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ESMA Announces Review Covering the Marketing of Financial Products across EU including Greenwashing

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On January 16, 2023, the European Securities and Markets Authority (ESMA) **announced** the launch of a common supervisory action (CSA) in partnership with EU Member State national competent authorities (NCAs). The CSA will cover the application of MiFID II (Markets in Financial Instruments Directive) disclosure rules to marketing communications for financial products across the EU. The stated objective of the CSA is to better align supervisory culture across EU Member States. ESMA has tasked NCAs with reviewing marketing communications (including advertisements) for investment products and checking that these are fair, clear and non-misleading. The CSA will focus on marketing targeting younger consumers including through apps, social media and collaborations with affiliates such as influencers. The CSA will be conducted throughout 2023.

ESMA also plans to use the CSA to collect information on possible greenwashing practices in marketing and advertisements for financial products. ESMA's identification of greenwashing as a specific area of review is notable and demonstrates continued focus on climate-based marketing practices by European regulatory authorities. Between November 15, 2022 and January 16, 2023, three European supervisory authorities – the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA – held a **call for evidence** on potential greenwashing practices in the whole EU financial sector, including banking, insurance and financial markets. We reported on the **consultation** and the **response** from the Securities and Markets Stakeholder Group (SMSG), which warned that EU rules on greenwashing must also cover “green bleaching.”

Taking the Temperature: ESMA's focus on potential greenwashing practices in marketing materials for financial products across the EU is consistent with a global trend and echoes similar initiatives by other financial regulatory authorities. UK's Financial Conduct Authority (FCA) recently [conducted](#) a similar consultation on the regulation of sustainability claims by investment firms and plans to publish final rules by June 2023. In June 2022, the Australian Securities & Investments Commission (ASIC) [published](#) an information guidance sheet on how to avoid greenwashing when promoting sustainability-related products.

Enforcement activity relating to misleading environmental claims in financial product marketing materials is also on the rise. As we [reported](#) in October, the UK's Advertising Standards Authority ruled that two UK retail banking advertisements, which made claims about the financial institution's green credentials, were "misleading" and "omitted material information." In December, the ASIC issued three infringement notices to the Australian unit of a U.S.-headquartered asset manager for greenwashing infringements. We expect further enforcement action during 2023 as financial regulators continue to focus on this area.