Joint Response to ESAs Call for Evidence on Better Understanding greenwashing

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The Blended Capital Group

CRRI
THE CREDIT RATING RESEARCH INITIATIVE

Ben McQuhae & Co

Executive Summary

In attempting to answer the call from the European Supervisory Authorities - the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupation Pensions Authority - who have requested information, evidence, and analysis on the concept and effect of 'greenwashing', this report presents an overarching picture of the concept. It also provides key examples of the real-life machinations of the concept, together with a contextual analysis of the drivers of greenwashing. To accentuate this, the report also provides analysis of the surrounding infrastructure that greenwashing needs to thrive, with the purpose being to demonstrate for the ESAs the key undertones that regulators may wish to consider. The report concludes with a small number of recommendations for regulatory policymakers, and a collection of impactful and pioneering research into the concept for the benefit of regulators and interested parties.

The report attempts to provide a brief anchor that can be of use to interested parties. We are making this submission public so that interested parties can gain an introductory insight into the concept of greenwashing and why it is so important that it is considered more. For the ESAs, the report provides a small anchor that the ESAs can incorporate into a much larger body of evidence that will be forthcoming via their request.

Our collective aim with this report is to highlight some of the centrally understood facets of the concept of greenwashing; it was not our intention to break down every nuanced sector that greenwashing may affect. Yet, it is worth stating here that the concept of greenwashing is exceptionally nuanced in nature, and its impact is societally wide. As the consequences of ignoring the impact of humankind on the environment become ever clearer, the concept of greenwashing and its relative impact synergistically grows. This is our acknowledgement that the task placed in front of regulators, at this time, is monumental. Therefore, we attempt to provide just some introductory insight that regulators may find useful as they seek to delve into the complicated and nuanced world of corporate action, environmentalism, legal effect, political strategy, and human psychology just to name a few. We, the undersigned, therefore hope to aid regulators in this quest and stand ready to provide more assistance in the future.

Dr Daniel Cash - Professor Paul Q Watchman - Mr Ben McQuhae - Mr Paul Clements-Hunt

What is greenwashing?

Unfortunately, whilst the literature and understanding of the concept of 'greenwashing' is expanding, there is simply not a universally accepted definition of the term, and the wider concept, is understood ambiguously.[1] Although it may stand to reason for some that the 'green' element of the term alludes to aspects of an environmental nature, many have attributed wider connotations to the term, including 'S'ocial and 'G'overnance-related issues. Furthermore, there is a varying agreement on what constitutes 'greenwashing' in terms of 'the degree of falsehood implied in the message'[2], which suggests that motive, or at least consciousness, is a critical factor in understanding whether greenwashing has or is taking place.

Traditionally, the term greenwashing has been defined as 'the intersection of two firm behaviours: poor environmental performance and positive communication about environmental performance'. The term was coined first in an environmental context in 1986 by Jay Westervelt, whose published essay on the hospitality industry regarding towel reusing practices developed the idea that a firm would seek to portray a positive image of itself despite not taking the fundamental measures to actually develop such progressive practices.[3]

Traditionally, the term greenwashing has been defined as 'the intersection of two firm behaviours: poor environmental performance and positive communication about environmental performance'.

Dictionary definitions have included 'the practice of promoting environmentally friendly programs to deflect attention from an organisation's environmentally unfriendly or less savoury activities' (Webster's) to 'disinformation disseminated by an organisation so as to present an environmentally responsible public image; a public image of environmental responsibility promulgated by or for an organisation, but perceived as being unfounded or intentionally misleading' (Oxford). However, the multifaceted nature of modern corporate activity makes a neat definition almost impossible.

What is greenwashing?

There are, however, a number of aspects that can be considered as greenwashing. For example, what is described above can be recognised as ‘selective disclosure’, which has been described as ‘a symbolic strategy whereby firms seek to gain or maintain legitimacy by disproportionately revealing beneficial or relatively benign performance indicators to obscure their less impressive overall performance’.[4]

Another form of greenwashing is known as ‘decoupling’, which describes the process whereby symbolic actions are taken ‘which tend to deflect attention to minor issues or lead to create “green talk” through statements aimed at satisfying stakeholder requirements in terms of sustainability but without any concrete action’. This has led others to further define greenwashing as ‘the gap between “symbolic” and “substantive” corporate social actions’.

These approaches can be grouped under the concept of ‘Claim greenwashing’. There is another grouping, namely ‘Executional greenwashing’ that is much more subtle in nature. Researchers investigating this approach classify it as strategies that evoke nature or nature-related colours (Green, Blue etc.) to denote a nature/sustainability/climate-friendly approach without any evidence; for example, a report may have pictures of waterfalls or a jungle on the front, or have green themes in its colour design. [5].

The theory suggests that such strategies may induce false perceptions of the entity’s ‘greenness’, with the inference being that this induction may be intentional. Interestingly, research has found that this executional approach only tends to work on the non-expert consumer groups, whereas accustomed experts are not usually affected; this has connotations for regulators tasked with protecting retail investors/consumers.

At the core of greenwashing is the concept of communication. Research in the field is moving towards a very nuanced consideration which is important for the development of the concept: the distinction between miscommunication and deceptive communication. Linder has developed a useful distinction between two major views of greenwashing, namely: greenwashing focused on the specific object of communication and its features, and greenwashing focused on the communicative process.[6]

In the first case, the greenwashing occurs when there is a discrepancy between the attributes of the object of the communication (a product or services etc.) and the company’s claims about the relevant value of the object. The process-related concern is when the entire process behind developing the communication has the aim of misleading the receiver of the information to protect or enhance the relevant credentials of the firm involved. Therefore, greenwashing has been considered as a type of ‘corporate hypocrisy’.

What is greenwashing?

There are many drivers of greenwashing. A company may have competitive pressures that affect its decision to undertake greenwashing practices. One suggestion has been that firms tend to model themselves both on successful industry leaders, but also industry participants who are well regarded by external stakeholders (a different measure of success, potentially).

If a firm seeks to model themselves on industry leaders, or at least act so as to not lose ground to them in terms of market share, they may be emboldened to take particular actions whilst not necessarily undertaking the groundwork the industry leader has taken. Researchers have attempted to categorise firms within a given industry as ‘green’ and ‘brown’ firms, with the inference being that brown laggards may become ‘vocal’ to alter their status on the spectrum.

In association with this driver, managerial incentive structures and remuneration policies i.e., corporate governance, has been highlighted as a key driver of greenwashing, whereby managers are incentivised to take short-term actions to achieve success; many green-related initiatives realise their success over the mid- to long-term.[7]

Managerial incentive structures and remuneration policies i.e., corporate governance, has been highlighted as a key driver of greenwashing

In terms of societal drivers, regulation is one of the most important drivers of greenwashing. This is witnessed both in the intentional and unintentional spaces. For example, pushes via policy to increase corporate sustainability naturally increase the need to signal one’s adherence to such a societal push, to maintain corporate legitimacy and also to achieve the relative success that comes within the new paradigm. If that ‘push’ is backed by regulation, there becomes a tangible incentive to develop green practices, but that does not necessarily mean that every firm will change or invest in the correct manner, which could lead to greenwashing practices.

What is greenwashing?

The other regulatory element is whether there is an adequate deterrence regime in place surrounding greenwashing. Gatti et al discuss how greenwashing not only negatively affects a firm's bottom line in the long run, but that it also causes substantial damage to the levels of trust within the economic space, which has considerable societal connotations.[8] Additionally, damaging trust in the space at such a nascent time in the development of the concept of sustainable business practices could seriously hamper efforts to grow the space in terms of increased securitisation and financialisation. If the chosen penalties for greenwashing are relatively low or do not have a material impact on the conduct of the company to deter it from a 'business as usual' stance, the analysis taken by firms may be that greenwashing is a risk worth taking.

There is a systemic aspect to greenwashing that regulators need to consider, according to the literature. Researchers have found that it is the brown firms with 'egoistic' management approaches that are the most likely to engage in greenwashing. Firms with principled or ethical codes of working are seen as statistically more unlikely to engage in greenwashing practices.

This makes sense, but the reality is that it is the brown firms which need to change the most from a societal perspective who will be the most likely to engage in greenwashing; from a regulatory perspective, this presents an opportunity but also a key challenge – how do you focus on the brown firms whilst still maintaining an adequate regime for green firms?

One element that is crucial for the deterrence structure surrounding the concept of greenwashing is the role of NGOs, researchers, and investigative journalists. Delmas and Burbano tell us that 'activists, NGOs, and the media provide a threat of public exposure for greenwashing, which likely deters some brown firms from positively communicating about their environmental performance [this phenomenon is known as 'green-hushing'][9].

As consumers, the public, and investors become more interested in environmental issues, environmental activist groups become more powerful and can exert more influence and pressure on companies. Members of the media are also more likely to report on issues of greenwashing as these stories become more likely to capture reader interest'. Gatti et al substantiate this, saying that 'the accusation from a third party is an essential aspect of greenwashing'.

What is greenwashing?

For regulators, this adds an extra layer of responsibility with regards to their greenwashing regulatory apparatus: how can the regulator support and embolden such third parties to continue this investigative and necessary accusative role? There is evidence, as our case study of DWS asset management suggests, that there is more support needed for investigative journalists, accusatory NGOs, and internal whistle-blowers especially.

The Concept of Signalling and its Importance

As a very short interlude, what is of concern here is the philosophical nature of greenwashing. greenwashing, in effect, is simply a matter of signalling. There is a large and expansive theoretical background to the concept of signalling, stemming from the 1970s and the industrial labour analyses undertaken by Akerlof, Spence, Stiglitz, and others.[10] It has been widely accepted in the literature that 'signalling theory is useful in analysing how parties that have access to different information interpret signals and to study the distortive effect of greenwashing'.[11]

Essentially, signalling theory is concerned with how different parties deal with the informational asymmetry that is natural in a variety of contexts: where one party knows more than the other. The nuanced complexities of the theory examine how one party may seek to signal from this informationally rich position to others whilst not necessarily compromising their position, whilst for the receiver the issues revolve around being able to understand but ultimately trust the signal they are receiving. Within this spectrum, greenwashing clearly sits neatly; a firm wants to signal to others their green (or other) credentials but must find a way to do that in a way the receiver can understand it, but also in a manner they can trust.

This is why instances of proven greenwashing are so detrimental to society, because with each proven case the aggregated trust in firms signalling their credentials decreases. To resolve this asymmetry, there are a number of options. For the general public and unsophisticated receivers, a form of verification is required and, to that end, a number of verification-based initiatives are already underway with regards to certifying the statements that firms make.

In the financial sense, and especially for investors (both retail and sophisticated, but especially for sophisticated) it is the case that the information provided needs to be moulded into something that is easily recognisable. In both cases, third-party verification is critical. However, all third-party verification comes with an inherent issue: can the third party be trusted to be independent?

The greenwashing Infrastructure: The Case of ESG Rating Agencies

In the traditional financial marketplace, one's creditworthiness can be relayed to the market by way of a credit rating; credit rating agencies exist to provide alphanumeric rankings to one's ability to repay an investment in full, and on time. That system has been in place, via various guises, since the 1830s in the US. However, the need to signal one's green credentials (or another relevant metric) is a relatively recent requirement and, as such, the ESG Rating space is a much younger market.

There are several large and recognisable players, like MSCI, Bloomberg, and Sustainalytics, although the traditional credit rating agencies like S&P Global, Moody's, and Fitch are all actively seeking to take their place in the nascent market via new products and concerted M&A strategies. Researchers have accounted for this convergence of industries,[12] but other identified issues relate to the applicability and utility of the ESG rating space for the modern marketplace.

From a signalling perspective, a firm will want to signal its green credentials in the most effective way possible. Given that not everybody is a sophisticated receiver of green information, the best way to do this is to receive a high ESG rating from one of the recognised agencies.

The agencies also stand in a privileged position in terms of their access to the firm and their information, as well as containing internal research capacities that allow it to filter and understand public information on a large scale. This, in theory, resolves the informational asymmetry present in the green space. Yet, there are a wide range of issues currently affecting the ESG rating space which makes it a critical consideration for the regulatory apparatus.

The usage of ESG ratings is rapidly increasing, and societally-critical areas of development – like the use of green bonds – are accelerating because of the influence of ESG ratings.[13] However, the growing literature on ESG rating agencies have revealed a litany of problems. Soh Young In and Kim Schumacher discuss how it is proving to be increasingly difficult to determine the approach that ESG rating agencies are taking with their ratings and methodological developments,[14] while Scheler describes how the nature of non-financial information lends itself to an increased risk of bias and subjectivity within the ESG rating process.[15]

The greenwashing Infrastructure: The Case of ESG Rating Agencies

Other research has shown that the ratings of each agency diverge massively from other agencies, making it difficult for investors to compare ratings and get a true sense of a firm's commitment to sustainable practices.[16] Furthermore, Scheler describes how ESG rating agencies are choosing to be selective with their ratings, making for a compromised service (ESG Rating Agencies are said to have refused to rate US Treasuries because they would be certain to be lowly-graded because of the US' investment in arms etc.)

Other researchers have demonstrated that there is a large-cap bias in ESG ratings, revealing that larger firms have a better chance of getting higher ratings mostly because they can invest in the disclosure systems needed to provide rating agencies with the relevant information they need to rate them; this leads to systemic inefficiency, because smaller players who may be operating on a sustainable basis will not get the investment they need because of a lack of investment in informational disclosure.

Some researchers have analysed the interaction between ESG rating agencies and the concept of greenwashing and concluded that, eventually, ESG rating agencies will pick up on greenwashing and act accordingly, adding an extra layer of deterrence to the consequences facing firms that participate in greenwashing practices.[17]

The ratings of each agency diverge massively from other agencies, making it difficult for investors to compare ratings and get a true sense of a firm's commitment to sustainable practices

This can be challenged on a number of levels, however. In reality, those same researchers admit that the ratio of rating reversals for any reason in the ESG rating space is remarkably low. Second, there have been a number of instances recorded whereby firms are gaming the ESG rating system, effectively increasing their disclosure operations whilst not changing the underlying issues.[18]

Interestingly, and to deviate for a moment, it has been noted that increased disclosure actually increases the level of divergence amongst ESG rating agencies, which has implications for the drive to increase disclosure across the board.[19] Third, there have been a growing number of instances witnessed whereby failures of internal control within ESG rating agencies have had demonstrable effects on the final ratings,[20] whilst researchers have also found that ESG rating agencies which have been acquired by the larger credit rating agencies have tended to increase the ratings of the clients of their new parent companies; the inference being that ESG ratings can and are being manipulated for commercial gain.[21]

The greenwashing Infrastructure: The Case of ESG Rating Agencies

In addition to these problems, the securitisation of ESG and green-related financial flows is now increasing. ESG rating agencies are and will continue to be critical to the development of this sector. However, the lessons from the Financial Crisis are being called for to be learned again because the role of the ESG rating agencies means that any shortcomings will be amplified by the growth of the securitisation of green and ESG flows.

This has led the SEC Chair Jay Clayton to warn publicly about the risks of using simplified ratings to understand complicated financial products. He said: ‘I have not seen circumstances where combining the analysis of E, S, and G together, across the broad range of companies, for example with a ‘rating’ or ‘score’, particularly a single rating or score, would facilitate meaningful investment analysis that was not significantly over-inclusive or imprecise’.

The risk that ESG rating agencies will be active components in the systemic effect of greenwashing is actively real. They are not equipped, not designed to verify the information given to them yet they are in a position to effectively signal the greenness of tremendously complicated financial products to a marketplace that clearly does not yet fully understand the concept of ESG, green, and responsible business developments.

Regulatory Developments

There are, of course, a variety of regulatory developments that affect the concept of greenwashing. Disclosure-related regulations play a front-and-centre role, but there are additional regulations and legislative developments that also play a part, like in the US where rulings over fund names are being actively considered (as well as elsewhere – like the EU and the UK). Whilst to review every single regulatory and legislative action is far beyond this report, there are some key developments worth considering.

In the US, earlier in 2022, the SEC proposed to amend a small number of rules to enhance the scrutiny of ESG funds and advisors' ESG-related practices. The aim was to enhance and modernise the Investment Company Act's 'Names Rule', so that its 80/20 rule – a rule which dictates that a fund's investment portfolio must constitute at least 80% of its stated target – will be expanded to more funds that attach titles to their funds; essentially, now any funds with words like 'growth' or 'value' in their title will be exposed to the 80/20 rule.[22]

The ratings of each agency diverge massively from other agencies, making it difficult for investors to compare ratings and get a true sense of a firm's commitment to sustainable practices

This is an attempt to remove some of the 'executional' greenwashing that was reviewed earlier in the report. In addition to this, the US has also sought to amend its disclosure regulations so that, now, advisors and registered funds will be exposed to a new classification system that brings with it differing disclosure mandates.[23] Essentially, these proposals bring the US in line with the EU which also mandates that the more a fund identifies itself as ESG-focused, the more it must disclose to justify that identification.

In the EU, the wider Green Deal approach has taken several forms which are impactful for the development of anti-greenwashing initiatives. The Sustainable Finance Disclosure Regulation (SFDR), the EU Taxonomy, and the recently implemented Corporate Sustainability Reporting Directive (CSRD) that updated the NFRD, all coalesce to present a unified approach to disclosure, identification, and substantiation (although there are exceptions, like the banking sector and parts of the wider financial sector).

Regulatory Developments

Whilst the developments may have unintended effects elsewhere in the financial sector (we saw earlier how increased disclosure will increase divergence in the ESG rating sector), the legislative and regulatory suite of approaches demonstrates a committed approach to combatting greenwashing. By insisting that firms fully and transparently identify what they are offering to the marketplace, and then by ranking this against a unified set of metrics, the opportunities for greenwashing are not only reduced (in theory) but then the instances whereby perpetrators can claim ignorance are vastly reduced. Whether or not there is an adequate penalty system in place for those perpetrators is another question. Interestingly, the EU is considering whether to alter its consumer-related regulations so that the Unfair Commercial Practices Directive and the Consumer Rights Directive may in the future consider instances whereby companies make vague or generic claims about environmental performance.[24]

The push now is for claims from companies to be verified independently, but again this has the potential to cause issues. Industry observers have suggested that it is important that the EU does not mandate how verification is undertaken because such mandates could stymie innovation (which is a correct observation), but additionally it is vital that third-party verifiers themselves have the correct regulatory regime in place so that conflicts of interest do not threaten the development of the space.

Furthermore, in a really important consideration, it has been noted that the narrow focus on environmental issues only ‘misses an opportunity’. D’Hollander suggests that ‘consumers should also be able to trust claims about human rights, working conditions, living wages, and other social concerns’. Rightly, he follows with ‘leaving these issues out of the scope risks driving action, investment, and awareness away from these critical issues’.

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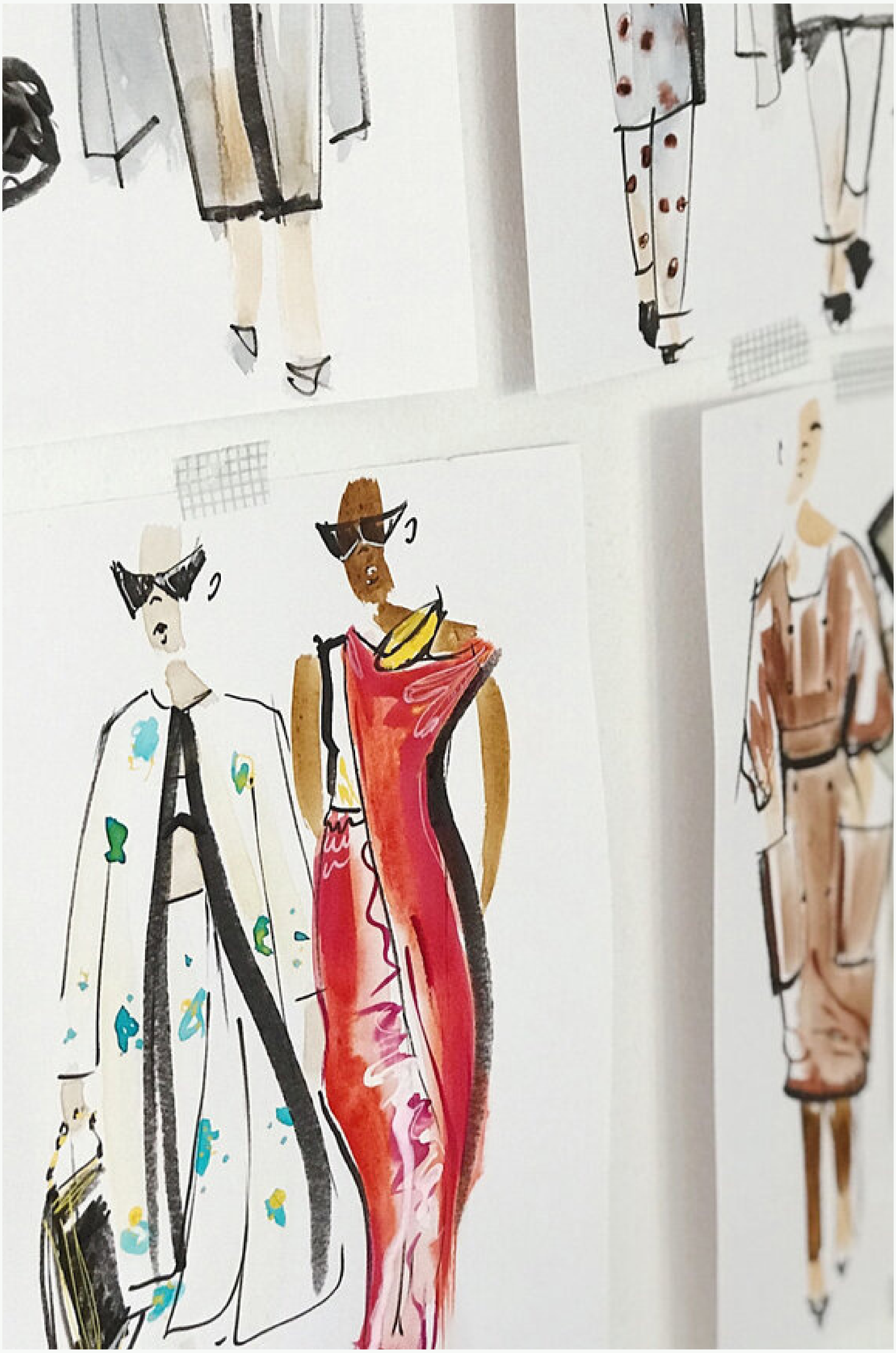
Case Study - Fast Fashion



Case Study - Fast Fashion

The ***License to Greenwash*** report by Changing Markets studies the certification schemes that have arisen within the fashion industry during recent times. Certification schemes offer a genuine route for a largely unregulated industry to signal its sustainability efforts, although in reality they also ‘enable the proliferation of “greenwashing” on a remarkable scale’. The certification schemes offer, mainly, two types of certification or signal for brands to use – either by way of endorsing particular products and the construction of the products, or via the brand partnering with a particular certification scheme. However, research shows that the fashion industry had a disproportionate influence over these certification schemes, resulting in an ability to essentially mark their own homework and gain seemingly independent certification irrespective of the underlying sustainability of the given product or brand.

With a focus on notable schemes and initiatives like Bluesign, Cradle to Cradle, EU Ecolabel, OEKO-TEX, the Recycled Claim Standard, the Microfibre Consortium, and the Higg Index, the report found that these schemes are all voluntary and enjoy high levels of industry buy-in and cross promotion. It also found that the different schemes did not uphold high levels of ambition, focused on arbitrary segments of a product’s life cycle, and ultimately lacked any sort of accountability or independence. Concerningly, the report found a litany of governance related failures that allude strongly to a systemic ‘licence to greenwash’.

As a result of this and other investigations, the EU sought in 2022 to develop the ***Sustainable Products Initiative*** which would, in part, tackle greenwashing in the fashion sector. The Initiative would seek to redesign how products are constructed, destroyed, manage better the carbon footprint created by the creation of such products and encourage EU-recognised labels that could be controlled (rather than voluntary initiatives which are being manipulated). Observers have suggested that the proposed legislation does not go far enough, with suggestions ranging from more constrained metrics for certification to the quantification of clothing overproduction; the European Environment Agency found that ***clothing usage has the fourth-highest impact on the environment***, behind food, housing, and transport.

An ***array of legislative and regulatory tools*** are being deployed to counter greenwashing in the fashion industry, ranging from a digital product passport for textiles, to the Green Claims Initiative that makes it harder for brands to claim products are ‘green’, ‘eco-friendly’ and the like.

Case Study - Asset Management

Case Study - Asset Management

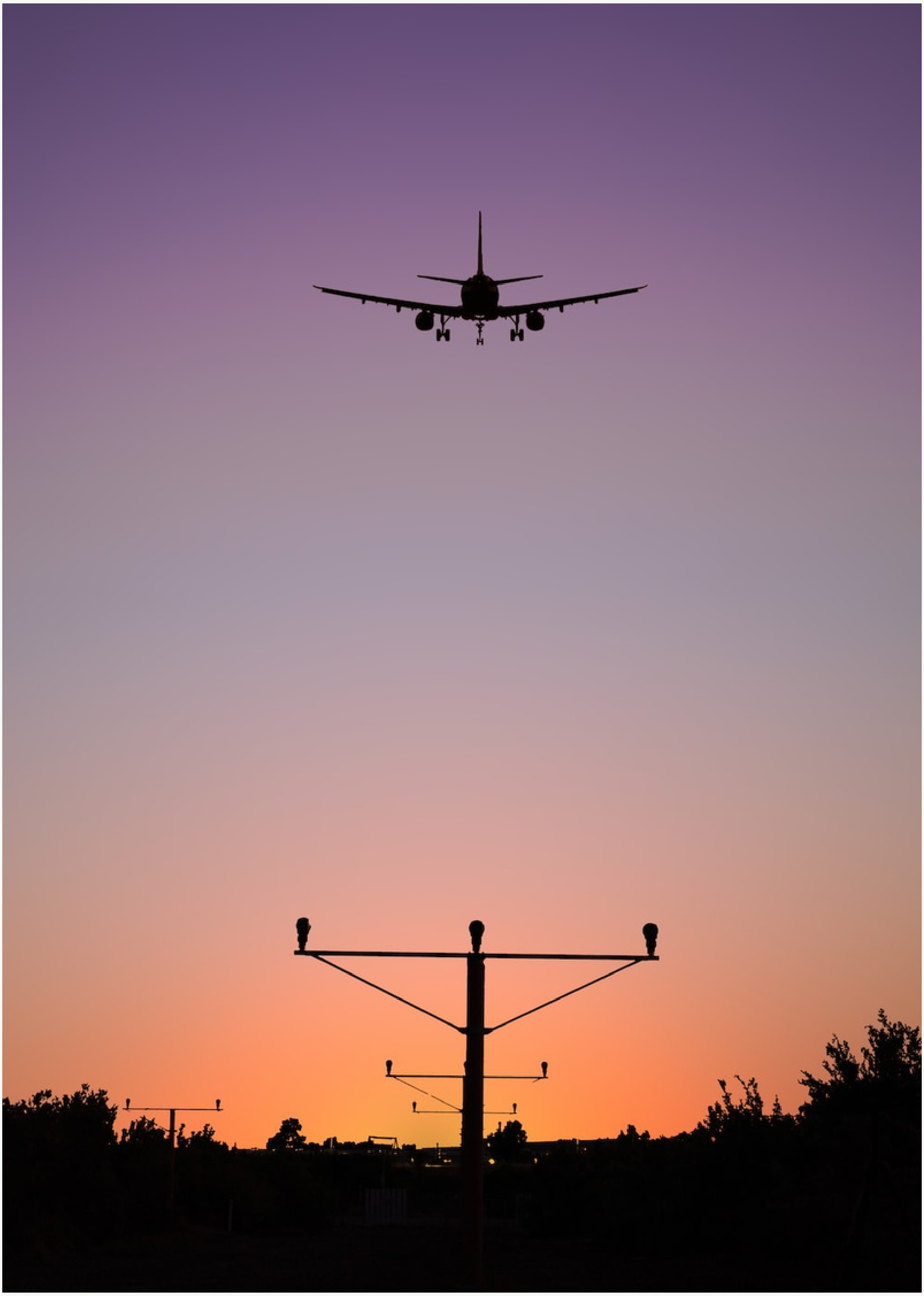
Deutsche Bank's Asset Management arm, DWS, had reported in its ***2020 Annual Report*** that it had €459 billion in assets under management, but that those assets were 'ESG-integrated', denoting an ESG-flavour to those investment strategies. This integration was related to an internal system known as the 'ESG Engine' that was populated with all manner of data and scores coming from the leading ESG rating and data agencies. That engine was then supposed to be used by investment managers when making decisions with the assets at their disposal.

The then recently appointed Sustainability Chief Desiree Fixler alleged that this ***figure was inflated many times over*** because the managers were not utilising the Engine and DWS were taking the approach that because it was at their disposal, they could classify the funds accordingly. Fixler sought to blow the whistle on greenwashing within the firm. Based on this and other instances, German prosecutors on the morning of May 31st 2022 ***raided the headquarters of DWS' majority owner Deutsche Bank*** seeking information regarding greenwashing practices within the firm. The investigators said they uncovered 'sufficient factual evidence' that ESG factors were not being taken into account when DWS said they were. In October 2022, a leading German consumer group initiated litigation against DWS in connection to investments within the DWS Invest ESG Climate Tech fund; a regional judge has set a court date for March 10th 2023.

Whilst other financial institutions have been paying fines for similar practices – Bank of New York Mellon ***settled recently for $1.5 million*** for misstatements and omissions in prospectuses, whilst Goldman Sachs ***settled for $4 million*** for several policy and procedure failings relating ESG research – the reality is that it remains unclear as to what penalty DWS will face, if any; legal observers have noted that '***there is currently no regulation that makes greenwashing punishable***' and we have yet to hear what the prosecutors intend to do with the evidence they retrieved from the raid. In fact, the new head of DWS has been ***bullish in his public defence of the firm***, saying that while 'all learnings [will be] implemented', ultimately 'after a decade of sunshine, the next few years will see a renaissance of active asset management – which is our clear competitive edge'.

Recently, DWS has been ***reclassifying large parts of its assets under management*** in relation to the EU Taxonomy and SFDR, downgrading 10 Paris-Aligned Benchmarked (PAB) ETFs from Article 9 (dark green) to Article 8 (light green), causing chaos in the investment marketplace. DWS have said this is a precautionary measure whilst the European Commission decides on whether PAB ETFs automatically qualify as Article 9 funds; DWS are not alone in this reclassifying approach.

Case Study - Airline Industry



Case Study - Airline Industry

Ryanair, the ultra low-cost Irish carrier, was in 2020 accused of greenwashing by British advertising regulators. The basis of the Advertising Standards Authority's (ASA) greenwashing claim related to an advertising campaign within which the airline ***claimed to have the lowest carbon emissions of any major airline in Europe.*** Ryanair based that claim that it had the lowest carbon emissions on CO2 emissions per passenger per kilometre flown, the youngest fleet, the highest proportion of seats filled and the newest, most fuel-efficient engines. Yet, upon investigation, the ASA found that Ryanair was utilising statistics from 2011, which the ASA said was 'of little value as substantiation for a comparison made in 2019' and that major competitors were left off the chart, so it was unclear whether they had been included in the statistics.

Finding also that 'seating density' on the planes was not considered, the ASA banned the advertisements absolutely, saying that 'the advertisements must not appear again in their current forms' and 'told Ryanair that when making environmental claims they held adequate evidence to substantiate them to ensure that the basis of those claims were made clear'. Remarkably, the advertisement campaign came just five months after Ryanair had been named the ***first non-coal company in the EU top-10 carbon emitters list***.

A recent report from Greenpeace identified that seven of the largest European airline groups are '***failing to take sufficient measures to reduce their CO2 emissions in line with the Paris Agreement***', further highlighting the importance of both the aviation industry to combatting climate-related emissions, but also the relevancy that advertising and greenwashing have with regards to the airline industry. The identified airlines were accused of '***relying on "false and inefficient" solutions such as "carbon neutrality", carbon offsetting, and sustainable aviation fuels to tackle emissions***'. The spokesman for Greenpeace's campaign on mobility said simply 'European airlines are putting up a smokescreen of false solutions that sound great, but in effect keep transport hooked on oil, distracting from their staggering emissions, lack of credible climate targets and insufficient measures to combat the impacts of flying. Even in the face of a climate emergency, airlines carry on polluting the air and hide behind their dirty business behind a wall of greenwashing'.

Recommendations

As stated above, there are many avenues for regulators to consider and each has a particular set of nuanced parameters. Therefore, providing broad and encapsulating recommendations is difficult and likely not helpful. However, based on our report, we have provided five (5) points of consideration based on our research.

1 Investment in Monitoring Infrastructure

Interested and invested external forces – NGOs, media, and researchers – must be supported and incentivised to participate in the wider monitoring structure overlooking greenwashing activities. This can be done via supporting collaborative efforts, investing in relevant research initiatives, and maintaining lines of communication to established and impactful NGOs so that they have the tools they need to be ahead of trends that are developing within the greenwashing space.

2 ESG Rating Regulation Must Consider greenwashing

The forthcoming European regulation on ESG rating agencies must have the greenwashing perspective injected into it. The role of ESG rating agencies in the development, and also the suppression of greenwashing is vital, and the forthcoming regulatory action must consider this and interweave such considerations formally into its construction.

3 Stronger Punitive Regime

The ESAs, together with the Commission, should consider a stronger punitive regime for greenwashing. At such an early stage in the development of green and sustainable business principles, breaches of trust can have disproportionate effects on the successful implementation of what is, essentially, an attempt to change corporate culture. Therefore, the range of penalties ought to be increased and the authority of the ESAs to intervene increased so as to the develop a thorough and impactful regulatory regime complete with the adequate deterrence. The failure of current punitive regimes strongly suggests that, whilst not on trend, the imposition of personal and civil liability could have more impact with regards to instilling the cultural change required.

Recommendations

4 Informational Campaigns

Efforts should be taken to increase the informational campaign against perpetrators of conscious greenwashing. Those found to have committed egregious examples of greenwashing should be made an example of in this early stage. This can be done by being more vocal in terms of media relations regarding instances of confirmed greenwashing, rather than mere public statements.

5 Stand-Alone Legislation Feasibility Study

A feasibility study should be undertaken to examine the effectiveness of stand-alone legislation against greenwashing, instead of a piecemeal approach via different strands of legislation. A stand-alone approach may be more impactful and easier for market participants.

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Contact

This collaborative effort has been provided on the basis of transparency and openness. In that light, the team can be contacted should anybody who reads the report want or require any further information or assistance.

The report's authors include:

Professor Paul Q. Watchman - Global Head of Climate Change and ESG Transition at Ben McQuhae & Co; Honorary Professor at the University of Glasgow; Senior Legal Advisor to the UN Environment Programme Finance Initiative.

Mr Ben McQuhae - Founder of Ben McQuhae & Co.

Mr Paul Clements-Hunt - Founder of the Blended Capital Group; Director of Mishcon Purpose at Mischon de Reya LLP.

Dr Daniel Cash - Fulbright Scholar at New York University and Associate Professor at Aston University.

With grateful support from Jessica Ha - Associate and Founding Member of Ben McQuhae & Co.

Contact

The Corresponding Author's Details are:

Dr Daniel Cash
Fulbright Scholar and Associate Professor
The Credit Rating Research Initiative
Aston University
d.cash@aston.ac.uk