



The Protection of Investors (Bailiwick of Guernsey) Law, 2020

Guidance for Authorised and Registered Collective Investment Schemes on Measures to Counter the Risk of Greenwashing

Issued 20 September 2022

Guidance for Authorised and Registered Collective Investment Schemes on Measures to Counter the Risk of Greenwashing

“Greenwashing: The practice by asset managers of misrepresenting their own sustainability related practices or the sustainability-related features of their investment products.”

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

Greenwashing, both actual and potential, and whether deliberate or unintentional, has become a focus of global regulatory concern. The risks associated with greenwashing include the potential of encouraging investors to make an investment sold to them on the basis of positive environmentally sustainable characteristics, when in reality such characteristics either do not exist, or do not exist to the extent suggested by the investment’s marketing materials. This brings with it reputational risks not only for the investment product itself, but also for its service providers and by association, their jurisdiction. It also risks undermining the credibility of genuinely environmentally sustainable products.

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 environmentally 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 environmentally sustainable investments 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 environmentally sustainable investments, the Commission expects that relevant information is provided to allow potential investors to understand how the sustainable investment objective 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 environmentally 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 environmentally 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 “environmentally sustainable investment” means an investment in an economic activity that contributes to an environmental objective (including mitigation of climate change, mitigation of environmental damage, making a positive contribution to the natural world, or significantly reducing harm to the natural world). An environmentally sustainable investment as defined in the European Union Taxonomy for Sustainable Activities¹ Regulation is also included within this definition.

A Guernsey collective investment scheme making disclosures compliant with the European Union’s Sustainability-related Financial Disclosure Regulations (“SFDR”)² would be deemed to be in compliance with this guidance.

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

² Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector