

Action Point Checklist: Sustainable finance - Checklist to minimise the risk of greenwashing for a sustainability-related financial product

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Introductory note:

With the increased use of sustainable finance products, there is increased focus on the risks and challenges facing market participants in connection with the implementation of sustainable financing, including the risks associated with 'greenwashing' (or, in the broader social context, 'bluewashing'). When implementing a sustainability-linked product, it is of paramount importance for borrowers and lenders to be aware of the liability regimes that may apply in relation to 'greenwashing'.

Greenwashing can have adverse reputational impacts for the borrower and its financiers and, in its extreme, could be considered a form of misleading and deceptive conduct with legal consequences (eg class actions or attention from regulators such as [Australian Competition and Consumer Commission](#) ¹ (ACCC), [Australian Securities and Investments Commission](#) ² (ASIC) or [Australian Prudential Regulation Authority](#) ³ (APRA) for breaches under the Australian Consumer Law (being [Sch 2](#) of the Competition and Consumer Act 2010 (Cth)) or the [Australian Securities and Investments Commission Act 2001](#) (Cth)). The ACCC and ASIC have both recently indicated that they will be actively regulating greenwashing.

Contemplating the considerations set out in the checklist below when issuing will help to reduce the risk of issuing statements, disclosures or promotional material that could be considered 'greenwashing', or misleading or deceptive.

How to use this checklist:

The following checklist is based on information publicly available on the ASIC website and in [Information Sheet 271 \(INFO 271\)](#). The checklist outlines key issues to consider when dealing with a sustainability-related financial product that is marketed as environmentally friendly, sustainable and/or ethical. This checklist is a general guide and does not represent legal advice. You should adapt the checklist according to your client's instructions and the particular circumstances of your transaction, contract or matter.

Links to related content:

- [Guidance Note: Risks, challenges and drivers of sustainable finance](#)
- [Guidance Note: Sustainability-linked loans](#)
- [Guidance Note: Sustainability-linked bonds](#)



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| Disclosure obligations | | ✓ |
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| Consider whether your sustainability-related financial product Disclosure Statement (PDS) has complied with the disclosure obligations that apply to all sustainability-related financial products. | | |
| ➤ | You must comply with section 1013D(1)(l) of the Corporations Act. | |
| ➤ | If your sustainability-related financial product has an investment aspect, you must include information in that disclosure that explains how the labour standards and/or environmental, social, or ethical factors are considered when making decisions regarding the selection, retention, or realisation of the investment. ¹ | |

| Accuracy of communication | | ✓ |
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| Consider whether your sustainability-related financial product is 'true to its label'. | | |
| ➤ | The name of your sustainability-related financial product must accurately represent its sustainability characteristics. Using sustainability-related terminology where the sustainability-related financial product lacks significant sustainability considerations during the investment selection process, creates a risk of 'greenwashing' the sustainability-related financial product, and being found to be misleading and deceptive. | |
| Consider the claims made in the headline of your sustainability-related financial product. | | |
| ➤ | If there are exceptions and/or qualifications required in the description of your sustainability-related financial product, such exceptions and/or qualifications should be consistent with the impression given by the headline. | |
| Consider the terminology used to describe your sustainability-related financial product. | | |
| ➤ | When employing sustainability-related terminology to describe your sustainability-related financial product, you must ensure the sustainability-related financial product is explained accurately and with the adequate amount of detail in each piece of promotional material and the relevant PDS. | |
| Consider whether you have relied on external documents to substantiate your claims. | | |
| ➤ | If statements are made that direct investors to external documents, those documents should be sufficient to substantiate, correct or support claims and impressions that may otherwise be considered misleading. | |

¹ <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/#Questions-to-consider-when-offering-or-promoting>



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| Consider the explanation used to describe how the relevant sustainability-related factors have been incorporated into your sustainability-related financial product. | |
| <ul style="list-style-type: none"> ➤ Ensure the aspects of your sustainability-related financial product that relate to sustainability are disclosed and clearly explained. | |
| <ul style="list-style-type: none"> ➤ In the promotion of your sustainability-related financial product, and under sections 1041E, 1041G and 1041H of the Corporations Act, and sections 12DA and 12DB of the ASIC Act, you must not make any statement about the sustainability-related aspects of your sustainability-related financial product that are false or misleading. This could amount to misleading and deceptive conduct in relation to financial sustainability-related financial product or financial service.² | |
| Consider whether the explanation used to describe the sustainability-related factors of your sustainability-related financial product includes assumptions about the future. | |
| <ul style="list-style-type: none"> ➤ You should refrain from making any statement or representation about the future viability of your sustainability-related financial product or its sustainability-related factors that may not be reasonably supported.³ | |

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| Explaining the integration of sustainability in your sustainability-related financial product | | ✓ |
| Consider the explanation used to describe how the relevant sustainability-related factors have been incorporated into your sustainability-related financial product. | | |
| <ul style="list-style-type: none"> ➤ In line with ensuring all communication of your sustainability-related financial product is clear and accurate, you should clearly explain how the sustainability factors are incorporated into investment decisions and potential stewardship activities. | | |
| Consider whether you have included sustainability considerations taken into account when integrating sustainability factors into your sustainability-related financial product. | | |
| <ul style="list-style-type: none"> ➤ It is important that investors, clients and consumers are given information about the sustainability considerations your institution takes into account, and how those considerations are incorporated into your sustainability-related financial product (e.g. exclusionary or negative screening, inclusionary or positive screening). | | |
| <ul style="list-style-type: none"> ➤ You must also ensure you are complying with the content requirements under section 1013D of the Corporations Act and ASIC's Regulatory Guide 65. | | |

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| Specificity and clarity in investment screening criteria | | ✓ |
| Consider the sustainability criteria your institution has in place for the relevant sustainability-related financial product. | | |

² <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/#Questions-to-consider-when-offering-or-promoting>

³ <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/#Questions-to-consider-when-offering-or-promoting>



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| ➤ | Each sustainability criteria should be clearly described and explained. | |
| ➤ | Any broad promotional language and statements should be avoided. | |
| ➤ | It should be clear to potential investors, clients and consumers whether the investment screen applied to your sustainability-related financial product is specific to that sustainability-related financial product, or whether it is applied to multiple sustainability-related financial products offered by your institution. | |
| ➤ | If a specific screening tool is only used on part of a portfolio sustainability-related financial product, you should disclose the percentage of the portfolio that is screened by that tool. | |
| | Consider whether any exceptions or qualifications are required to understand the screening tools used by your institution in relation to your sustainability-related financial product. | |
| ➤ | You should provide clear and relevant information to each exception and qualification that applies to each screening tool used. | |
| ➤ | To avoid any relevant terms being considered vague, ambiguous or contradictory to accepted definitions, you should explain the defined terms used in the screening tools. | |

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| Clear and transparent use of sustainability metrics and targets | | ✓ |
| | Consider whether you have an influence over the metric used to measure the performance of a sustainability-related financial product. | |
| ➤ | You should disclose any and all influence you may have over the performance metric of the sustainable factors of your sustainability-related financial product. | |
| | Consider whether the sustainability-related financial product is passively managed. | |
| ➤ | All management claims must accurately reflect the degree of involvement you have in the investment decisions of a sustainability-related financial product. | |
| | Consider whether you have used and relied on sustainability metrics in the description or promotion of the sustainability-related financial product. | |
| ➤ | If you have used and relied upon sustainability metrics to quantify an aspect of your sustainability-related financial product, you should disclose how those metrics are used and what the sources of those metrics are. | |
| ➤ | You should provide details about each piece of data and each calculation methodology used in the description and promotion of the sustainability-related financial product. | |
| | Consider whether the sustainability-related financial product has set a specific sustainability target. If your sustainability-related financial product has set a specific sustainability target, you should explain and disclose: | |
| ➤ | what the target is; | |



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| ➤ | how and when you expect the target will be met; | |
| ➤ | how the progress towards such target will be measured and communicated; and | |
| ➤ | whether you have relied on any assumptions that may have had a material impact on what the target is and how you will measure progress towards it. ⁴ | |
| Consider whether you will rely on the UN Sustainable Development Goals, or the UN Principles for Responsible Investment frameworks in your investment approach to your sustainability-related financial product. | | |
| ➤ | You should disclose the relevancy of these frameworks if, and when, you rely on them to guide your investment approach. | |

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| Accessibility of relevant information | | ✓ |
| Consider how accessible the disclosure and any other information pertaining to your sustainability-related financial product is. | | |
| ➤ | You should ensure all potential investors, clients and consumers are provided with clear and concise information that is easy to locate and readily available on your website. The information should also be the same across each medium you use to promote, disclose and publish information about the sustainability-related financial product. | |

⁴ [https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/#Questions-to-consider-when-offering-or-promoti](https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/#Questions-to-consider-when-offering-or-promoting)