Svensk Värdepappersmarknad
Swedish Securities Markets Association

Swedish Securities Markets Association (Svensk Värdepappersmarknad) response to the ESAs Call for evidence on greenwashing

10th January 2023

The Call for Evidence (C f E) by the European Supervisory Authorities (ESAs) seeks input on potential greenwashing practices in the whole EU financial sector, including banking, insurance, and financial markets, and which may be relevant to various segments of the sustainable investment value chain and of the financial product lifecycle. All interested parties are welcome to contribute to the survey, including financial institutions under the remit of the three ESAs and other stakeholders ranging from retail investors and consumers associations to NGOs and academia.

Respondents are invited to contribute to this C f E, both to the common part and to the ESA-specific sections, or to those sections of the C f E which are relevant for a given respondent (by going directly to the relevant section).

The Swedish Securities Markets Association (SSMA) has responded to questions in the common part as well as to the section specific to the European Securities and Markets Authority (ESMA). Parts of the consultation not responded to by the SSMA is not included in this document.

A. Introduction and background

I. Introduction

1. Growing demand for sustainability-related products combined with rapidly evolving regulatory regimes and sustainability-related product offerings create a context that may be conducive to increased greenwashing risks. In its Renewed Strategy of July 2021, the European Commission (EC) laid out its expectation that supervisors play an essential role in identifying, preventing, investigating, sanctioning, and remediating greenwashing, suggesting that it would issue a request to work on the subject to the three ESAs.

2. On 23 May 2022, the ESAs received a request for input from the EC relating to greenwashing risks and supervision of sustainable finance policies. The EC requests each ESA, separately but in a coordinated manner, to provide input on greenwashing risks and occurrences in the EU financial sector and on the supervisory actions taken and challenges faced to address those risks. Two deliverables are foreseen in the request: a progress report expected by end of May 2023 and a final report expected by end of May 2024.

3. The work for this request for input can be structured in the following main areas:

    a. Clearly defining greenwashing and better understanding the phenomenon, its scale and potential related risks;

    b. Taking stock of the implementation of relevant sustainable finance legislation within the remit of the ESAs and identifying early challenges for stakeholders and regulators;

c. Mapping out various aspects of the supervisory response and assessing its adequacy from both a legal and a practical standpoint.

d. Issuing recommendations based on findings within the areas referred to above.

4. In order to deliver on the EC's request, the ESAs will build on a number of actions already planned under their respective workplans and will rely on a variety of data sources, as well as on extensive outreach. This C f E will contribute to the collection of up-to-date, detailed evidence to complement other sources of information.

II. Objectives and scope

5. With regard to the term "greenwashing", it is important to note that this C f E uses the term broadly to also include sustainability-related claims relating to all aspects of the ESG spectrum (i.e., environmental, social and governance dimensions). This is consistent with the EC's request for input where the term "greenwashing" is used as referring to sustainability-related claims on environmental, social and/or governance aspects. In this regard, it is important to note that some market participants have given more prominence recently to environmental aspects due to developing sustainable finance legislation focusing on the environment and the increased focus on climate change. As a result, there may be an increasing number of misleading claims on environmental topics leading to greenwashing risks. This does not mean, however, that social and governance aspect could not lead to a significant number of misleading claims.

6. Concretely, the ESAs are interested in collecting:

i. The views from various stakeholders on how to understand greenwashing and what the main drivers of greenwashing might be;

ii. Examples of potential greenwashing practices across the EU financial sector relevant to various segments of the sustainable investment value chain and of the product lifecycle; and

iii. Any available data to help the ESAs gain a concrete sense of the scale of greenwashing and identify areas of high greenwashing risks.

7. This C f E seeks evidence of potential greenwashing practices in connection to sustainability claims regarding entities (hereafter entity-level claims) and products or services (hereafter referenced together under the term product-level). 'Product' is a generic term including all financial instruments, securities, investment, banking, insurance or pension products as well as all services relevant for each sector considered. Product-level claims are typically about how a product or service is taking into account sustainability. On the other hand, entity-level claims are made in connection to what an entity is doing at the overall firmwide level (e.g. an insurance undertaking or insurance intermediary, a corporate issuer, a bank, a pension provider, or a benchmark administrator).

8. Furthermore, in line with the scope of the EC's request for input, the C f E seeks evidence related to potential greenwashing practices both within and outside the scope of current EU sustainable finance legislation. Consequently, the ESAs encourage respondents to also consider providing examples of potential greenwashing practices relating to products, practices, and/or to documents or other means of communication of claims currently not explicitly covered by the EU sustainable finance legislation (e.g. references to ESG awards made in marketing materials, claims made on websites, social media, etc.). For instance, such products include ESG ratings or ESG derivatives. The collection of examples would be relevant given the fast-evolving nature of ESG markets and of the offer of sustainability-related products. The ESAs also encourage respondents to consider providing examples which comply with existing EU sustainable finance legislation but the outcome would still result in greenwashing.

9. This C f E seeks to collect information relating to practices and potential greenwashing risks in the sectors within the remit of the three ESAs. These sectors cover a great variety of financial market participants (e.g. insurers, credit institutions, benchmark administrators, product manufacturers, investors), which may also be present across the sustainable investment and sustainable products value chain (hereafter for simplicity referenced as "the sustainable value chain"). Indeed, there is value in looking at greenwashing from a multidimensional perspective with the help of the sustainable value chain which includes the entities operating in all of the sectors listed below as well as other stakeholders such as the retail investors/consumers.

10. This C f E contains a section on general greenwashing-related aspects relevant for the whole financial sector, as well as three additional sections covering specific aspects within the remit of each of the ESAs. Please note that the below list contains some unavoidable overlap in the form of some entities that fall under the scope of several ESAs (e.g. certain banks providing investment services would in fact be in scope of both EBA's and ESMA's remit).

    a. EBA: credit institutions and related activities such as retail banking activities, corporate and project finance, investment services, own funds, funding, and liquidity instruments; payment service providers and payment services.

    b. EIOPA: insurance undertakings, insurance intermediaries – including banks acting as insurance intermediaries, financial advisors acting as insurance brokers, and managing general agents – occupational pension schemes, and undertakings offering or planning to offer the Pan-European Personal Pension Product (PEPP).

    c. ESMA: investment managers, investment firms, issuers and benchmark administrators. This sectoral prioritisation reflects ESMA's current understanding of the relative degree of greenwashing risks. Beyond these priority sectors, the C f E also aims to collect information on potential greenwashing issues within other segments within the sustainable value chain, in particular credit rating agencies and ESG data and rating providers.

11. All interested stakeholders are invited to respond to this C f E, both to the common part and to the ESA-specific sections, or to those sections of the C f E which are relevant for a given respondent.

12. It is important to note that this C f E does not seek input in relation to sustainability-related claims made regarding entities, products or services not under the scope of the ESAs, such as sustainability-related claims regarding non-financial products (e.g. consumer goods).

III. Possible features of greenwashing

13. In providing feedback on greenwashing in the ESAs common section respondents are invited to consider a number of possible features of greenwashing that are listed below. These features are only illustrative and are not meant to set out a framework that the ESAs have approved or endorsed; they are only meant to help structure the analysis of the greenwashing phenomenon. Sectorial differences may exist.

14. Greenwashing is a complex phenomenon which can involve or impact a multitude of financial market participants and potentially affects all sectors in the sustainable value chain.

15. The drivers of greenwashing are multifaceted and may include demand for sustainability-related products, data-related issues, the need to build expertise and skills, challenges in the application of new rules, inconsistent interpretations of the legal regime and financial literacy gaps, etc. In order to address the causes, it is therefore necessary to understand more clearly the phenomenon and arrive at a shared understanding of greenwashing issues.

16. Greenwashing could be analysed through four main dimensions:

    a) The role market participants can play in greenwashing, which could include three possible categories: trigger, spreader and receiver of a sustainability-related claim. These three categories represent three potential roles that stakeholders across the sustainable value chain can have in any given occurrence of greenwashing.

    b) The actual topics on which the sustainability-related claims are made. These topics can be cross-sectoral, can apply at entity- and product-level and can be grouped into 3 broad categories. This does not however mean that all 3 categories necessarily lead to greenwashing in all sectors. The 3 categories are: (1) Claims about an entity's governance and remuneration around sustainability and about an entity or a product's dedicated resources to sustainability matters, (2) Claims about sustainability strategy, objectives, characteristics or qualifications of a product, an entity, or a service and (3) Claims about sustainability-related metrics based on historical data or future targets. SE

    c) The misleading qualities of a sustainability-related claim, which specify in which way a claim can be construed as misleading (e.g. selective disclosure or hidden trade-off such as cherry-picking positive information and/or omitting relevant negative information; exaggerated claims and/or failure to deliver on such claims; omission or lack of disclosure; vagueness or ambiguity or lack of clarity; poor advice; etc).

    d) The channels through which the sustainability-related claims are communicated to other actors across the sustainable value chain (e.g. regulatory documents, ratings/benchmarks/labels, product information, marketing materials) or the various stages of the product lifecycle in which they occur (e.g. product delivery, product manufacturing).

B. Background questions/contact information

Swedish Securities Markets Association (Svensk Värdepappersmarknad)

C. ESAs common section of the C f E

1. Possible features of greenwashing

1.1. Core features or greenwashing

This part of the survey enquires about the views of respondents on what can be seen as core characteristics of greenwashing, including:

1) Similarly with the communication of other misleading claims there are several ways in which sustainability-related statements, declarations, actions, omissions or communications may be misleading. On the one hand, communications can be misleading due to the omission of information that consumers or investors would need to take an informed transactional or investment decision (including but not limited to partial, selective, unclear, unintelligible, inconsistent, vague, oversimplistic, ambiguous or untimely information, unsubstantiated statements). On the other hand, communications can be misleading due to the actual provision of information, relevant to an informed transactional or investment decision, that is false, deceives or is likely to deceive consumers or investors (including but not limited to mislabelling, misclassification, mis-targeted marketing);

2) Greenwashing can occur either at entity level (e.g. in relation to an entity's sustainability strategy or performance), at product level (e.g. in relation to products' sustainability characteristics or performance) or at service level including advice and payment services (e.g. in relation to the integration of sustainability-related preferences to the provision of financial advice).

3) Greenwashing can be either intentional or unintentional (e.g. resulting from negligence or from misinterpretation of the sustainable finance regulatory framework requirement).

4) Greenwashing can occur at any point where sustainability-related statements, declarations or communications are made, including at different stages of the cycle of financial products/services (e.g. manufacturing, delivery, marketing, sales, monitoring) or of the investment value chain (e.g. issuer, benchmark/rating provider, investment firms, etc.).

5) Greenwashing may occur in specific disclosures required by the EU sustainable finance regulatory framework (e.g. SFDR Article 9 product-level disclosure requirements). Greenwashing may also occur as a result of non-compliance with general principles – as featured either in general EU financial legislation or more specifically in EU sustainable finance legislation (e.g. the requirement to provide information that is fair, clear and not

misleading). In that context, greenwashing may occur in relation to entities that are currently outside of the remit of the EU sustainable finance legislation as it currently stands (e.g. ESG ratings).

6) Greenwashing can be triggered by the entity to which the sustainability communications relate or by the entity responsible for the product, or it can be triggered by third parties (e.g., ESG rating providers or third-party verifiers).

7) If not addressed, greenwashing will undermine trust in sustainable finance markets and policies, regardless of whether immediate damage to individual consumers or investors (in particular through mis selling) or the gain of an unfair competitive advantage has been ascertained.

Q A.1: Please provide your views on whether the above-mentioned core characteristics of greenwashing reflect your understanding of and/or experience with this phenomenon and whether you have anything to add/amend/remove.

The Swedish Securities Markets Association considers that the intention of the ESG regulatory framework is good but also a work in progress. While the industry strives to be as "green" as possible, the construction of the framework has to a certain extent started in the wrong end. Some cases that are labelled "greenwashing" may be unintentional and caused by a lack of data in combination with gaps or unclarities in the regulatory framework.

This said it is important that market participants make a serious effort and strives to be as transparent as possible. They must thus not hide behind the concept of "unintentional greenwashing". A good starting point is to consider what reasonable expectations investors may have. Sometimes this may mean having to manage expectations, as some expectations of end-investors may be difficult to meet. The aim must here be to have rules that are so clear that there is no or a limited risk of making "unintentional" mistakes.

As an example, SFRD reporting includes technical parameters where we do at present lack complete and reliable information. There may be differences in data provided on the same topic. Consequently, mistakes may occur not least in relation to products relating to several asset classes. This is for example reporting on Co2 scopes 1 -3 is frequently not complete.

The fundamental problem here is the lack of relevant and reliable data. In the context of greenwashing it is important to find the ultimate source of incorrect or incomplete information. At present corporates may rely on consultants when drafting their reports as they lack resources to gather all information themselves. However, also consultants may at times have difficulties grasping all details of the regulatory framework.

Another aspect that could be addressed is the application of rules on corporates and business activities that are in themselves relatively "green" in the sense that they have a low environmental impact. They may rebrand themselves or their products as "green" or "sustainable" without making much if any changes to their business activities.

The Call for Evidence indicates that a firm may be accused of greenwashing also in situations where it has complied with applicable rules, based on an interpretation that is in acceptable. While we do not know if and to what extent this is a problem in practice it shows the importance of developing and clarifying the regulatory framework so that this risk is minimized. Some aspects of “greenwashing” incl. making statements that are untrue or unfounded are also already covered by existing rules which may however need to be modified or further clarified.

One challenge is here situations where there is not yet agreement on the interpretation of terms or where definitions are not aligned. The Commission and ESMA here has an important role to play together with the industry when it comes to harmonizing and aligning definitions and interpretations in the EU.

1.2. Dimensions of greenwashing

1.2.1. The potential roles market participants can play in greenwashing

Q A.3: Market participants could potentially play three main different roles (trigger, spreader, receiver) in any given occurrence of greenwashing. For instance, a corporate issuer can trigger greenwashing by understating its carbon emissions. This misleading claim could be communicated to both investment managers, ESG data providers and/or other market participants some of whom might continue to spread the misleading claim to the end investors/consumers, who will be the receiver of greenwashing.

Q A.3.1: Do you agree that market participants could be involved in three different ways in greenwashing, as described above?

Yes

1.2.2. The topics of sustainability-related claims

Another dimension of greenwashing is the topic of a given sustainability-related claim, which can be grouped into 3 broad topics. These can be applicable to various sectors across the sustainable value chain and can be cross-cutting at entity- and product-level. However, this does not mean that all of these 3 categories necessarily lead to greenwashing in all sectors. Moreover, it is important to note that one given claim can fall under several topics, for instance an entity making claims about targeting positive impact on climate change can be split into its actual strategy around creating positive impact (falling under Topic 2), its governance around monitoring and implementing this strategy including dedicated staff composed of impact analysts (Topic 1), while the actual metrics referenced to measure the impact would fall under Topic 3. Furthermore, greenwashing can occur in relation to an isolated claim about one of the topics listed below or it may relate to a combination of claims which in aggregate constitute greenwashing.

- Topic 1: Claims about an entity’s governance and remuneration around ESG and about an entity or a product’s dedicated resources to sustainability matters:
  i. Board and senior management's role in sustainability
  ii. ESG corporate resources and expertise

- Topic 2: Claims about the sustainability strategy, objectives, characteristics or qualifications of a product, an entity, or a service:
  i. ESG strategy, objectives, characteristics
  ii. Sustainability management policies
  iii. ESG qualifications / labels / certificates
  iv. Engagement with stakeholders

- Topic 3: Claims about sustainability-related metrics based on historical data or future targets:
  i. ESG performance to date (including metrics for impact claims)
  ii. Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans)

Q A.4: Please indicate the degree to which you consider each topic described above, as prone to the occurrence of greenwashing, on a score from 1 to 5, where 1 = very low occurrence; 2 = low occurrence; 3 = neutral; 4 = high occurrence; 5 = very high occurrence.

Q A.5: For the same list of topics listed in the previous question, please provide a score from 1 to 5 on the potential harm/impact of a misleading claim made on that topic, where 1 = very low impact; 2 = low impact; 3 = neutral; 4 = high impact; 5 = very high impact.

- Board and senior management's role in sustainability (Topic 1, i) = 4 / 4
- ESG corporate resources and expertise (Topic 1, ii) = 4 / 4
- ESG strategy, objectives, characteristics (Topic 2, i) = 4 / 4
- Sustainability management policies (Topic 2, ii) = 4 / 4
- ESG qualifications / labels / certificates (Topic 2, iii) = 4 / 4
- Engagement with stakeholders (Topic 2, iv) = 4 / 4
- ESG performance to date (including metrics for impact claims) (Topic 3, i) = 4 / 4
- Pledges about future ESG performance (ESG targets, including net zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii) = 4 / 4

Q A.5.1: Please explain what types of impacts or harm and their consequences you anticipate as a result of greenwashing practices.

Investors have an interest in “green” products and there is as a consequence an interest in manufacturing and marketing products that are as "green" as possible. This can be done in different ways and as long as the rules are unclear or give room for interpretation there is a risk that "greenwashing" is perceived by investors and others to occur without the any rules in fact being breached. There is also a regulatory and legal risk, where rules are unclear or can be interpreted in different ways.

Examples that could be discussed include the marketing of a product as “green” or “sustainable” where it relates to a company involved in child labor practices or stating that an investment makes an "impact" where it only passively follows an index linked to the Paris agreement. Similarly, an investor referring to "dialogues" it has may need to describe more in detail what this “dialogue” consists of and what effect they have.

In this context we may also need to look at the language used and consider the meaning of references to “green” or “sustainable” when the taxonomy is not yet fully developed insofar as regards E, S and G.

Q A.6: In addition to the three topics and eight sub-topics above, do you identify any additional topics which would be relevant to potential greenwashing issues?

No

1.2.3. The way in which a claim can be misleading

Q A.8: On a scale from 1 (“not at all relevant”) to 5 (“very relevant”), indicate the extent to which you find each of the misleading qualities of a sustainability-related claim listed below relevant to greenwashing practices

- Selective disclosure or hidden trade-off (cherry-picking positive information and/or omitting relevant negative information) = 4
- Empty claims (exaggerated claims and/or failure to deliver on such claims) = 4
- Omission or lack of disclosure = 4
- Vagueness or ambiguity or lack of clarity = 4
- Inconsistency across various disclosures and communications (marketing, regulatory, website, etc.) = 4
- Lack of fair and meaningful comparisons, thresholds, scenarios and/or underlying assumptions = 4
- No proof (unsubstantiated) = 4
- Misleading /Suggestive non-textual imagery and sounds (including the use of specific colours like green) = 4
- Irrelevance = 3
- Outdated information = 4
- Misleading / suggestive use of ESG-related terminology (naming-related greenwashing) = 4
- Outright lie (falsehood) = 5

Q A.8.1: Please provide further comments to the identified misleading qualities of communication in the context of greenwashing. In particular, should any of the qualities be added, amended or deleted from the list and if so, why?

As regards "empty claims" it happens that firms contribute to and refer to surveys based on their own self-evaluations. Such surveys may in themselves be correct but may cover areas and questions that are in practice less relevant. It is here important to describe and inform about the impact (if any) made from a sustainability point of view.

As regards "inconsistency across various disclosures and communications" a risk may exist that intermediaries or distributors of ESG products shorten or amend product information to such an extent that the information becomes misleading. Such parties may also have an incentive to inter alia highlight certain information to increase sales. Such practices may, it should be noted, not in themselves be in breach of applicable rules.

As regards "misleading/suggestive use of ESG-related terminology (naming-related greenwashing)" it is important that terminology used in relation to ESG is clear and understood in the same way by all relevant parties. In the absence of such clarity, it may be difficult to clearly define the term “greenwashing” and target misleading and suggestive use of ESG-related terms.

Another challenge is that end-users may not consider (or care to read) details in information provided, but may rather rely on labels, flags or similar that may (or may not) provide much relevant information in themselves.

1.2.4. Which communication channel

Another dimension of greenwashing is represented by the channels through which sustainability-related claims are communicated to other actors in the sustainable value chain.

Q A.9: Regarding the above dimension and the list of channels below through which misleading claims can be communicated to other segments of the sustainable value chain, please indicate the likelihood that a given channel serves to communicate misleading sustainability claims made at entity level and/or at product/service level.

Regulatory documents (including Key Investor Documents or Key Information Documents (KIDs), prospectuses, financial statements, management reports, non-financial statements, benchmark statements and methodology documents, insurance—product information documents, pension benefit statements, etc.) or regulatory disclosures = 2

ESG ratings and/or other ESG data products / Benchmarks / Labels = No opinion

Product information (including internal classifications and internal target market, product testing and distribution strategy related documentation) = No opinion

Intermediary/advice information = 3

Marketing materials (including website, social media, advertising) = 4

Voluntary reporting, falling outside previous categories as reported on a voluntary basis = No opinion

Other (please specify) = No opinion

Q A.9.1: Please indicate below if you have any comments regarding the communication channels of potentially misleading sustainability-related claims?

Sustainability is a complex and still developing area and it is at times difficult to describe all relevant aspects in a clear and concise manner. At the same time a risk may exist that intermediaries or distributors of ESG products shorten or amend product information to such an extent that the information becomes misleading. Such parties may also have an incentive to inter alia highlight certain information to increase sales. Such practices may, it should be noted, not in themselves be in breach of applicable rules.

The risk of missing or misleading information may be lower in formal reports not least due to potential legal risks.

Another challenge is that end-users may not consider (or care to read) details in information provided, but may rather rely on labels, flags or similar that may (or may not) provide much relevant information in themselves.

1.2.5. At which stage of the lifecycle and where in the business model/management does greenwashing occur

Q A.10: For each of the stages of product lifecycle and with regard to the business model and management, please indicate the likelihood of the occurrence of greenwashing.

No opinion.

Q A.10.1: Please indicate below if you have any comments on the above question

The Swedish Securities Markets Association (SSMA) notes that product manufacturers would normally strive to comply with all rules applicable at the time of structuring a product, At the same time there are rules that have not yet been clearly formulated or may be interpreted in different ways. A large number of EU-rules have also been introduced in a relatively short time. As a consequence, it may take some time for market participants to adjust existing (legacy) products.

The greenwashing risk may be more significant in the near term when the regulatory framework is still being developed and market participants have not yet had time to adjust. A significant amount of work has been done and much has been achieved in a short period of time, but at the same time it is important to keep in mind that we are here dealing with complex issues.

Q A.11: Are there any relevant elements or features of greenwashing which have not been referenced in the questions above?

No.

F. ESMA section of the Call for Evidence

All financial market participants and issuers under the remit of ESMA are invited to provide answers to this section. Other stakeholders ranging from retail investors and consumers associations to NGOs and academia are also invited to participate to the extent the views and expertise provided are relevant to ESMA's activities.

Understanding the drivers and the scale of greenwashing risks

As stated previously, the drivers of greenwashing are multifaceted and better understanding them is critical to addressing the issue.

The Swedish Securities Markets Association considers that the main drivers of greenwashing risks include the following:

- Entry of new participants such as issuers of ESG products, ESG rating or data providers, etc.
- Lack of ESG expertise and skills of market participants
- A rapidly evolving regulatory framework
- Differing interpretations of the regulatory framework
- Lack of reliable data

SSMA also considers that financial literacy is important and should include education also about ESG.

SSMA further notes that ESG has become increasingly important to market participants, end-investors and other relevant parties. Much has also been achieved in a relatively short time. While there may presently be a shortage of ESG expertise in the market, this will likely be solved over time. CSRD also means that this topic will attract the attention of and become more important to members of management and boards of directors.

Question F.2. As stated before, this C f E uses the term greenwashing broadly, covering sustainability-related claims relating to all aspects of the ESG spectrum. While the sustainable finance legislation gives more prominence to environmental aspects, we would like to understand which aspects of the ESG spectrum may be more prone to greenwashing risks, at this stage.

Please rate the three aspects below from 1 to 5, where 1 = very low occurrence; 2 = low occurrence; 3 = medium occurrence; 4 = high occurrence; and 5 = very high occurrence.

a. Environmental aspects = 4
b. Social aspects = 3
c. Governance aspects = 3

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