Frankfurt,
13 January 2023

BVI[1]'s position on ESAs Call for evidence on better understanding greenwashing

C. ESAs common section of the CfE

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) Similar to 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

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 28%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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.
4000 character(s) maximum

We do not subscribe to the view that greenwashing can happen unintentionally. In particular, accidental misinterpretation of the sustainable finance regulatory requirements should not be considered as resulting in greenwashing. The current regulatory framework, in particular the SFDR regime and MiFID/IDD provisions on sustainability preferences, encompasses many concepts and provisions that still leave room for interpretation by market participants (cf. our reply to Q A1.10 below). This pertains also to the disclosure requirements in the standardised ESG annexes and the standardised PAI statement under SFDR. In many instances, one can only guess what has actually been meant by the regulator and the understanding based on clarifications by the ESAs/the EU Commission or market standards improves only gradually. In these circumstances, we do not deem it appropriate to treat potential misinterpretations of regulatory requirements (that will become evident at a certain point of time but may not have been obvious before) as greenwashing.

Apart from this point, we agree in principle with the core characteristics of greenwashing as outlined by the ESAs. It should be expected that greenwashing occurrences due to the omission of relevant information will decrease after full implementation of the SFDR Delegated Regulation. Problems in terms of too general disclosures or sustainability claims not sufficiently backed by corresponding product features will probably remain relevant, even though such deficiencies should only be treated as greenwashing in case of intentional occurrence.

Q A.2: Do you have or use a specific definition of greenwashing as part of your activities? If so, please share this definition.
4000 character(s) maximum

We do not use any particular definition of greenwashing in our activities or communications. However, when monitoring greenwashing claims raised by some stakeholders and the press, it often seems that greenwashing is being understood in the sense of not meeting certain quality standards of sustainability. This is in our view a misconception of greenwashing. Given that there is no universal understanding of sustainable investments or investment strategies promoting environmental or social characteristics, nor any other minimum standard of sustainability, no common level of ambition must be expected. We deem it very important to make a clarifying statement in this regard in the upcoming ESA report in order to objectivise the debates about greenwashing in the public media. Sustainability claims should be rather assessed against the specific features of individual products as disclosed in the precontractual documents and reported over time in periodic reports. This assessment will soon be facilitated by implementation of standardised ESG annexes under SFDR.

However, in order to enhance the understanding of greenwashing and its implications also beyond the EU, the results of the current stocktaking by the ESAs could be shared with other regulators via international organisations and networks, such as IOSCO, with the view to aligning the concepts of greenwashing and potential regulatory or supervisory responses to greenwashing risk.

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?
[one answer possible]

☒ a) Yes
☐ b) No

Q A.3.2: If no, could you please further elaborate on the roles market participants could play in greenwashing, including on potential alternative or additional roles to the ones identified above?
4000 character(s) maximum

N/A

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.

Please note the enclosed document contains further explanations on the categories of topics listed below. We strongly encourage you to consult these in order to better understand the topics and sub-topics of sustainability-related claims listed below.

ESAs_CfE-_footnotes_topics.pdf

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. Please provide a score from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence ; 3 = neutral; 4 = high occurrence ; 5 = very high occurrence).

	1	2	3	4	5	Don't know
*Board and senior management's role in sustainability (Topic 1, i)						X
*ESG corporate resources and expertise (Topic 1, ii)						X
*ESG strategy, objectives, characteristics (Topic 2, i)	X					
*Sustainability management policies (Topic 2, ii)	X					
*ESG qualifications / labels / certificates (Topic 2, iii)	X					
*Engagement with stakeholders (Topic 2, iv)						X
*ESG performance to date (including metrics for impact claims) (Topic 3, i)		X				
*Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii)		X				

Q A.4.1: Please specify the underlying drivers of greenwashing in relation to the topics you scored higher.
4000 character(s) maximum

- Our answer is based on the assessment of topics being in general prone to the occurrence of greenwashing. A high score does not mean that the actual occurrence is high.
- As regards measurement of actual ESG performance or commitments to future performance, there is still a lot of uncertainty in the market about suitable metrics/methodological approaches that should at best be science-based; the current lack of reliable and comparable ESG data further aggravates the problems. These deficiencies of measurement tools entail a certain potential for greenwashing.

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).

	1	2	3	4	5	Don't know
*Board and senior management's role in sustainability (Topic 1, i)						X
*ESG corporate resources and expertise (Topic 1, ii)						X
*ESG strategy, objectives, characteristics (Topic 2, i)						X
*Sustainability management policies (Topic 2, ii)						X
*ESG qualifications / labels / certificates (Topic 2, iii)						X
*Engagement with stakeholders (Topic 2, iv)						X
*ESG performance to date (including metrics for impact claims) (Topic 3, i)						X
*Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii)						X

Q A.5.1: Please explain what types of impacts or harm and their consequences you anticipate as a result of greenwashing practices.
4000 character(s) maximum

- Investors may misunderstand the potential for achieving sustainable outcomes.
- Investors may misunderstand the implications for the selection of investments.
- Bad press coverage, NGO investigations may lead to reputational risk for product providers.
- As a consequence, investors could lose confidence in sustainable investments in general and retreat from ESG-related products which would decrease finance flows for sustainable transition.
- Intentionally misleading claims can qualify as a criminal offence and be prosecuted.

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?
[one answer possible]

☐ a) Yes

☒ b) No

Q A.6.1: If yes, please provide below more information on your answer including, if possible, a short example.
4000 character(s) maximum

N/A

Q A.7: Please indicate below if you have any additional comments regarding the relevance of the above topics on which sustainability-related claims are made in the context of a given sector or entity.
4000 character(s) maximum

N/A

1.2.3 The way in which a claim can be misleading

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

	1	2	3	4	5	Don't know
*Selective disclosure or hidden trade-off (cherry-picking positive information and/or omitting relevant negative information)						X
*Empty claims (exaggerated claims and/or failure to deliver on such claims)						X
*Omission or lack of disclosure						X
*Vagueness or ambiguity or lack of clarity						X
*Inconsistency across various disclosures and communications (marketing, regulatory, website, etc.)						X
*Lack of fair and meaningful comparisons, thresholds, scenarios and/or underlying assumptions						X
*No proof (unsubstantiated)						X
*Misleading /Suggestive non-textual imagery and sounds (including the use of specific colours like green)						X
*Irrelevance						X
*Outdated information						X
*Misleading / suggestive use of ESG-related terminology (naming-related greenwashing)						X
*Outright lie (falsehood)						X

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?
4000 character(s) maximum

N/A

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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.
These channels include, but are not limited to, the following: (1) 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) Ratings/benchmarks/labels, (3) Product information (including internal classifications and internal target market, product testing and distribution strategy related documentation), (4) Intermediary/advice information, (5) Marketing materials (including website, social media), (6) Voluntary reporting, falling outside previous categories as reported on a voluntary basis.

Q A.9: Regarding the above dimension and the list of channels 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. Please score each channel from 1 (rather unlikely) to 5 (very likely):

	1	2	3	4	5	Don't know
*a) Regulatory documents (including Key Investor Documents or Key Information Documents, Prospectuses, Financial statements, Management Reports, Non-Financial Statements, Benchmark statements and methodology documents, insurance-product information documents, pension benefit statements, etc.) and/or any mandatory disclosures	X					
*b) Ratings (ESG ratings and/or other ESG data products)			X			
*c) Benchmarks			X			
*d) Labels		X				
*e) Product information (including internal classifications, and internal target market, product testing and distribution strategy related documentation)	X					
*f) Intermediary/advice information		X				
*g) Marketing materials (including website, social media, advertising)			X			
*h) Voluntary reporting, falling outside previous categories as reported on a voluntary basis		X				
*i) Other (please specify)			X			

Other, please specify
4000 character(s) maximum

- Greenwashing can potentially also relate to the use of outdated/not verified information;
- Fund management companies struggle with ensuring sufficient quality of disclosures based on ESG information obtained from third parties (commercial vendors), but not yet reported by companies; this pertains to the use of ESG KPIs for risk assessment and investment due diligence, but represents also a huge problem in the context of forthcoming reporting obligations (i.e. in relation to PAI reporting at the entity level under SFDR due by mid 2023);

- A significant proportion of ESG data sourced from third parties is being approximated or estimated based on partially non-transparent methodologies; for asset managers as the users of ESG data it is very difficult to establish which KPIs/data elements can be actually relied upon and to which extent; potential greenwashing issues can arise if findings based on such patchy, low quality information are being presented as bulletproof to investors;Processing of information provided by ESG data providers or brokers is thus prone to further impairment of quality and reliability in terms of underlying ESG assessments. Detailed disclosures of ESG data sources as well as any limitations to methodologies and data as already required for financial products under Art. 10 SFDR should help in understanding the current challenges and thus mitigate greenwashing risk.

Q A.9.1: Please indicate below if you have any comments regarding the communication channels of potentially misleading sustainability-related claims?
4000 character(s) maximum

The assessment of ESG controversies (i.e. alleged events or practices with likely negative environmental, social or governance impacts) and their implications for ESG ratings/scores of issuers can significantly vary across data providers. While an apparent controversy can be taken into account by some providers as reported on the spot, other will have processes in place that involve further investigations or an opportunity to react for the involved issuers. Asset managers that currently have to refer to external data providers in the absence of directly reported company data thus face significant difficulties as to which assessment can they eventually rely on, especially in view of the opaqueness of methodologies mentioned above.

The decision on which/how many data vendors to contract with depends on many factors (i.e. covered investment universe, technical interoperability, costs) and should be subject to a strategic determination by the fund management company. Likewise, asset managers must retain the discretion to either use the external ESG rating or to make their own evaluation based on a proprietary methodology and additional data sources, as long as such selection of methods is based on a pre-defined process and thus avoids cherry picking. In any case, presuming that data sources and methodologies are being appropriately disclosed pursuant to Art. 10 SFDR, the consequential ESG assessment must not be considered greenwashing.

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

In addition to the different channels of transmission of claims, greenwashing can also occur at various stages of the product lifecycle, including: the product manufacturing stage (product development, product design, market targeting), the product delivery stage (marketing, product-related disclosure, distribution, sales), the product management stage (product monitoring/review, ongoing product-related disclosure). Beyond the product lifecycle, greenwashing can occur at the entity-level: in the business model (value chains, group structures, innovation and technology, outsourcing) or in the business management (culture, governance arrangements, systems and processes).

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. Please provide scores ranging from 1 (rather unlikely) to 5 (very likely):

	1	2	3	4	5	Don't know
*a) Product manufacturing						X
*b) Product delivery – marketing: advertisements, nonregulatory information						X
*c) Product delivery – regulatory disclosure						X
*d) Product delivery – distribution channels			X			
*e) Product delivery – sales: information asymmetry (this includes under or over emphasis of certain product features)			X			
*f) Product delivery – sales: misselling due to misleading information/disclosure						X
*g) Product delivery – sales: misselling due to unsuitable product						X
*h) Product delivery – sales: incentives at point of sale						X
*i) Product management – product monitoring, product review, ongoing product disclosure						X
*j) Business model at entity level – value chain, group structure, innovation/digitalization, outsourcing						X
*k) Business management at entity level – culture, governance arrangements, systems and processes						X

Q A.10.1: Please indicate below if you have any comments on the above question
4000 character(s) maximum

As indicated above, we would be reluctant to qualify unintentional misinterpretations of regulatory concepts or requirements as greenwashing. Nonetheless, in the current regulatory environment, it can happen that due to diverging interpretations of relevant regulatory concepts at the product level, greenwashing risk becomes relevant in the distribution channels when advisers attempt to compare sustainability features of products in order to make recommendations to their clients. The ESAs are certainly aware that such diverging interpretations are particularly pertinent in practice with regard to the criteria for sustainable investments according to Article 2(17) SFDR and the approach to calculate the proportion of sustainable investments at the portfolio level. In this regard, the following greenwashing risks may arise:

- <u>Providers may be tempted to apply rather lax criteria for sustainable investments in order to be able to commit to high proportions and potentially, to qualify for the Article 9 status under SFDR</u>: Indeed, the lack of clarity about the qualitative approach to sustainable investments (how to establish a positive contribution to an environmental or social objective/how to assess the "do no significant harm" requirement by applying principal adverse impact indicators) as well as about their calculation at the portfolio level (based on the proportion of sustainable activities or on the evaluation of the entire investee company) might set wrong incentives as regards the level of ambition. This applies even more in view of the regulatory expectation for Article 9 products to make "only sustainable investments" which implies a high minimum commitment to be made in the upcoming ESG annexes to sales prospectuses. Nonetheless, the recent wave of reclassifications of products that have been initially assigned to Article 9 SFDR (cf. the BVI sustainability snapshot for the German market and the Morningstar market review, both for Q3 2022) demonstrates that many fund providers prefer to take a rather cautious approach in order to avoid greenwashing claims in case they were not able to meet the required level of sustainable investments after the pending clarification of definitions to be expected soon from the EU Commission.

- <u>Distributors might pick products or investment solutions that match a client's preferences in terms of minimum proportion of sustainable investments without being able to understand the underlying approaches or to compare the level of ambition in its breadth and depth</u>: Due to the highly diverging approaches applied by product manufacturers for assessing sustainable investments, distributors are currently unable to directly compare commitments in terms of proportion of sustainable investments across products, but must refer to the underlying concepts applied at the product level. Against this background, matching of products with certain levels of sustainable investments with the corresponding preferences of investors is quite a challenging exercise that entails the risk of improper communication by the adviser and misapprehension by the client.

<u>1.2.6 Further considerations</u>

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

☐ a) Yes
☒ b) No

Q A.11.1: If yes, please provide below more information on your answer including, if possible, a short illustration:
4000 character(s) maximum

N/A

<u>2. Examples of potential greenwashing practices</u>

This section of the survey relates to the collection of examples of potential greenwashing practices that you may have encountered that we would like to encourage you to describe below. These examples can be within or outside the current scope of the EU sustainable finance legislation and should refer to the financial sector within the remit of at least one of the ESA's. This CfE does not seek input in relation to sustainability-related claims made regarding entities, products or services not under the scope the ESAs, like sustainability-related claims regarding non-financial products (e.g. consumer goods). Please make sure to provide examples for which you can answer at least some of the below questions. Please provide the details of the described cases to the best of your knowledge.

Please bear in mind that the purpose of this survey is to gather useful and concrete examples that will help the ESAs to better understand greenwashing. Greenwashing cases reported in this CfE are mainly sought for the purpose of informing the advice which the ESAs would provide to the European Commission. Therefore, you may either give full details about the actual names of the entities or products involved in a potential greenwashing practice, or you may refer to them as 'entity X', 'product Y'.

Respondents can provide up to 5 examples of greenwashing in this survey. If you are able to identify more examples of greenwashing, please choose those cases which are the most relevant in your view, and the most likely to occur.

Q A.12: Are you able to identify and characterize at least one example of potential greenwashing practice?
[one answer possible]

☐ a) Yes, I can provide at least one example of potential greenwashing practice
☒ b) No, I cannot identify a specific example of potential greenwashing practice

Q A.12.1: (If no) If you have not identified occurrences of greenwashing, what is the reason for that?
[multiple answer(s) possible]

☐ a) There is no specific methodology on how to detect (potential) greenwashing cases
☐ b) As sustainable finance requirements (including definitions and disclosure standards) are new/not in force yet, greenwashing is hard to detect
☐ c) Few or no products with sustainability features are offered in my jurisdiction / entity / area of interest, decreasing the risk of greenwashing
☐ d) I have not encountered any instances of greenwashing
☒ e) Other, please specify below

Other, please specify
4000 character(s) maximum

As an industry association, we do not perceive it as in our remit to identify practical instances of greenwashing. Our activities focus rather on assisting our members in their efforts to implement new regulations, including on sustainability, and to act as a resonance body to regulators and policy makers in case of practical difficulties and inconsistencies. Our respective suggestions that may help to tackle the greenwashing risk are outlined in our responses to Q F.9 and F.10 below.

Q A.13: Do you want to raise any additional points that was not included in this survey?
5000 character(s) maximum

N/A

F. ESMA section of the CfE

The ESMA-specific section of the survey below covers questions relevant to entities and products under ESMA's remit.

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.

Question F.1. Which, of the elements listed below, do you consider to be the main driver(s) of greenwashing risks?
[multiple answers possible]

☐ a) New / innovative ESG products in rapidly evolving ESG markets
☐ b) Entry of new participants such as issuers of ESG products, ESG rating or data providers, etc.
☐ c) Lack of ESG expertise and skills of market participants
☐ d) A rapidly evolving regulatory framework
☐ e) Differing interpretations of the regulatory framework
☒ f) Desire to exaggerate the sustainability profile at entity/product or service level
☒ g) Competition (wanting to be better than a comparable issuer/product)
☒ h) Lack of reliable data
☐ i) Mismatch between retail investors' expectations and market participants' ability to deliver real-world impact
☐ j) Other, please specify below

Question F.1.j. You selected "j) Other", please specify:
100 character(s) maximum

N/A

Please elaborate briefly on the answer to question F.1
500 character(s) maximum

The most relevant practical problems relate to the combination of (1) sustainable investing being a relatively new phenomenon that needs to be understood, embedded and incorporated in internal systems and processes of companies, (2) the lack of clear universally applicable concepts and (3) the lack of reliable data. Such factors may lead to unintentional misinterpretation of regulatory requirements, which should however not be considered greenwashing.

Through the questions below, we seek to better understand which ESG aspect(s), which segment(s) of the sustainable investment value chain, and which asset class(es) or product category(ies) may be more prone to greenwashing risks, in relative terms.

Question F.2. As stated before, this CfE 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 ; 5 = very high occurrence)

	1 = very low occurrence	2 = low occurrence	3 = medium occurrence	4 = high occurrence	5 = very high occurrence
a) Environmental aspects			X		
b) Social aspects		X			
c) Governance aspects	X				

Question F.3. Greenwashing may apply to claims at both entity- and/or product-level (including services). Based on your experience, we would like to understand which level may be more prone to greenwashing risks in various market segments. For each of the segments listed below, please select one of the four options.

Greenwashing practices are…	1) more likely at entity-level	2) more likely at product /service-level	3) equally likely at entity and product/ service levels	Not Applicable
Investment managers [1] *[1] For Investment Management, entity-level claims refer to claims made by asset managers under the scope of SFDR. Product level claims refer to claims regarding investment products like investment funds.*		X		
Investment firms[2] *[2] For investment firms, entity-level claims refer mostly to claims made by product distributors and manufacturers. Product-level claims refer to claims regarding: a) products: all financial instruments (within the meaning of Article 4(1)(15) of MiFID II) (b) services: portfolio management and investment advice.*		X		
Issuers [3] *[3] For Issuers' disclosure and governance, entity-level claims refer to claims made by issuers under the scope of NFRD, the upcoming CSRD and/or the Taxonomy Regulation (TR). Product-level claims relate to financial securities and instruments that fall under the remit of ESMA.*			X	
Benchmarks administrators[4]		X		

[4] For Benchmarks, entity-level claims refer to claims made by benchmark administrators. Product-level claims refer to claims regarding benchmarks.				
Other				

Question F.3.1. If your scored "Other", please specify below:
100 character(s) maximum

N/A

Please elaborate on the answer provided to question F.3
1000 character(s) maximum

- For investment managers, investment firms and benchmark providers, greenwashing risk should be more prominent with regard to the terms of products (and services) they offer to the market,
- For issuers, greenwashing risk should be equally relevant at entity and product level, given that entity-level ESG profile of an issuer is of high importance for equity and bond investments.

Question F.4. For market segments which you see as more prone to greenwashing risks, please provide below any quantitative or qualitative data (and relevant links) you may have and that could help inform our understanding of the scale and frequency of potential greenwashing practices. You may also upload files if relevant in the next field.
4000 character(s) maximum

N/A

Annex to question F.4 - please upload any file, if applicable.

Question F.5. With regards to product-level sustainability-related claims, we want to better understand which asset classes, financial products categories may be more prone to greenwashing risks. For each of the asset classes and /or financial products regarding which your expertise is relevant, please provide a score from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence ; 3 = medium occurrence ; 4 = high occurrence ; 5 = very high occurrence of greenwashing).

	1 = very low occurrence	2 = low occurrence	3 = medium occurrence	4 = high occurrence	5 = very high occurrence	Not applicable
a) Equity (common shares, other equity instruments)						X
b) Fixed income (green bonds, social bonds and other use of proceeds (UoP)						X

bonds, sustainability linked bonds, common corporate bonds, common government bonds or other fixed income securities)						
c) Derivatives (ESG derivatives including those with an ESG underlying and with an ESG performance target, other derivatives)						X
d) Alternative investments (infrastructure, private equity)						X
e) Funds: UCITS funds, AIFs, ETFs, Private Equity funds or other funds (e.g. Hedge Funds, ELTIFs)						X
f) Benchmarks: Paris-aligned (PAB), Climate transitioning (CTB) Climate Benchmarks, other climate benchmarks or ESG benchmarks						X
g) Other MiFID II instruments (e.g. securitisations)						X
h) Other products/services (please specify below)	X					

*** Question F5.1** If you scored "Other products/services", please specify:
5000 character(s) possible

- It is difficult/not appropriate to differentiate greenwashing risk based on asset classes; for instance with regard to fixed income instruments, there are different incentives and potentials for greenwashing risk in relation to green or social bonds on the one hand and traditional corporate bonds on the other; also with regard to green bonds, the assessment may differ depending on the issuer (corporate/sovereign) and its ability to dedicate bond proceeds to finance/refinance specific green investments;

- Public availability of reliable, comprehensive and comparable information on sustainability risk and impact of the issuer and sustainability objectives or outcomes of the investment should be seen as the decisive factor in differentiating greenwashing risk.

With regard to green, social or sustainability-linked bonds, greenwashing risk can be minimised by adherence to internationally recognised market standards, in particular of ICMA (e.g. Green Bond Principles) or CBI, and verification by an independent third party (second party opinion). In future, the EU Green Bond Standard will hopefully contribute to tackling greenwashing risk in relation to green bonds launched for financing Taxonomy-aligned projects.

Question F.6. Greenwashing practices can be transmitted over more than one segment of the sustainable finance value chain. Various options are described below representing various greenwashing transmission trajectories of sustainability-related claims, where the first entity is always the trigger with subsequent entities being either in the role of spreader and/or receiver of the claims. Based on you experience, we would like to understand which transmission trajectory may be more prone to greenwashing risks. For each trajectory listed below, please provide a score from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence; 3 = medium occurrence; 4 = high occurrence; 5 = very high occurrence)

	1 = very low occurrence	2 = low occurrence	3 = medium occurrence	4 = high occurrence	5 = very high occurrence	Not applicable
a) Issuer X --> Issuer Y[1] --> Investor or benchmark administrator *[1] At entity-level, Issuer Y might be claiming to engage with its suppliers, including Issuer X, about a given E or S topic (e.g. human rights violations). Assuming Issuer X Makes misleading claims about this topic, these claims can thus be spread by Issuer Y*						X
b) Issuer --> Benchmark administrator --> Investment manager --> Investor						X

c) Benchmark administrators --> MiFID II manufacturer (e.g. ETF provider) --> Investment manager --> Investor						X
d) Benchmark administrator --> Investment manager --> Investor						X
e) Investment manager --> Institutional investment managers [2] --> Investor *[2] The institutional investment managers could select the first asset manager as an underlying investment in their products (e.g. fund of funds), which are then sold to final investors*						X
f) Investment manager --> MiFID II Distributor (e.g. Investment firm) --> Retail Investor						X
g) ESG ratings provider --> Investment manager --> Investor						X
h) ESG ratings provider --> Benchmark administrator --> Investor						X
i) Issuer --> Investment						X

manager --> Investor						
j) Issuer --> MiFID II Distributor (e.g. Investment firm) --> Retail Investor						X
k) Other (please specify below)	X					

Question F6.1 If you scored "Other", please specify:
5000 character(s) possible

Fund companies are required by law to make their decisions on the basis of data that they can adequately evaluate. This decision-making process must be verifiable. This also applies with regard to the data for determining and assessing sustainability risks or to any other risk-relevant sustainability information. Even though no standards exist so far and ESG data obtained from external sources are often not comparable, they can still be used as long as plausibility controls and checks have been applied by the fund company. This due diligence process should mitigate the risk of transmitting greenwashing practices if fund management companies are involved in the value chain.

Consideration of greenwashing risks by financial market participants and issuers

It appears that some industry players already perceive greenwashing as a source of potential risks for their own development and performance and have started to take action with the view to mitigate such risks. The following section seeks to collect insights from financial market participants and issuers on how they perceive greenwashing and on what action they take to address the issue at their level.

Question F.7. Does your organisation perceive greenwashing as a potential source of risk?
[one answer possible]

☒ a) Yes and we have started developing a structured approach to tackling the issue
☐ b) Yes, but we have not yet developed a structured approach to the issue
☐ c) No
☐ d) Other, if so specify

Question F.7.d. If you selected „Other“, please specify:
250 character(s) maximum

N/A

Question F.7.1. If you answered a) or b) to QF.7: what category of related risks do you anticipate could result from greenwashing issues?
[multiple answers possible]

☒ a) Financial risks
☒ b) Reputational risks
☒ c) Legal risks
☒ d) Other, if so specify

Question F.7.1.d. If you selected "Other", please specify:
250 character(s) maximum

Financial risk can become relevant in case of missing or incomplete disclosures on material sustainability risks associated with the activities of target companies that are, as a consequence, not adequately reflected in the market price formation.

Question F.7.2. If you answered a) or b) to QF.7: what types of potential negative impacts do you anticipate as a result of greenwashing issues?
4000 character(s) maximum

- Legal claims resulting from greenwashing accusations can lead to financial risk for firms,
- Persisting regulatory unclarities in terms of key sustainability concepts make it difficult to implement coherent and stable sustainable investment approaches, thus aggravating greenwashing risk for the financial sector,
- This can lead to the loss of confidence on the part of retail investors.

Question F.7.3. If you answered a) to QF.7: What safeguards / risks mitigants have you (or are you planning to) put in place to address greenwashing risks?
4000 character(s) maximum

At BVI level, we are actively working on developing common understanding of and guidance to implementing ESG regulations that should contribute to mitigating greenwashing risk. At the level of individual firms, our members apply
- internal and external control and compliance processes and
- plausibility checks for ESG data and research, complemented by internal analyses

that help tackling greenwashing risk in their products and activities.

Question F.8. Which industry initiative(s) do you see as instrumental in tackling greenwashing?
1800 character(s) maximum

In general, all initiatives aiming at standardisation should be helpful for addressing greenwashing risk. As it stands, standardisation can only happen within the boundaries of EU regulations and must respond to the dynamically changing regulatory environment which is very challenging. Nonetheless, the following industry initiatives should be highlighted:
- Development of a standardised European ESG template (EET) for supply of detailed ESG-related information to distributors, insurance companies, funds-of-funds and portfolio managers: The EET developed by the cross-industry ESG working group under the auspices of the FinDatEx provides a standardised set of ESG data to be transmitted to the market for investment funds and structured

products. In the mid run, it will help standardising the underlying concepts and thus improving the quality and understanding of ESG information.

- In the German market representatives of the banking, investment fund and structured products sectors have agreed on common minimum standards for financial products that can be offered to clients with sustainability preferences under MiFID II. Such minimum standards include among others certain minimum exclusion criteria especially for products committing to consideration of principal adverse impacts as well as compliance with UN PRI. By requiring a common minimum level of quality for all investment strategies offered to ESG-interested investors, they also help alleviating greenwashing concerns.

Question F.9. Which do you think are the market mechanisms that can help mitigate greenwashing risks (e.g. reputational issues) and how do you believe supervisors can help in this respect?
1800 character(s) maximum

In our view, the level of awareness in terms of appropriate communication about sustainability features of products and services could be further enhanced. While firms are certainly increasingly cautious about using sustainability-related marketing messages from the reputational perspective due to critical media coverage, the supervisory expectations in this regard remain less clear. ESMA is now consulting a first set of supervisory guidance on the use of ESG and related terms, however only in relation to fund names. It also seems that the proposed guidance is attempting to enforce some common terms of minimum ESG quality and not reflecting on the issue of responsible communication. In our view, it would be more effective and better aligned with the current regulatory environment of SFDR if supervisory guidance was rather focused on enforcing the “fair, clear and not misleading” principle in terms of public communication on ESG matters and clearly articulating the corresponding expectations by supervisors.

Question F.10. Beyond what is already being done, what could policymakers and regulators do to alleviate greenwashing risks?
5000 character(s) maximum

We suggest the following evolvement of the sustainable finance regulations in order to alleviate the greenwashing risk concerns:

- I**ntroducing transparency and conduct of business rules for ESG research and rating:** For a long time, we have been advocating for voluntary transparency and conflict of interest standards for ESG rating and research providers. Such market-driven initiative would have been helpful in order to enhance the understanding of methodologies and data sources as well as potential associated shortcomings. Unfortunately, there is so far neither a common industry code nor sufficient level of disclosure on the part of individual providers. Therefore, we see the case for regulatory intervention that should focus on transparency rules and accountability requirements as follows:
    - Increased transparency should involve disclosure requirements for internal methodologies and processes as well as proprietary ESG rating frameworks
    - There should be disclosure on data sources, data collection processes, how missing data are dealt with and the methodology for estimation and their data quality controls (in particular if raw data has been third-party audited by the company or not),
    - Providers should have robust operational and control processes in place to ensure a continuous service and provide sufficient detailed information on such processes.

- **Aligning the understanding of key concepts of sustainable finance by principle-based guidance**: There is a blatant need for further clarification of concepts underlying sustainability-related product features that are relevant in terms of sustainability preferences of clients. This applies in particular to the concept of sustainable investments for which currently there is no clear level of ambition nor a uniform rule for calculation (cf. our input to Q A.10 above). We look forward to the answers to corresponding questions put forward by the ESAs to the EU Commission that will hopefully provide principle-based guidance to the level of ambition that needs to be observed and clarify the conditions under which sustainable investments can be forward-looking in order to facilitate sustainable transition. Transition-oriented ESG strategies are indeed key to fostering sustainable progress in the entire economy and thus to achieving the objectives of the EU Green Deal. However, the acknowledgment of such strategies as integral elements of sustainable finance needs to be deepened especially on the side of supervisors and investors.

- **Streamlining supervisory expectations for products that are marketed as sustainable to investors:** Linked to this topic is the overarching issue of clear and commensurate communication on sustainability-related concepts. ESMA is currently consulting a first set of supervisory guidance on the use of ESG and similar terms, that relates, however, only to fund names. Moreover, the consultation is very much focused on imposing certain minimum thresholds without attempting to clarify the underlying concepts. In view of the persisting uncertainties especially about the standards for sustainable investment mentioned above, this does not seem the right way forward. We are generally more in favour of principle-based requirements that would ensure credibility of ESG investment approaches and responsible communication to investors and will certainly explain our ideas in more detail in our reply to the ESMA consultation.

- **Enhancing investors' understanding of sustainability issues:** Ultimately, the risk of greenwashing cannot be tackled without investors being able to understand the various strategies and concepts offered by products with sustainability features. Investors and distributors currently struggle with new regulatory concepts of "Taxonomy-aligned", "sustainable investments" or "consideration of principal adverse impacts" and have difficulties to relate these aspects to their individual preferences. In order to facilitate truly informed investment decisions on sustainability matters, there is an urgent need to effectively enhance investors' understanding that should be the focus of any future regulatory initiatives on sustainability-related disclosures. In this context, the German Sustainable Finance Advisory Committee has recently published an open letter with the suggestion for introducing a colour-based ESG scale that would illustrate the sustainability profile of a product in a simple, easy to understand manner on the basis of existing regulations, but condensing it into one single figure. Such a simplified approach to communicating on sustainability matters should in our view focus on sustainability-related product features, not on the extent of sustainability risk that might be associated with underlying investments. It could be well worth considering in order to enhance comprehensibility for retail investors.