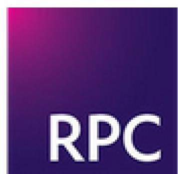

Staying green and true: navigating the new FCA anti-greenwashing rule

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In an era where sustainability is now firmly on the investor agenda and under increasing scrutiny, the FCA has recently introduced a new 'anti-greenwashing' rule to prevent firms from exaggerating the green or social credentials of their products and services. The implications of the new rule are significant, with the risk of regulatory action and civil claims for non-compliance. Against this backdrop, IR professionals can play a key role in helping ensure transparency with investors, raising the firm's profile in the sustainability space and mitigating legal risk.

What is the anti-greenwashing rule?

The anti-greenwashing rule came into effect on 31 May 2024 and applies to all FCA-regulated firms. It governs communications with UK clients and the promotion of financial products and services within the UK. Under the new rule, which is contained in section 4.3.1R of the FCA ESG Sourcebook, these communications must be "fair, clear, and not misleading," reflecting the true sustainability profile of the product or service. The rule applies regardless of whether the firm is involved in 'sustainability in-scope' business, such as managing a UK UCITS/AIF, and covers interactions with businesses and individuals. Although sustainability is not precisely defined, it typically refers to the environmental or social aspects of products or services. In essence, firms must ensure their sustainability claims are accurate and genuine.

The rule is part of a package of new measures announced by the FCA last November to improve trust and transparency of investment products, including new rules and guidance on sustainability disclosure requirements and investment labels. The FCA's laser focus on sustainability demonstrates the increasing importance of ESG in investment decisions with a now widespread understanding across the investor community that ESG factors can have a material impact on a firm's financial performance and therefore present both risks and opportunities. The FCA's new rule also sits alongside similar rules in the EU under the Sustainable Finance Disclosure Regime (SFDR) which applies to financial products based or marketed in the EU. Notably however the EU regime does not include a specific anti-greenwashing rule for the EU financial sector.

What does the anti-greenwashing rule require?

Firms must ensure that all sustainability claims adhere to the four 'Cs':

- **Correct:** Firms must have evidence to support green claims for as long as they are advertised. For example, if a fund is promoted as "fossil fuel free," it should not hold investments in companies using fossil fuels. Broad and vague terms like "sustainable" or "green," which are difficult to substantiate, should be avoided.
- **Clear:** Firms must tailor communications to their target audiences, avoiding technical jargon for individuals who may not be familiar with industry terms. Disclosures are assessed as a whole, so visuals and language should not create misleading impressions.
- **Complete:** Firms should provide a full picture, including both positive and negative aspects of their products or services. For example, if a bond supports both sustainable projects and fossil fuel efficiency improvements, omitting the latter could be misleading.
- **Comparisons:** Firms must explain any comparisons made to enable informed decision-making. Information should not be cherry-picked about their own or comparable products and services.

What happens if a firm breaches, or is suspected of breaching, the anti-greenwashing rule?

As the rule has only recently come into effect, FCA enforcement actions for breaches have not yet been observed, though this is expected to change. Firms that violate the rule may face enforcement actions, including fines for serious misconduct and the potential obligation to remediate impacted customers.

Even if a breach is not established, FCA investigations into compliance are likely to increase. Moreover, firms and their directors could face civil claims, such as direct customer claims for misleading sustainability statements, activist investor derivative claims aimed at enforcing compliance, and conceivably even securities claims. Defending these claims, regardless of merit, will incur costs. Additionally, the potential reputational damage from such claims or investigations could be significant, necessitating PR efforts to mitigate the fallout.

Takeaways

Our 'top tips' for firms and IR professionals to help guide compliance with the FCA's anti-greenwashing rule are:

- **Audit your claims:** Given that the obligation to comply with the anti-greenwashing rule is ongoing, firms should review their sustainability claims now to ensure they comply with the four 'Cs' above.
- **Check your insurance coverage:** Firms should assess their insurance coverage, including Directors & Officers (D&O) and general civil liability insurance, to ensure, so far as possible, that they are protected against the risks associated with non-compliance.
- **Transparency and traction with investors:** Firms that can demonstrate transparency around their sustainability credentials can build trust and credibility with investors, raise the firm's profile and potentially attract greater investment. IR professionals can support this by working with legal and PR teams to ensure investors are given timely and accurate sustainability information, and their concerns and questions are proactively addressed, for example through dedicated sustainability investor roadshows.

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