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Gibson Dunn Environmental, Social and Governance Update (August 2023)

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We are pleased to provide you with Gibson Dunn's ESG monthly update for August 2023. This month, our update covers the following key developments. Please click on the links below for further details. **I. International**

1. World Water Week and the announcement of the COP28 Water Agenda

Between August 20-24, 2023, the Stockholm International Water Institute (SIWI) hosted the annual World Water Week conference. The event brought together 15,000 business leaders, decision-makers, planners and researchers, from 193 countries and territories, to explore how the natural resource of water can be harnessed to address the climate crisis. This year's theme, Seeds of Change: Innovative Solutions For a Water-Wise World, sought to promote the benefits of a mission-driven approach to global planning for the increasing scarcity of water world-wide. It also sought to raise awareness of the significance of designing policy to work with the water cycle. SIWI identified some Key Trends from the week: (i) interconnectivity and inclusion being critical for progress; (ii) shifting perceptions of innovation away from conventional thought towards broader governance, finance, values and culture; (iii) learning from indigenous peoples for innovation; (iv) oceans, and the connectivity between freshwater, coasts and oceans as opposed to separate bodies of water; (v) urgency of global approaches to water governance, given current pressures on the global water cycle; and (vi) international processes to ensure collective action. Additionally, the progress made so far on the UN's Water Action Agenda, set out in March 2023, was analyzed, and participants were prepared for COP28 which takes place in the UAE from November 30 until December 12, 2023. The COP28 UAE Presidency announced its own Water Agenda and that the Netherlands and Tajikistan will serve as COP28 Water Champions. Both of these signal that the management of global water resources will be a top priority at COP28.

2. S&P Global Ratings Drops ESG Scores

S&P Global Ratings (S&P) announced on August 4, 2023, that it will no longer give alphanumeric ESG ratings when assessing creditworthiness. The scores were originally introduced in 2021 to supplement the narrative ESG reports which S&P provide. S&P has instead determined that these narrative reports are "most effective at providing detail and transparency on ESG credit factors material to our rating analysis." The move is seen as a response to growing pressure from international policymakers on those bodies currently providing ESG rating standards. The dropping of the rating system does not affect the S&P's ESG General Criteria, which is still applied by S&P when incorporating ESG factors into its credit ratings analysis.

3. International Auditing Assurance Standards Board opens consultation on proposed global sustainability assurance standards

On August 2, 2023, the International Auditing and Assurance Standards Board (IAASB) opened a consultation on proposed new global sustainability assurance standards, focused on sustainability reporting. The IAASB's proposed standards – 'ISSA 5000' – are based on principles intended to apply across different sectors and regions, and include proposals such as requiring practitioners to design and perform sustainability-related risk procedures. The standards aim to be the 'most comprehensive sustainability

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assurance standard available to all assurance practitioners across the globe'.
The consultation is open until December 1, 2023.

4. Vanguard and Blackrock report falls in support for ESG-related proposals

The world's two biggest investment managers revealed sharp falls in their support for ESG-related shareholder proposals during the 2023 proxy season compared to 2022. Both Vanguard and Blackrock said that many ESG-related proposals had been rejected because the risks raised were already being addressed by the recipient companies' boards, or the proposals did not improve on existing company disclosures. The investment stewardship reports show an increase in the volume of ESG-related shareholder proposals, but suggest an overall decrease in their viability. For a deeper discussion of ESG and other shareholder proposal developments during the 2023 proxy season, please see our client alert here. **Vanguard:** On August 28, 2023, Vanguard reported that it supported only 2% of environmental and social shareholder proposals submitted to its U.S. portfolio companies in 2023, down from 12% in the previous year. Vanguard stated this decline was 'largely attributable' to the increasing number of such proposals and the nature of their requests. Vanguard specifically noted the impacts of the SEC's November 2021 changes to its no-action request standards, including when a proposal addresses a "significant social policy" and cannot be excluded as relating to the company's "ordinary business" under Rule 14a-8(i)(7) Securities Exchange Act 1934. Vanguard reported that the number of environmental shareholder proposals rose 50% from the prior year, with target-setting for greenhouse gas emissions becoming an increasingly common request. **BlackRock:** On August 18, 2023, BlackRock reported a 34% increase in environmental and social shareholder proposals submitted to U.S. companies compared to 2022. Echoing the sentiments from Vanguard, Joud Abdel Majeid, BlackRock Global Head of Investment Stewardship, commented that "[b]ecause so many shareholder proposals were over-reaching, lacking economic merit, or simply redundant, they were unlikely to help promote long-term shareholder value and received less support from shareholders, including BlackRock, than in years past.". BlackRock supported only 7% of the environmental and social shareholder proposals submitted globally. **II. UK**

1. UK Government increase in funding for renewable funding – multi-million backing for renewables

On August 3, 2023 the UK government published a press release announcing a £22m increase in the budget of the Contracts for Difference scheme, taking the total budget to £227m for this auction. The aim is to foster investment, growth, and diversity in the UK's renewables industry and improve the UK's energy security via reducing its exposure to potentially volatile global fossil fuel prices. The scheme is to encourage growth in established technologies such as solar and offshore wind via an increase in their budgets to £190m from £170m in the latest auction. Emerging technologies such as carbon capture are also seeing increased investment, with those increasing in budget from £35m to £37m, with a £10m ring-fenced budget for tidal stream projects. The target is to increase the proportion of the UK's electricity generation, building on the existing trend which has seen an increase from 7% in 2010 to 42% in 2022.

2. Updates on UK moves to adopt the new ISSB Sustainability Disclosure Standards

The UK government has issued guidance on its Sustainability Disclosure Standards (SDS), which will set out corporate disclosures on the sustainability-related risks and opportunities faced by companies. They will include climate change related assessment of risks and opportunities and will be published by the Department for Business and Trade. SDS will be based on the IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board (ISSB). The UK-endorsed standards will only divert from the global baseline if absolutely necessary for UK-specific matters. These SDS's may be referenced in any legal or regulatory requirements for UK entities. Decisions to require disclosure will be taken independently by the UK government, for UK

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registered companies and limited liability partnerships, and by the Financial Conduct Authority (FCA) for UK listed companies. By adopting a global baseline for environmental standards (as envisioned when ISSB was announced at COP26), it is hoped that this will enable globally harmonised and comparable standards and be a useful metric for decision making by investors allocating capital. The FCA has issued its own proposed approach to the implementation of the ISSB standards, noting that it expects to open a consultation in the first half of 2024. The FCA aims to finalise its policy position by the end of 2024, with a view to bringing new requirements into force for accounting periods beginning on or after January 1, 2025. The first reporting would begin from 2026.

3. UK Government Consultation: Role of biomass in achieving net zero: call for evidence

The Department for Energy Security & Net Zero had previously sought evidence from a range of stakeholders on how sustainable biomass should best support the UK's Net Zero target, and has now issued its detailed analysis of responses and key findings. The information gathered will be used in connection with the development of the UK government's Biomass Strategy. The consultation received 144 responses across 4 topics. Firstly 'Supply', focusing on underutilised waste, forestry, and energy crops. Secondly, 'End Uses' covering a variety of examples from heating to transport and electricity. Thirdly, 'Sustainability and Accounting for Emissions', which proposed a set of criteria and ideas for monitoring in accordance with potential international standards. Finally, 'Innovation', which covered waste processing technologies, BECCS (bioenergy with carbon capture and storage), and the regional innovation potential of different parts of the UK.

4. UK Charity Commission guidance on investing charity money for charity trustees

The UK Charity Commission has issued updated guidance and a summary of the legal framework on investing charity money for charity trustees. The guidance is intended to assist trustees in making financial and social investment decisions, whilst fulfilling their duties as trustees. The guidance intends to streamline and clarify existing guidance on trustee responsibilities, following a 2022 High Court decision on charity trustee investment duties, which established that it was possible for charities to adopt climate-conscious investment strategies.

5. Collective action claim against water companies in the UK's Competition Appeal Tribunal

Collective action cases have been launched with the Competition Appeal Tribunal against water companies in the UK accused of falsely reporting sewage discharges in breach of environmental regulations. Around £330 million in damages are sought from Severn Trent (ST) on behalf of ST's eight million customers, in the first of this series of claims, with up to five more such claims expected to be launched. Law firm Leigh Day brings the claims on behalf of household customers on the basis of alleged breach of competition laws by ST, who, it claims, abused its dominant market position to mislead regulators on the environmental damage caused by sewage discharges. **III. Europe**

1. AFME report for Q2 2023

The Association for Financial Markets in Europe (AFME) has published its European environmental, social and governance (ESG) finance report for the second quarter of 2023 (Q2 2023), which provides detailed data trends alongside a regulatory and supervisory snapshot of the sustainable finance market in Europe. The report includes statistics on European ESG bond and loan issuance: half year volumes for ESG-labelled bonds increased 17% year-on-year, driven by the robust green bond issuance during Q1 2023. Sustainable-linked bond market witnessed a sharp decline with a 16.3% year-on-year decrease. The report also noted that UK carbon prices have declined by 35% since

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December 2022 with European Union Allowance carbon prices 10% higher over the same period. Global ESG Funds are noted as decreasing marginally since Q1 2023, but increasing by 25.3% since Q2 2022. Spreads of corporate ESG bonds against non-sustainable benchmarks are reported as increasing by c. 1.6bps between April and late July 2023. A primarily UK and EU regulatory update is also provided, with a quarter-by-quarter breakdown.

2. European Commission adoption of European Sustainability Reporting Standards and EFRAG's Response

As summarised in the Gibson Dunn ESG Update of June 2023, the European Commission is in the process of implementing a set of European Sustainability Reporting Standards (ESRS), due to come into effect January 1, 2024. The ESRS aim to provide investors and other stakeholders with granular reporting on sustainability and climate-related issues, an essential prerequisite for informing investment decisions and allocating capital in line with sustainability goals, including those of the European Green Deal and the EU Climate Law. On 31 July, 2023, the Commission adopted the Commission Delegated Regulation supplementing the Directive, which sets out the first set of sector-agnostic ESRS – as covered in the Gibson Dunn ESG Update of July 2023. The Commission must adopt the ESRS taking into account the technical advice provided by EFRAG, who themselves issued a press release welcoming the adoption of the first set of ESRS. EFRAG's advice focuses on streamlining the proposed reporting obligations to reduce the potential cost burdens. In response, the Commission has included phase-in provisions for the reporting obligations of smaller companies and changed some reporting requirements from mandatory to voluntary. Additionally, EFRAG also highlighted its continuing efforts to ensure the interoperability of the ESRS with other relevant international standards of ESG reporting, such as the International Sustainability Standards Board (ISSB) and Global Reporting Initiative (GRI) standards. The ongoing collaboration between those setting ESG reporting standards suggests the potential for further convergence of the global reporting regimes, and increased clarity for those subject to them in future.

3. Appointment of new Executive Vice-President for the European Green Deal, Maroš Šef?ovi?

Following the resignation of Frans Timmermans as Member of the European Commission, Maroš Šef?ovi? has been appointed as his replacement to become Vice-President of the European Green Deal. In connection with the appointment, European Commission President, Ursula von der Leyen, has taken the opportunity to flag the Commission's intentions to prioritise the European Green Deal and consolidate Europe's leadership role on global renewables and energy efficiency targets. Von der Leyen notes the requirement for 'more intensive dialogue with industry, key stakeholders like forest owners, farmers, as well as citizens'.

4. EU announces emissions reporting rules for Carbon Border Adjustment Mechanism (CBAM)

The European Commission adopted new rules on August 17, 2023 in connection with the initial trial phase of the Carbon Border Adjustment Mechanism (CBAM). These implement carbon emissions reporting obligations for EU importers of CBAM goods and set out fines for failures to satisfy such reporting requirements. The transitional phase begins on October 1 2023 until the end of 2025, during which time, traders will not be subject to the fines or taxes on emissions envisaged by the regulation, but must report on emissions, allowing for the 'definitive methodology to be fine-tuned by 2026', as the Commission reports. Guidance has been published in conjunction with the CBAM implementation and initial trial phase.

5. Denmark announces new carbon capture storage project plans

The Danish Ministry of Climate, Energy and Utilities has announced it has pioneered a

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scheme to promote carbon capture and storage (CCS) technology, by allocating the equivalent of almost USD4bn in government subsidies to companies over a period of 15 years. The initiative is set up to enable the capture of around 2.3 million tons of CO2 per year. The scheme proposes to function with 20 per cent state ownership of future carbon storage licences, meaning Danes will share in profits of the scheme. **IV. North America**

1. Companies plea for climate disclosure legislation with the return to session of California lawmakers

As California lawmakers return to session, 15 companies have written a letter to the California Assembly Appropriations Committee Chair to express their support of the proposed Climate Corporate Data Accountability Act (SB 253), which would require U.S. companies with more than $1 billion in total annual revenues and doing business in California to annually report their Scope 1, 2, and 3 greenhouse gas emissions. The companies state in their letter that 'consistent, comparable, and reliable emissions data at scale is necessary to fully assess the global economy's risk exposure and to navigate the path to a net-zero future. All sectors and economic actors must work together to shift the entire economy …. we need legislation like SB 253 to cover privately held and midmarket companies to better ensure economy-wide accountability and action'.

2. U.S. antitrust agencies increasing scrutiny of 'interlocking directorates,' raising pressure on board members at competing companies

August has seen the U.S. Government increasingly focused on directors operating on boards of competing companies, a practice that violates Section 8 of the Clayton Act, a federal law designed to promote competition and avoid contraband co-ordination. The Federal Trade Commission (FTC) on August 16, 2023 stepped in to re-structure a deal that would have given Quantum Energy Partners a board seat at EQT, its direct competitor in the sale and production of natural gas. The FTC issued its proposed consent agreement to settle 'alleged violations of Federal law prohibiting unfair methods of competition'. Similarly, the Department of Justice (DOJ) announced the resignation of two Nextdoor board members who were simultaneously directors on the board of its competitor, Pinterest, following the DOJ antitrust division's ongoing enforcement efforts relating to the Clayton Act. Deputy Assistant Attorney General Andrew Forman of the Antitrust Division noted that 'enforcement involving interlocking directorates will continue to be one of the top priorities of the Antitrust Division'.

3. New U.S. Department of Energy initiatives

The U.S. Department of Energy has announced a number of new environmental initiatives, including the availability of $350 million in grants to help states monitor and cut methane emissions, and to provide support to reduce inefficiencies. States must apply for funding by September 30, 2023. The Department of Energy also announced the launch of a Responsible Carbon Management Initiative, which seeks to ensure the highest standards of management required for safety, environmental stewardship, accountability, community engagement and societal benefits related to carbon management projects. It was also announced that $1.2 billion would be made available for the development of the first direct air capture facilities in Texas and Louisiana, aiming to start a nationwide network of commercial-scale carbon removal sites to reduce emissions. The investment would be the world's largest to date in connection with carbon removal technology.

4. Government of Canada consultation on clean electricity regulations

As part of the nation's broader electrification and decarbonisation strategy, the Government of Canada has published a consultation on its draft Clean Electricity Regulations, aimed to reduce emissions through the modification of electricity generation units and the requirement of reporting on all eligible units. The consultation remains open until November 2, 2023. **V. APAC**

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1. ASEAN to establish guidelines for company climate transition

A joint statement of the ASEAN Finance Ministers and Central Bank Governors (AFMGM) was issued on August 25, 2023, affirming that regulatory authorities across ASEAN countries are working on a voluntary corporate transition framework that is estimated to be released by the end of 2023. The forthcoming guidelines will adopt a principles-based approach, combining and taking inspiration from the most effective existing frameworks internationally. The primary objective is to assist companies in developing and sustaining transparency in their climate transition strategies, and to support an 'affordable, credible and orderly transition'. The meeting also outlined progress of the ASEAN Taxonomy Board's consultation on the ASEAN Taxonomy version 2, which commenced in June 2023, and which is expected to complete by November 2023 (ahead of the UN Climate Change Conference in Dubai). The consultation will assist with the implementation of and the focus on particular sectors for Version 3, which is anticipated to be released over the next two years.

2. New investors have increased the AUM of sovereign climate engagement group to $8trn

Eighteen new investors joined the Australian pilot of the Collaborative Sovereign Engagement on Climate Change, raising the combined assets under management of the programme to $8trn. The initiative consists of a network of institutional investors who aim to support Australian governments to mitigate climate change in accordance with the Paris Agreement. The initiative runs under the aegis of the United Nations-supported Principles for Responsible Investment (UNPRI). The press release of the UNPRI, which announced the new members, also laid out the four goals which investors will seek to reach by improving sovereign climate change responses: (i) narrowing the gap between ongoing efforts and a path that aligns with the emission reduction goals of the Paris Agreement; (ii) developing comprehensive and credible net zero transition plans, including supportive policies, budget allocations and investment strategies; (iii) enhancing climate resilience across the economy and society to mitigate the harm and disruption caused by environmental threats; and (iv) enhancing transparency of sovereign exposure to climate-related risks and opportunities, following global standards.

3. Net zero organisation GFANZ sets up Hong Kong Chapter

The Glasgow Financial Alliance for Net Zero (GFANZ), a global coalition of financial institutions committed to the climate transition, issued a press statement of their intention to open a Hong Kong Chapter. The Hong Kong Chapter will serve as an extension of the GFANZ's Asia-Pacific Network with the strategic goal of collaborating with financial institutions in Greater China on matters of comprehensive transition planning, scaling transition finance, and furthering net zero efforts.

4. New ESG standards coming into effect in South Korea

South Korea implemented new ESG evaluation standards on September 1, 2023. These 'best practices for ESG evaluation work' have been prepared and implemented by the ESG Standards Institute, Korea ESG Research Institude, and Sustinvest, and have the support of three major South Korean ESG rating agencies (Financial Services Commission (FSC), the Korea Exchange, and the Korea Capital Market Institute). The FSC has established a council composed of these evaluation agencies to assist in overseeing and enhancing the standards going forward.

5. New carbon markets registry launched in Singapore

The Asia Carbon Institute (ACI), a voluntary carbon credit registry and carbon standards organisation was launched in Singapore on August 29, 2023. The non-profit, established by Shell trader John Lo, seeks to scrutinise sustainability initiatives in the urban- and tech-space by issuing carbon credits that represent a quantifiable and permanent reduction in

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greenhouse gas emissions. ACI aims to provide independent and science-based reviews of project developments and expects to register around 100 projects per year.

6. India has issued a Green Hydrogen Standard

To advance the National Green Hydrogen Mission, the Ministry of New & Renewable Energy of India (MNRE) has announced a Green Hydrogen Standard that specifies emissions thresholds which need to be met in order to classify hydrogen production as 'green'. The scope of the definition includes both biomass-based and electrolysis-based production methods and it characterises green hydrogen as having a well-to-gate emission not exceeding an average of 2 (two) kilograms of carbon dioxide equivalent per kilogram of hydrogen produced over 12 (twelve) months. The office memorandum dated August 18, 2023, sets out that a detailed methodology for the measurement, monitoring, reporting, on-site validation and certification of green hydrogen and its derivatives will be developed by the MNRE.

7. Taiwan opens carbon trading exchange

President Tsai Ing-wen launched Taiwan's first carbon exchange in Kaohsiung on August 7, 2023, to assist the government's goal of achieving net-zero emissions by 2050. In its initial phase, the exchange, set up jointly by the Executive Yuan's National Development Fund and the Taiwan Stock Exchange, aims to support local businesses with carbon consultation and training on topics such as supply chain carbon neutrality, international carbon border taxes and domestic carbon fees. It is also expected that after pertinent sub-laws regarding carbon pricing are drafted by the Environmental Protection Administration, the exchange will begin to facilitate international carbon credit trading. Please let us know if there are other topics that you would be interested in seeing covered in future editions of the monthly update. Warmest regards, Susy Bullock Elizabeth Ising Perlette M. Jura Ronald Kirk Michael K. Murphy Selina S. Sagayam

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