

Sustainable finance: Guernsey's new anti-greenwashing guidance

Briefing Summary: The Guernsey Financial Services Commission ("GFSC") has published its Guidance for CIS on measures to counter the risk of greenwashing ("Guidance") which applies to all collective investment schemes which are authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and to those responsible for preparing the prospectuses and other marketing materials of such schemes.

Service Area: Investment Funds, Fund Formation, Fund Finance, Investment Managers, Fund Regulation and Compliance, Funds Strategies and Asset Classes

Sector: Environmental, Social and Governance (ESG), Investment and Wealth Management

Location: Guernsey

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Disclosure Requirements

The purpose of the Guidance is to safeguard investors against the potential risk of false or misleading sustainability claims. Guernsey's existing disclosure requirements – namely, to include all relevant information to enable a potential investor to make a well-considered assessment of the merits and risks of investing in a scheme – now extend to ensuring that:

- any explicit claims, or statements, indicating that the scheme or its underlying assets are environmentally sustainable investments, are not misleading;
- any disclosures are based on genuine fact and are capable of being evidenced by the scheme or its service providers; and
- relevant information is provided to allow potential investors to understand how any sustainable investment objective is intended to be achieved and how that will be monitored, measured, reported and kept up to date.

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The GFSC defines an “environmentally sustainable investment” as 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.

The GFSC also extends the definition to include those environmentally sustainable investments listed in the European Union’s Taxonomy for Sustainable Activities Regulation, the EU’s classification system, which was introduced to provide investors with a common language to identify the degree to which any economic activities can be considered environmentally sustainable. Whilst Guernsey is not part of the EU and therefore not subject to EU legislation, many Guernsey funds are marketed into the EU. For this reason, the GFSC has sought to provide equivalence recognition by including the EU’s Taxonomy.

Further, the GFSC has stated that a fund will be deemed to comply with the Guidance where the fund makes disclosures compliant with the EU’s Sustainability-Related Financial Disclosure Regulation (“**SFDR**”). The SFDR’s disclosure requirements require firms to highlight to investors any environmental, social or governance event or condition that could occur and cause a negative impact on the value of their investment. The SFDR came into force on 10 March 2021 and applies to EU regulated firms such as EU AIFMs and UCITS management companies and any delegates of such firms as well as Guernsey AIFMs, as non-EU AIFMs that market AIFs in the EU pursuant to the national private placement regime.

Key actions for those responsible for preparing and updating prospectuses

Funds and their boards should be aware of their overarching duty to ensure fund prospectuses and any marketing materials do not facilitate greenwashing and to check that any environmental claims are verifiable.

Many funds will already have the necessary disclosures included in their marketing materials as they already comply with the SFDR. However, for the remainder of schemes, their prospectuses and any further marketing materials will need to be prepared and/or updated to include sufficient information to allow investors to understand how any sustainable investment objective is intended to be achieved and how that will be monitored, measured, reported and kept up to date going forward.

Where a fund is regulated as a Guernsey Green Fund, its marketing materials will already be complying with the strict disclosure requirements under the Green Fund Rules. To ensure consistency with other Guernsey funds, the GFSC has also now expanded the green criteria in the Green Fund Rules to include reference to the EU Taxonomy.

Please speak to a member of the Carey Olsen team should you wish to discuss the Guidance further.

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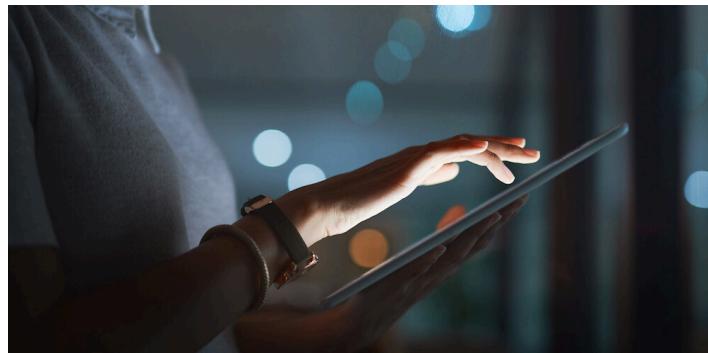


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