

Guernsey Financial Services Commission

**Consultation Paper on Proposed Measures to Counter the Risk
of Greenwashing**

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Responses to this Consultation Paper are sought by 4 June 2022.

We welcome and strongly encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission's website (www.gfsc.gg).

Introduction

Purpose of the Consultation Paper

The Commission seeks to regulate and supervise financial services in the Bailiwick of Guernsey with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

The term “greenwashing” refers to the practice of misrepresenting sustainability-related practices or the sustainability related features of investment products¹.

Consistent with the Commission’s objectives, the proposals in this Consultation Paper are designed to enhance levels of confidence in the Bailiwick’s regulatory and supervisory framework for investment firms and collective investment schemes by reinforcing the Commission’s expectations relating to disclosure requirements in order to help mitigate the potential risks of greenwashing.

The purpose of this Consultation Paper is to seek feedback from all interested parties on detailed proposals for the introduction of:

- 1) Proposed new Guidance to be made under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”). The proposed new Guidance, sets out the Commission’s wider expectations regarding the transparency of environmental sustainability related claims and statements made in respect of Guernsey collective investment schemes which are authorised or registered under the POI Law, and
- 2) Proposed additional Guidance to be added to the Licensees (Conduct of Business) Rules and Guidance, 2021, clarifying the Commission’s expectations in respect of promotion and advertising by persons licensed under the POI Law, and in particular in relation to avoiding the risks of greenwashing.

Views are also sought on the future consideration of anti-greenwashing policy measures for other supervised sectors.

Please note that a concurrent Consultation Paper covering the proposed new Natural Capital Fund regime has also been issued by the Commission (https://www.gfsc.gg/sites/default/files/2022-05/20220405-%20Natural%20Capital%20Fund%20CP_0.pdf).

This Consultation Paper is a working document and does not prejudice any final decision to be made by the Commission.

¹ [Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management Final Report](#), International Organization of Securities Commission, November 2021.

Background to the proposals

Greenwashing

Greenwashing, both actual and potential, and whether deliberate or unintentional, has become a focus of global concern, and many mature financial jurisdictions have introduced, or are introducing, measures to counter greenwashing risks. These range from prescriptive measures to being educational or advisory in nature.

The risks associated with greenwashing include the potential of encouraging investors to make an investment into a product which is being sold to them on the basis of its positive environmentally sustainable characteristics, when in reality such characteristics either do not exist, or do not exist to the extent suggested by the product's marketing materials. This brings with it reputational risks not only for the product itself, but also for its service providers and by association, their jurisdiction. It also risks undermining the credibility of genuinely environmentally sustainable products.

The parties most likely to be adversely affected by greenwashing (whether deliberate or not) are those investors less able to make their own considered assessment of the sustainable merits of any given investment, including retail and less sophisticated investors. As this is a new and emerging risk category it is important for all investor types to recognise its potential. Therefore, with this proposal, the Commission seeks to protect the interests of all investors both in Guernsey regulated funds and those who are the recipients of services provided by licensees under the POI Law.

Whilst the Commission is not aware of any greenwashing practises being undertaken by licensed Guernsey based entities, we should not be complacent. As a responsible jurisdiction it is important that we visibly take active measures to demonstrate that the risks of greenwashing are taken seriously and that local funds and their service providers, as well as local businesses providing other investment services, are in no doubt about the Commission's stance on this. The proposed measures set out in this Consultation Paper have therefore been designed to be both proportionate, given the nature, scale and maturity of the relevant local industry sector and its target market, whilst demonstrating that the jurisdiction is alive to the potential risks of greenwashing and is prepared to proactively take appropriate measures to mitigate such risks.

Proposed measures to be introduced to mitigate the risk of greenwashing by Guernsey funds and Licensees

The Commission is proposing a two-fold approach which will impact both Guernsey regulated funds as well as businesses licensed under the POI Law, as follows:

1) Guernsey authorised or registered funds

The Commission proposes introducing a new Guidance Note which will be relevant to all collective investment schemes which are authorised or registered under the POI Law. The proposed Guidance Note will refer to the existing provisions within the various fund rules

concerning requirements for the disclosure of a scheme’s investment objectives and policy and/or any investment restrictions within its prospectus (or equivalent document), where one is required. The proposed Guidance Note sets out the Commission’s expectation that this requirement for disclosure extends to ensuring that any explicit claims or statements concerning the sustainable investment attributes of the scheme or its assets are not misleading and are capable of being evidenced. Similar levels of transparency are expected in respect of any other marketing materials associated with such schemes.

For the avoidance of doubt, it is anticipated that schemes which have been designated by the Commission as a Guernsey Green Fund or a Natural Capital Fund will already meet these expectations by virtue of the requirements of the rules relevant to these types of schemes.

The text of the proposed Guidance Note is set out in Appendix 1 to this paper.

Q1: Do you have any comments on the proposed new Guidance Note on Reducing the Potential Risk of Greenwashing by Guernsey Regulated Collective Investment Schemes? Please provide your comments below:

It is proposed that the Guidance Note will apply in respect of any new funds authorised or registered after the date that it is introduced. For existing funds, it is proposed that the Guidance Note will apply from the date that their prospectus (or equivalent document) and/or marketing material is next updated (where relevant). Thus, in the case of, for example, an existing fully funded closed ended scheme where there is no intention of updating its initial offering document or marketing material, the introduction of the proposed Guidance Note will impose no immediate impact. In the case of an existing open ended scheme, the expectations set out in the proposed Guidance Note will apply from the point at which the prospectus and/or marketing material is next required to be updated.

Q2: Do you have any comments on the timing of the introduction of the expectations contained in the proposed new Guidance Note on Reducing the Potential Risk of Greenwashing by Guernsey Regulated Collective Investment Schemes? Please provide your comments below:

2) Licensees under the Protection of Investors (Bailiwick of Guernsey) Law, 2020

The Licensees (Conduct of Business) Rules and Guidance, 2021 (“the Conduct of Business Rules”) apply to all businesses licensed under Section 4 of the POI Law. Section 5.4.1 of these rules sets out requirements relating to the issue of promotional and advertising materials by Licensees, and includes, *inter alia*, requirements that such materials are: - clear, fair and not misleading; do not contain any promise or forecast which is untrue; are not designed in such a way as to distort or conceal any relevant subject material; and are not likely to be misunderstood.

The Commission is proposing to add a set of Guidance Notes immediately following this rule. The draft Guidance is intended to make clear the Commission’s expectation that the various requirements of this rule extend to cover any claimed sustainable credentials associated with any investment product which a POI Licensee is promoting or advertising. The draft Guidance also sets out the Commission’s expectation that relevant information is provided to potential investors to enable them to understand how the product intends to achieve any claimed sustainable investment aims and how that will be monitored, measured and reported. Examples of how this might be achieved are included in the draft Guidance.

A copy of the relevant section of the Conduct of Business Rules, along with the proposed Guidance Notes are included in Appendix 2 to this paper.

Q3: Do you have any comments on the proposed Guidance to be added immediately following Rule 5.4.1 of the Licensees (Conduct of Business) Rules and Guidance, 2021? Please provide your comments below:

Broader application of anti-greenwashing measures

The above proposals relate only to the investment sector, but greenwashing is a growing risk area relevant to other financial services sectors too. There are already industry-led initiatives supporting sustainability transparency, for example the Guernsey International Insurance Association ESG Framework, but the Commission would welcome views on the extent to which further Commission policy measures might help to mitigate this risk.

Q4: Do you have any comments on the relevance of anti-greenwashing risk to sectors beyond the Protection of Investors regime? Please provide your comments below, including suggestions, if any, for relevant future Commission policy measures:

Providing Feedback

Responses to this Consultation Paper are requested by 4 June 2022. Responses should be submitted through the Commission's Consultation Hub, which can be found at <https://consultationhub.gfsc.gg/>

Next Steps

Following the consultation period, the Commission will collate and consider responses provided, with a view to introducing the Guidance Note on Reducing the Potential Risk of Greenwashing by Guernsey Regulated Collective Investment Schemes and adding the additional Guidance to the Licensees (Conduct of Business) Rules and Guidance, 2021 at some point during the second half of 2022.

Appendix 1

Draft of the proposed new Guidance Note on Reducing the Potential Risk of Greenwashing by Guernsey Regulated Collective Investment Schemes

The text of the proposed new Guidance Note is as follows:

“This Guidance applies to all collective investment schemes which are authorised or registered under Section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”) and those responsible for preparing the prospectuses and other marketing materials of such schemes. The term “prospectus” has the meaning defined in the POI Law and includes scheme particulars, information particulars and other equivalent documents in relation to a collective investment scheme.

Where the rules applicable to a class or type of scheme require the preparation of a prospectus, they also require the disclosure of the scheme’s investment objectives and policy and/or any relevant investment restrictions within that document.

The Commission’s expectation is that this disclosure requirement extends to ensuring that any explicit claims, or statements, indicating that the scheme or its underlying assets are sustainable investments, are not misleading. The Commission considers it important that any disclosures are based on genuine fact and are capable of being evidenced by the scheme or its service providers.

As part of any application process, and its on-going supervision, the Commission may request such evidence to support any claims that the scheme or its assets are a sustainable investment and would take appropriate action in line with our statutory functions in cases where such claims cannot be properly substantiated.

Where the prospectus of a scheme makes any explicit claims that the scheme itself, or any of its underlying assets, are a sustainable investment, then the Commission expects that relevant information is provided to allow potential investors to understand how the sustainable investment aim is intended to be achieved and how that will be monitored, measured, reported and kept up to date. This might, for instance, include any alignment with a specific taxonomy; the proportion of investments which are sustainable and any associated limits; and the basis on which any benchmarking or measurement against targets will be measured and reported. Ordinarily it is expected that the preceding guidance would be met, but where a collective investment scheme fails to put such measures in place, then it is expected that such fact should be disclosed.

The Commission would expect similar levels of transparency in any other marketing materials associated with a Guernsey regulated collective investment scheme.

Those responsible for preparing and updating the prospectus and marketing materials of a scheme should remain mindful of their duty to ensure that all relevant information to enable a potential investor to make a well-considered assessment of the merits and risks of investing in the scheme are clearly disclosed (including whether, or the extent to which, it might be considered a truly

sustainable investment). They should also be aware of their role in ensuring that the prospectus and marketing materials do not, either intentionally or otherwise, facilitate greenwashing.

For the purposes of this Guidance Note, the term “sustainable investment” means an investment which is intended to: mitigate climate change, mitigate environmental damage, make a positive contribution to the natural world, or significantly reduce harm to the natural world (or any combination of these).”

Appendix 2

Draft of the proposed Guidance to be added immediately following 5.4.1 of the Licensees (Conduct of Business) Rules and Guidance, 2021

5.4 Promotion and Advertising

5.4.1 Issue of materials

- (1) The licensee, if responsible for promotion and advertising, must ensure that any materials used –
- (a) are clear, fair, and not misleading;
 - (b) do not contain any statement, promise, or forecast which is untrue;
 - (c) are not designed in such a way as to distort or conceal any relevant subject material;
 - (d) are clearly recognisable as an advertisement;
 - (e) are not likely to be misunderstood;
 - (f) where appropriate, state that the investment value is not guaranteed or that the value may fluctuate;
 - (g) do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to; and
 - (h) do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance and may not be repeated.

Guidance Note

The requirements of rule 5.4.1 apply to the promotion by licensees of all types and classes of Controlled Investments.

Where a licensee is promoting a product on the explicit basis of it being a sustainable investment, or one which invests in explicitly sustainable investments, then the Commission expects that relevant information is provided to potential investors, to allow them to understand how the product intends to achieve the claimed sustainable investment aims and how that will be monitored, measured and reported.

This might, for instance, include any alignment with a specific taxonomy; the proportion of investments which are sustainable and any associated limits; and the basis on which any benchmarking or measurement against targets will be measured and reported. Where there are no such measures in place, then it is expected that such fact should be disclosed.

In providing this Guidance, the Commission reminds all Licensees of the importance it places on: preventing the potential facilitation of “greenwashing”; not misleading investors; and avoiding the associated reputational risk to the Bailiwick of Guernsey, its Licensees and the products and services which they provide.

For the purposes of this Guidance, the term “sustainable investment” means an investment which is intended to: mitigate climate change, mitigate environmental damage, make a positive contribution to the natural world, or significantly reduce harm to the natural world (or any combination of these).