

# The dilemma and Path of regulating greenwashing behavior of commercial banks from the Perspective of anti-competition law

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**Abstract:** The regulatory challenges in combating greenwashing within commercial banks are particularly evident during the implementation of China's "dual carbon" strategy, making the application and practical significance of reflexive law theory worthy of in-depth exploration. Through systematic legal analysis, three structural issues in the current regulatory framework have been identified: widespread information asymmetry, ambiguous legal standards, fragmented supervisory functions, and complex liability determination processes. Reflexive law theory holds significant research value in environmental risk governance, with its evolutionary trajectory as a system of self-creation warranting attention. This theory bridges gaps in existing legal frameworks while enhancing regulatory flexibility. It effectively controls enforcement costs while strengthening risk early-warning mechanisms. The synergy between market supervision and social oversight deserves emphasis, with the "feedback-learning-correction" cycle forming the core mechanism. By combining government regulation with industry self-regulation, complementing market constraints with public participation channels, this innovative multi-stakeholder governance model demonstrates remarkable effectiveness. Continuous legal improvements and institutional optimization remain essential. A comprehensive governance system involving multiple stakeholders needs to be established, alongside enhanced pilot projects and systematic experience summarization. These measures can effectively address greenwashing issues in the development of green finance.

**Key words:** Commercial banks; Greenwashing behavior; Reflex method; Regulation model; Optimization path

## 1. Introduction

Since the introduction of the "dual carbon" goals, building a green financial system has become a key focus in financial reforms. As pivotal capital allocation hubs, commercial banks play a vital role in green transition. However, profit-driven practices have led to systematic proliferation of greenwashing. Such behaviors not only distort resource allocation efficiency but also erode trust mechanisms in financial markets. For instance, greenwashing issues in ESG disclosures have become major obstacles to the healthy development of green finance. Under the high-quality development context, regulatory frameworks for ESG disclosures urgently require systematic optimization. Current regulatory frameworks exhibit significant misalignments when addressing greenwashing: On one hand, administrative-command regulatory models suffer from inherent flaws like information asymmetry and high enforcement costs; on the other hand, market incentive mechanisms often fall into structural dilemmas of

"overemphasis on incentives over supervision." This regulatory dilemma highlights the urgency to establish more flexible and adaptive regulatory systems. Meanwhile, existing research contains certain misunderstandings. Greenwashing studies predominantly adopt marketing and communication perspectives, while legal research remains confined to traditional sectoral frameworks. There are two theoretical pitfalls: First, "technical risk anxiety syndrome" —exaggerating greenwashing risks and expecting strict regulation; second, "social engineering thinking" —blindly trusting that institutional designs can permanently solve greenwashing problems. Both tendencies reflect misconceptions about the functions and limitations of legal regulation. To address these challenges, this paper introduces the reflexive methodological perspective to explore how to construct a more flexible and adaptive regulatory framework against greenwashing. By expanding the application of reflex method in the field of financial environment governance, especially in the field of commercial banks, we can build a "feedback-learning-correction"

circular Path and design a multi-level collaborative governance system to respond to the structural difficulties of green regulation of commercial banks, so as to Provide theoretical support and Practical solutions for the healthy development of green finance.

## 2. The Problem of green regulation of commercial banks and its interpretation

In the field of green finance, regulating greenwashing faces multiple challenges. First, the dual framework of voluntary and mandatory disclosure creates room for selective reporting, while non-uniform disclosure standards lead institutions to merely comply with minimum requirements. Technological innovations further complicate the identification of greenwashing, particularly through fintech-driven technical packaging that makes it harder to define such practices. The current multi-tiered regulatory model with fragmented governance lacks unified understanding and clear criteria, increasing the difficulty of detecting greenwashing. The second challenge stems from ambiguous legal standards. Existing regulations focus excessively on procedural details while lacking substantive criteria, creating a "law without application" dilemma in enforcement. The absence of normative frameworks reduces regulatory effectiveness and indirectly encourages greenwashing. On the implementation front, regulatory fragmentation and interdepartmental coordination costs create systemic contradictions. The current regulatory structure suffers from inconsistent standards, resource dispersion, and high coordination costs, hindering coordinated efforts. The structural conflict between departmentalized administrative systems and the cross-sector nature of greenwashing leads to overlapping regulatory blind spots and redundant oversight. Finally, insufficient penalty deterrence and imbalanced incentive mechanisms pose functional crises. Inherent limitations in current penalty mechanisms and flawed incentive policies make the costs of greenwashing far outweigh its benefits, exacerbating regulatory ineffectiveness. The theory of reflexive law offers a fresh perspective to address the aforementioned challenges, emphasizing how legal systems adapt to their environment through self-referential and self-adjusting mechanisms, thereby establishing governance models rooted in systemic self-reflection. At its core, reflexive law aims to stimulate self-regulation capabilities through procedural design, creating a cyclical mechanism of

self-restraint and renewal. Future research will explore regulatory logic and mechanisms from this reflexive law perspective, seeking to provide theoretical support and practical pathways for optimizing greenwashing regulations in commercial banks.

## 3. The logic and mechanism of regulation from the perspective of counteraction

Traditional command-control models and market incentive mechanisms have proven inadequate in addressing greenwashing. Against this backdrop, developing a more flexible, dynamic, and adaptive regulatory framework has become imperative. Reflexive Law Theory, with its profound understanding of system self-renewal and adaptation, offers a fresh perspective and theoretical tool to resolve these challenges. Originating from Luhmann's systems theory and Tuiberena's legal auto-creation theory, this framework emphasizes the self-referential and self-renewing nature of legal systems. It posits that legal systems achieve dynamic adaptation to environmental changes through normative closure and cognitive openness. The introduction of meta-regulation – regulation of regulation – marks a paradigm shift in regulatory theory, prompting governments to establish corporate self-regulation frameworks and develop indirect governance mechanisms to meet complex governance demands. The core mechanisms of Reflexive Law include cyclical dynamic structures, multi-stakeholder collaboration, and bidirectional evolutionary logic, collectively forming the operational architecture of reflexive regulation. Cyclical dynamic structures address the uncertainty and complexity of greenwashing regulation through information feedback, learning assessments, and dynamic adjustments. The multi-stakeholder collaborative governance framework resolves regulatory fragmentation through cooperation among governments, commercial banks, third-party institutions, and the public. Bidirectional evolutionary logic emphasizes interaction between rules and practices, optimizing penalty and incentive mechanisms. Reflexive Law demonstrates three advantages in combating greenwashing: effectively filling legal gaps and enhancing regulatory flexibility; reducing enforcement costs and strengthening risk warnings; and stimulating synergies between market forces and social supervision. These advantages provide a systematic solution for the regulation of commercial banks to green, and lay a foundation for the transformation of theory into practice.

#### 4. Optimization Path based on reflex method

Through its "feedback-learning-correction" circular path, multi-agent coordination mechanism and two-way evolution logic of rules and Practices, the theory of counterbalance Provides a systematic solution to solve the above dilemma.

##### Basic Principles of optimization design

First, reforms should adopt a Phased approach involving Pilot Programs, timely feedback, and dynamic refinement to address legal gaps and ambiguous standards. The reflexive law theory advocates Progressive reform and adaptive adjustments, aligning with the "Piecemeal social engineering" Philosophy that emphasizes Providing appropriate regulations for urgent risks. The regulatory reform of commercial bank greenwashing should Proceed in stages – from Pilot implementation to full-scale adoption – to Prevent systemic risks while ensuring continuous improvement of the regulatory framework.

Secondly, reforms should adopt a Problem-oriented approach that balances stability with innovation. The regulatory dilemma of greenwashing arises from technological advancements outpacing the capacity of regulatory frameworks to update. Regulatory optimization must Prioritize Problem-solving while maintaining continuity and reserving space for technological innovation. Reforms should avoid extreme tendencies, design solutions based on specific issues, and Properly balance stability with Progress. Finally, reforms require multi-level collaboration and clear division of responsibilities. To address fragmented supervision and high interdepartmental coordination costs, the reflexive law Proposes enhancing governance efficiency through multi-tiered collaboration and defined roles. A greenwashing regulatory system for commercial banks should establish a collaborative governance network involving government agencies, industry associations, financial institutions, and the Public. This framework should clarify Primary responsibilities, reduce coordination costs, and ensure effective operation of the regulatory system.

We will improve the legal and institutional arrangements

The Green Credit Guidelines incorporate a reflexive feedback mechanism to address Procedural complexities and regulatory gaps,

thereby enhancing institutional flexibility. Key measures include: establishing self-assessment systems for commercial banks 'green credit operations to Promote self-reflection among financial institutions; creating information-sharing mechanisms between regulators and financial institutions to reduce coordination costs; and developing dynamic adjustment Procedures for standards to improve adaptability and Precision. Additionally, a framework for green finance disclosure regulation is formulated, encompassing tiered disclosure standards, Quality assessment mechanisms, anomaly alert systems, and third-party verification Protocols to tackle selective disclosure and technical greenwashing. Finally, relevant Provisions in the Banking Supervision Law are revised to clarify financial institutions' responsibility for verifying green claims authenticity, authorize regulators to establish greenwashing identification criteria, implement incentive-punishment linkage mechanisms, and create whistleblower reward systems to strengthen legal oversight. These measures collectively form a reflexive legal system for greenwashing regulation, effectively resolving normative dilemmas.

We will build a governance system with multiple stakeholders working together

Governments, industry associations, third-party rating agencies, and the Public should establish a networked governance structure to address fragmented supervision and interdepartmental coordination challenges. To regulate greenwashing in commercial banks, a multi-stakeholder collaborative governance system must be developed, clarifying responsibilities, establishing information-sharing mechanisms, and creating coordinated decision-making Platforms for self-regulation. By leveraging blockchain and big data technologies, an information-sharing Platform can enhance transparency, identify irregular disclosure Patterns, break down regulatory information silos, reduce coordination costs, and develop intelligent monitoring tools to improve regulatory efficiency. To tackle insufficient Penalty deterrence and imbalanced incentive mechanisms, a "Green Integrity" system for commercial banks should be established, including compiling a "Green Integrity" white Paper, creating a greenwashing record-keeping mechanism, implementing multi-dimensional accountability systems, and designing integrity restoration Procedures as market-based constraints. Pilot demonstrations and experience summarization: Local green finance

regulatory Pilot Zones aim to explore innovative models through trials, authorize local regulations, establish cross-departmental coordination mechanisms, conduct international cooperation, summarize and promote Pilot experiences to address the complexity of greenwashing regulation. A dynamic risk warning and assessment indicator mechanism will design evaluation metrics, optimize assessment methodologies, establish a risk classification early-warning system, and promote transparent assessment results to respond to evolving greenwashing risks. National unified legislation will clarify legislative conditions and procedures, plan supporting systems, and establish legal implementation evaluation and revision mechanisms to resolve fragmented legal norms. Through these three paths, a complete implementation path of the regulation reform of greenwashing under the perspective of reflex method is constructed, and a systematic solution is formed to deal with the problems of greenwashing regulation.

## 5. Conclusion

This paper examines the current state of greenwashing regulation in commercial banks, revealing four structural challenges: information asymmetry, ambiguous legal standards, fragmented supervision, and imbalanced incentives. These issues exceed the scope of traditional regulatory frameworks. In contrast, reflexive law theory offers a novel approach that emphasizes cyclical mechanisms, collaborative governance among multiple stakeholders, and bidirectional interaction between rule-making and implementation. This methodology addresses legal gaps, reduces enforcement costs, and enhances supervisory synergy. Therefore, optimizing greenwashing regulation should follow principles of gradual Pilot Programs, problem-oriented approaches, and multi-level coordination to develop systematic solutions. Reflexive law provides fresh perspectives on greenwashing regulation by balancing rule flexibility with systemic stability, facilitating the establishment of adaptable governance systems and ensuring legal safeguards for the healthy development of green finance.

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