CLEVELAND & CO™
External in-house counsel

ASIC Enforcement Priorities: Greenwashing

Summary

There has been an increase in investor demand for sustainability-related financial products in the Australian market. When promoting or offering sustainability-related products, issuers must comply with existing requirements to mitigate the growing risk of greenwashing and to avoid investors being confused or misled.

The Australian Securities and Investments Commission (“**ASIC**”) recognises ‘greenwashing’ as the practice of misrepresenting a financial product or investment strategy as environmentally friendly, sustainable or ethical. Marketing documents, including labels or headline statements about a product’s green credentials should not be misleading or deceptive, and should provide adequate information for investors to form sound judgement in making investment decisions.

Disclosure

Disclosures should fairly reflect how environmental, social, and governance **("ESG")** factors are integrated regardless of products offering multiple investment options or products made up of different asset classes. The four principles set out below must be taken into account in order to avoid greenwashing.

Transparency **Accuracy** **Comprehensibility** **Comparabaility**

ESG disclosures should include information that is useful to retail clients who are considering whether to acquire a financial product. This includes information about how ESG factors are taken into account when selecting, retaining, and realising investments, as well as the methodology used for incorporating ESG factors into investment decisions.

ASIC has reminded the industry to avoid using confusing and misleading terminology when disclosing information about ESG factors. Terms such as "considers", "integrates", or "takes into account" may not provide a concise picture as to how ESG factors are being incorporated into investment decisions.

Methodology

While there is no specific requirement about the implementation of ESG factors into the investment management process, ASIC provided examples of how ESG factors can be incorporated with the intention to provide guidance to the industry. Regardless of the methodology adopted, product issuers must present this information in a consistent manner across all promotional materials and offering documents. Examples include:

1) Engagement approaches where the fund actively uses its voting rights and other sources of influence to exert pressure on the company to improve their ESG performance;

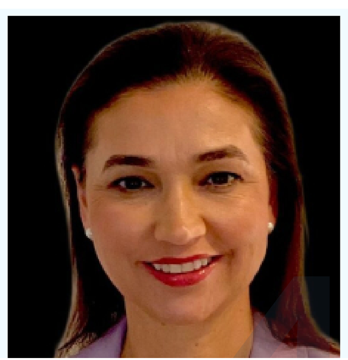
3) investment governance approaches which identify ESG risks and opportunities associated with present and future investments, and actively inform relevant stakeholders of these matters; and

3) negative and positive screening approaches to investment selection based on ESG criteria.

Next Steps

ASIC has reiterated that greenwashing is one of its enforcement priorities for 2023. Licensees issuing ESG-compliant investment products must have adequate knowledge and controls in place to ensure that their marketing and offering documents meet the regulatory expectation to avoid greenwashing allegations.

For more information and guidance or advice on how to ensure compliance with ASIC’s ESG disclosure requirements, Cleveland & Co External in-house counsel™, your specialist outsourced legal team, are here to help.



If you need any help or further information, please contact Tanja Listar:

Tanja Listar - Managing Director, General Counsel APAC

+61 466778482

tlistar@cleveland-co.com

https://cleveland-co.com/

https://uk.linkedin.com/company/cleveland-co