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Greenwashing: Switzerland to Establish Narrower Definition for Sustainable Investments

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The Swiss Federal Council has **published** a position paper on the “prevention of greenwashing in the financial sector.” The Federal Council is composed of seven members—each a head of a government department—who, collectively, serve as the executive body of the Swiss government. The paper clarifies that financial products may only be labelled as sustainable or as having sustainable characteristics if they (i) align with one or more specific sustainability goals, or (ii) contribute to achieving one or more specific sustainability goals. Sustainability goals should be defined “using the widest possible reference framework,” and the paper refers by way of example to the Sustainable Development Goals in the UN’s 2030 Agenda for Sustainable Development. Institutions offering sustainable products will be required to describe their approach to classifying a product as sustainable and report on their sustainability goals regularly, and such disclosures should be public, easily accessible, transparent and comparable.

The Federal Council instructed the Federal Department of Finance (FDF) to establish a working group, which will include “representatives from the affected industries and civil society,” with the goal of establishing the most effective way to implement the Federal Council’s position as set out in the paper. The Federal Council expects the FDF to present a plan with concrete proposals by September 30, 2023.

The position paper states that: “the Federal Council considers it essential to ensure that the necessary clarity exists to enable clients, investors and insured persons to make investment decisions about financial products or services that are described as sustainable. The Federal Council therefore sees a need for a common understanding in the financial sector about the general criteria permitting investment objectives, and hence products and services, to be labelled as sustainable. Inherently, this cannot involve detailed prescriptions, but only a baseline understanding. This common understanding of sustainability goals should apply to the entire financial market, financial services (both at the point of sale and in downstream reporting) and financial products (both for pre-contractual obligations and in downstream reporting). This will ensure a level playing field in terms of transparency for all financial services and products, and the credibility of the Swiss financial centre as a whole."

Taking the Temperature: As we have discussed previously, regulators and policymakers across the globe are paying close attention to the risk of greenwashing. Within the last few months, the UK's Financial Conduct Authority (FCA) has announced a proposal for regulating sustainability claims by investment firms and the EU has provided additional guidance for complying with its sustainability classification system, leading a number of European asset managers to reclassify the sustainability profile of investment funds from Article 9 to the less onerous Article 8 under the EU's Sustainable Finance Disclosure Regulation (SFDR). These announcements follow draft guidelines published on November 18 by the European Securities and Markets Authority (ESMA) as part of a consultation (closing February 20, 2023) on funds' names using ESG or sustainability-related terms. We expect regulatory and civil greenwashing and greenhushing challenges to increase in 2023 notwithstanding the potential clarity that could be provided by additional guidance from government bodies such as the FCA and ESMA.