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Dear All

RE: GC23/3: Guidance on the anti-greenwashing rule

We are pleased to respond to GC23-3: Guidance on the anti-greenwashing rule. The UK Sustainable Investment and Finance Association (UKSIF) is the UK's leading membership network for sustainable finance, bringing together more than 300 financial institutions and investors collectively managing more than £19trn in global assets under management.

UKSIF had an extensive involvement in the development of the FCA's sustainability disclosure requirements regime (SDR), the final form of which was released by the FCA on 28 November 2023. This included the submission of a response to the FCA's CP122/20: Sustainability Disclosure Requirements and investment labels, and close engagement with the FCA on the proposals, including as a member of the Disclosures and Labels Advisory Group, which advised the FCA on the design of SDR. The clarification and expansion of the sustainability disclosure regime is integral to the UK's aim of becoming a world leader for green and sustainable investing, and SDR is a key milestone for this.

We strongly support the FCA's anti-greenwashing rule and its objectives to ensure that sustainability claims from all authorised firms in regards to their funds and services are fair, clear, and not misleading. We expressed our support for this rule in our initial response to the SDR consultation, recommending closer alignment between the rule and the regulator's guiding principles for ESG and sustainable funds laid out in its 'Dear Chair' letter in July 2021.

Set out below is our detailed response on each of the queries raised in the guidance consultation.

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

The guidance arguably goes further than was initially expected of the anti-greenwashing rule. Whilst we advocate the introduction of the rule, for many firms it will require a step-up in processes and procedures and a reassessment of existing marketing materials and publications. We discuss this further at our response to Q3 below.

In respect of further clarification, one potential issue we identify is in regards to the requirement for sustainability-related claims to be "complete". In place of "complete", consideration could be given to using the term "fully representative". This could potentially help minimise litigation concerns for some firms - for example, in the event that new circumstances arise in terms of the fund's sustainability profile and performance over the life of the product, and the firm has not yet had the opportunity to re-review the product and its sustainability claims. We also note that the data available on each fund will differ, and some flexibility should be permitted to avoid introducing overly onerous obligations on collecting new information. An example here is the reference in the guidance to life cycle assessments, which may not be carried out for all products and services and may not be practical to introduce.

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On the topic of litigation risks more generally, the regulator and industry may need to consider how these risks can be minimised. Thought may need to be given on how to highlight to firms that even where they follow and implement the FCA's guidance, this may not be a "silver bullet" to avoid being held liable for misleading claims made to retail investors in regards to a fund with sustainability characteristics.

A further area where additional clarity would be beneficial for firms and consumers relates to the regulator's definition for references to environmental and/or social sustainability characteristics of financial products and services. Given the relatively loose definition provided here, and lack of a specific list of terms that may fall within the anti-greenwashing rule, ensuring compliance may be a complex process for some firms. Additional guidance or input from the regulator may be required to support assessments of what products and services may be within scope. We also recommend the regulator continue the process to harmonise the definitions and use of sustainability-related terminology by providing guidance that specifically refers to the joint work on [Definitions for Responsible Investment Approaches](#) by the Global Sustainable Investment Alliance (GSIA), PRI and the CFA Institute and highlighted in the SDR Policy Statement.

There may be a case to clarify the application of the anti-greenwashing rule to products marketed to institutional clients, not just retail clients. The existing guidance may need to be tweaked and/or expanded to reflect the more sophisticated needs and knowledge of institutional investors. The approach here could be aligned to the approach of the FCA under the rules set out in the Conduct of Business Sourcebook, which expressly modifies the "fair, clear and not misleading" rule for professional-only communications.

With respect to the use of the term "communications", this could be interpreted very widely given that references to environmental and/or social sustainability characteristics of financial products and services lie in many different areas, including those identified in the consultation: statements, assertions, strategies, targets, policies, information, and images. We strongly suggest that more clarity is given here on what falls within scope of being a "communication". As a specific example, it would be helpful for the FCA to confirm the position on firm-level communications which incidentally reference specific products or services, such as the annual accounts, annual report, TCFD statement, PRI statement and stewardship code disclosures, particularly given that institutional clients may review these as part of their investment processes. It is currently unclear whether the whole content of such publications would fall within the scope of the anti-greenwashing rule. This would require a greater level of due diligence for firms, and it would be helpful for the FCA to confirm that the rules will not be backwards-looking for historical reports of this type. It may be helpful to refer to definitions of communications that already exist in the FCA Handbook, (e.g. under the Fair, Clear and Not Misleading rule) in this regard.

Clarity may be required on the implications for overseas domiciled funds, particularly those with sustainability and climate-related terms in their fund names, and how consistency can be promoted across marketing rules adopted across jurisdictions. There is a question of enforcement and supervision of firms' delivery against the rule over time and steps the regulator may take in response to firms not meeting the expectations set out; for example, the implications for funds seeking to qualify for one of the labels. Clearer expectations could be outlined for firms seeking to demonstrate their compliance with both the anti-greenwashing rule and the Consumer Duty obligations. Additionally, where communications are compliant with disclosures rules in another jurisdiction, such as SFDR, there may be scope for the FCA to permit these to be deemed as compliant with the anti-greenwashing rule, without requiring additional due diligence and potentially minor amendments. For example, it would be helpful for the FCA to confirm if an SFDR annex to a prospectus is exempt from the anti-greenwashing rule, given the language used therein will have been prepared in accordance with international regulation.

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

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We would recommend the finalised guidance outlines additional illustrative examples of funds/products (across a range of investment strategies and asset classes) and the types of disclosures that may be useful for these. This could also include examples which may be viewed as making deliberately misleading and inaccurate sustainability-related claims. It would be useful for FAQs on the rules to be provided as part of ongoing guidance from the regulator.

Strengthened guidance on stewardship outcomes reporting, particularly to ensure firms do not overstate the impact their stewardship has had on investee company actions would be helpful.

Some further examples in relation to the requirement that sustainability references are correct and capable of being substantiated would be useful, particularly in relation to the “substantiated” element of this requirement. Substantiation is a subjective requirement and it may be useful for the FCA to provide examples of what evidence and supporting materials they would expect to see available here, to ensure a consistent standard is applied across the industry. For example, a fund could be labelled as “sustainable” where the focus is on fossil fuels as a transition fuel. Whilst it may be possible to substantiate the claim of these being transition fuels, marketing such a fund as sustainable may be misleading to the consumer.

Related to this, specifically in relation to the requirement that firms regularly review claims and any evidence, we note that sustainability is a rapidly evolving field. What may be considered an effective climate goal today may swiftly become outdated. For example, many financial products currently refer to climate action in the context of the reduction or minimisation of greenhouse gas emissions. However, since publication of the Working Group II and III contributions to the Sixth Assessment Report by the Intergovernmental Panel on Climate Change in 2022, there has been increasing recognition that effective climate action requires a focus on more than greenhouse gas emissions. The financial services sector is still adapting to this. It may be useful for the FCA to give some guidance, perhaps by way of a further example, as to how firms should be explicit on the scope and nature of their climate action steps and acknowledge that an action, whilst still worthwhile, may now be commonly considered insufficient of itself to fulfil the end goal. This links in to the litigation risks discussed above.

In relation to Example 5 set out in the guidance, it may be prudent to mention that ESG scores can also be biased due to out-performance on some factors, rather than improvement across the board. Any evidence provided should explain why outcomes are, for example, “sustainable”, rather than using the ESG score as conclusive evidence of sustainability.

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

The proposal for the formal application of the anti-greenwashing rule on 31 May 2024 is, in our view, largely the right approach. However, there could still be risks in terms of the smooth implementation of the rule in parts of the market, given that the majority of the SDR’s proposals come into force later than the rule.

There is a concern amongst our members that the timeframe between the release of the final form of the guidance and the proposed implementation date will not afford sufficient time for firms to read, digest and implement the finalised guidance before it comes into effect. We had originally anticipated that many of our members would, and should, be well-placed to meet the rule’s requirements. However, given the level of detail of the guidance, firms may need to set up new processes (e.g. record-keeping or publication) to ensure that they hold the necessary evidence on file and are making that publicly available where appropriate.

In addition, for efficiencies’ sake, firms may be reluctant to take steps to implement the draft guidance now in case there are substantive changes when the final guidance is released. This shortens the timeframe for compliance even further. One option to consider here would be for the anti-greenwashing rule to come into force on 31 May 2024, with the guidance to come into play on 2

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December 2024 with the remainder of the SDR framework. This would require firms to comply with the general principle of the anti-greenwashing rule, with the detail coming into play at a later date.

With that said, we would like to see the industry swiftly adopt proactive steps to promote compliance and a 'high bar' of practice in meeting the rule's requirements, particularly in light of the initial expectation that the rule would come into formal effect once the finalised SDR Policy Statement was published.

Firms should look to quickly carry out a number of steps in preparation and adopt a holistic approach as part of this. Actions points may include comprehensively evaluating the extent to which marketing materials and fund disclosures are consistent with a fund's sustainability profile; analysing the governance and oversight processes to ensure the fund's sustainability claims have been accurately articulated and evaluated; and putting in processes to regularly review sustainability-related claims and ongoing compliance with the rule.

We look forward to engaging with the regulator ahead of the final Policy Statement in the coming months, ensuring that the promotion of a more inclusive industry, and therefore more sustainable in the long term, remains front of mind for our membership going forward.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'James Alexander', written in a cursive style.

James Alexander  
Chief Executive