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Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
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Preventing and combating greenwashing

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1 Introduction

Demand for sustainable financial products and services from investors and clients has increased rapidly in recent years. In step with this demand, the number of sustainability-related[1] financial products claiming to be "sustainable", "green" or "ESG" (environmental, social, governance) has also grown significantly.

Various initiatives are under way at national[2] and international level and increasing numbers of regulatory measures are being introduced abroad to enhance sustainability-related transparency for investors and clients. As of now Switzerland lacks specific regulatory requirements for sustainability-related financial products and services. This increases the risk that investors and clients will be consciously or unconsciously misled about the sustainable characteristics of financial products and services ("greenwashing").

Because of its strategic goal of contributing to the sustainable development of the Swiss financial centre, FINMA's primary concern in the area of sustainability – besides considering the financial risks resulting from climate change for the financial institutions and the financial system[3] – is the protection of investors and clients. In particular, this means preventing and combating greenwashing. In this context, FINMA aims, to the extent that it is empowered to do so, to protect investors and clients from improper business conduct and to ensure that they are not deceived regarding the alleged sustainability of products and financial services.

In addition, greenwashing poses risks for market participants and the Swiss financial centre, namely legal and reputational risks, which increase accordingly as a result of cross-border activities. FINMA expects these risks to be adequately taken into account.

Collective investment schemes occupy a central position among sustainability-related financial products. Their growth of almost 50% in 2020

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[1] As there is no uniform definition, the term *sustainability* should be understood broadly. *Reference* or *link* to sustainability or *sustainability-related* should also be interpreted widely, in the interests of protecting investors and clients. Sustainability-related financial products may be marketed, inter alia, by using terms such as "sustainable", "green", "environmentally friendly" or "ESG" (environmental, social, governance) in the name or in the company name, in the product documentation or in the advertising for the financial product. The crucial factor is that investors or clients could get the impression that sustainability is an essential characteristic of the financial product.

[2] See, for example, Guideline for the integration of ESG considerations into the advisory process for private clients published in June 2020 or Sustainable Asset Management: Key Messages and Recommendations of SFAMA and SSF published on 16 June 2020 (as at: 15 October 2021).

[3] For financial institutions, the repercussions of climate change can entail significant longer-term financial risks. On the one hand, climate change entails physical risks for market participants, for example in the form of rising natural catastrophes and their associated costs. On the other hand, financial institutions can be indirectly affected by so-called transition risks as a result of action taken on climate policy. For example, illiquid assets in affected sectors can be exposed to increased valuation risks in the balance sheets of financial institutions.

alone, meaning that their market volume exceeds that of non-sustainability-related collective investment schemes for the first time[4].

In relation to the management of sustainability-related collective investment schemes, FINMA's focus in preventing and combating greenwashing is on the following areas:

i. sustainability-related information at the fund level (figure 2 below) and

ii. suitable organisational structure at the institutional level for managing such products (figure 3 below).

Furthermore, financial service providers who offer sustainability-related financial products will be made aware that the advisory process (at the point of sale) involves greenwashing risks (figure 4 below).

2 Sustainability-related information for Swiss collective investment schemes

Attributes such as "sustainable", "green" or "ESG" can appeal to investors for whom sustainability characteristics are an essential criterion when making an investment decision. In particular, if a Swiss collective investment scheme is described in such a way or if a link to sustainability is established via another means, FINMA will pay particular attention to the information provided about the advertised sustainability characteristics when approving and supervising it. It will ensure that these are appropriately disclosed and will check that investors are not deceived regarding sustainable characteristics[5].

The fund documents[6] for Swiss collective investment schemes must therefore contain the information required for investors to make an informed investment decision. In view of the large number of possible sustainability strategies, thematic orientations and due to the lack of general definitions, classifications and measurement methods, establishing transparency for sustainability-related Swiss collective investment schemes poses a

[4] See Swiss Sustainable Investment Market Study 2021, Swiss Sustainable Finance (SSF) / Center for Sustainable Finance & Private Wealth, University of Zurich, pages 4 and 16 (as at: 15 October 2021).

[5] The designation «collective investment scheme» must not provide any grounds for confusion or deception, in particular in relation to the investments (Art. 12 para. 1 of the Collective Investment Schemes Act [CISA; SR 951.31]). In addition, the fund documents for collective investment schemes must meet the minimum content requirements (see in particular Art. 35*a* of the Collective Investment Schemes Ordinance [CISO; SR 951.311], Annex 6 of the Financial Services Ordinance [FinSO; SR 950.11] and Art. 102 CISA). Furthermore, persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, as well as their agents must fulfil the loyalty, due diligence and disclosure obligations (Art. 20 para. 1 CISA).

[6] Fund documents include the fund contract, the investment regulations or the articles of association along with the prospectus (if once exists).

challenge, but is essential to protect investors. FINMA informed fund management companies about its expectations regarding the content of fund documents for sustainability-related Swiss collective investment schemes in February 2021.

In practice, FINMA regards the following scenarios as greenwashing (deception) in the area of Swiss collective investment schemes or at least sees a potential greenwashing risk due to the lack of transparency vis-à-vis investors:

- The collective investment scheme makes reference to sustainability, although no sustainable investment strategy/policy is actually pursued.
- The collective investment scheme makes reference to sustainability and information about the sustainability approach used is provided in the investment strategy/policy (e.g. best-in-class approach, approach integrating ESG considerations, stewardship), but the stated approach is not implemented.
- The collective investment scheme makes reference to sustainability, but the investment policy allows for a significant proportion of non-sustainable investments, which are not in line with the sustainability approach pursued or are even inconsistent with it. For investors, this means that a significant proportion of the assets will not be used in the way they are entitled to expect.
- The collective investment scheme makes reference to sustainability, but the investment strategy/policy is only deemed to be sustainable because of exclusionary criteria that are already widespread, without there being a specific sustainability component going beyond this.
- The collective investment scheme makes reference to sustainability by using terms such as “impact” or “zero carbon” without the stated impact or savings being capable of being measured or verified.
- The collective investment scheme makes reference to sustainability, but the fund documents do not provide or only provide very general information about the corresponding investment strategy/policy and/or the selection of permitted investments, along with how sustainability considerations are integrated into the investment decision process. Investors are not able to gain an impression of how sustainability is taken into account due to the lack of detail or transparency.

Retrospective sustainability reports should be published setting out clearly and transparently for investors to what extent a sustainability-related Swiss collective investment scheme has achieved its sustainability goals. To promote good practice and ensure that investors are adequately informed, FINMA therefore recommends that a high degree of transparency is applied in sustainability reporting for sustainability-related Swiss collective investment schemes.

3 Organisational structure of institutions that manage sustainability-related collective investment schemes

Institutions that manage collective investment schemes must be suitably organised[7]. In the case of institutions that manage sustainability-related Swiss or foreign collective investment schemes, FINMA takes account of aspects such as the following when assessing whether it is suitably organised:

- Investment decision process/investment controlling/risk management: Attention must be paid to integrating and observing sustainability-related considerations during the investment decision process. These should also be reviewed as part of independent monitoring of risks.
- Specialist expertise and knowledge: It should be ensured that the requisite specialist expertise and the necessary knowledge in the area of sustainability is present not only within the body for governance, supervision and control, but also across the operational level as a whole.
- Sustainability strategy: It should be ensured that the body for governance, supervision and control specifies the relevant strategy in relation to sustainability.
- Sustainability-related data, tools and ratings: When selecting and using external sustainability-related data and analyses, tools and ratings, adequate assessment and monitoring of the data providers and validation of the corresponding information should be ensured.

The adequacy of the organisational structure is dependent, in particular, on the sustainable strategy for the sustainability-related Swiss or foreign collective investment scheme being guaranteed and also on sustainability risks being captured as part of the risk management process, alongside the traditional investment risks.

4 Rules of conduct at the point of sale

The advisory process (at the point of sale) can also pose greenwashing risks if sustainability-related financial products are offered. These risks should be limited by financial service providers, particularly in view of their potential civil liability. The Financial Services Act (FinSA; SR 950.1) does not currently contain specific rules for combating greenwashing. In particular, the FinSA does not include any specific duties that indicate how a client's sustainability-specific preferences should be taken into account at the point

[7] See in particular Art. 9 of the Financial Institutions Act (FinIA; SR 954.1) and Art. 14 para. 1 let. c CISA as well as Art. 20 para. 1 CISA.

of sale. FINMA welcomes the Federal Council's decision to consider corresponding amendments to financial market law[8]. Until this happens, guidance from the sector can contribute to preventing and combating greenwashing. In this context, the Guideline for the integration of ESG considerations into the advisory process for private clients published by the Swiss Bankers Association in June 2020[9] should be referred to, which contains recommendations for gradually integrating sustainability considerations into the advisory process for all financial products aimed at private clients. FINMA welcomes this initiative if, like the above-mentioned principles (figs. 2 and 3), it can help minimise the greenwashing risk at the point of sale.

5 Outlook

Preventing and combating greenwashing in the financial markets remains a priority at both international and national level. FINMA is following the developments in this area, supporting the State Secretariat for International Finance SIF in the ongoing work on sustainable finance in line with its mandate, and will aim to prevent and combat greenwashing as part of its supervisory activities to the extent that it is empowered to do so. Its focus here is on protecting investors and clients along with the potential legal and reputational risks for market participants and the Swiss financial centre.

[8] See Federal Council press release of 11 December 2020, Federal Council fleshes out proposals for sustainable Swiss financial centre (as at: 15 October 2021).

[9] See Guideline for the integration of ESG considerations into the advisory process for private clients published in June 2020 (as at: 15 October 2021).