

**MEMO# 35263**

April 26, 2023

# Japan FSA Finalizes Disclosure Requirements for ESG Funds

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TO: ICI Global Members

Asia Regulatory and Policy Committee

ESG Task Force SUBJECTS: ESG

International/Global RE: Japan FSA Finalizes Disclosure Requirements for ESG Funds

On March 31, 2023, the Japan Financial Services Agency (FSA) finalized amendments to the supervisory guidelines for financial business operators related to ESG Investment Trusts and ESG integration.[\[1\]](#) These revisions provide regulatory guidance on the disclosures and conduct of ESG Investment Trusts and ESG integration of non-ESG Investment Trusts. The FSA conducted a public consultation on the draft amendments in January,[\[2\]](#) and in conjunction with the release of the final amendments also provided a Q&A document[\[3\]](#) responding to specific comments and offering additional interpretive guidance. ICI Global submitted comments in response to the consultation, broadly welcoming the FSA's principles-based approach, while encouraging a focus on international interoperability and seeking clarity on the scope of coverage, disclosure of investment processes, impact-related information and stewardship policies, and due diligence requirements on ESG ratings and data providers.[\[4\]](#) ICI Global will continue to track any further developments.

Relative to the draft proposal, the final amendments: 1) emphasize the importance of ESG as a "key factor" in the investment process for an ESG Investment Trust; 2) expand the requirements for ESG integration funds; 3) clarify the broad definition of ESG strategies in Japan; 4) confirm the guidelines only apply to funds domiciled in Japan; 5) clarify the disclosure requirements for stewardship policies; and 6) encourage any pre-existing non-ESG Investment Trusts that have ESG-related terms in the fund name to change the name as soon as possible.

## Notable Changes in the Final Amendments Versus the Consultation Draft

### Importance of ESG as a "key factor" but subject to fund manager judgement

In the Q&A document, the FSA stressed that it is imperative for any fund self-identifying as an ESG Investment Trust to have ESG as a "key factor" in making investment decisions.

However, the FSA also affirmed that it has no intention of establishing a specific numerical threshold or strategy for an investment fund to qualify as an ESG Investment Trust. Instead, it is up to the manager of an ESG Investment Trust to identify an appropriate strategy and investment allocation based on the supervisory guidelines.

#### **Application of the guidelines to non-ESG Investment Trusts**

The FSA clarified that certain aspects of the guidelines are also applicable to investment trusts that incorporate ESG integration elements into their investment process, even if ESG is not a "key factor" and the fund does not define itself as an ESG Investment Trust. Specifically, investment trusts that integrate ESG factors into their investment decisions must comply with the requirements to demonstrate that they have adequate resources dedicated to implement their ESG integration strategy and that they are conducting appropriate due diligence on any ESG rating and data providers used as part of that strategy.<sup>[5]</sup> Although the FSA has no plans to publish a specified format on ESG disclosure items, they encourage fund managers to voluntarily disclose ESG items to help improve investors' understanding.

#### **Broad definition of ESG strategies in Japan**

The FSA clarified that certain strategies could be sold as ESG Investment Trusts in Japan even if the strategies would not be categorized as ESG in other jurisdictions, as long as the strategies align with Japanese sustainable finance themes. The FSA underscored that the definition of ESG and sustainable finance may vary across different jurisdictions, and noted that a transition finance focused investment strategy is one example of a theme that could be categorized as an ESG strategy in Japan even if it is not considered as ESG elsewhere.

#### **Scope of coverage for foreign domiciled funds**

Consistent with our request for clarification, the FSA clarified that the guideline only applies to public investment trusts domiciled in Japan, while foreign-domiciled funds distributed in Japan remain subject to the laws of their respective domiciles. If the strategies of an investment trust are distributed through a fund of funds, the investment trust will be subject to the FSA guideline if the distribution vehicle is domiciled in Japan.

#### **Disclosure requirements in relation to stewardship policies**

ESG Investment Trusts are required to disclose the content of any relevant stewardship policy in the prospectus and periodic reports. The FSA revised the guidelines to specify that an investment trust management company is permitted to refer to a company-wide stewardship policy if a specific investment strategy does not have its own dedicated policy. ICI Global raised this need for clarification in our response to the FSA's consultation draft.<sup>[6]</sup>

#### **Investment Trusts established before March 2023**

The FSA proposed that investment trusts established before March 2023 that include ESG-related terms but do not fit within the category of ESG Investment Trusts would need to include a disclaimer in the fund's materials but would not be required to change the name of the fund. The final guidelines now recommend that fund managers change the fund's name to exclude ESG-related terms as soon as possible. Regarding key words that would be considered ESG-related, the FSA indicated that it will not provide a set list, noting that the landscape of ESG is evolving rapidly.

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## Notes

[1] Announcement of Response to the FSA's Consultation on the Proposed Amendment of the Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, etc. regarding ESG Investment Trusts, available at <https://www.fsa.go.jp/en/news/2023/20230331/20230331.html>. Provisional English Translation of Revised Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc., available at <https://www.fsa.go.jp/news/r4/shouken/20230331-2/03.pdf>.

[2] Call for Public Comment on Proposed Partial Amendments to the Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, etc. regarding ESG Investment Trusts, available at <https://www.fsa.go.jp/en/news/2022/20221219/20221219.html>.

[3] Summary of opinions received concerning on the Proposed Partial Amendments to the Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, etc. regarding ESG Investment Trusts (Primarily in Japanese only), available at <https://www.fsa.go.jp/news/r4/shouken/20230331-2/01-2.pdf>.

[4] ICI Global Comment Letter to Japan FSA Consultation on Supervisory Guidelines for ESG Funds, available at <https://www.ici.org/system/files/2023-01/23-global-cl-fsa-guidelines-esg.pdf>.

[5] Sections (4) Resources and Due Diligence, i. Organizational Resources, and ii. Use of ESG Rating and Data Providers.

[6] See ICI Global comment letter, *supra* note 4.