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Response by email to [gc23-3@fca.org.uk](mailto:gc23-3@fca.org.uk)

26 January 2024

### Response to FCA GC23/3 consultation on Guidance on the Anti-Greenwashing rule

AREF welcomes the FCA's Guidance on the Anti-Greenwashing rule (GC23/3) and the opportunity to respond to the consultation questions. We agree that tackling greenwashing should be a regulatory priority for the FCA and consumers must be protected from greenwashing so they can make informed decisions that are aligned with their sustainability preferences. We support the FCA's aim to create 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. Also, we are in agreement 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.

In the context of applying the anti-greenwashing rule with reference to benchmarks, it would facilitate market transparency, consistency, and verification, which we strongly support, if there were in place the UK Green Taxonomy. The government have commitment to deliver a UK Green Taxonomy and were expected to consult on this in Autumn 2023<sup>1</sup>. We understand<sup>2</sup> that the Green Technical Advisory Group (**GTAG**) provides advice to government on the design and implementation of a UK Green Taxonomy. We strongly advocate progress with GTAG and HM Treasury so well before implementation of the guidance the UK Green Taxonomy is operational.

Our response, to the three questions in the consultation, is provided below. Please contact either myself ([prichards@aref.org.uk](mailto:prichards@aref.org.uk)) or Jacqui Bungay ([jbungay@aref.org.uk](mailto:jbungay@aref.org.uk)), Head of Policy, AREF, to discuss any aspect of our response.

Yours sincerely



**Paul Richards**

CEO, The Association of Real Estate Fund

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1149690/mobilising-green-investment-2023-green-finance-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1149690/mobilising-green-investment-2023-green-finance-strategy.pdf), paragraph 11a

<sup>2</sup> <https://www.greenfinanceinstitute.com/programmes/uk-green-taxonomy-gtag/>

## Response to Questions within GC23/3 consultation on Guidance on the Anti-Greenwashing rule

### Q1: Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?

We agree, in the main, that the proposed guidance clarifies the anti-greenwashing rule. However, there are a few areas where we believe more clarification is required:

- ***'Claims should be correct and capable of being substantiated':***
  - Can the FCA confirm 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).
  - When evidence should be considered 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?
  - We recognise that 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.
  - Can the FCA acknowledge that in respect of investments which only afford 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?
  - 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 helpfully explains what should be avoided. However, defining 'vague', 'broad', or 'general' could still be subjective; how will this ultimately determine whether a claim is truly clear to its audience?
- ***'Claims should be complete – they should not omit or hide important information':***
  - 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?**

AREF would welcome in the guidance examples that would be applicable in real estate and real estate fund scenarios. As stated<sup>3</sup> by the Environmental Audit Committee (EAC) of the UK Parliament “*From residential to commercial buildings, the UK’s built environment is responsible for 25% of the UK’s greenhouse gas emissions*”. The EAC “*warns that to date there has been a lack of Government impetus or policy levers to assess and reduce these emissions. With climate deadlines looming, urgent action is needed*”.

We strongly encourage the guidance to also contain an illustrative example that refers to real estate and designed to help firms, involved with the real estate sector, understand what the guidance means in practice.

We propose to be incorporated in any explanatory notes relating to the anti-greenwashing rule the following example:

*“In the promotions for a fund that will hold underlying real estate assets, where an investment manager makes environmental or social claims, the manager should support them with reference to market best practice metrics.”*

We endorse, and consider to be appropriate for current purposes, as a benchmark of market best practice 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<sup>th</sup> January 2024<sup>4</sup> recognising (as stated in the Submission):

*“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, AREF 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 that could be incorporated in future explanatory notes relating to the anti-greenwashing rule. Examples could include illustration of the tests that the FCA will apply to determine compliance; where examples of non-compliant claims have been made; and/or model examples that do meet the guidance.

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

We agree the anti-greenwashing guidance should come into force at the same time as the anti-greenwashing rule, on 31 May 2024. However, we would strongly recommend that the finalised guidance is published as soon as practicable so firms can progress preparations to ensure compliance with the anti-greenwashing rule.

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: anti-greenwashing rule and the SDR requirements. This would assist in improving consistency, alignment and efficiency of reporting expected from these firms.

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<sup>3</sup> <https://committees.parliament.uk/committee/62/environmental-audit-committee/news/171103/emissions-must-be-reduced-in-the-construction-of-buildings-if-the-uk-is-to-meet-net-zero-mps-warn/>

<sup>4</sup> <https://www.aref.org.uk/resource/esg-metrics-for-real-estate.html>