

# The FCA's Anti-Greenwashing Rule: Industry Reaction and Timing Concerns

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**PRACTICES** Investment Management, Environmental, Social and Governance

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By 2026, it is expected that ESG-oriented assets being managed globally will rise to \$34 trillion. As such, it is no surprise that firms are trying to meet the ever-increasing demand for sustainable investments. This has led to concerns from regulators of exaggerated and misleading sustainability-related claims about products being made to garner such investments.

As a result, on 28 November 2023, the UK's Financial Conduct Authority (FCA) published a consultation on guidance on the "anti-greenwashing rule" ([GC23/3](#)), a rule which sits within a wider package ([PS23/16](#)) being introduced to tighten requirements surrounding sustainability disclosures. The FCA is of the view that "financial products that are marketed as sustainable should do as they claim and have the evidence to back it up." The anti-greenwashing rule, alongside its guidance, is due to come into force on 31 May 2024, with the remainder of the Sustainability Disclosure Requirements (SDR) framework taking effect on 2 December 2024.

PS23/16 followed the FCA's Consultation Paper (CP22/20) (Sustainability Disclosure Requirements (SDR) and investment labels), which we explored [here](#).

## Responses to the consultation

Having closed the consultation on 26 January 2024, all respondents expressed supportive views in favour of the introduction of the anti-greenwashing rule. However, all respondents, across various markets, raised concerns over clear gaps within the draft guidance.

## Requests for further guidance

A recurring theme across responses concerned a current lack of clarity around various terms used.

The draft guidance states that sustainability-related claims must be "complete," "substantiated" and "understood." There is concern that the use of such terms creates uncertainty due to the subjective nature in which they can be interpreted. Numerous respondents have requested further examples to be provided to aid understanding in both how these terms will be used and whether compliance under various other disclosure rules or international standards, such as the PS23/16 and the existing prospectus rules regime, would result in "complete" disclosure under the guidance.

## ESG characteristics

While the guidance clearly focuses on environmental claims, social claims are also referenced. There is concern that as drafted, there is significant interchangeability of these characteristics. As such, respondents have requested a greater level of differentiation between environmental and social characteristics for ease of compliance. While the FCA could respond to this concern with the provision of a specific list (as requested by some), it could be simpler to highlight the inevitable overlap among characteristics, meaning firms should consider all potential characteristics prior to making any claim.

## Proportionality

As drafted, the guidance seems to cater solely to concerns around the vulnerability of retail investors. It is assumed that professional investors have a certain level of knowledge and experience in relation to their investments. Therefore, a proportionate approach is taken in relation to the level of information related to sustainability provided. Furthermore, respondents have suggested that the level of detail required in these claims should be proportional to the type of communication being distributed, suggesting the need for distinction between the different types (e.g. promotions vs. non-commercial).

A two-tiered approach may be needed to address these concerns and appropriately address market participants. First, the nature of the communication should be established; second, the level of knowledge held by the investor should be determined. Varying thresholds of disclosure can then be set accordingly.

## Timeline

All respondents have questioned the short timeline, with the rule and guidance coming into force in May. While there has been a consensus of supportive skepticism surrounding timing, respondents' suggestions on how to deal with this have varied. Some have recommended aligning implementation with the remainder of the SDR framework at the end of the year (given the extensive internal procedures that will have to be introduced in some firms). Others have taken the view that simply expediting the publication of the finalised guidance should allow sufficient time. A staggered approach has also been proposed – keeping the implementation of the rule as is and delaying the detailed guidance to December.

On balance, the finalised guidance may not afford firms (particularly those smaller firms with fewer resources) sufficient time to undertake the actions necessary to ensure compliance, particularly if there are material deviations from the draft guidance. These are amplified when the substantive changes following the consultation relating to the PS23/16 (CP22/20) are taken into consideration.

An update as to how these concerns are addressed will be published once the FCA has finalised its guidance. The FCA intends to publish the finalised guidance in “early 2024.”

If you have any questions, please contact one of the lawyers listed below.