

Central Bank Focus on “Greenwashing”

The Central Bank of Ireland (the “Central Bank”) has made it clear that one of its key areas of focus for 2022 will be any mismarketing of financial products by claiming they have sustainable credentials where they do not actually meet such criteria - “greenwashing”. The Central Bank notes that this can consist of inadequate as well as incorrect disclosures so care needs to be taken to ensure that related materials are comprehensive and complete.

Background

The European Commission (“EC”) has introduced specific regulation to address the risks arising from greenwashing. Specifically, the Sustainable Finance Disclosure Regulation (“SFDR”) aims to harmonise the rules across the European Union (“EU”) on how firms describe sustainability factors and risks and how they provide related information for financial products, including funds. This aims to ensure investors can be fully informed of financial products’ sustainability characteristics in a measurable and quantifiable manner, using consistent and transparent parameters. This is vital to building trust in related financial products to assist a transition to a carbon neutral economy. This forms part of the EC Action Plan on Sustainable Finance, 2018, and its Renewed Strategy for Sustainable Economy, 2021 and is a new regulatory framework for sustainable finance.

Fund documentation has already been updated to address SFDR Level 1 requirements that applied from March 2021 (as well as potential further updates to reflect the Taxonomy Regulation which were effective with a 1 January 2022 deadline). These requirements will be further supplemented with detailed Level 2 obligations, applying from January 2023. Firms will also have had to determine the classification of their funds for the purposes of the SFDR (e.g., “Article 8”, “Article 9” etc).

Central Bank Actions to Date

The Central Bank published its second annual “Securities Markets Risk Outlook Report” (the “Report”) in February 2022.

This sets out the key risks perceived by, and areas of focus for the Central Bank in 2022. It also seeks to assist firms by setting out its expectations regarding their responsibilities for mitigating and managing relevant risks. This Report notes that greenwashing will be one of its areas of focus in 2022. The Report is just the latest in a series of related steps. For example, the Central Bank established a new Climate Change Unit in 2021. Its purpose is to drive forward climate-related work and to ensure cohesion and consistency of approach.

Furthermore, the Central Bank wrote to regulated firms in November 2021 to highlight statutory obligations related to climate and sustainability issues as well as its related supervisory expectations. The fundamental message is that with sustainable finance becoming part of the mainstream investment process, firms need to be cognisant of their related legal responsibilities to ensure investor interests and market integrity are protected. The Central Bank also introduced fast track filing and approval processes to facilitate the timely updating of fund documentation in advance of the relevant deadlines.

How Clerkin Lynch Can Help

ESG is an area of keen focus for Clerkin Lynch. Six members of our team undertook the “Climate Change Law” course with the Law Society of Ireland in 2021 to facilitate our comprehension of related issues and we have prepared a host of materials on ESG related topics. Our genuine interest in the topic and sustainability related outcomes generally means that we are ideally positioned to assist clients in addressing related concerns.



Mark Browne
Partner
Email: markbrowne@clerkinlynch.com
Phone: 01 611 4400



Ben Lynch