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**The FCA's Sustainability
Disclosure Regime:
A Practical
Implementation Guide**



B. The FCA's Anti-Greenwashing Rule

This is the second briefing in a [series of alerts](#) focused on the Sustainability Disclosure Requirements (SDR) regime. As part of the SDR, all UK authorised firms will be required to comply with an anti-greenwashing rule which requires sustainability-related claims to be clear, fair and not misleading. The FCA is currently consulting on guidance that will support the new rule. This briefing provides a detailed review of the new anti-greenwashing rule, including practical issues that firms should bear in mind.

1. What is the Anti-greenwashing Rule?

The UK "anti-greenwashing rule" (ESG 4.3.1R), a key component of the [SDR](#), requires FCA-authorized firms to ensure that any references they make to the sustainability characteristics of their financial products and services are:

- (i) consistent with the sustainability characteristics of that product or service; and
- (ii) fair, clear and not misleading.

This rule is intended to allow the FCA to challenge firms and – if necessary – to take appropriate action if it considers that they are making misleading claims about their products or services.

However, in an acknowledgement that the FCA Handbook provides limited detail on how regulated firms should interpret and apply this new standard, the FCA is consulting on a set of detailed guidelines designed to give substance to the new rule¹. These new guidelines will be implemented alongside the SDR, and the FCA regards them as a key component of the new reform package.



Fair, clear and not misleading: although the "fair, clear and not misleading" standard was only recently extended to ESG-related statements, it is familiar from existing regulations on marketing and customer communications, and from the Principles for Businesses. The FCA has notably relied upon the fair, clear and not misleading standard as the basis for a number of non-ESG related enforcement actions, given that its broad nature forms a convenient basis to strike out customer communications perceived as misleading in some way. UK regulated firms should therefore ensure that they review communications against the guidelines once they have been finalised.

Timing



Despite the fact that the guidelines are still at consultation stage, the FCA has proposed that – once finalised – they will enter into force on 31 May 2024. Needless to say, this is a fast lead-in time and UK firms should monitor when the final guidelines are published.

¹ <https://www.fca.org.uk/publication/guidance-consultation/gc23-3.pdf>

2. Scope

Which firms will the guidelines apply to?

The anti-greenwashing rule, and therefore the new guidelines, apply to all FCA-authorized firms, including firms that approve financial promotions for communication in the UK. This includes firms dealing with both retail and professional clients.



Financial promotions and the anti-greenwashing rule: the new guidelines are proposed to apply not only to UK authorised persons marketing their own investment services and products, but also to firms that approve financial promotions for unauthorised persons. Such firms frequently act as a "gateway" for non-UK firms seeking to promote their services to potential UK clients and investors.

Along with the Financial Promotions Gateway, this development will increase potential regulatory exposure for firms that approve financial promotions. Such firms will, for instance, need to consider whether they are in a position to verify sustainability disclosures, and whether additional contractual protection may be required.

Which statements is the FCA concerned by?

The FCA consultation makes clear that the anti-greenwashing rule applies to all communications about financial products or services which refer to the environmental and/or social (aka "sustainability") characteristics of those products or services. The consultation paper states that a sustainability claim could include, but is not limited to, "claims relating to the environment, climate or climate change, biodiversity and nature, social issues, or corporate social responsibility".

There are a few points to note here:

- The definition of "sustainability" goes beyond environmental / climate-related claims to cover claims relating to "social issues", and even corporate social responsibility initiatives.
- There is a less of a focus, however, on claims regarding governance, with the FCA noting that:



We consider governance to be an enabler of environmental or social outcomes, rather than an end in itself, and we refer to 'sustainability characteristics' as 'environmental or social characteristics'.

- The FCA is not solely focused on sustainability-related references appearing in formal offering documents, but also refers to their use in targets, policies, and images.

3. Key Principles

The draft guidelines describe four key aspects of compliance with the anti-greenwashing rule, and provide illustrative examples. Specifically, the guidelines would require firms to ensure that their sustainability-related claims are:

- correct and capable of being substantiated;
- clear and presented in a way that can be understood;
- complete, in the sense that they should not omit or hide important information and should consider the full life cycle of the product or service; and
- fair and meaningful in relation to any comparisons to other products or services.

The FCA goes on to draw out a number of points that firms should bear in mind when applying these principles, detailed below.

(i) Evidencing claims

As a threshold point, the FCA stresses that any claims a firm makes should be factually correct. In addition:

- Claims should not exaggerate the sustainability or positive social and/or environmental impact of a product or service.
- Firms should ensure that they do not provide conflicting or contradictory information when describing the sustainability profile of a product or service.
- Firms should be able to support their claims with "robust, relevant, and credible" evidence. Where a firm's claim makes specific reference to supporting evidence, it may wish to publish that evidence alongside the claim.

(ii) Providing a balanced picture

The FCA stresses in its consultation that claims should convey a representative picture of the product or service, and that important information with the potential to influence decision-making should not be omitted or hidden. This suggests that positive statements on sustainability should be balanced with transparency around any negative outcomes a product may have.

Firms should ensure in particular that:

- Claims do not solely highlight positive sustainability impacts and disguise negative impacts. In other words, claims should be presented in a balanced way and should not focus solely on the positive sustainability characteristics of a product or service, where other aspects may have a negative impact on sustainability.
- Where claims are only true if certain conditions or caveats apply, those conditions or caveats should be clearly and prominently stated.
- The limitations of any information, data or metrics used in a claim should be clearly and prominently disclosed.
- Firms should consider the entire life cycle of a product or service when making sustainability claims.

(iii) Comparative information

Any comparisons a firm makes (for example between its products and others on the market, or between a previous iteration of the same product and a new version) should be fair and meaningful.

Firms should ensure that:

- Claims comparing the sustainability characteristics of products and services make clear what is being compared, how a comparison is being made, and compare like with like.
- Claims do not give the impression of making market-wide comparisons where they are based only on a limited sample of data.
- They are cautious when making claims about the extent to which a feature of a product or service has sustainability characteristics in circumstances where it may simply be meeting a minimum standard of compliance with existing legal requirements.



Practical issues to bear in mind:

Once the finalised guidelines have been published, UK regulated firms will need to consider how they apply in the context of their business, and whether policy updates are required. In the meantime, a number of practical points arising out of the draft guidelines appear likely to remain relevant in the final draft. For example:

- Many UK firms already spend a significant degree of time and resource on ensuring that they are compliant with the FCA's COBS 4.5 rules. COBS 4.5 sets out requirements on the use of past performance data, future projections and comparison data in marketing and other client-facing materials. The FCA's new guidance on the anti-greenwashing rule draws on a number of these concepts, and will therefore require the same level of oversight to be applied to sustainability claims. Existing internal review and approval processes could be leveraged for these purposes.
- Compliance teams should bear in mind that information about the firm itself, along with product-level information, could be considered part of the "representative picture" that clients and investors take into account when making decisions regarding financial products and services. Firms should therefore consider how firm-wide sustainability claims may interact with product-level claims, and whether the combination could be perceived to offend against the fair, clear and not misleading rule.
- The FCA makes clear that its guidelines are intended to be broad, and will cover not only image advertising, but also situations where the visual presentation of information (including graphics) gives the impression that a product or service takes into account sustainability where in fact it does not. Marketing and website materials will therefore need to be reviewed in a holistic way.
- Firms may wish to review their use of social media, where text restrictions can make it more difficult to provide balanced information on sustainability. The FCA's existing guidance on marketing undertaken through social media, which explains how positive information about a firm's investment products can be balanced with appropriate risk warnings, could be used to inform approach².
- Interestingly, the FCA mentions both the ASA and CMA in its guidance. Firms should in particular be aware of this dual source of liability from both the FCA and the ASA, and how relevant ASA guidance should be applied in the context of marketing activities.

² <https://www.fca.org.uk/publication/finalised-guidance/fq15-04.pdf>

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