

## **IRSG response to the FCA's Guidance consultation on the Anti-Greenwashing rule**

### **About the IRSG**

The International Regulatory Strategy Group (IRSG) is a joint venture between the City of London Corporation and TheCityUK. Its remit is to provide a cross-sectoral voice to shape the development of a globally coherent regulatory framework that will facilitate open and competitive cross-border financial services. It is comprised of practitioners from the UK-based financial and related professional services industry who provide policy expertise and thought leadership across a broad range of regulatory issues.

The IRSG welcomes the opportunity to respond to the FCA's Guidance consultation on the Anti-Greenwashing rule. We support the principles set out in the FCA's anti-greenwashing rule and welcome the supporting guidance. We would like to highlight the following comments from our members to clarify some issues of uncertainty.

### **Key points:**

- We would welcome clarification from the FCA on how the Guidance on the Anti-Greenwashing rule guidance applies to capital markets.
- We would like to highlight the challenges companies face with ESG data gaps and reliance on third party providers.
- We would urge the FCA to consider proportionality, and recognise, through ongoing supervision, that the environment for ESG data is still in its infancy.
- We would value more guidance from the FCA on images, as this is a relatively new concept with less clarity on application.

**Consultation question 1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?**

### **Scope**

The IRSG understands that the guidance will apply to firms' own products and services. On this, we would welcome clarification from the FCA on how the guidance applies to capital markets. Furthermore, how does the anti-greenwashing rule / guidance apply in situations where claims are made by third party issuers about their own security issuances, where the claim is subsequently communicated by authorised firms at the direction of the third party issuers. Firms have and will continue to seek confirmations from third party issuer clients on the accuracy and completeness of the information included in the third party issuers' offering documents, but it is not clear whether any additional steps are required as a result of the guidance. In general, it would be helpful to understand what the FCA would expect and consider to be reasonable steps in this regard, particularly where a firm relies on a third party.

In addition, we would welcome clarification from the FCA whether the scope applies to all authorised firms, including foreign firms who fall under the FCA's overseas fund regime. Our understanding is that the rule applies to regulated products and services and that existing rules and guidance relating to communications and financial promotions continue to apply to materials that include references to the sustainability characteristics of a product or service (for example, relevant exemptions). It would be helpful if the FCA could confirm this understanding of the scope of the rule and the way that it interacts with existing rules on communications and financial promotions.

## Data challenges

The guidance consultation states that firms should consider the whole life cycle of a product or service when making sustainability claims and consider which elements of the life cycle are most likely to be of interest in a decision-making process. Members are concerned that in practice the data to compare the full life cycle is not necessarily available. There are challenges companies face with ESG data gaps and reliance on third party providers. Firms' net zero ambitions and financial product manufacture have a degree of reliance on third party providers of ESG data and ratings, including due to differing ESG company-level reporting regulations globally and practical considerations around sourcing and collating data. IOSCO notes that quantitative disclosure may be limited and are often not based on consistent methodology, while qualitative disclosures raise issues of consistency, reliability, and comparability. Addressing this market failure is an industry wide challenge, particularly given that financial institutions are reliant on ESG data from outside the sector.

To this end, the FCA should help catalyse solutions in the real economy by convening public-private partnerships. One example of this is the Monetary Authority of Singapore (MAS) and Singapore Exchange (SGX Group) jointly launching ESGenome<sup>1</sup>. This is a digital disclosure portal for companies to report ESG data in a structured and efficient manner and will allow for investors to access such data in a consistent and comparable format.

In parallel, we hope that the recently published Code of Conduct for ESG Ratings and Data products providers<sup>2</sup> will help to address some of these challenges. We support the ongoing work around regulatory oversight of ESG Ratings and ESG Data providers and look forward to HMT's proposals that are expected in Q1 2024.

We would also welcome clarification how the dates suggested would play with the availability of more data associated with transition finance (TPT) and the forthcoming UK's adoption of ISSB standards.

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<sup>1</sup> <https://www.mas.gov.sg/news/media-releases/2022/mas-and-sgx-group-launch-esgenome-disclosure-portal-to-streamline-sustainability-reporting-and-enhance-investor-access-to-esg-data>

<sup>2</sup> <https://www.irsg.co.uk/assets/DRWG/DRWG-Code-of-Conduct-for-ESG-Ratings-and-Data-Products-Providers.pdf>

**Proportionality**

Due to the aforementioned data challenges, we would urge the FCA to consider proportionality (e.g. when firms undertake reasonable due diligence and rely on credible external sources in good faith), and recognise, through ongoing supervision, that the environment for ESG data is still in its infancy. This could take the form of safe harbour (e.g., where financial firms are required to make mandatory disclosures, but relevant data is not yet available) and / or supervision proportionality in implementing disclosure requirements as the quality of data matures.

We would suggest that a proportional approach should be taken in relation to cases of greenwashing that involve a degree of fault (e.g. intentionality or negligence) by one market participant whilst another market participant is not at fault and has in place reasonable due diligence and risk management processes to mitigate greenwashing risks. For example, in a bond issuance, a financial institution acting as underwriter may have conducted appropriate due diligence but be unaware of a misleading statement included by the issuer in the offering documents or resulting from good-faith reliance on data that subsequently proves to be inaccurate or where the issuer misleadingly labels a product as sustainable and takes full responsibility for such label. To this end, we would suggest that responsibility to adhere to the greenwashing rule should be reflective of the relative roles each FCA-authorized firm plays in the product or service.

A proportionate approach will ensure that firms are not discouraged from adopting ambitious long-term sustainability goals on a voluntary basis, by recognising that aspects of firms' decarbonisation pathways depend on factors outside their own control (e.g. reliance on government policy or the availability of new technologies) and a resulting failure to achieve those targets would not in itself amount to greenwashing, providing those risks or dependencies have been clearly articulated.

**Cross-application of guidance**

The guidance consultation states that the FCA "expects the anti-greenwashing rule and associated guidance to [...] help clarify existing requirements and expectations for firms as outlined in the FCA Handbook, consumer protection law, CAP and BCAP Codes, and the CMA's and ASA's corresponding guidance." We would welcome clarification from the FCA whether the FCA has authority to confirm cross-application of Guidance to CAP/ BCAP/ CMA/ ASA, and how this would work under the proposed or current FCA guidance.

**Clarification of terms**

The FCA state that in practice, the anti-greenwashing rule means sustainability references should be correct and capable of being substantiated; clear; complete; and have fair and meaningful comparisons. We appreciate the FCA contextualising the anti-greenwashing rule and providing additional information on its practical application, however we have concerns that the difference between these new four expectations and the four expectations set out in the rule itself may cause

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confusion for firms and for consumers. We suggest it may be helpful for the FCA to connect this additional colour with the binding provisions of the rule. There could for instance be sub-headings for each of 'fair', 'clear', 'not misleading' and 'consistent with the 'sustainability characteristics of the product or service', with the corresponding additional colour/ guidance on application included under each.

**Consultation question 2: Do you have any comments on the proposed guidance including the examples given?**

In addition to the existing examples that feature negative framing, we encourage the FCA to publish additional examples on what good disclosure would look like. In addition to application to funds and products, additional examples related to portfolio management services and other FCA-regulated activity would be helpful or related to non-retail clients.

It would be helpful to have an example relevant to paragraph 28 of the guidance, and the concept of a how information about the firm itself may be considered part of the 'representative picture' of the product or service.

We would value more guidance from the FCA on images, as this is a relatively new concept with less clarity on application. Example 3 refers to a mixed purpose web page with a 'green' image. It would be helpful to clarify whether using a green image in the context of a single, credible green product is still allowed or whether it would fall foul of Guidance as firms may provide other traditional finance/ services to high-emitting companies and sectors. The use of some imagery and colour (green), in particular if part of a firm's logo or brand, would not necessarily mean the firm is making a sustainability claim and cannot then be deemed misleading. We do not believe that a firm should be prohibited or worried about using green font/logo in isolation.

**Consultation question 3: Do you agree that the guidance should come into force on 31 May 2024?**

We are broadly supportive of the implementation date of 31 May 2024. Some members are in favour of synchronising the date with the FCA's naming and marketing rules for asset managers that will come into effect from 02 December 2024.

The IRSG would welcome the opportunity to discuss the guidance with the FCA in more detail, and would like to propose setting up a roundtable with some key IRSG stakeholders following the deadline of the consultation to help clarify residual areas of uncertainty.

For any questions or clarifications please contact: [IRSGsecretariat@cityoflondon.gov.uk](mailto:IRSGsecretariat@cityoflondon.gov.uk)