

23 January 2024

Q1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?

Q2: Do you have any comments on the proposed guidance including the examples given?

Q3: Do you agree that the guidance should come into force on 31 May 2024?

Introduction

INREV* welcomes FCA GC23/3, the FCA consulting on guidance on the anti-greenwashing rule and the opportunity to respond to the consultation questions. We share the FCA's views expressed in GC23/3. In particular, tackling greenwashing is a regulatory priority and consumers must be protected from greenwashing so they can make informed decisions that are aligned with their sustainability preferences.

Furthermore, we appreciate that the guidance aims to create a level playing field for firms whose products and services genuinely represent a more sustainable choice and who are making supportable claims about their products' sustainability characteristics. Therefore, we strongly support the FCA's expectation that firms' sustainability-related claims about their products and services should live up to what they are claiming, and firms should have the evidence to back them up.

Q1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?

INREV appreciates the proposed guidance clarification of the anti-greenwashing rule; however, we would like to make a few comments. While we agree with the approach taken in GC23/3 that the rule applies to all FCA-authorized firms irrespective of whether they are subject to the Consumer Duty, we understand that non-UK clients and investors are technically not in the scope of the proposed anti-greenwashing rule. This is because the rule only applies when a firm communicates with a client in the UK concerning a product or service or generally communicates a financial promotion to a person in the UK. Consistent with the FCA's approach of treating customers fairly (TCF), we suggest that the rule should apply to all non-UK clients and investors whether UK or non-UK.

Implementing the UK Green Taxonomy would significantly enhance market transparency, consistency, and verification in the context of applying anti-greenwashing rules for benchmarks, a measure we fully endorse. Furthermore, we acknowledge the support that the Green Technical Advisory Group (GTAG) provides to the government on the design and implementation of a UK Green Taxonomy.

To provide more clarity, we urge GTAG and the government, specifically HM Treasury, to expedite the development and implementation of the UK Green Taxonomy to ensure it is operational before the FCA's proposed deadline of May 31, 2024. Given the government commitment to deliver a UK Green Taxonomy – a tool to provide investors with clear definitions of the economic activities that should be labelled as green – this will support the quality of standards, labels and disclosures used in the industry for green finance activity.

Furthermore, considering that claims should be correct and capable of being substantiated, we encourage the FCA to clearly state that it can request market participants to disclose evidence to support claims to investors and supervisory authorities. In the case of funds open only to institutional investors, however, such evidence should not be required to be made publicly available.

Moreover, we acknowledge that in the real estate industry, most evaluations and certifications are constrained by developing market practices, data availability and quality. We believe that it is reasonable for companies to use widely accepted assessments and certifications as proof of ESG claims made at the product level and urge the FCA to confirm the acceptability of this practice.

With regard to investments that allow managers only limited control or influence, such as debt investments and investments in collective investment undertakings, we believe that companies should be able to link sustainability statements to the processes of selecting, evaluating, and monitoring investments rather than to the performance of the underlying assets. We urge the FCA to include explicit recognition that this approach is acceptable.

Considering that 'claims should be clear and presented in a way that can be understood', the guidance helpfully explains what should be avoided. However, considering that terms such as 'vague', 'broad', or 'general' are highly subjective, we urge the FCA to provide more clarity regarding the factors that will be used to determine whether a claim is sufficiently clear to its audience.

Finally, since claims should be complete and should not omit or hide important information, we emphasise that the level of detail required should be proportional to the type of communication and distinguish between fund promotions and non-commercial communications.

Q2: Do you have any comments on the proposed guidance including the examples given?

We would welcome more examples that apply to real estate and real estate fund scenarios. We also encourage the guidance that contains examples that refer to real estate and are designed to help firms in the real estate sector understand what the guidance means in practice.

We propose that the FCA incorporates the following example in any explanatory notes relating to the anti-greenwashing rule:

'In the promotions for a fund that will hold underlying real estate assets, an investment manager makes environmental or social claims, the manager should support them with reference to market best practice metrics.'

We also endorse and consider it appropriate for current purposes that the metrics contained in the Submission to the FCA/ International Sustainability Standards Board/Secretariat to the UK Transition Plan Taskforce entitled 'ESG Metrics for Real Estate' dated 12 January 2024¹ be used as a benchmark of market best practice, on the basis that:

'These principles and real estate specific metrics aim to facilitate consistency of disclosures across the UK as well as internationally where the TCFD's recommendations will apply. While the principles are aimed at supporting consistent reporting and disclosure by international asset managers, local supplements may be appropriate or needed for domestic real estate-specific metrics. In the context of realising this aim, the Working Group looks forward to progressing the dialogue with the FCA and

¹<https://www.inrev.org/tax-regulations/regulations/sustainability-related-regulations>

resolving a time frame for appropriate implementation, recognising that some metrics are implementable sooner than other metrics.’

In addition, INREV would be pleased to engage with you further and on a continuing basis to develop examples that would be applicable in real estate and real estate fund scenarios which could be incorporated in future explanatory notes relating to the anti-greenwashing rule. Examples could include illustrations of the tests that the FCA will apply to determine compliance, where examples of non-compliant claims have been made, and/or model examples that meet the guidance requirements.

Q3: Do you agree that the guidance should come into force on 31 May 2024?

We welcome the FCA’s goal to review the responses to the consultation and, subject to the responses received, its intent to publish the final guidance. We endorse the FCA’s proposal that the guidance comes into force on 31 May 2024, which would ensure alignment with the timeframe envisaged for implementing FCA PS23/16. We strongly recommend an expedited release of the final guidance to enable firms to effectively prepare for compliance before the FCA’s deadline of 31 May 2024.

We request, for the benefit of firms that need to comply with wider SDR requirements, a joined-up set of guidance and timings for these two components: the anti-greenwashing rule and the SDR requirements. This would assist in improving consistency, alignment and efficiency of reporting expected from these firms.

Conclusion

We hope that our comments make a constructive contribution to the important issues raised in the FCA GC23/3 Greenwashing Consultation. We remain available to provide any further information the FCA would find helpful.

For any inquiries, please contact:

Jeff Rupp
INREV Director of Public Affairs
jeff.rupp@inrev.org
+31 6 300 97 666

* INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. With approximately 500 members, including institutional investors such as pension funds, insurance companies and sovereign wealth funds from around the globe, as well as investment banks, investment managers, fund of funds managers and advisors, we represent all facets of institutional investment into real estate in the UK and Europe through non-listed investment funds, joint ventures, club deals and separate accounts.