



Runway East
2 Whitechapel Road
London
E1 1EW
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Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

Sent via email: gc23-3@fca.org.uk

Dear Environmental, Social and Governance (ESG) Division,

ShareAction response to the FCA's Anti-Greenwashing rule and guidance consultation

I am pleased to respond to the FCA's anti-greenwashing rule and guidance consultation on behalf of ShareAction, a registered charity established to promote transparency and responsible investment practices throughout the financial services sector. We are a member organisation and count amongst our members well-known NGOs and charitable foundations, as well as over 26,000 individual supporters. Among other activities, we work with the financial services sector, including asset management firms, to promote integration of sustainability factors in investment decisions, long-term stewardship of assets and the consideration of the views of clients, beneficiaries and pension scheme members.

ShareAction welcomes the FCA's anti-greenwashing rule and guidance and believes that it will have a much needed and positive impact on the financial sector's approach to sustainable investment. Enhancing consumers' trust in firms themselves and in their products will help to continue the shift towards sustainable investment on a large scale and help to mitigate the risk of the market being undermined through mis-selling. The FCA's welcome crackdown on greenwashing will lead to increased confidence in the market and as a result, increased capital flows into genuinely responsible, environmentally and socially conscious investments.

The FCA's new anti-greenwashing rule is a vital tool to drive sustainable investment. In order to meet our obligations under the Paris Agreement and to alleviate the huge financial and environmental risks fuelled by the climate crisis, investment needs to shift from funds that are driving emissions to green initiatives. However there are enormous challenges confronting investors: for example, funds that are incorrectly and misleadingly labelled as 'green' in order to entice investment are preventing market participants from being able to move away from environmentally damaging investments as quickly as we need.

Government and regulators need to be sympathetic to the trade-offs that pension scheme trustees and asset managers face when deciding between financial and non-financial priorities and provide guidance on these competing priorities. Globally, we face significant

risks presented by environmental degradation, therefore it is reasonable to expect the FCA and other financial regulators to encourage green investments and make those investment decisions as easy as possible through strict labelling and better guidance for firms. The financial industry as a whole needs to be supported to consider environmental and social factors within every investment decision that is being made in order to mitigate the risks and impacts posed by the climate crisis. Pension trustees, asset managers and other industry actors should be encouraged to make sustainable investment decisions that take a long term, holistic view rather than being focused solely on short-term financial returns.

We have responded to questions 1, 2 and 3 below. Please do not hesitate to contact us if you require clarification on any specific points.

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

The proposed guidance clarifies the anti-greenwashing rule and confirms the importance of labelling funds to ensure that appropriate investments are made by consumers. However, ShareAction would like to see stronger encouragement from the FCA to asset managers and pension fund trustees towards sustainable investment. While it is effective to have more blatant labelling for funds, the language used for the labels dilutes the financial and environmental risk involved in the investments funding fossil fuel expansion, and nor does the FCA discourage that kind of investment decision-making. Although the FCA is providing regulatory guidance, there should be strong punitive measures to prevent greenwashing. The FCA's use of fines could be an effective deterrent for greenwashing practices; in addition, methods such as disbarring board members would communicate a strong message to institutions that there would be personal risks to senior staff if greenwashing continues.

In the FCA's investment labels regime, governance is considered to be an enabler of environmental or social outcomes, rather than an end in itself, and the Regulator refers to 'sustainability characteristics' as 'environmental or social characteristics' which is a very positive step towards considering environmental and social factors within all investments. This means that there is little room for ambiguity from investment firms and consultants when disclosing their governance practices to the Regulator in their annual reporting on ESG and climate. Also, this enhances transparency so that the client, or consumer, knows that if they are putting their money into something sustainable, that is the true aim of the fund.

ShareAction believes the FCA's requirement that all sustainability-related claims are substantiated is a good measure to deter greenwashing and prevent any misunderstanding of what is included within a fund. It should also prompt a greater number of genuinely sustainable investments and the reduction of green claims that previously have been attached to funds misleadingly. The need for sustainability-related claims will be a powerful tool to ensure transparency within the financial market and better disclosure. It is important that all investments are transparent and that accurate fund details are readily available to whomever requires that information. Firms should not state or imply features of a product or service that are not true and the anti-greenwashing rule should prevent overstatement, misrepresentation and dishonesty.

Anti-greenwashing rules and requirements should be strictly monitored and punishable upon lack of compliance from firms failing to label their funds appropriately or misleading individuals. As mentioned in section 2.13, consumer law covers how firms present their sustainable practices but this should also be supported by the FCA's regulatory work, especially through the Consumer Duty which should be made mandatory for all firms.

The FCA should explicitly set out its minimum sustainability expectations and publish them. This should include a zero tolerance approach to firms that are attempting to avoid the anti-greenwashing rule, including through a lack of transparency and disclosure.

2. Do you have any comments on the proposed guidance including the examples given?

The proposed guidance and the examples given are extremely helpful. The principles of consumer duty and the consumer research undertaken by the FCA demonstrate that clearer labelling is required from a trusted source. This is important so that firms who currently claim that they did not consider consumers to be concerned with the contents of funds cannot ignore consumers' need for accurate information and continue to claim that their fund is sustainable when it is not.

Additionally, it is critical that firms develop consumer-facing disclosures and that they outline the climate risks and environmental damages associated with their funds, alongside simply advising clients whether investment opportunities are considered a sustainable option or not. Consumers are keen to know about a firm's sustainability approach, as well as understanding where their money is investedⁱ.

False claiming to be committed to sustainability principles could also be tackled by the new guidance on not omitting or hiding certain information. For example, although certain asset managers are members of Glasgow Financial Alliance for Net Zero (GFANZ) and pride themselves on their public climate commitments, they are ranked as some of the worst performers on responsible investment by ShareAction's assessment of 77 of the world's largest asset managers' policies and practicesⁱⁱ. The guidance outlines that claims should not highlight only positive sustainability impacts where this disguises negative impacts. This is a vital regulatory measure to require increased disclosure from firms who are covering up their negative climate investment practices. As climate risks increase, the investment regime needs to be more transparent and the anti-greenwashing rule is a positive step towards eliminating misleading practices.

In addition to example two given in the consultation, it would be valuable to draw attention to the contradictory behaviours of many firms who are part of collaborative initiatives such as GFANZ and Net Zero Asset Manager Initiative (NZAMI) but do not reflect the principles of such alliances through their voting and stewardship activities. Example two describes an investment manager who displays a claim that all investments are reviewed for their sustainability characteristics but these sustainability characteristics are not actually a significant factor in the investment manager's decisions. As ShareAction's Voting Matters report found, many asset management companies who have net zero targets and policies often vote against climate resolutions, thus they not supportive of, and failing to meet, their own climate targetsⁱⁱⁱ. Specifically, four NZAMI members voted against more than 70% of climate resolutions at companies in which they had holdings^{iv}. This is an important example of greenwashing that is not explicitly referenced in the FCA's guidance. While membership of NZAMI may be common amongst the prominent asset management firms, many members do not live up to the initiative's main goal of reaching net zero in terms of their voting performance. Therefore, such contradictory actions can be confusing for consumers who believe they are using the services of a firm with genuine interest and reputation for environmental and social protections but whose practices do not reflect their climate commitments.

The fourth example given of greenwashing of green bonds highlights a huge issue that faces pension schemes and other investors, who may think that they are investing in green initiatives in accordance with their beneficiaries' preferences but are in fact funding fossil fuels. This example is very relevant and seeing effective labelling changes within the market will be helpful and will encourage more sustainable decisions from asset managers and pension trustees.

Finally, the last example of market participants being able to reduce emissions through purchasing an investment bond is a claim that carries weight and should be monitored. The guidance proposes that firms must clarify the comparative nature of the claim which is a very sensible suggestion. As well as increasing the understanding of technical language of scope emissions for all audiences, it ensures that market participants who do not want their investments to exacerbate emission outputs are not disappointed by an investment bond that is contributing to scope two or three emissions whilst claiming to be 'green'. This is a valuable example of how the new anti-greenwashing rule will protect consumers who are trying to invest responsibly. It should prevent market participants from being misled or at risk of being involved in carbon intensive initiatives when their intention was to invest in environmentally conscious activities.

3. Do you agree that the guidance should come into force on 31 May 2024?

We are facing imminent and catastrophic environmental, financial and health consequences of the climate crisis, which the financial sector has a responsibility to acknowledge and address. By implementing the anti-greenwashing rule in May 2024, the FCA is helping to encourage better behaviour as quickly as possible, which is necessary given current climate scenarios. Additionally, retail and pension savers have the right to direct their own money towards investments that protect people and planet rather than investing in opportunities that are less sustainable than they had been led to believe. Asset managers, pension scheme trustees and investment consultants should consider and act on retail and pension savers' wishes, rather than purely financial returns. Given that workplace pension participation rose to 79% of employees in the UK in 2021⁹, there is a vast amount of money that could be misdirected into investments that are not reflective of pension members' views. Therefore, the anti-greenwashing rule is important to ensure that consumers and market participants have the knowledge to avoid making environmentally harmful investment decisions and are empowered to make better sustainable choices if they wish.

In addition to the anti-greenwashing rule, ShareAction believes that clarifying the law on fiduciary duty and expanding the definition of beneficiaries' 'best interests' would uphold trustees' core duties of loyalty, impartiality and prudence whilst also giving them more discretion to act on ESG impacts and risks. As it stands, the law does not encourage pension trustees to consider ESG risks and opportunities, therefore we would like to see fiduciary duty clarified and redefined. 'Best interests' should be considered more broadly than in solely financial terms and should also take into account factors that are critical to

beneficiaries' quality of life, such as the environment, the financial system and society. The new anti-greenwashing rule should help prevent unwarranted challenges to trustees when making sustainable investment choices.

Understandably, it takes time for new guidance and rules to be implemented but ShareAction agrees that regulatory and policy action should be taken quickly to drive rapid action by the financial sector. ShareAction thinks the anti-greenwashing rule and guidance are a huge step forward in terms of protecting the consumer and market participants from making investment decisions based on misleading information. By outlining anti-greenwashing guidance, it enables effective, fair reporting practices of sustainable activities for those who are wishing to invest sustainably, and it prevents those who are using green labelling deliberately opaquely to lure in investment from being able to do so.

The FCA should apply harsh punishments to financial institutions who are culpable of significant greenwashing activities. There should be increased transparency across the whole market, which should include firms of all sizes. A recent example which should be penalised is HSBC, which disappointed retail and institutional investors by failing to adhere to its much-publicised new policy on fossil fuels. HSBC announced in December 2022 that it had decided to halt all financing of new oil and gas fields but in fact it has helped to raise more than £37 billion for upstream projects of oil and gas production^{vi}. Although HSBC claims not to invest in oil and gas fields directly, it funds energy companies which are expanding fossil fuel projects. This contradicts the spirit of HSBC's public commitments to transition the global economy to net zero and is an example of blatant greenwashing, used to entice investors and their money for continued irresponsible funding practices when such investors believed they were using the services of an environmentally conscious company. To avoid these kinds of practices, further measures should also be introduced to require banks to publicly report against a robust green finance framework.

We look forward to continuing to work closely with the FCA on the role it should play as regulator in ensuring the finance sector plays a central role in delivering positive sustainable change.

Yours sincerely,

Rosalind Leech
Senior Policy Officer,
ShareAction
rosalind.leech@shareaction.org

ⁱ FCA, *Sustainability Disclosure Requirements (SDR) and investment labels regime (Qualitative Research)*, 2023

ⁱⁱ ShareAction, *Point of No Returns*, 2023

ⁱⁱⁱ ShareAction, *Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues?*, 2024

^{iv} Ibid

^v Department for Work & Pensions, *Official Statistics: Workplace pension participation and savings trends of eligible employees: 2009 to 2021, 2022*

^{vi} The Bureau of Investigative Journalism, *HSBC helped Oil and Gas industry raise \$47bn despite Net-Zero pledge*, 2024