

ESG for financial services firms: Pillar 4 – Product design, labelling, manufacturing and distribution



Environmental, Social and Governance (ESG) and sustainability obligations and expectations now extend beyond climate-related risks and encompass governance and social considerations such as diversity, equity & inclusion (DE&I) and tackling non-financial misconduct. Our multidisciplinary financial services team is well-placed to advise clients on responding to the latest ESG developments and meeting the expectations of both regulators / law enforcement agencies and other market participants. We can also help clients to evaluate opportunities and advise them on how to most effectively manage emerging risks.

Our ESG offering for financial services firms

To help our financial services clients navigate the complexities associated with embedding ESG considerations and compliance into their businesses, we have designed our ESG offering around the following 6 “Pillars”:

1. Governance.
2. Risk identification, assessment and mitigation.
3. Policies and procedures.
4. Product design, labelling, manufacturing and distribution.
5. Disclosures and reporting.
6. Regulatory interventions, investigations and disputes.

This brochure sets out our approach in relation to product design, labelling, manufacturing and distribution (“Pillar 4”).

Our services in relation to product design, labelling, manufacturing and distribution

There is a range of support which we can offer to clients in relation to effectively building ESG considerations into their product design, labelling, manufacturing and distribution. This includes:

- Advising clients on the positioning of products as well as on issues relating to product classification and labelling, including the development of ‘green’ and ‘social impact’ products.

- Advising clients in relation to the production and review of relevant marketing materials.
- Advising clients on their distribution strategies, including the delta between ESG-related expectations and requirements and the expectations and requirements arising from the Consumer Duty.

We have extensive experience supporting clients in compliance with EU and UK regulatory requirements in connection with product governance. Leveraging this breadth of experience from supporting clients with regulatory implementation projects in areas including MiFID II, our support for clients in connection with ESG-driven regulatory requirements combines environmental law expertise and, where necessary, working seamlessly with consultants to advise product labelling regimes and distribution arrangements.

Our tools and products

In addition to providing bespoke advice, we have developed a number of tools and products to support clients. These include:

- **ESG Updater.** Our multi-jurisdictional ESG updater keeps clients informed of the latest developments and best practices in ESG globally, including from regulators in the UK, US, Australia and EU. Receiving this updater service can help clients ensure that their ESG strategies remain aligned with standards and expectations as they evolve.
- **Anti-Greenwashing Tool.** In light of the FCA’s Anti-Greenwashing Rule, we have developed an anti-greenwashing tool to assist clients in identifying potential greenwashing risks within their financial products and promotional materials.
- **Tailored Training Programmes.** Working with our clients, we can design a tailored internal training programme to address specific needs and concerns

amongst different populations of staff and provide practical guidance on managing ESG-related matters and risks.

- **Podcasts and Blogs.** Our series of podcasts and blog posts on Global Regulation Tomorrow can serve as an invaluable tool for clients navigating the ESG landscape by providing timely and accessible insights into key issues and developments.

Why instruct Norton Rose Fulbright?

Instructing Norton Rose Fulbright provides access to:

- **A multidisciplinary team of experts.** Our team comprises a blend of contentious and advisory lawyers and risk advisory experts, enabling us to provide a broad range of advice across all key jurisdictions.
- **A team with a depth of experience.** We have a broad understanding of how financial services firms operate. We understand the issues which arise when managing regulatory risks and balancing internal sensitivities and can help clients to navigate these complexities.
- **A team that can provide market insights.** We have a broad view of common practices across the professional services market due to our diverse client base.
- **Advice which can benefit from legal privilege.** Provided certain steps and protocols are followed, it may be possible for a client to assert privilege over advice that we provide, which has a number of benefits including protecting such advice from disclosure.

Our experience

Our team has extensive experience of advising financial services firms on ESG issues. Some of our recent experience includes:

- Advising on the launch of sustainable finance platform and related products in light of relevant ESG-related legal and regulatory obligations. As part of this exercise, we reviewed marketing materials, websites and a proposed mobile app to ensure they complied with ASA and FCA rules and guidance.
- Working with numerous clients, across almost all retail sectors – from retail banks, retail brokerages,

exchanges, asset managers, private and mass retail wealth managers and consumer finance firms – to implement the FCA's new Consumer Duty.

- Assisting a sustainable finance digital platform with a review of its marketing materials to ensure that all ESG-related claims were compliant with relevant regulatory standards, mitigation of potential greenwashing risks and providing advice on applicable legislative requirements and industry best practice.
- We have extensive experience supporting UK listed investment trusts in connection with HM Treasury and the FCA's temporary '*forbearance*' surrounding the PRIIPS Regulation, advising on distribution implications and wider regulatory matters.

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