Fondbolagens förening
SWEDISH INVESTMENT FUND ASSOCIATION

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SIFA reply on the ESAs Call for Evidence on Greenwashing

The Swedish Investment Fund Association initially has a few general comments on the ESAs *Call for Evidence on Greenwashing* that we would like to provide.

Firstly, the core mission of an asset manager is to invest capital and savings (from citizens or from corporation) into productive economic activity, allowing companies to grow and to make the necessary transitions for their business. Investment services provided on behalf of investors by asset managers should be conducted in the best interest of clients (fiduciary duty) and in line with the strategy of the product/the client. There is no contractual relationship between an asset/portfolio manager and investee companies and between fund/portfolio and investee companies. As investors, investment managers only have access to public information from investee companies (ex-post) when they buy listed securities. All this is important to keep in mind when discussing greenwashing in the asset management industry and liabilities that may be tied to this concept.

Secondly, the investment management industry takes the greenwashing risks and its responsibility very seriously. We see the need to ensure a clear and harmonized understanding of greenwashing in the EU. The growth in both demand and offer of sustainable financial products combined with unprecedented regulatory reforms is creating additional and increasing risks for financial markets, all the financial actors, and the end investor. Looking at the vast number of files proposed by the European Commission since the launch of the European Green Deal one could get the impression of high activity from the lawmakers, but lack of clarity and uncoordinated timetables leads to unintentional greenwashing, and we see a great risk that the trust in extensive sustainability work that the industry is indeed committed to, might be damaged.

Furthermore, we would like to comment on some sections of the ESA's Call for Evidence on Greenwashing, as follows:

C. ESAs common section of the CfE

3) *Greenwashing can be either* ***intentional or unintentional*** *(e.g. resulting from negligence or from misinterpretation of the sustainable finance regulatory framework requirement).*

SIFA Answer: The Sustainable Finance Framework remains at an early stage of its development with regulatory uncertainty on multiple key aspects and legal concepts. In retrospect, it would have been better to focus on finalizing a framework for the reporting companies, so that the disclosing companies receive data they can trust. In the situation we are now, when disclosures are mandated for data that does not exist, streamlining the regulatory framework together with legal guidance from the ESAs are highly welcomed, to the benefit of investors.

About unintentional greenwashing it is our view that a statement cannot be considered as potential greenwashing if it is the result of a reasonable interpretation of an inherently unclear or uncoordinated regulatory framework. What is regarded as greenwashing today must also be put in relation to the development (new regulations, science, etc.) that took place after the claim was made (hence no retroactivity).

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.*

SIFA Answer: We think there is a need to further nuance the picture of what greenwashing is.

We would also like to add and underline the importance of the following factors that may contribute to potential greenwashing:

- Lack of appropriate knowledge and understanding to manage sustainability information.
- Lack of adequate training to understand all aspects of sustainability information.
- The risk of making the information too simplistic in order to try to find a way to "box" in information into models, and in this sense both make assumptions that exaggerate how a company/product/service is contributing to a sustainable shift or the opposite that a company /product /service is understated because an investor/ESG-data provider rather be on the "safe side" – so in short unfair and simplified analysis and ratings is a risk.
- The different levels of ambition can constitute a risk for greenwashing. For example, a company/financial actor may set sustainability targets that are relatively easy to meet and will therefore be able to claim to reach their goals and have a "progress", but in reality, the company/financial actor has not been ambitious enough.
- Level of transparency and information presented in a correct context. It is important that the receiver of information is given it in a correct context to be able to understand how the information should be assessed and valued. Information given in a non-transparent or clear context could be a source of potential greenwashing.
- Ignorance could also be a source of potential greenwashing – when a company/financial actor is not making the effort to find out sustainability factor x, y, z.
- Lack of sufficient resources to manage sustainability information is also a potential risk for greenwashing.
- Biased analyzes due to local presence could lead to unintentional 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?*
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?*

SIFA Answer: Generally, in practice it is difficult to distinguish actual greenwashing and identify who should bear the legal responsibility for the greenwashing in question. In the example mentioned in Q A 3, it is one thing that an end investor/consumer is faced with a misleading statement and another that both "a corporate issuer" and an "investment manager/ESG data provider and/or other market participants", who have passed on this information, shall be considered guilty of greenwashing.

An asset manager must be able to trust that the information it receives from an investment object (that has undergone some form of independent review and seems reasonable) is correct. Therefore, the investment manager should not be held civilly or commercially liable for greenwashing towards end investors/consumers when that information is passed on in good faith. That responsibility should only be enforceable against the person/entity who originally produced the information/is the source of the information or such party who intentionally/grossly negligently disseminated the (erroneous) information. The consequences of another approach are exorbitant, difficult to overlook and most likely very costly.