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Response by email to gc23-3@fca.org.uk

25 January 2024

Response to FCA Consultation GC23/3: Guidance on the Anti-Greenwashing rule

The Investment Property Forum (IPF) welcomes the opportunity to respond to the above consultation, particularly as it responded to the earlier consultation on the Sustainability Disclosure Requirements (SDR) and investment labels regime PS23/16

IPF is a national membership organisation of senior professionals, all active in the property investment and finance market. The organisation has a diverse membership of around 1,800, which includes fund managers, investment agents, accountants, bankers, lawyers, researchers, academics, actuaries and other related professionals.

The IPF's Mission is to enhance the understanding and efficiency of property as an investment, including public, private, debt, equity and derivatives, for its members and other interested parties, including government. The IPF has a dedicated ESG Special Interest Group (established in 2006), the members of which have engaged in previous government consultations and participated in working groups in relation to the development of guidance.

We are not a lobby organisation but one of our key priorities is to identify where legislation or regulation has, or will have, an impact on the market and to alert government and our members to any adverse or beneficial issues.

General comment
In responding to this consultation, we have had sight of, and agree with, the responses submitted by The Association of Real Estate Funds (AREF) and the European Association for Investors in Non-Listed Real Estate Vehicles (INREV).

We share the views of the FCA expressed in GC23/3, in particular with regards to:

- Creating "*a level playing field for firms whose products and services genuinely represent a more sustainable choice and who are making genuine claims about their products' sustainability characteristics*"; and
- The 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".*

Responses to the Consultation questions:

Q1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?
We agree that the proposed guidance helps clarify the anti-greenwashing rule but there are some areas where we think more clarification is required:

- ***'Claims should be correct and capable of being substantiated'**:*
  - It would be helpful to have confirmation that evidence to support a claim is not required to be voluntarily disclosed when a claim is made, but that the FCA can reasonably request for such evidence to be disclosed (and hence firms should therefore have such evidence available for disclosure to the FCA).
  - Where evidence is to be made publicly available, what is the definition of 'public'? Is this only to consumers of the product or through, for example, a public website?
  - In the real estate sector virtually all assessments and certifications have their limitations (due to developing market practice as well as data availability and quality). We request that the FCA's guidance should confirm that it is reasonable for firms to rely on the use of widely-accepted assessments and certifications as evidence of ESG claims made at the product level.
  - Please can the FCA confirm that, in respect of investments affording only limited control or influence (for example debt investments and investments in collective investment schemes), it is reasonable for firms to link the sustainability claims to investment selection, evaluation and monitoring processes rather than to the outcomes of the underlying assets.
  - Please can the FCA confirm that where professional clients request ESG-related information, which goes beyond the level of information usually provided for a product with no ESG objectives or characteristics, the overriding obligation for the firms is to provide to the client requested data (as long as the claims are true and capable of being substantiated).
- ***'Claims should be clear and presented in a way that can be understood'**:*
  - The guidance is helpful in explaining what should be avoided. However, defining 'vague', 'broad', or 'general' could still be subjective – how will this ultimately be determined whether a claim is truly clear to its audience?
- ***'Claims should be complete – they should not omit or hide important information'***
  - Please can the FCA acknowledge that the level of details relating to the claim, as well as the level of disclosures relating to limitations and qualifications, should be proportional to the type of the communication (social media post vs flyer vs pitchbook vs personal advice) as well as differentiate between financial promotions and non-marketing type of client communications.

Q2: Do you have any comments on the proposed guidance including the examples given?
It would be extremely helpful to have examples that are applicable in real estate and real estate fund scenarios in the guidance.

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 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 2024[1] 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 resolving a time frame for appropriate implementation, recognising that some metrics are implementable sooner than other metrics."

In addition, the IPF 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.

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.

We hope that our comments are helpful. Please contact Sue Forster, details below, should you require any further information.

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[1] https://www.inrev.org/tax-regulations/regulations/sustainability-related-regulations