

SDR and labels policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

By email: gc23-3@fca.org.uk

26 January 2024

Dear SDR & labels policy team

Re: Guidance on the Anti-Greenwashing rule (GC 23/3)

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of over 600 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

We agree that sustainability-related disclosures should be fair, clear and not misleading, as is the case for all communications or financial promotions, and we welcome guidance to help firms understand the FCA's expectations under the new anti-greenwashing rule in ESG 4.3.1R.

We are responding to GC23/3 to raise two comments.

We note that the anti-greenwashing rule in ESG 4.3.1R is limited to communications with UK clients and financial promotions to UK persons. The "fair, clear and not misleading" rule in COBS 4.2.1R on which the ESG rule is based is accompanied by guidance making clear that it does not apply to excluded communications and non-retail communications. If it is the FCA's intention to apply the same approach to ESG 4.3.1R for the sake of consistency, it would be helpful if the final guidance (and the FCA rules) could clarify that the rule does not apply to communications unless they are either (a) made to UK clients of a firm or (b) financial promotions (other than excluded communications etc) to UK persons. If the FCA proposes a different scope, it would be helpful to note this explicitly in the guidance.

Second, we wish to raise a concern about the drafting in 'Example 2' on page 9 of the draft guidance and recommend a simplification and clarificatory amendment.

Claims should be correct and capable of being substantiated

Example 2 is intended to clarify the FCA's expectations of firms that sustainability claims should be correct and capable of being substantiated:

Example 2

In the promotions for a fund, an investment manager prominently displays a claim that all investments are reviewed for their sustainability characteristics. However, these sustainability characteristics are not actually a significant factor in the investment manager's decisions and not all investments are systematically reviewed in the investment process.

We agree that the claims firms make should be factually correct and capable of being supported by robust, relevant, and credible evidence.

However, Example 2 goes beyond what is required by the new anti-greenwashing rule. It does this by suggesting that a claim that investments are reviewed for their sustainability characteristics would be incorrect or not substantiated if sustainability characteristics are not also a "significant factor" in the investment manager's decisions (on whether to invest).

We agree it would be misleading for a firm to claim that all investments are reviewed for their sustainability characteristics when not all investments are systematically reviewed. We do not agree that it is incorrect or misleading to make that claim when sustainability characteristics are not actually a significant factor in the investment manager's decisions. We acknowledge that the example says that the claim is overstated where sustainability characteristics are not a significant factor in decision making and not all investments are systematically reviewed (emphasis added), but we think it would be much clearer if Example 2 in the draft guidance said:

In the promotions for a fund, an investment manager prominently displays a claim that all investments are reviewed for their sustainability characteristics. However, ~~these sustainability characteristics are not actually a significant factor in the investment manager's decisions and~~ not all investments are systematically reviewed in the investment process.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the above in more detail (please contact Tom Taylor ttaylor@bvca.co.uk / Nick Chipperfield nchipperfield@bvca.co.uk).

Yours faithfully,



Tim Lewis
Chair, BVCA Regulatory Committee