Delegated Regulation) to clarify that sustainability factors must be taken into account by financial advisers in the investment process.[72] It notably requires financial advisers to adapt their internal organisation so that they integrate sustainability in reporting, processes and internal policies. MiFID II does not apply to pension funds which are specifically regulated (Section 4.2.1) [125, Art. 2 para. 1i)]. Member States' authorities are competent to ensure compliance with MiFID II requirements. They can impose administrative sanctions and measures.

In particular, financial advisers are required to explicitly question their clients on their sustainability preferences according to MiFID II. The adviser must carry out a suitability and appropriateness assessment with each client, before any financial service is provided [125, Art. 25]. This assessment examines, along with the client's risk profile and financial preferences, the

[70] By "financial advisers", we mean persons that offer financial advice to clients about investing.

[71] The notion of "fiduciary duty" stems from common law. The exact content of the fiduciary duty differs between jurisdictions. Civil law jurisdictions like Switzerland do not recognise the concept of fiduciary duty as such but provide for equivalent duties called duty of loyalty, prudence or care [123, p. 202 ff.]; [124, p. 442].

[72] Similar amendments were brought to the Insurance Distribution Directive [127], [128], and Solvency II [129], [130], subjecting insurance and reinsurance distributors to similar obligations when providing financial services.

client's sustainability preferences. Sustainability preferences refer to the client's decision as to whether and what extent she wishes her investment to (1) include the minimum shares of sustainable investments within the meaning of (a) the Taxonomy Regulation (TR) and (b) the SFDR; and (2) take into account the main negative effects on sustainability factors within the meaning of the SFDR [131, Art. 1 para.1 no.7]. This ensures coherence and uniformity with other EU regulations.

For instance, Mary opens an investment account with an initial capital of EUR 100'000 with Laura's investment advisory firm. Mary does not know anything about sustainable investment opportunities. According to MiFID II, Laura must explicitly ask Mary if she has any ESG-related preferences along with financial objectives. Through the test, Laura finds out that Mary has two children and wants to ensure that she can pay for their university education in 15 years (EUR 150'000), but that she is also very risk-averse. As a biologist, Mary also wants to make sure that her investments support biodiversity protection. She wishes that her investment include 60% of sustainable investments within the meaning of the TR and 50% of sustainable investments within the meaning of the SFDR.

Within the investment selection process, sustainability preferences expressed in the questionnaire are nonetheless subsidiary and secondary to financial investment objectives. Assessing whether sustainable preferences are met comes only once a financial instrument that meets the client's other financial objectives has been found. Given this subsidiarity, in certain cases and under certain conditions financial advisors can offer to a client a service or product that is in line with the client's financial objectives, but not with her sustainability preferences.[73] In this case, the adviser must keep record of the client's decision, stating the reasons for her decision to deviate from her initial sustainability preferences [126, Art. 54 para. 10].

Continuing with the example above, Laura must first assess whether the investment opportunities that match Mary's risk profile (risk-averse) with her financial objectives (+50'000 in 15 years) exist. Once the financial instruments to reach these objectives have been identified, Laura will assess whether some of them support biodiversity protection. If some do, Laura shall offer Mary these financial products. If not, Laura might be authorised to offer Mary financial products that do not support biodiversity protection. If Mary decides to invest in these, Laura must keep record of Mary's decision.

Financial advisers are also required to demonstrate and report to their clients how they take into account sustainability factors. They must be able to show that they have adequate policies and procedures in place, to ensure that they understand these factors. In particular, advisers must provide (1) a description of the sustainability factors considered in the selection process of financial instruments, and (2) a report to the retail client that includes, in particular, her sustainability preferences [131, Art. 1 para. 6].

In the example above, Laura will provide Mary a description of the sustainability factors she took into account when she chose the financial instrument. These factors consider whether (1) investee firms had controversies linked to oil spills or toxic releases to water or land and (2) investee firms have programs to protect natural ecosystems.

The ESMA published Guidelines on Suitability Requirements (ESMA Guidelines)[133][74] that aim to establish coherent and convergent surveillance

[73] For more details: [132, p. 120ff. and 125].

[74] The ESMA Guidelines clarify: (1) the information to be provided to clients when conducting the suitability assessment; (2) the policies and procedures to put in place to understand the clients' characteristics, including the necessary information to be collected, the measures to take to ensure the consistency of the given information and the policies and procedures to understand investment products; (3) the policies and procedures to put in place to ensure the suitability of an investment product, including assessing possible alternatives; (4) qualifications of firm's staff and record-keeping.

practices and ensure the common and uniform application of MiFID II suitability requirements within the EU.[75]

4.2 IN SWITZERLAND

4.2.1 No legal obligation to require and integrate clients' ESG preferences

In Switzerland, advisers do not have explicit requirements for inquiring clients' sustainability preferences so far. The Financial Services Act (FinSA) establishes a general duty of care and loyalty for all financial service providers but no specific duty with regard to sustainability preferences. When establishing a business relationship, the FinSA subjects financial advisers to an appropriateness or suitability test, the concrete content of which depends on the extent of the advice provided.[76] Theoretically, any sustainability preferences of the client must already be taken into account under the current law [137, p. 266].[77] However, while the FinSA requires to take climate risks into account - in the same way as other financial risks [8, p. 177ff.], it does not require to explicitly ask for the client's ESG preferences.[78]

4.2.2 But self-regulations do

Industry associations, such as the Swiss Bankers Association (SBA), have developed self-regulation relating to ESG integration in the advisory process. In particular, the Swiss Bankers Association (SBA) issued Guidelines for the Financial Service Providers on the Integration of ESG-Preferences and ESG-Risks into Investment Advice and Portfolio Management (Financial Service Providers Guidelines)[79,80], which set a uniform standard for the integration of ESG preferences and ESG risks by financial providers into their investment advisory and asset management activities.[81] The Guidelines aim to prevent greenwashing in these activities and enhance the Swiss financial centre's reputation [132], [141, p. 126].

The SBA Financial Service Providers Guidelines are only binding to the SBA Members[82] - unless members comply with the equivalent EU regulations[83] - as the Guidelines are currently not recognised as

[75] ESMA Guidelines are legally non-binding but have de facto an almost-binding character : EU Member States' shall "make every effort to comply with those guidelines" [134, Art. 16], [133, Para. 7]. Member States indicate whether or not they intend to comply with them. Non-compliance is publicly disclosed and mentioned in the annual report on the activities of the Authority. The potential reputational consequence has thus a strong dissuasive character [135].

[76] In the case of comprehensive financial service, the financial adviser checks the financial situation, the investment objectives and the knowledge and experience of the client (assessment of suitability). In the case of a limited advisory activity, the adviser inquires about the client's knowledge and experience and verifies the suitability of the financial instruments before recommending them (assessment of appropriateness) [136, Arts. 11 and 12].

[77] Even in the case an adviser voluntarily asks for a client's ESG preferences, FinSA does not specifically regulate either how a client's sustainability preferences shall be determined or how these preferences shall be taken into account. Therefore, financial advisers are not specifically aware of procedures for enquiring about clients' ESG preferences and this part of the advisory process is often ignored in practice. [132, p. 129f.].

[78] In 2017, the Swiss Parliament discussed the introduction of the obligation to take into account ESG preferences in FinSA, which was clearly rejected. In particular, parliamentarians considered that this obligation should not be regulated in the law: because taking into account ESG preferences constitutes a competitive advantage, financial institutions should remain free to apply it - or not [124, p. 451], [132, p. 129 footnote 76].

[79] Replacing the 2020 SBA Guide to Integrating ESG Factors into the Private Client Advisory Process [138].

[80] The Guidelines entered into force on January 1 2023. It applies from January 1 2024 for new client relationships and from January 1 2025 for existing client relationships. They are available online: [139].

[81] SBA also issued a guideline targeting specifically mortgage providers for the promotion of energy efficiency [140]. These guidelines aim to integrate the issue of long-term value preservation of the building, and thus energy efficiency, in the context of real estate financing advice [140, Art. 2]. It applies exclusively to advice provided in the context of granting mortgages. They came into effect on 1 January 2023.

[82] The third largest Swiss banking group, Raiffeisen, pulled out of SBA in March 2021 over political disagreements, hence is no longer an association member bound by the self-regulation [142].

[83] Indeed, any financial service provider applying the MiFID II is deemed meeting the SBA Guidelines requirements. [139, Art. 4 para.3].

minimum standards by FINMA.[84] SBA Members are Swiss-domiciled financial service providers.[85] Swiss-domiciled financial service providers that are not SBA members, or foreign financial service providers, are not subject to these Guidelines, except if they are foreign branches of SBA members [132, p. 127]. Non-SBA members can voluntarily adopt the Guidelines [139, Art. 2 para. 2], which can provide an important competitive advantage.[86]

Compliance with the Guidelines must be verified by the internal audit of financial service providers as part of the supervisory audit [139, p. 17f.]**.** The frequency of internal compliance checks is at the discretion of the respective institution. SBA members that repeatedly violate their obligations stemming from the Guidelines, including the obligation to inquire ESG preferences, can be expelled from the SBA, with related reputational damage.[87]

According to the SBA Guidelines, financial service providers are first required to determine the ESG preferences of clients [139, Art. 11]. ESG preferences linked to investment advice must be included as part of the appropriateness or suitability test, equally with other financial preferences [139, Art. 11 para.1]. ESG preferences shall however not take precedence over the client's personal investment objectives, similar to the EU regulation under MIFID II [141, Art. 11 para. 5]. Moreover, if the client does not state any specific ESG preferences or does not answer the question on ESG preferences, the consideration of ESG criteria is not necessary or only necessary if the financial service provider itself deems it appropriate.

Expanding on the example above, suppose Mary moves to Switzerland and opens an investment account with an initial capital of CHF 100'000 in Mirjam's advisory firm.

Scenario 1: Mirjam's advisory firm is not a SBA member and did not voluntarily adopt the SBA Guidelines. Even though Mary does not know anything about sustainable investment opportunities, Mirjam is not required to ask for Mary's ESG preferences.

Scenario 2: Mirjam's advisory firm is a SBA member. In that case, Mirjam must ask for Mary's ESG preferences. Mary explains that she wants to pay for the education of her kids, and at the same time making sure her investments support biodiversity protection. Mirjam must include this preference in the selection process along with Mary's risk-averse profile and objective to obtain a return of CHF 50'000 in 15 years to cover the universities' fees.

Secondly, financial service providers are required to take ESG preferences into account. Investment solutions may however not align with the ESG preferences expressed by the client, e.g. where there is no ESG-related alternative available for the required asset class, similar to MiFID II regime. This must be however clearly highlighted and communicated to the clients, before such transactions may be executed.

Scenario 1: Mirjam is not required to consider ESG criteria in the selection process. Mirjam is however required to take into account general ESG risks in the selection process (FinSA). This means that if a

[84] "In the present regulatory environment, FINMA cannot recognise the SBA and AMAS ESG Guidelines as a minimum standard due to a lack of legal basis. It remains to be seen whether these initiatives will eventually become a minimum standard for the industry, recognised by FINMA, or whether Swiss authorities will choose the legislative path. Recent statements by FINMA's CEO, Urban Angehrn, suggest the latter, as he mentioned that a legal framework is needed that applies to all sectors of the financial industry and is enforceable under supervisory law" [143].

[85] This includes licensed banks; securities firms; financial market infrastructures; auditing companies that audit banks, securities firms and financial market infrastructures; other institutions and financial service providers subject to the approval of the Committee of the Board of Directors [141, Art. 4 para. 2],

[86] In the future, these Guidelines could also be used as an industry standard in the interpretation by the courts of the standard of due diligence required by advisors [132, p. 126 f.].

[87] Art. 5 para. 3 SBA Articles of Association. Non-SBA Members that voluntarily join the Guidelines might be removed from the non-SBA Member list if they repeatedly do not comply with the Guidelines. [132, p. 131].

product contains real-estate in an area which is likely to be flooded during the next years, due to changes in rain patterns, this environmental risk is considered financially relevant.

Scenario 2: Mirjam must first assess whether the investment opportunities that match Mary's risk profile (risk-averse) with her financial objectives (+50'000 in 15 years) exist. If there is no alternative that aligns with Mary's wish that her investments support biodiversity protection, Mirjam must clearly communicate that to Mary before it can execute the transaction.

4.2.3 MiFID II's impact on Swiss actors

MiFID II provides for the principle of equivalence: non-EU countries may have easier access to the European internal market and/or supervisory relief, provided that their relevant legislation is considered functionally equivalent to the corresponding European requirements [55, Para. 56], [144, p. 416]. This approach would allow Swiss economic actors to operate throughout the EU financial market while respecting Swiss law [123, p. 43], [144, p. 466], [145, p. 417]. In view of the important economic relationship between Switzerland and the EU, Switzerland has a strong interest in adopting standards that are sufficiently equivalent to European standards in this area [146, p. 5].[88] Following Brexit, the EU tightened its internal market access policy, which for Switzerland was reinforced by the failure of the EU-Swiss framework agreement. The principle of equivalence in this context could therefore lose its importance [144, p. 471]. Nonetheless, it remains interesting to observe what the equivalency principle would require in case of a new bilateral agreement between the EU and Switzerland. Currently, the FinSA seems incompatible with EU law because the latter requires that all financial services providers ask and take into account clients' ESG preferences - even if this aspect is supplemented by SBA self-regulation.

However, due to the freezing of the negotiations on the framework agreement, the EU has not renewed the recognition of equivalence granted to Switzerland. In the absence of such an equivalence decision, EU law requires financial market participants to set up a company in an EU country and to develop their activities through branches, or obtain prior recognition from the competent authority of the EU Member State [147, Art. 32], which entails significant costs [148, p. 28 para.59].

Box 6: Pension funds: future retirees worldwide would like to live happily ever after

As part of the business of pension funds is advising clients, they represent an important channel of savings for investment.[89] They provide a critical mass of investments needed to close the gap for the transition to a more sustainable economy. Moreover, the value of pension funds may also be exposed to important risks related to unsustainable economic development.

In the EU, hard law might soon introduce requirements for considering sustainability-related preferences of beneficiaries. Currently, the IORP II Directive [150] requires Institutions for Occupational Retirement Provision (IORPs)[90] only to take into consideration sustainability factors and risks in asset management activities.

[88] For this reason, Switzerland is systematically adopting an equivalence strategy in financial matters [144, p. 467].

[89] While in some European countries, retirement contributions are directly redistributed to current retirees, in addition to private saving vehicles [149], in the US and Switzerland classic pension funds are especially common, hence the regulation of such deserves particular attention

[90] IORPs are financial institutions that manage collective retirement schemes for employers to provide retirement benefits to their employees (i.e. pension scheme members and beneficiaries). They are long-term investors that aim to deliver the best returns to their members and beneficiaries at the same time as keeping their investments [151].

Currently under review, it might require IORPs' investment decisions to reflect sustainability preferences of members and beneficiaries, where IORPs can gauge these preferences and to the extent they are consistent with the other investment principles IORPs are subject to [152, p. 181ff.].

In the US, federal law clarifies that incorporating ESG preferences in pension plans can be part of fiduciary duty. The Department of Labour (DoL) issued a new rule (DoL Rule) [153] in December 2022, which clarified that advisers on private sector retirement plans may consider ESG factors when they make investment decisions and exercise their shareholder rights [154, p. 70]. In particular, it clarifies that fiduciaries do not violate their fiduciary duty by taking participants' preferences into account when constructing participants' individual account plans, provided the selection of the investment options is based on a prudent risk-return analysis.

In Switzerland, state law does not provide for specific sustainability-related obligations for pension funds relating to ESG integration in services. Non-binding recommendations issued by the industry aim to promote ESG consideration in investments decisions and ESG-related disclosures by pension funds. In that regard, the Swiss Pension Funds Association (ASIP) published two non-binding self-regulations, an ESG Guide for Swiss Pension Funds in July 2022 (ASIP ESG Guide) [155], and an ESG Reporting Norm for Pension Funds in December 2022 (ASIP ESG Reporting Norm) [156]. However, they do not address the question of beneficiaries' ESG preferences integration.

4.3 Recommendations for Switzerland

Investors shall have access to investments that match their sustainability preferences. Regulation can help ensure that advisers require and integrate clients' sustainability preferences in the advisory process. Recommendations considering the status-quo in Switzerland, recommendations to the Swiss regulators include (1) introducing common requirements applicable to all financial advisers for the explicit request and integration of clients' ESG preferences in the advisory process, and (2) providing education on sustainability investment opportunities to investors.
In a forthcoming analysis, we will complement the recommendations and approaches proposed below with the position of leading industry and governmental actors.

Introducing common requirements applicable to all financial advisers for the explicit request and integration of clients' ESG preferences in the advisory process. In the EU, financial advisers must explicitly inquire their clients' ESG preferences and take them into account in their activities (Section 4.1). In Switzerland, state law does not require advisers to take into account sustainability (Section 4.2.1). However, professional associations issued sector-specific self-regulation explicitly requiring advisers to request and integrate client preferences into the advisory process from 2023 on (Section 4.2.2). Yet, the SBA self-regulation does not apply to all financial advisers active in Switzerland. The inclusion of a respective requirement in the Financial Services Act (FinSA) would also increase the likelihood of an equivalency decision by the EU on MiFID II and facilitate Swiss financial advisers' activities in the EU.

Providing education on sustainability investment opportunities to investors. Financial advisers are mandated to provide investors the financial advice and services they need. In that regard, they may provide information and to some extent, education to investors on ESG investment opportunities. Yet, other channels should be used to explain to investors what sustainable investment opportunities they have and how the financial system works so that they can understand its mechanisms. Further support should thus be granted to general sustainability and financial education to the general public. Respective classes in schools and public media formats should support mainstreaming an understanding of sustainable finance for all citizens, since collective efforts are needed to orient financial flows towards sustainable products.

5 APPENDICES

APPENDIX 1: CRITERIA, DISCLOSURE REQUIREMENTS AND EXAMPLES OF SFDR ART. 9, ART. 8 AND ART. 6 FINANCIAL PRODUCTS

	Criteria	Main requirements		Example of fund
Art. 9	Financial products made of 100% sustainable investments, as defined by SFDR Art. 2, excluding investments that are required to meet prudential, product-related or specific rules, e.g. hedging, liquidity, insurances [14, p. 5].[91]	1	Disclose on the integration of sustainability risks according to the principle of comply-or-explain	Financial product investing solely in renewable energy projects which do not have any direct negative impact and that are developed by firms with good governance practices
		2	Disclose how the underlying investments contribute to the product's stated environmental or social objective	
		3	Choose a reference benchmark which is aligned with this objective or explain how it will be achieved	
Art. 8	Financial products that promote[92] environmental or social characteristics in addition to financial objectives, provided that the investee companies follow good governance practice	1	Disclose on the integration of sustainability risks according to the principle of comply-or-explain	Financial product investing in a firm making cigarettes and providing for good working conditions and health care to its workers, or in a coal plant with great working conditions
		2	Provide a description of the environmental or social features promoted as well as a list of sustainability indicators used to measure the achievement of these features	
		3	If an index has been designated as a reference benchmark, disclose information on whether and how this index is consistent with the product's environmental or social characteristics	
Art. 6	Financial products that do not promote any environmental or social characteristics and only take sustainability risks into account	1	Disclose on the integration of sustainability risks according to the principle of comply-or-explain	Cash savings account

Source: SFDR [2], Authors.

[91] The SFDR provides specific requirements for Art. 9 financial products that pursue a carbon reduction objective in view of achieving the long-term global warming objectives of the Paris Agreement. These financial products need to use the Climate Transition or Paris Agreement Benchmarks as a reference benchmark.

[92] The term "promotion" is very broad. It encompasses information, reporting as well as an *impression* that the investment also considers environmental and social characteristics in terms of target, objectives or general ambition in any document made by the financial actor (publicity, factsheets, marketing communications, etc.).

Appendix 2: Disclosure requirements for financial products under the EU Taxonomy Regulation and the SFDR

The EU Taxonomy Regulation complements the SFDR for the classification of financial products with an environmental objective, in that financial market participants need to disclose information on how their Art. 8 and 9 products align with the Taxonomy Regulation (TR) [25]. In practice, the existence of two frameworks for defining sustainability makes uniform application and comparability among financial market participants difficult: in theory, a financial product could be exclusively made of sustainable investments under the terms of the SFDR, yet not investing in any taxonomy-compliant environmentally sustainable economic activity under the TR [74]. However, the taxonomy-alignment disclosure requirement of the TR provides investors with a clear indication of the financial product's contribution to environmental objectives through science-based and Paris Agreement-aligned indicators and thresholds - as defined by the Technical Screening Criteria.

<table>
<tr><th></th><th>Disclosure under TR</th><th>Disclosure under SFDR</th></tr>
<tr><td colspan="3">Company level</td></tr>
<tr><td></td><td></td><td>- How key adverse impacts on sustainability factors are addressed
- How sustainability risks are integrated into the decision-making process
- How remuneration policies are adapted to the integration of sustainability risks</td></tr>
<tr><td colspan="3">Product level</td></tr>
<tr><td>Art. 6</td><td></td><td>- Integration of sustainability risks</td></tr>
<tr><td>Art. 8</td><td rowspan="3">- How the investments contribute to the environmental objectives
- The extent to which the investments are made in taxonomy-aligned economic activities (expressed as % in turnover, capex and opex and separated per transitional and enabling activities)</td><td>- Integration of sustainability risks
- Description of environmental and social characteristics promoted by each financial product
- Indicators used to measure the achievement of the characteristics promoted by the product
- If index designated, how this index is consistent with the ES characteristics</td></tr>
<tr><td>Art. 9</td><td>- Integration of sustainability risks
- How the investment contribute to the environmental objective (in the sense of SFDR)
- If index designated, why and how this index differs from broad market index</td></tr>
<tr><td>Art. 9 (3)</td><td>- Integration of sustainability risks
- Where an EU CTB or EU PAB does not exist, explanation of how the effort to attain the emission reduction objective is ensured in view of achieving the long-term Paris Agreement objectives.
- Where an EU CTB or EU PAB exists, a financial product must be tracking these.</td></tr>
</table>

APPENDIX 3: INDUSTRY-LED SUSTAINABILITY-RELATED DISCLOSURE INITIATIVES

	Title	Type	Description	Character
FINMA	FINMA Guidance 05/2021 - Preventing and combating greenwashing [71]	Guidance	In 2021, FINMA clarified its expectations regarding the management of sustainable financial products (collective investments), namely disclosures at the product level and organisational structure at the financial market participant level.[93] When approving and supervising products using attributes referring to sustainability, FINMA pays particular attention to the sustainability explanations advertised based on this Guidance.	No legal impact
AMAS	Self-regulation on transparency and disclosure for sustainability-related collective assets	Self-regulation	The AMAS self-regulation entering into force in September 2023 aims at increasing sustainability transparency standards and asset quality. Similarly to the FINMA Guidance 05/2021, it introduces binding disclosure requirements on sustainability-related information at the sustainable financial product level and on the organisation of product management at the financial market participant level [157].[94]	Binding to AMAS members and non-member adherents
ASIP	ESG Reporting: Standard for Pension Funds	Recommendations	ASIP published a practical guide for pension funds on how to consider ESG criteria in their investment decisions in July 2022 [159], and followed-up with non-binding qualitative and quantitative recommendations for ESG consideration and disclosures by pension funds [160]. The latter set out two levels of quantitative disclosures: basic indicators representing minimum standards and advanced indicators. Both cover shareholder engagement disclosures and	Non-binding

[93] FINMA Guidance 05/2021 [71] also introduces point-of-sales clarifications that are discussed in Section 4.

[94] Under this self-regulation, individual consideration of sustainability e.g. exclusion or ESG integration only, is not enough to be part of the scope of this self-regulation as such investments "are not considered sufficient to constitute a reference to sustainability" ...)" [158]. This introduces a definition of what could be considered a sustainable investment and what could not.

			portfolio allocation elements. Recommendations entered into force on January 1, 2023.	
SSF & AMAS	Sustainable Asset Management: Key Messages and Recommendations	Recommendations	Published in June 2020, these recommendations indicate how to integrate sustainability into the investment process at the company and product level. The recommendations address fiduciary duty, governance, investment policy and investment strategy as well as risk management, transparency and reporting [161].	Non-binding
	Recommendations on Transparency and Minimum Requirements for Sustainable Investment Approaches and Products	Recommendations	SSF and AMAS have published minimum requirements and transparency considerations for sustainable investment strategies and products in 2021 [162]. For each sustainable investment approach, such as exclusion, ESG integration, it recommends the publication of related specific information and indicates minimum requirements.	Non-binding

Notes: *Guidance* refers to documentation published by supervisory bodies providing information which supports supervised institutions in their compliance of rules in practice. *Self-regulation* in this context refers to free self-regulation; that is self-regulation on a private, autonomous basis that does not include state involvement, that can be binding for members of industry associations introducing it, and that is controlled via internal compliance mechanisms. *Recommendations* refers to rules that reflect best practices and that are applied on a voluntary basis. Source: FINMA, 2021; AMAS, 2022; ASIP, 2022, AMAS & SSF, 2020 [71], [157], [159], [160], [162].

Appendix 4: The different types of industry self-regulation in Switzerland

Since Swiss regulators follow a subsidiarity tradition, meaning minimum intervention into the financial market, different types of self-regulation play a special role.

Firstly, there are three types of self-regulation from the perspective of the financial market authority FINMA [163]:

- Voluntary self-regulation on a private, autonomous basis does not include state involvement. Such so-called **"free self-regulation"** can be internally (although not legally) binding for members of industry associations and controlled via internal compliance mechanisms. However, it is not recognised by FINMA as a minimum standard and thus not FINMA supervised (e.g. current SBA/AMAS climate self-regulations [139, Art. 17], [140, Art. 7], [157]);
- **Self-regulation recognised as a minimum standard by FINMA**, which applies not only to members of self-regulating organisations but to the entire sector;
- And **compulsory self-regulation,** which requires FINMA approval.

FINMA is itself mandated by the Federation to provide binding rules and guidance via Circulars and Guidelines, such as mandating the TCFD recommendations for Swiss banks and insurances [69], [164]–[166].[95]

In addition, sectoral agreements are a special type of self-regulation at the industry-level, where the state is involved and external supervision required. The conclusion of such agreements is generally done with industries that are constituted in such a way that the objectives are binding on its members without the need for transposition into Swiss domestic law [48, No. 157], [50, Art. 41a para. 3]. Such sectoral agreements are currently pursued by the FDF in order to prevent greenwashing and set stricter sustainability targets for the Swiss financial market.

[95] Eleven SROs are recognised by FINMA including the Association Romande des Intermédiaires Financiers .

Appendix 5: PACTA tests

PACTA tests help bring transparency on the alignment of the Swiss financial sector with the Confederation's climate objectives. PACTA tests are a tool to evaluate a portfolio's alignment with the Paris Agreement.[96] They provide an anonymous and regular assessment as well as best practices to participants and disclose to the public the market trend towards net-zero [4], [5, p. 13]. Since 2017, the Federal Office for the Environment (FOEN) and the State Secretariat for International Financial Matters (SIF) have introduced PACTA tests for the Swiss industry. The first PACTA in 2017 was reserved for Swiss insurance companies and pension funds. A second test, conducted in 2020 and open to the entire Swiss financial centre, analysed the climate compatibility of approximately 80% of the Swiss financial market in terms of AuM [169, p. 6], [170, p. 14]. Consistent participation in PACTA tests for the entire financial industry would help the regulator in assessing industry progress and taking necessary actions to ensure national compliance with the Paris Agreement.

The most recent tests, conducted in 2022, show that improvements are still needed to achieve an effective reduction in emissions in the real economy [5, p. 13]. A decline in the number of participants in the PACTA tests was also observed. According to the 2022 report, "*the participation of pension funds decreased significantly compared to 2020, which could indicate the limits of voluntary initiatives*" [5, p. 13], [171, p. 85]. The next PACTA test is planned for 2024 and will include more detailed analyses which can be submitted to the Swiss government as part of complying with firms' sustainability-related reporting obligations of the Climate Ordinance and Art. 964*a* ff. CO [170, p. 32]. Developments could include changes in the benchmark, expansion to emerging markets, or integration of forward-looking scenarios for engagement (Ruprecht, 2023). Furthermore, PACTA is no Swiss invention, but internationally coordinated by the 2° Investing Initiative, which, however, now transfers stewardship to the Rocky Mountain Institute (RMI), which will focus on upscaling reporting requirements [167], [168].

[96] The PACTA tests use production data of invested companies, which is then consolidated to assess their net-zero transition profile and that of their financial products, e.g. company shares or bonds. This information is then aggregated at the portfolio level to infer the portfolio's alignment [167], [168]. The assessment of firms' net-zero profile is a way to categorise climate-friendly companies and can act as a net-zero taxonomy [4].

6 ABBREVIATIONS

AMAS – Asset Manager Association Switzerland

AMF - French Financial Market Authority (Autorité des Marchés Financiers)

AMLA - Swiss Anti-Money Laundering Act

ARIF - Association Romande des Intermédiaires Financiers (ARIF)

ASIP - Swiss Association of Pension Funds

AuM - Assets under management

CDSC – Climate Data Steering Committee

CSRC - Chinese Securities Regulatory Commission

DETEC – Swiss Federal Department of the Environment, Transport, Energy and Communications

DNSH – Do not significant harm principle of the EU taxonomy

DoL – Department of Labour (United States)

EAER – Swiss Federal Department of Economic Affairs, Education and Research

EBA – European Banking Authority

ECB - European Central Bank

EFRAG – European Financial Reporting Advisory Group

EIOPA – European Insurance and Occupational Pensions Authority

EPA - Environmental Protection Act

ESAP - European Single Access Point

EuGB - European Green Bond Label

ESG - Environmental, Social and Governance factors for responsible business

ESMA - European Securities and Markets Authority

EU CTB - Climate Transition Benchmark of the European Union

EU PAB - Paris Aligned Benchmark of the European Union

FC - Federal Council

FCA - UK Financial Conduct Authority

FDF - Swiss Federal Department of Finance

FED - Federal Reserve System (Central Bank in the USA)

FinSA - Swiss Financial Services Act

FINMA - Swiss Financial Market Supervisory Authority

FOEN - Swiss Federal Office for the Environment

FSB - Financial Stability Board

GBP - Green Bond Principles

GFANZ - Glasgow Financial Alliance for Net Zero

GHG - Greenhouse Gas Emissions

ICMA - International Capital Market Association

IDD - Insurance Distribution Directive of the European Union (2016/97 EU)

MiFID II - Financial Instruments Directive of the European Union (2014/65/EU)

NAFMII - National Association of Financial Market Institutional Investors

NGFS - Network for Greening the Financial System (cooperation of 114 central banks)

NDRC - Chinese National Development and Reform Commission

NGO - Non-governmental organization

NZPDU - Net-Zero Public Data Utility

PACTA - Paris Agreement Capital Transition Assessment administered by FOEN and SIF

PAI - Principle Adverse Impact for double materiality measurement and reporting

PCAF - Partnership for Carbon Accounting Financials

PBoC – People's Bank of China, Chinese Central Banking Authority

PRI - Principles of Responsible Investment

PSF - EU Platform on Sustainable Finance

RTS – Regulatory Technical Standards of the European Union clarifying SFDR requirements

SBA – Swiss Bankers Association

SDGs - Sustainable Development Goals of the United Nations

SDR - UK Sustainable Disclosure Requirements

SEC - Securities and Exchange Commission of the United States

SFDR - Sustainable Finance Disclosure Regulation of the European Union

SIF - Swiss State Secretariat for International Financial Matters

SIX - Swiss Infrastructure and Exchange - Swiss Stock Exchange, 3th largest in Europe

SME - Small and Medium Size Enterprise

SNB - Swiss Central Bank (Schweizer Nationalbank)

SRO - Self-regulatory organisation (with surveillance function controlled by FINMA)

SSF - Swiss Sustainable Finance

SSPA - Swiss Structured Product Association

TCFD – Task Force on Climate-related Financial Disclosures

TR – Taxonomy Regulation of the European Union

TSC - Technical Screening Criteria

UCITS - Undertakings for Collective Investment in Transferable Securities

7 GLOSSARY

GHG Protocol - international Protocol establishing a framework to measure, account and report on GHG emissions for companies and, increasingly, the public sector. It covers Scope 1 and 2 emissions, yet lets the user decide whether or not to report on Scope 3 emissions.

Materiality - In the financial context, an information that if omitted, misstated or obscured could reasonably be expected to influence decisions that the primary users of the reported information make on the basis of this information (IFRS, 2010).

Sustainable or sustainability-related investments - "Any investment approach integrating environmental, social and governance (ESG) factors into the selection and management of investments." (SSF, 2022) Such investments can adopt different investment approaches, including best-in-class exclusion, ESG engagement, ESG integration, sustainable investment themes, ESG voting and others.

Scope 1, 2 and 3 emissions - Scope 1 refers to direct emission within a company's facility, Scope 2 refers to the energy used indirectly, and Scope 3 covers the whole supply chain. In the course of recent regulatory developments and calls for double materiality, the impact on global GHG emissions via scope 3 is gaining attention but has also caused struggles due to a lack of data from supply chain partners and the problem of double counting. Besides, metrics are not standardised. Swiss financial actors can follow the PCAF model for measuring their emissions (Figure 6),[1] hence can focus on scope 3 "financed emissions" which are integral to investments, as the Climate Ordinance mandating the TCFD framework for corporate disclosures, does not demand to cover scope 3 emissions beyond that. Further efforts could include measuring so-called "facilitated emissions" for scope 3 emissions correctly. The US SEC proposal also requires scope 3 disclosures for "financed emissions", however disclosure is only necessary for set targets, and the government provides safe harbours to incentivize thorough analysis and reduce liability fear. Although there are differences in regulation concerning the scope 3 measurements required for disclosure, especially in comparison with the EU, metrics and data quality need to improve everywhere.

European Regulation: Binding legislative act that must be applied in all EU jurisdictions. As soon as the regulation is adopted, it becomes automatically enforceable.

European Directive: Legislative act that proclaims a goal for all EU countries. However, each Member State must adjust their own laws to reach these goals (it must be transposed into national law).

Regulatory Technical Standard (RTS): Technical delegated act, which develops, specifies and determines the conditions for consistent harmonisation of the rules included in the basic legislative act. If special expertise is necessary for implementation, the European Parliament and the Council of the European Union may delegate power to the European Commission to adopt regulatory technical standards (RTS).

Financial market participants and advisers control or sell financial products& services.

Sustainable financial products are portfolios/funds promoted as having sustainability characteristics. They can be composed of sustainable as well as (sometimes) non-sustainable investments.

Sustainable financial services can be in the form of expertise on financial investment opportunities within planetary boundaries or analytic capacities for ESG performance measurement etc.

End-investors are institutional investors or retail investors that invest in financial products

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