

By email only: gc23-3@fca.org.uk

26 January 2024

Dear Sir/Madam

Response to the FCA Guidance Consultation (GC23/3) – Guidance on the Anti-Greenwashing Rule (“Guidance Consultation”)

The Loan Market Association (“LMA”) is the trade body for the European, Middle Eastern and African syndicated loan markets. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 850 organisations across over 65 countries and consists of banks, non-bank investors, borrowers, law firms, rating agencies and service providers.

The LMA is dedicated to promoting growth and innovation in sustainable lending practices, and supporting the loan market as new sustainability-related law and regulation emerges. The LMA is proactive in working with market participants and other trade associations across the financial sector to continue to build the integrity and credibility of loan products and services against an ever-changing ESG regulatory landscape.

The LMA recognises that greenwashing is a risk for the financial sector as a whole and considers the issue of greenwashing in the context of its sustainable loan principles and supporting documents. The LMA welcomes the opportunity to respond on behalf its members to the FCA’s Guidance Consultation on the Anti-Greenwashing Rule (GC23/3). We see the Guidance Consultation as an important step towards identifying, clarifying and strengthening the market understanding of greenwashing and how to prevent it.

The Anti-Greenwashing Rule and proposed guidance does not directly apply to the loan market. However, authorised firms may make sustainability-related claims about loan products and related services. We have not therefore included detailed comments on the Guidance Consultation but have set out below our high-level comments.

The LMA supports the FCA’s overarching goal of tackling greenwashing whilst continuing to enhance the transparency, credibility and integrity of markets. In order to achieve this, we are keen to ensure that the proposed guidance is proportionate, “user friendly” (including in respect of terminology, defined terms and further information) and aligned with other regulatory regimes. It should also provide authorised firms with clear and practical guidance to identify

and address greenwashing risk, improve relevant processes, policies and procedures and comply with the Anti-Greenwashing Rules.

The FCA can use the proposed guidance to assist and improve communication efforts generally by taking into account, referring to and clarifying the use of existing definitions and other relevant terms used in market (such as “green-hushing”, “green-bleaching”, “communication” and “sustainable value chain”), explaining the differences between and use of those terms (including in market guidance and regulation) as well as the rationale for the approach taken by the FCA in the Anti-Greenwashing Rule and the proposed guidance. Clarification of these references and definitions in this proposed guidance would support the understanding and impact of the Anti-Greenwashing Rule and the proposed guidance.

There has been a wave of consultations, guidance and regulation across the EU and globally designed to address greenwashing - many of which are not harmonised or consistent with each other. This has made it extremely difficult for market participants to understand, analyse and implement requirements of a complex, interrelated and evolving sustainability regulatory landscape. As well as clarifying terminology, the LMA therefore urges the FCA to use this opportunity to enhance interoperability between global regimes aimed at addressing greenwashing issues by referencing existing regulatory framework and gaps in the proposed guidance.

In recent years, the LMA has played an active role in fostering a just transition to a sustainable future. To enhance the integrity and credibility of sustainable loan products and minimise greenwashing, the LMA has developed the Green, Social and Sustainability-linked Loan Principles and Guidance along with supporting documents. These documents aim to provide a framework for the structuring of relevant sustainable loan products whilst also retaining sufficient flexibility to allow the relevant products to continue to develop in line with market practice and evolving law and regulation. These documents also include detailed guidance relating to processes and procedures (including benchmarking, analysis, reporting and verification) which are aimed at ensuring the credibility and integrity of the relevant loan products and supporting users in identifying and addressing greenwashing issues. Other trade associations (including ICMA) have also published similar product-related principles and guidance.

We believe that market participants would benefit greatly from understanding how these frameworks and criteria can be used to achieve the expectations of the Anti-Greenwashing Rule. We welcome the illustrative examples set out in the proposed guidance but believe that the FCA can go further and use the proposed guidance to inform market participants of the various resources, tools and information which can be used to support their analysis, processes and procedures and ensure that their sustainability-related claims comply with the Anti-Greenwashing Rule.

The market would also benefit from additional detail being included in the proposed guidance in respect of the processes and controls that could be put in place to support claims and meet the expectations of the Anti-Greenwashing Rule. This is particularly important given the recognition that greenwashing is often unintentional. Market participants are relying heavily on the information, resources, tools and data available at the time a sustainability claim is made and concepts, quality, best practice are likely to evolve over time, including in response to regulation. Additional detail may include for example, whether reliance on ESG assessments, criteria, certifications etc is reasonable; best practice for selection of metrics and data; the

circumstances in which to update processes, policies and procedures; and clear statements (including examples) of good and poor practice. Further clarification is required on the level of disclosures required in relation to limitations, disclaimers and qualifications and the distinction between financial promotions and non-marketing communications. It would also be helpful to provide illustrative examples of how to improve a “vague”, “broad” or “general” claim and an indication of the tools and resources that market participants can rely on to integrate safeguards into their processes, policies and procedures to ensure that such claims achieve the expectations of the Anti-Greenwashing Rule. Expanding the proposed guidance in this way would allow market participants to feel confident that the processes and procedures being implemented by them will be seen by the FCA as meeting expectations of the Anti-Greenwashing Rule.

If we can be of any further assistance, please do not hesitate to contact me by email at Hannah.Vanstone@lma.eu.com.

Yours faithfully,

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