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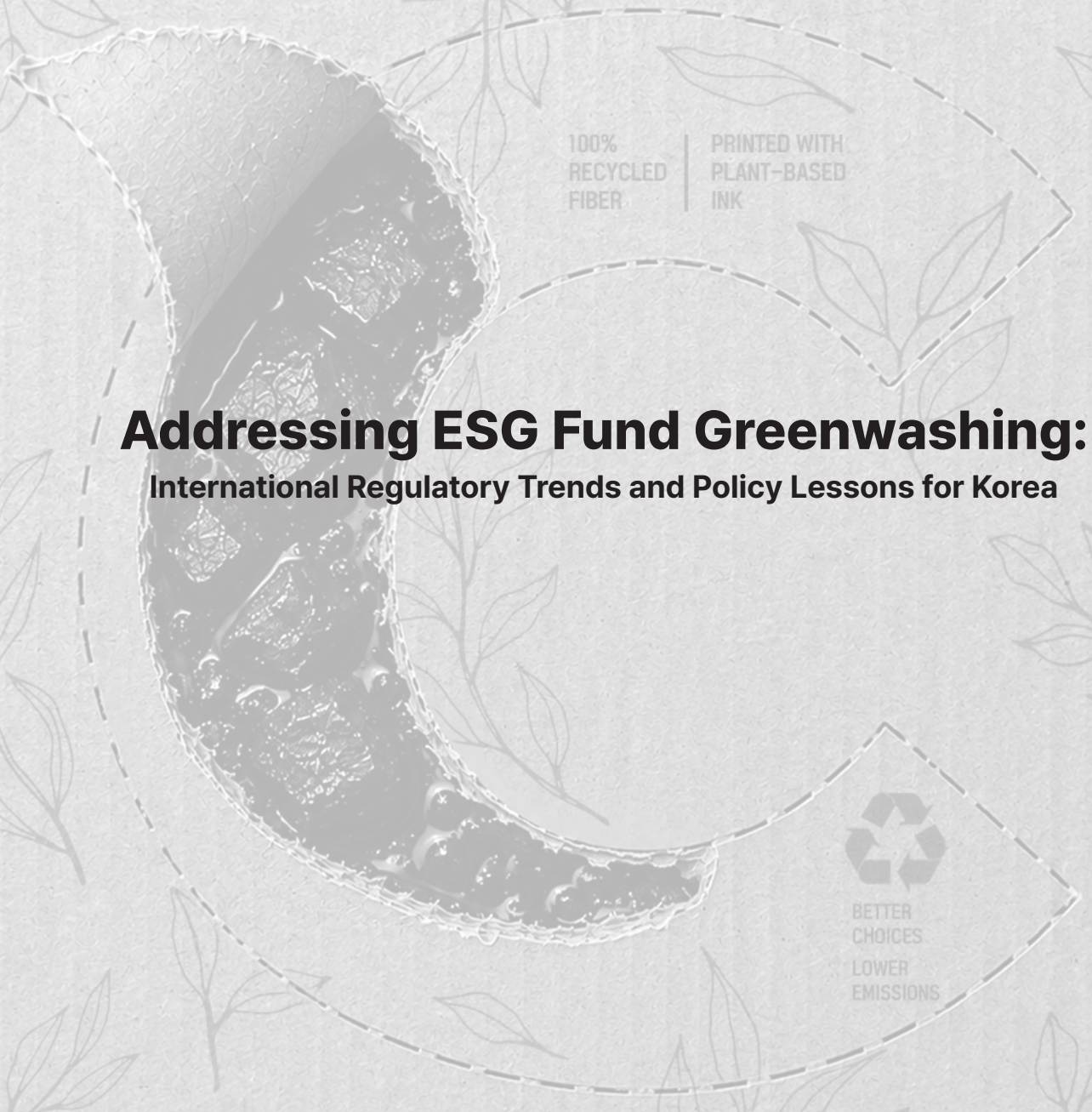
Addressing ESG Fund Greenwashing:

International Regulatory Trends and Policy Lessons for Korea



Addressing ESG Fund Greenwashing:

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Executive Summary

- ESG funds have experienced sustained global growth over the past decade, giving rise to mounting concerns over greenwashing risk and the integrity of ESG-related representations made to investors.
- In response, legislatures and financial regulators across major markets have begun adapting their regulatory and enforcement frameworks to address greenwashing in the ESG fund context specifically.
- A central regulatory trend has been the adoption of fund naming rules requiring that funds incorporating ESG-related terminology in their names maintain a minimum threshold of portfolio assets that genuinely align with the ESG methodology or objectives disclosed to investors.
- The United States, the European Union, and Singapore have introduced (or proposed) minimum thresholds of 80%, 70%, and two-thirds, respectively, with the EU framework further supplementing these thresholds with substantive exclusion criteria targeting carbon-intensive industries.
- Alongside these rulemaking efforts, several jurisdictions have pursued active investigation and sanctioning of ESG fund greenwashing. Australia, notably, has produced a series of landmark enforcement precedents relying exclusively on existing securities law, demonstrating that dedicated ESG-specific legislation is not a prerequisite for effective regulatory action.
- Korea, by contrast, has yet to adopt substantive minimum portfolio composition requirements for ESG funds or to develop ESG-specific enforcement standards. To date, there has been no significant regulatory action addressing ESG fund greenwashing beyond the introduction of standalone disclosure standards.
- The international enforcement landscape surveyed in this report reveals a clear gap in Korea's regulatory and enforcement framework. This highlights the need for the Financial Supervisory Service to take a more coherent and proactive approach, moving beyond disclosure-based measures toward substantive rulemaking and robust enforcement to effectively combat ESG fund greenwashing.

I. Greenwashing in the Financial Sector & ESG fund

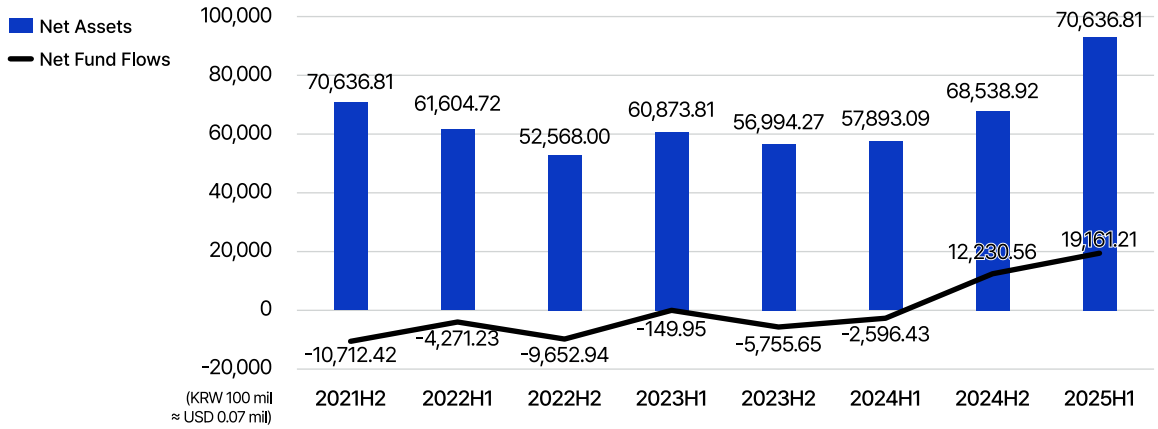
As demand for sustainability-oriented products and services has surged, ESG (Environmental, Social, and Governance) criteria have been recognized as critical determinants in investors' decision-making. The incorporation of ESG factors into business operations has become an important benchmark that materially affects investors' perceptions of long-term corporate value, making investment products bearing green or ESG labels attractive not only to environmentally conscious investors but also to mainstream investors seeking superior risk-adjusted returns.

Asset management strategies incorporating ESG factors are predominantly conducted through mutual funds and exchange-traded funds (ETFs), collectively referred to as "ESG funds." The ways in which ESG considerations are reflected in portfolio construction generally fall into several categories, including: (i) negative screening, which excludes companies with elevated ESG-related risks or those failing to meet established ESG criteria; (ii) positive screening, which increases allocations toward companies demonstrating strong ESG performance; and (iii) ESG integration, which embeds ESG considerations throughout the broader investment management process rather than applying them as a discrete filter.

The use of ESG criteria by funds has become one of the most prominent investment trends, with ESG funds gaining an increasingly significant presence in the global financial markets. This trend is evidenced by the substantial growth of ESG fund assets under management (AUM). As of March 2019, the global ESG fund market (including mutual funds and ETFs) had AUM of approximately USD 510 billion, which steadily increased to approximately USD 4.13 trillion by the end of 2025.

From a domestic perspective, Korea's ESG fund market has developed rapidly over a relatively short period, driven by the global rise of sustainable investing and domestic institutional shifts such as the adoption of stewardship principles and the growing emphasis on ESG disclosures in the early 2020s. The market remained nascent as of July 2020, with net assets of just KRW 416.8 billion (≈ USD 280 million) amid rising investor demand and product innovation. As of June 2025, the net asset value of domestic ESG funds reached KRW 9.38 trillion (≈ USD 6.3 billion) across 198 funds, representing a 37 percent increase from the previous year alone.

[Figure 1] Net Assets and Fund Flows of Domestic ESG Funds in Korea



Source: Source: Sustinvest, Korea Fund Ratings (KFR)

However, this rapid growth in ESG funds has been accompanied by the rise of opportunistic greenwashing by financial market participants ("FMPs") including asset managers and financial advisors, who market their products and services as environmentally sustainable or climate-friendly without substantive support in their underlying investment processes or demonstrable real-world impact.

A clear illustration of this issue can be found in the Korean ESG fund market. Solutions for Our Climate (SFOC) conducted a survey of 84 ESG funds offered by Korean FMPs as of December 2024 and found that several domestic bond- and equity-type ESG funds, whose names or titles suggest a "green" or climate-focused orientation, held securities of companies included in the Global Coal Exit List 2024[1], the Global Oil & Gas Exit List 2024[2], and the Financial Exclusion Tracker[3]. These ostensibly green and environmental impact-driven funds were found to hold securities issued by companies in carbon-intensive sectors such as coal-fired power generation, natural gas, and steel production.

This reveals that the mere incorporation of climate-friendly language into a fund's name and marketing materials can be strategically exploited to attract sustainability-minded investors, while such investors may, in effect, channel capital into companies with demonstrably adverse environmental impacts. This pattern of greenwashing in ESG funds is by no means unique to Korea; it has emerged as a pervasive trend across major ESG fund markets worldwide, highlighting the need for robust regulatory intervention.

1 The Global Coal Exit List is a database identifying companies worldwide that are involved in coal mining, coal-fired power generation, or other coal-related activities, used by investors to screen and divest from high-carbon assets.
2 The Global Oil & Gas Exit List is a dataset that tracks companies engaged in oil and gas extraction and production, providing investors with information to avoid financing fossil fuel operations in line with climate-aligned strategies.
3 The Financial Exclusion Tracker is a tool that monitors financial institutions' exposure to or exclusion of companies with high environmental or social risks, helping investors assess alignment with sustainable investment policies.

In recent years, many jurisdictions have accordingly responded to concerns over ESG fund greenwashing, primarily through legislative initiatives and enhanced regulatory enforcement. While establishing workable thresholds to govern greenwashing in capital markets requires a sophisticated and nuanced approach, policymakers in leading jurisdictions have made significant progress by introducing sector-specific regulations targeting greenwashing, complemented by intensified investigations and interpretive guidance from financial regulators.

Korea, however, presents a contrasting picture. Despite the market's growing prominence, regulatory responses have not kept pace, and the capital market has yet to demonstrate corresponding progress in addressing greenwashing risks. Although initial frameworks have been introduced, the country remains in a transitional phase, without meaningful enforcement actions or effective regulatory standards.

The following sections thereby examine the regulatory efforts undertaken in major jurisdictions and Korea to combat ESG fund greenwashing. Drawing on this comparative analysis, this Report evaluates Korea's existing regulatory framework, identifies its structural limitations, and suggests potential avenues for strengthening oversight of ESG fund practices.

II. Global Trends in ESG Fund Regulation

1. The United States

At the federal level, the regulatory landscape of the U.S. ESG fund market has been largely shaped by the Securities and Exchange Commission's (SEC) Climate and ESG Task Force, which spearheaded active regulatory guidance and enforcement actions from 2021 to 2024. The Task Force pursued a dual-track approach by intensifying enforcement actions under existing securities laws while simultaneously advancing rulemaking initiatives tailored to ESG funds. Although the Task Force was dissolved in 2024 and subsequent political changes have currently reduced regulatory intensity, the framework and precedents established during this period of heightened scrutiny continue to influence the SEC's enforcement mechanisms.

• The Amended Names Rule and the Expanded 80% Investment Threshold

Among its regulatory developments, the most significant concerns fund naming practices: the 2023 amendment to Rule 35d-1 under the Investment Company Act of 1940 (the "Amended Names Rule"). Commonly known as the "Names Rule," Rule 35d-1 governs fund naming practices by requiring that a registered investment company or business development company with a fund name that suggests a particular investment focus must invest 80 percent of its assets in accordance with that focus. Historically, this threshold requirement applied when a fund's name indicated a focus on a specific type of security, industry, geographic region, or tax-exempt investment strategy, but did not extend to thematic characteristics such as ESG.

The Names Rule expanded the scope to include fund names suggesting ESG or sustainability-related characteristics, thereby extending the 80% investment requirement beyond traditional categories such as asset type, industry, or geography. As a result, fund names using terms such as "growth," "value," or ESG-related descriptors like "sustainable," "green," or "socially responsible" are now subject to the 80 percent requirement. This requires FMPs to demonstrate that a fund with any of the above terms in its name invests at least 80 percent of its assets in securities that conform to the ESG criteria and methodology disclosed to investors.

The amendments further elaborate on detailed operational and disclosure obligations for the ESG-named funds. For example, registered ESG funds are now required to clearly define the terms used in their names in the prospectus and to disclose the criteria used to select investments that correspond to those terms, thereby reducing ambiguity around how broadly framed ESG-related terms are applied in practice. Such terms are required to be used

consistently with their plain English meaning or established industry usage. To ensure ongoing alignment between a fund's name and its portfolio, the rule mandates at least quarterly reviews of compliance with the 80 percent policy and requires funds that fall out of compliance to return to alignment as soon as reasonably practicable, and in all cases within 90 days.

Since compliance deadlines for the Amended Names Rule have been set to June 2026 for larger fund groups and December 2026 for smaller fund groups, its practical impact in subsequent SEC enforcement actions remains to be seen. While the current U.S. political climate has introduced a degree of regulatory uncertainty and some rollback of ESG-related policies, the Amended Names Rule nonetheless signals a baseline commitment to transparency in ESG fund naming practices.

2. The European Union

The European Union (EU) has developed a comprehensive legal framework to ensure the transparent operation of ESG funds through a multi-layered governance structure. At the supranational level, the EU adopts binding regulations and directives. The European Securities and Markets Authority (ESMA), EU's financial markets regulator, promotes harmonized supervision and application of these rules across Member States by translating their objectives into supervisory expectations and guidance. Finally, the national competent authorities (NCAs) of each Member State incorporate these EU-level instructions to operationalize and enforce the standards within their domestic legal systems.

• The Sustainable Finance Disclosure Regulation (SFDR)

At the EU level, the Sustainable Finance Disclosure Regulation (SFDR) constitutes the central disclosure framework for ESG fund products. Introduced by the European Commission as a core component of its 2018 Sustainable Finance Action Plan alongside the EU Taxonomy and the Low Carbon Benchmarks Regulation, the SFDR governs how FMPs must report sustainability-related information at both the entity and product levels.[4]

Under the current SFDR , which has been in effect since 2021, FMPs are subject to extensive disclosure obligations at both the entity and product levels. Central to this framework is a tiered classification system that categorizes funds according to the degree of ESG integra-

4 SFDR applies primarily to asset managers operating under the UCITS Directive and the Alternative Investment Fund Managers Directive (AIFMD), as well as to other financial institutions that manufacture or advise on investment products, including portfolio managers, insurance-based investment product providers, and pension product providers.

tion in their investment strategies: (1) Article 6 funds, which make no sustainability claims; (2) Article 8 funds, which promote environmental or social characteristics; and (3) Article 9 funds, which pursue dedicated sustainable investment objectives. Across these tiers, disclosure requirements are calibrated to the degree of ESG commitment embedded in each product.

[Table 1] Fund Classification and Disclosure Requirements Under SFDR

Category	Article 6	Article 8 (Light green)	Article 9 (Dark green)
Product Description	• No ESG characteristics or sustainability objective • Risk-based disclosure only	• Promote ESG characteristics • May include sustainable investments	• Sustainable investment strategy (either with or without full Taxonomy alignment)
Investment Requirement	• No sustainability investment requirement	• No obligation to invest in sustainable investments	• **Must invest primarily in "sustainable investments"**
Sustainable Investment Criteria	• Not applicable	• Not applicable	• Investments must: - Contribute to environmental or social objective - Comply with DNSH (Do No Significant Harm) principle - Follow good governance
Disclosure Obligations	• Must disclose how sustainability risks are integrated • If not → explain why	• Must disclose: - ESG implementation and measurement - Proportion (if any) of sustainable investments	• Must disclose: - Proportion of sustainable investments - Proportion of Taxonomy-aligned investments
EU Taxonomy Alignment	• Not required	• If environmental characteristics are promoted → must disclose Taxonomy alignment • No minimum threshold	• Must disclose Taxonomy alignment • No strict minimum required under SFDR
*** Principal Adverse Impacts (Article 7)**	• All financial products must disclose whether PAIs are considered • If yes → how integrated • If no → explanation required		

One other universally applied key requirement across the above-classified funds is the mandatory disclosure of sustainability risks and adverse impacts under Article 7, which obliges FMPs to report how ESG factors may negatively affect their investments. This includes both entity-level and product-level disclosures, covering qualitative explanations of risk integration and quantitative metrics for principal adverse impacts (PAIs), thereby ensuring transparency and enabling investors to make informed decisions.

- **The ESMA Fund Naming Guidelines: 80% Alignment Threshold and PAB/CTB Exclusion**

While the current version of SFDR itself, as a disclosure framework, is silent on clear, quantitative thresholds of what might constitute complying ESG funds, ESMA, the EU's financial markets regulator, provides further guidance on these necessary criteria. ESMA plays a primarily normative and harmonizing role, promoting supervisory convergence across EU Member States' financial markets at a systemic level. One of its most prominent functions is issuing interpretive guidelines and Q&As to clarify EU-level expectations for how EU law should be operationalized.

In the context of ESG fund regulation, ESMA's key contribution to date is the Guidelines on Funds' Names Using ESG or Sustainability-Related Terms ("ESMA Guidelines"). Particularly, the key provisions of ESMA Guidelines establish that **at least 80 percent of a fund's investments must align with the ESG objectives** disclosed under SFDR.[5] In addition to this alignment threshold, the ESMA Guidelines impose **minimum exclusions for activities** covered under taxonomy-related "Climate Transition Benchmark" (CTB)[6] or "Paris-Aligned Benchmark" (PAB)[7] areas, further narrowing the scope of ESG funds that can be considered compliant with EU expectations.[8] Specific obligations imposed on each fund type are as follows:

5 European Securities and Markets Authority (ESMA), *Guidelines on Funds' Names Using ESG or SustainabilityRelated Terms*, ESMA341592494965657 (Aug. 21, 2024), at 7–10, https://www.esma.europa.eu/document/guidelinesfundsnamesusingesgorsustainabilityrelatedterms.

6 The Climate Transition Benchmark (CTB) is a benchmark standard established under Commission Delegated Regulation (EU) 2020/1818, requiring the exclusion of companies significantly involved in harmful and controversial activities. Specifically, CTBs must exclude companies involved in: (a) controversial weapons; (b) violations of the UN Global Compact (UNGC) principles or the OECD Guidelines for Multinational Enterprises; (c) tobacco production; (d) companies deriving 1% or more of their revenues from the exploration, mining, extraction, distribution, or refining of hard coal and lignite; (e) companies with high greenhouse gas emission intensity in electricity generation; (f) companies developing new fossil fuel projects; and (g) companies lacking credible transition plans aligned with the objectives of the Paris Agreement.

7 The Paris-Aligned Benchmark (PAB) is a more stringent benchmark standard established under the same regulation as CTB, requiring all exclusions applicable under the CTB while imposing additional restrictions. Most notably, PAB excludes companies involved in (h) the exploration, extraction, distribution, or refining of oil and gaseous fuels, as well as (i) companies that do not have clear and measurable plans to phase out fossil fuel activities, particularly in relation to coal and lignite power generation.

8 Supra note 30

[Table 2] Minimum Threshold/Exclusion Under ESMA Guidelines

Category	Transition	Environmental	Impact	Sustainability
Relevant terms in the fund name	any terms derived from the base word "transition", e.g. "transitioning", "transitional" etc. as well as terms deriving from "improve", "progress", "evolution", "transformation", "net-zero", etc.	any words giving the investor an impression of the promotion of environmental characteristics, e.g., "green", "environmental", "climate", etc.	any terms derived from the base word "impact", e.g., "impacting", "impactful", etc.	any terms derived from the base word "sustainable", e.g., "sustainability", etc.
Minimum threshold	80% of investments used to meet environmental characteristics or sustainable investment objectives under SFDR	80% of investments used to meet environmental characteristics or sustainable investment objectives under SFDR	80% of investments used to meet environmental characteristics or sustainable investment objectives under SFDR	80% of investments used to meet environmental characteristics or sustainable investment objectives under SFDR
Minimum exclusions	CTB	PAB	PAB	PAB
Additional requirements	Investments must be on a clear and measurable path to social or environmental transition	None	Investments must be made with objective to generate positive, measurable social or environmental impact alongside a financial return	Commit to "invest meaningfully" in sustainable investments as defined under SFDR

Source: Herbert Smith Freehills Kramer, ESMA Guidelines on ESG or Sustainability-Related Fund Names (Nov. 6, 2024)

These minimum requirements established by ESMA Guidelines are non-binding in nature and do not carry formal legal force, leaving each NCA with discretion over whether to adopt them within its domestic framework. Nevertheless, ESMA expects NCAs to make "every effort" to comply and to incorporate the guidance into their national legal or supervisory frameworks where appropriate. Under the so-called "comply-or-explain" mechanism, NCAs were required to notify ESMA by October 21, 2024 whether they (i) comply, (ii) do not yet comply but intend to comply, or (iii) neither comply nor intend to comply with the Guidelines. As of March 2025, the vast majority of EU jurisdictions had published statements indicating their intention to comply with ESMA Guidelines and the recommended criteria contained therein.

• SFDR 2.0

The initial SFDR framework has governed EU's sustainable finance disclosure across since 2021.

However, on November 20, 2025, the European Commission proposed SFDR 2.0 signaling a fundamental overhaul of the existing product classification framework. The key changes to the product classification system and its associated disclosure requirements are as follows:

[Table 3] Fund Classification and Key Requirements Under the SFDR 2.0

Category	Art. 6 (Non-categorized)	Art. 7 (Transition)	Art. 8 (ESG Basics)	Art. 9 (Sustainable)
Asset allocation	Not suitable	Invest in: • Transition of undertakings/assets toward sustainability • Contribution to transition	✓ Min. 70% ESG-aligned	✓ Min. 70% sustainable (or min. ≥15% Taxonomy-aligned)
Commitment	Not applicable	✓ Min. 70% transition-aligned (or min. ≥15% Taxonomy-aligned)	Integration of sustainability factors in accordance with binding elements of the investment strategy	✓ 최소 70% 지속가능투자 (혹은 택소노미 연동 비중 최소 15%)
Exclusions	No mandatory exclusions	Clear and measurable transition objective related to sustainability factors	✓ CTB exclusions	Clear and measurable sustainability objective (incl. environmental and social)
Eligible Funds (Prescribed)	N/A	✓ CTB exclusions ✓ Fossil fuels (coal, lignite, oil, gas-related projects) • EU climate benchmarks • Taxonomy-aligned / transitioning activities • Companies with credible transition plans or science-based targets • Investments with engagement strategies & escalation • Portfolio-level transition targets (e.g., emissions reduction) • Other justified transition investments	• Investments outperforming ESG benchmark ratings • Outperformance on sustainability indicators • Proven sustainability track record • Combination with Art. 7 or 9 investments • Other sustainability-integrated investments (with justification)	• EU Paris-aligned benchmark portfolios • Taxonomy-aligned activities • EU Green Bond (EuGB) instruments • EU-supported investments (budgetary guarantees/ programmes) • Other sustainability-contributing investments (with justification)
Further criteria	Limited sustainability disclosure (≤10% in pre-contractual disclosures if sustainability is not central)	• Product-level PAI disclosure • No Entity-level PAI disclosure required	• No Entity-level PAI disclosure required	• Product-level disclosure • No Entity-level PAI disclosure required

출처: Arendt & Medernach, SFDR 2.0 – EU Commission Publishes Legislative Proposal to Review SFDR (Nov. 20, 2025) ; PwC Switzerland. The SFDR Overhaul: New Categories, New Rules, New Expectations.

Although not yet in effect, the proposed SFDR 2.0 signals a significant structural shift from a disclosure-heavy, narrative-based regime to a more product-focused regime with strict and standardized categories. It introduces three product categories—"ESG basics," "transition," and "sustainable"—each defined by the nature and ambition of their ESG objectives. In particular, a key feature of the reform is the introduction of a binding portfolio alignment requirement, under which at least 70% of a financial product's investments must meet the criteria associated with its designated category, while also complying with exclusion rules largely derived from the PAB and CTB, targeting activities such as fossil fuel expansion and other high-emission sectors. This marks a notable development from the previous framework, as it formalizes both the alignment threshold and minimum exclusion standards within enforceable EU legislation, moving beyond ESMA's technically non-binding guidelines.

Simultaneously, certain elements of the proposed framework remain insufficiently defined in practice, raising questions as to its overall level of ambition and internal consistency. The 70% threshold represents a reduction from the 80% benchmark previously articulated under the ESMA Guidelines. Also, it provides an exemption from this threshold in the "transition" and "sustainable" categories if a fund can demonstrate at least 15% alignment with the EU taxonomy, raising questions as to whether this level is sufficient to ensure meaningful sustainability alignment. The exclusion framework is also not uniformly applied across categories, with the "ESG basics" category subject to less stringent constraints, thereby allowing continued exposure to fossil fuel activities. Other proposed changes, including the removal of entity-level reporting, may create inconsistencies between product-level claims and broader sustainability strategies, potentially reducing transparency and accountability for negative impacts, and thus warrant further clarification as the framework develops.

Nevertheless, despite these concerns and limitations, the formal incorporation of a minimum portfolio alignment threshold and PAB/CTB-based exclusions into EU legislation is meaningful, as it renders these elements legally binding obligations, unlike the non-binding ESMA guidelines.

3. Singapore

Similarly to the above major markets, Singapore has adopted a regulatory framework that combines enhanced disclosure requirements with substantive expectations regarding portfolio alignment for ESG funds. The Monetary Authority of Singapore (MAS) introduced its Guidelines on Disclosure and Reporting for Retail ESG Funds in 2022, which came into effect in 2023, with the objective of mitigating greenwashing risks and improving transparency for retail investors. These guidelines apply to funds that use ESG-related terms in their names or

marketing materials and are intended to ensure that such labeling is supported by credible and consistent investment practices.

Under this framework, fund managers are required to provide detailed, product-level disclosures in offering documents, including the fund's ESG investment focus, strategy, reference benchmark, and entailing risks, as well as the data sources and metrics used in the investment process. In addition to ex ante disclosure requirements, MAS imposes ongoing reporting obligations to ensure continued accountability. Fund managers must periodically report on the extent to which ESG objectives have been achieved, including the proportion of investments that remain aligned with the stated strategy and any material changes to the fund's ESG approach.

Importantly, MAS also expects funds to disclose the extent to which their portfolios are aligned with their stated ESG focus, including any minimum asset allocation thresholds. As a general benchmark, MAS considers a fund to be "primarily invested" in accordance with its ESG strategy where **at least two-thirds of its net asset value is aligned with that strategy**, thereby introducing a degree of substantive expectation beyond mere disclosure.

4. Korea: Absence of Substantive ESG Fund Portfolio Threshold

Korea began engaging in responsive discussions regarding ESG fund greenwashing in the early 2020s. Following the establishment of a dedicated task force in March 2023 and several rounds of inspections into ESG fund marketing and disclosure practices, the Financial Supervisory Service (FSS) announced the Disclosure Standards for ESG Funds on October 5, 2023.

• Disclosure Standards for ESG Funds

Effective February 2024, the Disclosure Standards for ESG Funds require funds that include "ESG" in their name or investment objectives to disclose specific information regarding their ESG integration practices, the standards aim to enhance investor transparency and mitigate the risk of greenwashing by asset managers. They impose both ex-ante disclosure requirements—through securities registration statements and prospectuses prior to fund offering—and ex-post disclosure obligations, primarily through periodic asset management reports following fund launch.

[Table 4] Disclosure Requirements Under Korea's ESG Fund Disclosure Standards (FSS, Oct. 2023)

Subject of Disclosure	
Funds that 1) include "ESG" in their name or 2) indicate consideration of ESG factors in investment objectives or strategies are subject to ESG-specific disclosure requirements.	
Specific Obligations	
Investment Objectives and Investment Strategy	· Asset management companies shall clearly state the ESG investment objectives that the ESG fund seeks to achieve and explain the connection between the fund's investment strategy and ESG, including the criteria and procedures for selecting investment targets, as well as the ESG evaluation methods and their content.
ESG Evaluation Methods (Details)	· ESG evaluation methods shall be distinguished between internal assessments and external evaluations, and detailed information shall be provided on evaluation procedures and the manner in which evaluation results are utilized, so as to enable an easy understanding of the core elements of the investment strategy.
Management Capability	· ESG-specific information on human and organizational resources must be separately disclosed, including ESG fund management experience and dedicated ESG personnel or teams.
Investment Risks	· General: A cautionary statement must clarify that improvements in ESG performance or implementation of ESG strategies do not necessarily lead to higher financial returns. · Specific: Risks arising from ESG investment strategies must be disclosed, including risks related to ESG rating downgrades and environmental or social issues affecting investee companies.
Fees and Expenses	· When external ESG evaluation costs are paid from fund assets, details of contractual arrangements and payment items must be disclosed.
Performance Disclosure	· The implementation status of ESG investment strategies must be disclosed, and performance must be explained in comparison with benchmarks where applicable. · Detailed disclosure required for funds that identify active shareholder engagement as a core investment strategy (e.g. implementation status of such shareholder activities)

However, as a standalone disclosure framework, these obligations lack sufficient regulatory force to deter or sanction FMPs that offer funds with minimal ESG integration, as neither the framework nor any other domestic instrument imposes substantive minimum portfolio composition requirements on funds that use ESG terminology in their names or marketing materials. Unlike the aforementioned jurisdictions, which establish thresholds—such as 80% or two-thirds portfolio alignment with the FMP's ESG methodology—Korea does not provide such criteria in law or regulatory guidance.

• Exclusion of Thematic Investment from Current Fund Naming Practices Regulation

Under the existing regulatory framework governing fund naming practices, the Financial Investment Services and Capital Markets Act ("FSCMA") classifies publicly offered funds according to the type of assets they invest in—namely, securities, real estate, special assets, mixed assets, or money market funds (Article 229), and the fund's name or title must include

an indicator specifying its type (securities, real estate, special assets, mixed assets, or money market funds) (Article 183(1)).

The FSCMA further prescribes minimum thresholds depending on the fund category. In the case of securities funds, at least 50 percent of the fund's assets must be invested in the designated asset category indicated in its name (Article 229 and Enforcement Decree Article 240).

However, these thresholds are confined to asset-type classifications. They are designed to ensure consistency between a fund's name and its asset composition, but do not extend to thematic or strategy-based classifications, including ESG characteristics. As a result, they have limited practical relevance for ESG funds, whose defining features lie in their investment strategies or objectives rather than in any particular asset class.

Therefore, under Korea's current regulatory framework, a clear gap exists in ensuring meaningful oversight of whether ESG funds invest in a manner consistent with their stated objectives

Admittedly, establishing an enforceable threshold for the extent to which a fund's composition should align with an FMP's stated ESG criteria involves complex and time-consuming conceptual and policy debates. However, such challenges cannot justify continued regulatory inaction. The following enforcement actions in leading jurisdictions further illustrate that, even in the absence of a definitive substantive definition of ESG investment, proactive monitoring by financial authorities and the application of existing laws can provide a viable legal basis for investigating and addressing misleading ESG-related clams.

III. Enforcement Approaches to ESG Fund Greenwashing Across Leading Jurisdictions

1. The United States

During the period of heightened scrutiny by the SEC's ESG Task Force from 2021 to 2024, the SEC actively pursued enforcement actions against greenwashing by ESG funds, even in the absence of ESG-specific legislation. Rather than waiting for an ESG-specific regulation to be introduced, it relied on existing securities laws to address misleading ESG-related statements in fund disclosures, marketing materials, and investor communications.

[Table 5] Existing U.S. Securities Provisions (Pre-ESG Task Force)

Securities Act of 1933

• **Section 17(a)** (15 U.S.C. § 77q(a))

Prohibits fraud, material misstatements, and misleading omissions in the offer or sale of securities.

Securities Exchange Act of 1934

•**Section 10(b)**) (15 U.S.C. § 78j(b))

Prohibits deceptive or manipulative practices in connection with the purchase or sale of securities.

• **Rule 10b-5** (17 C.F.R. § 240.10b-5)

Implements Section 10(b) by prohibiting material misstatements, omissions, and schemes to defraud in investor communications and disclosures.

Investment Advisers Act of 1940

• **Section 34(b)** (15 U.S.C. § 80b-6)

Establishes a broad anti-fraud standard governing investment advisers' conduct toward clients and prospective clients.

• **Section 35(d)** (15 U.S.C. § 80a-35(d))

Prohibits registered investment companies from using names or titles that are materially deceptive or misleading.

• **Rule 25d-1 ("Name Rule")** (17 C.F.R. § 270.35d-1)

Operationalizes Section 35(d) by regulating the use of fund names and requiring con-sistency between a fund's name and its investment characteristics.

Drawing on the statutory bases above, the SEC has pursued enforcement actions against major investment management companies, resulting in significant civil penalties against offending FMPs. The SEC's enforcement approach during this period demonstrates that ESG-related misconduct can be effectively addressed under existing securities laws, even in the absence of ESG-specific legislation. Rather than relying on a precise or universally accepted definition of ESG investment, the SEC focused on whether firms' representations were accurate, substantiated, and consistently implemented in practice. The following cases illustrate how the SEC applied these principles across different forms of ESG-related misconduct.

◆ BNY Mellon Investment Adviser, Inc. (2022)

• Violations:

- **Misrepresentation of ESG processes and reviews:** Claimed systematic use of proprietary ESG tools and universal ESG quality reviews across investments, when in reality these practices were not consistently applied.
- **Misleading disclosures to investors and stakeholders:** Issued inaccurate statements in prospectuses, board materials, and RFP responses suggesting ESG risks and quality reviews were conducted for all investments.
- **Omissions and compliance failures:** Failed to disclose that many holdings lacked ESG review scores at the time of investment and did not implement adequate compliance policies to prevent misleading ESG-related statements.

• Legal Basis

- Investment Advisers Act of 1940 §§ 206(2), 206(4); Rules 206(4)-7 and 206(4)-8
- Investment Company Act Section 34(b)

• Outcome: BNY Mellon agreed to pay a $1.5 million penalty to settle charges.

◆ Goldman Sachs Asset Management (2022)

• Violations:

- **Misrepresentation and misleading disclosures:** Claimed systematic use of ESG questionnaires and scoring tools, and suggested ESG scores drove stock selection and position sizing, when in practice they often did not.
- **Failure to implement ESG policies consistently:** Did not follow stated procedures (e.g., completing ESG questionnaires pre-investment), applied ESG research inconsistently, and sometimes conducted analyses only after investments were made.
- **Governance, oversight, and recordkeeping failures:** Provided inadequate guidance and supervision, leading staff to treat ESG requirements as optional, and failed to maintain required documentation such as completed ESG questionnaires.

• Legal Basis: Investment Advisers Act of 1940 § 206(4), Rule 206(4)-7

• Outcome: DWS agreed to pay a total of $19 million in penalties to settle charges

◆ DWS Investment Management Americas, Inc. (2023)

• Violations:

- **Misrepresentation of ESG integration and tools:** Claimed systematic ESG integration and reliance on proprietary tools (e.g., ESG Engine) in investment decisions, which were not consistently applied in practice.
- **Misleading external communications:** Issued inaccurate marketing materials and RFP responses portraying robust ESG processes, while maintaining such claims despite known internal deficiencies.
- **Oversight and compliance failures:** Failed to properly monitor, document, or verify ESG analysis and did not implement adequate compliance controls to ensure ESG-related representations were accurate.

• Legal Basis: Investment Advisers Act of 1940 §§ 206(2), 206(4); Rules 206(4)-7 and 206(4)-8

• Outcome: DWS agreed to pay a total of $19 million in penalties to settle charges.

◆ WisdomTree Asset Management (2024)

• Violations:

- **Misleading exclusion claims and lack of transparency:** Represented that fossil fuel and tobacco companies were excluded without disclosing data limitations or clearly defining key terms and screening constraints.
- **Data and implementation failures:** Relied on incomplete third-party data and held securities inconsistent with stated exclusions (e.g., natural gas, coal transport, tobacco retail).
- **Disclosure and governance deficiencies:** Maintained inaccurate prospectus and board disclosures until regulatory scrutiny and failed to implement formal policies and procedures for ESG screening and exclusions.

• Legal Basis

- Investment Advisers Act of 1940 §§ 206(2), 206(4); Rules 206(4)-7 and 206(4)-8
- Investment Company Act. Section 34(b)

• Outcome: WisdomTree agreed to pay a $4 million civil penalty.

◆ Invesco Advisers, Inc. (2024)

• Violations:

- **Overstatement and misclassification of ESG integration:** Claimed a high proportion of AUM incorporated ESG and incorrectly classified passive strategies (e.g., non-ESG index ETFs) as ESG-integrated.
- **Inconsistent methodology and misleading communications:** Used vague, undefined ESG integration criteria and issued inaccurate presentations, reports, and marketing materials to investors.
- **Governance and compliance failures:** Maintained inflated ESG figures despite internal concerns and lacked adequate written policies and procedures to ensure accurate ESG disclosures.

• Legal Basis

- Investment Advisers Act of 1940 §§ 206(2), 206(4); Rules 206(4)-1(a)(5), 206(4)-7 and 206(4)-8.

• Outcome: Invesco agreed to pay agreed to pay a $17.5 million civil penalty to settle charges.

Collectively, these enforcement actions demonstrate that exaggerated or unsubstantiated ESG representations can be addressed as violations under existing securities laws. Although the current political climate appears to have reduced enforcement intensity and shifted ESG-related misconduct away from the SEC's primary priorities, the precedents developed during this period remain legally significant as a foundation for the future development of ESG greenwashing jurisprudence. Once the amended Names Rule becomes fully effective in December 2026, it may further strengthen the regulatory basis for renewed enforcement against ESG fund greenwashing.

2. The European Union

As EU member states are still in the process of transposing the ESMA Guidelines into their domestic enforcement frameworks, few enforcement actions by NCAs that directly invoke the 80% alignment requirement and PAB/CTB exclusion criteria have been reported to date. Nonetheless, several cases have indeed emerged post the adoption of ESMA Guidelines, and certain earlier actions predating the adoption are equally worth examining, as they demonstrate that EU member states had already begun developing corresponding measures to address ESG fund greenwashing well before a harmonized framework was in place. The following country-specific examples illustrate enforcement efforts spanning both the pre- and post-ESMA Guidelines periods:

(1) Luxembourg

Luxembourg's adoption of ESMA guidelines coincided with its first sanction against Aviva Investors Luxembourg S.A. ("Aviva"), reflecting the country's heightened scrutiny of fund managers failing to comply with sustainability obligations.

◆ CSSF-Aviva Investors Luxembourg Sanction (2024)

• Violations:

- **Mismatch between disclosures and investment practices:** Managed Article 8 sub-funds under the Sustainable Finance Disclosure Regulation whose actual portfolios did not adhere to the ESG criteria set out in prospectuses and pre-contractual disclosures.

- **Breaches of thresholds and unsupported sustainability claims:** Held assets (e.g., sovereign bonds) below disclosed ESG score thresholds (≈5.5% of net assets) and claimed alignment with United Nations Sustainable Development Goals without adequate mechanisms to ensure those objectives were genuinely pursued.

- **Governance and control deficiencies:** Failed to implement sufficient internal systems, monitoring, and oversight to ensure that investment decisions consistently aligned with stated sustainability representations.

• Legal Basis

- Luxembourg Law of 17 December 2010, Art. 109(1)(a) (requiring management companies to maintain sound administrative procedures and effective internal control mechanisms); Art. 111(a)-(b) (requiring management companies to act honestly, fairly, and with due skill, care, and diligence in the best interests of the UCITS they manage).

- **Outcome:** The CSSF imposed an administrative sanction on Aviva in October 2024 for noncompliance with professional obligations related to general organizational requirements and rules of conduct.

(2) Germany

The earlier regulatory intervention by the U.S. SEC against DWS Group, which in 2023 imposed a $25 million penalty on DWS for materially misleading ESG integration practices, was followed by another €25 million fine imposed by German prosecutors in 2025 after a multi-year greenwashing investigation.

◆ Frankfurt Public Prosecutor's Office — DWS Group & DWS Investment (2025)

- **Violations:**

- Extensively advertised financial products as ESG-integrated between mid-2020 and January 2023, creating a materially misleading impression of market leadership in sustainable finance that did not correspond to the firm's actual investment practices.
- Made unsubstantiated claims in external communications - including that the firm was an "ESG leader" and that "ESG is an integral part of our DNA" - while ESG factors were in practice incorporated into only a minority of investments.
- Failed to adequately implement its global ESG integration policy as represented to clients and investors, and failed to maintain adequate documentation and internal controls to ensure the accuracy of ESG-related public statements.

- **Outcome:** The Frankfurt Public Prosecutor's Office imposed a €25 million fine on DWS Group and DWS Investment on April 2, 2025 - the highest greenwashing penalty ever imposed in Germany - concluding a three-year joint investigation with the Federal Criminal Police Office conduct.

(3) France

Prior to the adoption of the ESMA Guidelines, France had already developed an enforcement practice grounded in its domestic Socially Responsible Investment ("SRI")[9] labeling regime. This is exemplified by the Autorité des Marchés Financiers (AMF)'s administrative settlement with PREIM, a portfolio management company sanctioned for failures in ESG due diligence, inadequate documentation practices, and the allocation of assets that did not satisfy the fund's stated ESG eligibility criteria.

◆ The AMF-Primonial REIM Settlement (2024)

• Violations:

- **Inadequate ESG documentation and timing issues:** Failed to maintain contemporaneous records demonstrating ESG eligibility at the time of investment , relying on unrecorded or later-produced analyses that were not traceable to the original due diligence process.
- **Non-compliant investments and retroactive adjustments:** Invested in assets that did not meet stated ESG thresholds at acquisition and later revised ESG ratings without sufficient justification, suggesting post-hoc attempts to align with requirements.
- **Traceability and compliance gaps:** Lacked clear audit trails and justification for ESG-based decisions across funds, and could not demonstrate that investments consistently complied with stated ESG objectives and eligibility criteria.

• Legal Basis

- Article 18 of Commission Delegated Regulation (EU) No. 231/2013 (requiring alternative investment fund managers to exercise a high level of diligence and maintain adequate knowledge of investment assets);
- Article 319-3(1) of the AMF General Regulation (requiring management companies to act honestly, loyally, and with due care and competence).

• Outcome: Under an administrative settlement concluded on February 28, 2024, PREIM agreed to pay €40,000 to the Public Treasury, thereby avoiding further proceedings on the

9 The SRI (Socially Responsible Investment) label is a certification introduced by the French Ministry of the Economy and Finance in 2016 to identify investment funds that integrate ESG criteria into their strategies. It is designed to help investors distinguish funds that pursue measurable sustainability outcomes through a transparent and structured investment process. To obtain the label, funds must define clear ESG objectives, implement a robust methodology for evaluating and selecting investments based on ESG performance, and demonstrate active criteria integration across portfolio management, including ongoing monitoring, engagement with investee companies, and transparent reporting. The label is granted following an independent audit and is subject to periodic review, ensuring continued compliance.

charges.

As France is still in the process of incorporating the ESMA Guidelines into its domestic regulatory framework, there have been no reported cases to date directly applying the 80% alignment threshold or the PAB/CTB exclusion criteria derived from those Guidelines. Nevertheless, civil society organizations are increasingly relying on these standards to bring complaints against FMPs for ESG fund greenwashing.

A notable example is the complaint filed by ClientEarth against BlackRock, the world's largest asset manager, targeting 18 actively managed retail funds marketed as "sustainable."

◆ ClientEarth's Complaint Against BlackRock

• Violations:

- **Misleading sustainability representations and DNSH breaches:** Marketed 18 funds as "sustainable" despite collectively holding over $1 billion in fossil fuel investments, allegedly breaching the "Do No Significant Harm" (DNSH) principle under the SFDR.
- **Inconsistency with disclosed exclusions and inadequate disclosures:** Contradicted prospectus commitments to exclude thermal coal companies and failed to adequately disclose these inconsistencies in pre-contractual and periodic reporting (including obligations under SFDR Article 10).
- **Non-compliance with ESMA naming expectations:** Allegedly contravened European Securities and Markets Authority Guidelines by using sustainability-related terminology while maintaining exposure to companies deriving significant revenue from fossil fuels.

• Legal Basis

- **SFDR obligations:** Requirements under the Sustainable Finance Disclosure Regulation, including the DNSH principle and disclosure obligations under Article 10.
- **ESMA Guidelines on fund naming:** Guidance issued by the European Securities and Markets Authority on the use of ESG- or sustainability-related terms in fund names, including incompatibility with fossil fuel exposure.

• Outcome

- **Fund restructuring and renaming:** Following the filing of the complaint, BlackRock restructured 17 of the 18 challenged funds by March 2025. Fourteen funds removed the term "sustainable" from their names, while the remaining funds adopted stricter fossil fuel

exclusions. Although the case has not proceeded to a formal investigation by the AMF to date, it has prompted voluntary changes by BlackRock.

Taken together, the cases of Luxembourg, Germany, and France show how NCAs, either by leveraging EU-level legal framework or their domestic legal frameworks, have taken active enforcement measures to curb ESG fund greenwashing. Beyond these exemplary jurisdictions, many other EU Member States have also signaled a clear intention to implement ESMA's fund-naming guidelines and to strengthen enforcement measures in the near future.

For example, a sustainable finance hub manager at the Austrian Financial Markets Authority stated that "anyone who violates the fund rules" commits an "administrative offence" and may be liable for a fine of up to €60,000, in line with the country's Investment Funds Act. Similarly, the head of collective investment schemes at the Financial Supervisory Authority of Norway stated that enforcement will be aligned with supervisory actions in other areas, many of which include "critique and corrective orders, as deemed appropriate according to the severity of the violations," suggesting that more serious breaches could result in fines.

3. Australia

Unlike the United States and EU member states, Australia has not yet adopted regulatory rules tailored specifically to ESG fund greenwashing. Despite the absence of dedicated ESG legislation, however, Australia has emerged as one of the most active jurisdictions in this space, applying existing securities dealing laws to hold fund managers accountable for misleading or deceptive sustainability-related representations. Since the early 2020s, the Australian Securities and Investments Commission (ASIC) has taken multiple administrative actions against FMPs for misleading ESG fund representation and marketing, issuing over 15 infringement notices and imposing fines on offending entities. These enforcement actions have been taken under ASIC's statutory authority, the Australian Securities and Investments Commission Act 2001 (Cth) (the "ASIC Act"), which empowers ASIC to address misleading or deceptive conduct in connection with financial services.

[Table 6] Relevant Provisions Under the ASIC Act

The ASIC Act 2001	**Section 12DB** False or misleading representations (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services: (a) make a false or misleading representation that services are of a particular standard, quality, value or grade; or ..... (e) make a false or misleading representation that services have sponsorship, approval, performance characteristics, uses or benefits; or **Section 12DF** Certain misleading conduct in relation to financial services (1) A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any financial services...

The following cases represent the most significant enforcement actions successfully pursued by ASIC, each resulting in record civil penalties:

◆ ASIC v. Mercer Superannuation Limited (2024)

• Violations:

- **Misleading sustainability claims:** Marketed "Sustainable Plus" options as strictly excluding carbon-intensive fossil fuels using absolute language ("will not invest"), creating a false impression of strict adherence to sustainability criteria.
- **Contradictory holdings and implementation failures:** Held investments in excluded sectors (e.g., thermal coal) and failed to implement systems or use available reports to monitor and enforce exclusion policies.
- **Prolonged governance and compliance deficiencies:** Misconduct persisted over several years despite rising demand for ESG products, reflecting inadequate controls to ensure accuracy of ESG-related statements.

• Legal Basis: ASIC Act §§ 12DB(1)(a) and 12DF(1)

• Outcome: Federal Court imposed a landmark AUD 11.3 million civil penalty in August 2024

◆ ASIC v. Vanguard (2024)

• Violations:

- **Widespread misleading ESG representations:** Claimed across multiple channels (e.g. disclosure statements, website, etc.) that the fund offered an ethically screened investment strategy, with all securities vetted against ESG criteria and non-compliant ones excluded.
- **Significant mismatch between claims and reality:** In practice, a large majority of holdings were unscreened (≈74%), with major gaps across asset classes and materially deficient screening methodologies.
- **Material compliance and governance failures:** Failed to ensure alignment between holdings and stated ESG standards, with misconduct particularly significant given ESG was the fund's core feature and investor base grew substantially during the period.

• Legal Basis: ASIC Act §§ 12DB(1)(a), 12DB(1)(e), and 12DF(1)

• Outcome: Federal Court imposed a record AUD 12.9 million civil penalty in September 2024, the highest greenwashing sanction in Australia to date.

The foregoing cases represent only the two most prominent enforcement actions in Australia. A broader set of greenwashing precedents remains accessible through ASIC's Infringement Notice Register, as well as its intervention reports detailing its proactive surveillance activities across sustainable finance markets. Australia's enforcement trajectory continues, as demonstrated by the recent case against Active Super, which resulted in a comparable fine of AUD 10.5 million in March 2025. ASIC's sustained commitment, escalating penalties, and the consistency of outcomes across multiple cases indicate a clear deterrence-focused approach, even in the absence of ESG-fund specific regulation.

IV. Implications for Korea

Overall, the approaches adopted across these jurisdictions reflect a strong regulatory recognition of the risks of ESG fund greenwashing and its potential consequences in major markets. When ESG labels are used primarily as a marketing tool to attract investors while the funds themselves continue to hold assets linked to coal, gas, and other environmentally harmful industries, such conduct not only not only impairs investors' confidence and ability to make informed decisions but also undermines the credibility of, and efforts by, companies that are genuinely committed to environmental sustainability.

In Korea, the apparent mismatch between how FMPs market and name their ESG funds and the composition of their underlying portfolios underscores the need for more robust regulatory intervention. Although the Financial Supervisory Service has introduced disclosure guidelines, these measures lack sufficient deterrent effect, as the current framework does not establish any quantitative portfolio alignment requirements. As a result, compliance is effectively satisfied through formal disclosure, with limited capacity for substantive supervisory review or enforcement. Notably, there have been no publicly reported enforcement actions by the Financial Supervisory Service specifically addressing ESG fund greenwashing to date.

By contrast, other jurisdictions have introduced minimum portfolio alignment thresholds and exclusion criteria, providing a clear legal basis for ensuring consistency between a fund's disclosed ESG strategy and its actual holdings, as well as for facilitating effective regulatory enforcement. Building on these developments, Korea should consider introducing comparable quantitative requirements to anchor ESG fund classifications. At the same time, the experience of Australia demonstrates that, even prior to the adoption of such prescriptive rules, a clear enforcement posture grounded in existing legal frameworks—such as general prohibitions on misleading or deceptive conduct—can play a critical role in deterring misconduct and shaping market behavior. Accordingly, Korea's rulemaking authorities and enforcement agencies, including the Financial Supervisory Service, should pursue a dual-track approach: advancing substantive rulemaking to introduce quantitative alignment requirements, while simultaneously strengthening enforcement under the current legal framework to address ESG fund greenwashing in the interim.

ESG greenwashing is not merely a matter of technical compliance but a question of market integrity. Private capital is widely recognized as a critical driver in advancing the transition to a sustainable economy; however, its misallocation risks undermining both environmental objectives and investor trust. Strengthening regulatory oversight, whether through clearer standards, enforceable thresholds and exclusions, or more assertive supervision, is therefore essential for Korea to ensure that ESG-labeled investments genuinely contribute to the goals they purport to serve.

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