Bern, 16 December 2022

The Federal Council's position on the prevention of greenwashing in the financial sector

1. Greenwashing

Greenwashing occurs in the financial sector when, for example, a financial instrument or service is portrayed as having sustainable characteristics or pursuing sustainability goals, and this portrayal does not adequately reflect reality.

The main risks in connection with greenwashing are:

a. Clients, investors and insured persons risk being misled about the sustainability or contribution to sustainability of financial products and services.

b. Without the necessary clarity about what constitutes a sustainable investment, financial institutions are exposed to legal and reputational risks.

c. The smooth functioning of financial markets and the reputation of the Swiss financial centre may be impaired. A lack of credibility would prevent Switzerland from assuming its desired role as a leading centre for sustainable finance.

d. Capital flows that are intended to contribute to sustainability goals could instead be diverted to non-sustainable activities. In addition, this can complicate the achievement of the international sustainability goals to which Switzerland has committed (environmental objectives or broader sustainability goals).

2. Situation in Switzerland

Currently, Switzerland has no legislative or regulatory requirements on transparency or compliance with specific sustainability criteria for financial services. Similarly, there are no such obligations for financial products, with the exception of funds, for which certain transparency requirements apply; these were defined in detail by the Swiss Financial Market Supervisory Authority (FINMA) in November 2021. Based, notably on the prohibition of confusion and deception, FINMA requires increased transparency in fund documentation if this uses the terms "sustainable", "green" or "ESG"[1], or otherwise refers to sustainability, including about the fund's sustainability goals. It also recommends sustainability reporting for these funds as best practice.[2] As regards financial services, FINMA does not impose any specific requirements in connection with greenwashing at the point of sale, due to the lack of an adequate legal basis.

Since the end of 2021, the Asset Management Association Switzerland (AMAS), the Swiss Bankers Association (SBA) and Swiss Sustainable Finance (SSF) have taken important steps in the form of recommendations and voluntary self-regulation. In so doing, they are working to increase transparency for investors and clients about certain non-financial aspects of their

[1] Environmental, social and governance criteria

[2] FINMA supervisory communication 05/2021, 3 November 2021

investments, and to improve the training of staff at the financial institutions selling this type of investment.

a. The AMAS and SSF recommendations of December 2021[3] divide investors' sustainability goals into three categories: investments to minimise financial risks and optimise performance in line with ESG criteria, investments aligned with personal values, and impact investments.

b. In June 2022, the SBA published voluntary self-regulation guidelines[4] which require member institutions to take their clients' ESG preferences into account. The guidelines also include training obligations for the staff of financial service providers. These obligations should improve the quality of services.

c. AMAS published a self-regulation in September 2022[5] describing, inter alia, sustainability-related investment approaches. In particular, it excludes two approaches if they are used in isolation: firstly, the inclusion of ESG risks and opportunities in conventional financial analysis and investment decisions (ESG integration); secondly, the systematic exclusion of certain issuers from an investment portfolio.

3. The Federal Council's position

a. Sustainability goals

Financial market laws aim to protect investors, insured persons and the creditors of financial service providers, and ensuring the smooth functioning of financial markets. At least some clients, investors and insured persons who choose a so-called sustainable financial product or service are looking to pursue a sustainability goal. Therefore if, for example, a financial product or service is described as "green", investors, insured persons and clients should be able to assess the extent to which it pursues an environmental objective.

In both its strategy for the Swiss financial centre and its foreign policy strategy for 2020 to 2023, the Federal Council stated that it wants to further strengthen and promote Switzerland as a location for sustainable financial services.

For these reasons, 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. A high level of credibility is a prerequisite for a financial centre to assume a leading role in sustainable investment. In this regard, the

[3] AMAS and SSF, Recommendations on Transparency and Minimum Requirements for Sustainable Investment Approaches and Products: https://www.sustainablefinance.ch/upload/cms/user/RecommendationsforSustainableInvestmentProducts_AMAS_SSF.pdf

[4] SBA, Guidelines for the financial service providers on the integration of ESG-preferences and ESG-risks into investment advice and portfolio management (2022), https://www.swissbanking.ch/_Resources/Persistent/a/5/e/0/a5e0845f065a60699df88910ae675b7082e69411/SBA_Guidelines_investment_advice_and_portfolio_management_EN.pdf

[5] AMAS, https://www.am-switzerland.ch/en/regulierung/selbstregulierung-standard/sustainable-finance

Federal Council is taking its cue from the United Nations' 2030 Agenda for Sustainable Development.

Sustainable investment objectives

Financial products or services that are labelled as sustainable or as having sustainable characteristics must also pursue **at least one of the following investment objectives** in addition to their financial goals:

(i) ***Alignment with one or more specific sustainability goals, or***

(ii) ***Contribution to achieving one or more specific sustainability goals.***

Financial products and services that are aimed at reducing ESG risks or optimising performance follow purely financial investment objectives and should therefore not be described as sustainable, unless they also pursue one of the investment objectives outlined above. Indeed, ESG risks should rather be taken into account as part of fiduciary duties.

The product documentation or the financial service provider should specify whether the investment objective being pursued is an alignment goal, a contribution to the achievement of one or more specific sustainability goals, or a combination of both.

The sustainability goals should be defined using the widest possible reference framework, for instance the Sustainable Development Goals in the United Nations' 2030 Agenda for Sustainable Development.

A sustainable financial service with an alignment objective could, for example, invest exclusively in equities and bonds of companies whose transition plans are all aligned with the goal of limiting global warming to 1.5° Celsius compared to the pre-industrial age.

A product aimed at contributing to the achievement of a sustainability goal will typically apply an impact investment approach (incl. real estate investments), a credible active ownership approach or a combination of the two. Impact investments must aim for a credible, causal and measurable impact. This could be direct investment in new solutions for renewable energy, for example. Active ownership could be achieved by actively selecting target companies which have a significantly negative impact on the climate or on biodiversity. Through coordination with other investors, dialogue and the exercise of voting rights, active ownership can ultimately compel the companies concerned to define specific, credible and measurable targets for reducing their negative impact.

b. Description of applied sustainability approaches

A financial service provider which offers a sustainable product or service should describe its sustainability approach. This information should be public, easily accessible, transparent and comparable. Thus, a service provider that pursues an alignment objective should describe how this alignment is concretely achieved and measured in the investment process. Under the impact investment approach, the provider should describe the management process used to achieve the desired impact, define the key performance indicators for measuring the effective impact and monitor these indicators so that the investment strategy can be optimised as necessary. Under the active ownership approach, the service provider should provide precise information on the following points: the selection process for its target investments, coordination with other investors, the process for influencing the target company, escalation procedures and the processes for assessing the effectiveness of engagement.

c. Accountability

There should be regular, efficient and appropriate reporting on the defined sustainability goals. In the case of climate alignment goals, recognised and relevant indicators should be used. The Federal Council recommends the Swiss Climate Scores in this regard. Under an impact investment approach, reporting should focus on strategy implementation, and the impacts should be measured using the predefined key performance indicators. Under an active ownership approach, reporting should include the defined targets, the discussions held, the results of the engagement and compliance with the processes.

d. Verification by an independent third party

Implementation of the transparency principles outlined above should be verified by an independent third party, in order to ensure the credibility of the sustainability goals.

e. Binding nature, enforcement and client rights

Obligations should be binding and enforceable. Moreover, in the event of non-compliance with the transparency requirements, clients, investors and insured persons should have recourse to legal action.

4. Next steps

The FDF (SIF) has been instructed to set up a working group together with the DETEC, the EAER, the FINMA, and representatives from the affected industries and civil society to determine the best way to implement the Federal Council's position on the prevention of greenwashing. It is important to ensure that the chosen solution is applied across the financial market, is binding and enforceable, and provides clients with legal remedies. By 30 September 2023 and based on these activities, the FDF (SIF) is to present the Federal Council with a plan and concrete proposals for putting the Federal Council's position on the prevention of greenwashing into practice.