

Calling all directors – are you ready for the anti-greenwashing rule?

- 1) Does your company make any references to sustainability characteristics?
(These may include terms such as ESG, environmental, social and governance, environment, environmental, environmentally, social, socially, climate, sustainable, sustainability, green, transition, net zero, impact, responsible, Paris-aligned or any other term implying suitability characteristics)
- 2) Are your company's shares being distributed in the UK?

If so, carry on reading, this applies to you.

On 31 May 2024 the FCA's anti-greenwashing rule (ESG4.3.1) will come into force, this is the first element of the sustainability disclosure requirements and labels regime (SDR) to go live, with another two coming into force later this year.

This anti-greenwashing rule states that a company must ensure that any reference to the sustainability characteristics of a product is:

- Consistent with the sustainability characteristics of the product and
- Fair, clear and not misleading

UK incorporated and domiciled investment companies

Compliance with the rule falls on FCA regulated firms, which for investment companies would often be the AIFM. The Board should consider amending their existing oversight and monitoring arrangements of the AIFM to include compliance with anti-greenwashing rule.

Distributors

When a distributor (i.e. broker, share platforms, wealth managers and IFAs) is communicating to a client in the UK, they will need to ensure any sustainability references made a company they are communicating about complies with the anti-greenwashing rule.

If not done so already the Board should engage with the company's distributors to confirm what information they need from the company to enable them to verify compliance with the anti-greenwashing rule.

Non-UK companies – you are not off the hook

Whilst the SDR currently does not apply to non-UK companies, if non-UK companies make references to sustainability characteristics and their shares are being distributed in the UK, their distributors will have the same obligations as above and will be seeking similar information from the company to verify compliance with the anti-greenwashing rule.

Lavery Governance Consulting has a detailed training course for directors on all elements of the SDR, along with practical considerations to take away. For more information please email siobhan@laverygovernance.com

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