TO: UK FCA
FROM: BlueMark
REGARDING: Anti-Greenwashing Rule Guidance Consultation

BlueMark's Response to the Anti-Greenwashing Rule Guidance Consultation

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 to clarify the anti-greenwashing rule, however we also see a few areas for improvement.

As context, BlueMark[1] is a leading provider of independent impact verification and intelligence for the impact and sustainable investing market. Our mission to "strengthen trust in sustainable and impact investing" is squarely aligned with the goal of the FCA's proposed anti-greenwashing rule and we are pleased to have the opportunity to respond to this consultation.

BlueMark's verification methodologies draw on a range of industry standards, frameworks, and regulations, including the Impact Management Project (IMP), the Operating Principles for Impact Management (Impact Principles), the Principles for Responsible Investment (PRI), SDG Impact, and the Sustainable Finance Disclosure Regulation (SFDR). We plan to also incorporate the new Sustainability Disclosure Requirements (SDR) into our methodologies, especially for clients operating in the UK.

In the course of this work, we regularly partner with private equity firms that are authorized by the FCA. This experience, along with our own proprietary Raising the Bar research[2], has enabled us to gain insight into the type of information that accurately portrays a fund's social and environmental performance to its stakeholders. Our research also contributed to Impact Frontiers' Impact Reporting Performance Norms (the Norms)[3], a framework for how impact investors should disclose their impact performance to external stakeholders (primarily LPs and other allocators).

Overall, we find that the proposed guidance clarifies the anti-greenwashing rule based on the following qualitative characteristics set forth by the Norms: **Relevance, Faithful Representation, Comparability, Verifiability, Timeliness and Understandability.**

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[1] https://bluemark.co/
[2] https://bluemark.co/raising-the-bar-2/
[3] https://impactfrontiers.org/work/impact-performance-reporting/#:~:text=The%20draft%20Impact%20Performance%20Reporting%20Norms%20are%20designed%20to%20support,which%20are%20commonly%20expressed%20concerns.

However, we also find that the guidance can be more explicit in the following areas:

1. Stating which marketing materials are the most relevant for scrutiny. For example, the FCA can specify if firms should focus their compliance efforts on their websites, internal or external-facing sustainability and impact reports, legal documents, consumer marketing efforts, or others. If all of the above, then the FCA can clarify if there is a hierarchy of importance among those mediums for the rule's implementation timeline.
2. Clarifying the scope of the rule with regards to materials that firms have already published. If a firm is required to amend all of its existing publications that make sustainability-related claims, then that would affect the rule's overall implementation timeline.

Finally, the FCA should consider that the market for sustainable financial products is evolving and that the rule will need to be updated accordingly. In the future, if it becomes apparent that different asset classes require substantially different approaches, then the guidance can be updated with specific guidance for the asset classes that are most prevalent in the sustainable and impact investing market.

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

The FCA could strengthen the proposed guidance by making an explicit link between the guidance and the disclosure requirements contained in the Policy Statement on Sustainability Disclosure Requirements (SDR) and Investment Labels. In the guidance documentation, the FCA should reference the requirement that all funds making sustainability-related claims and references are subject to the same disclosure requirements as labeled products (pg. 49 of the Policy Statement). Therefore, to ensure compliance with the anti-greenwashing rule, fund managers should apply the same standards for transparency and accuracy in disclosures as they do for labeled funds.

Specifically, the guidance to ensure that sustainability-related claims and references are "correct and capable of being substantiated" should also provide examples of:

1) The types of evidence that would substantiate the claims, such as credible sustainability standards, appropriate KPIs for comparison to other products, and governance protocols to ensure the ongoing monitoring of the claims' compliance with the rule.
2) The processes and procedures that would allow claims to be substantiated, such as independent assessment by an in-house or third-party qualified practitioner. Those qualifications should also be made explicit and be based on existing standards for sustainability reporting assurance, namely ISAE 3000. The FCA could also provide an example within the guidance of the value of independent assessment to the consumer.

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

The types of investors that we work with have not expressed any concerns about complying with this regulation by the proposed implementation date. However, we imagine some investors may require a longer runway, so we encourage the FCA to be mindful about these varying timelines as the guidance comes into force.