GIBSON DUNN

July 11, 2023

GIBSON DUNN ENVIRONMENTAL, SOCIAL AND GOVERNANCE UPDATE (JUNE 2023)

To Our Clients and Friends:

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

I. International

1. ISSB publishes first two IFRS Sustainability Disclosure Standards

In June 2023, the International Sustainability Standards Board ("**ISSB**") issued its IFRS Sustainability Disclosure Standards based on the recommendations of the Task Force on Climate-related Financial Disclosures ("**TCFD**"). IFRS S1 relates to the General Requirements for Disclosure of Sustainability-related Financial Information. It is effective for annual reporting period beginning on or after January 1, 2024 – earlier application is permitted if IFRS S2 is also applied. IFRS S2 relates to Climate-related Disclosures. It is effective for annual reporting period beginning on or after January 1, 2024 – earlier application is permitted if IFRS S2 is also applied. The ISSB is continuing to seek feedback on its future priorities for its next two-year work plan, which consultation closes on September 1, 2023.

2. ICMA announces updates to the Climate Transition Finance Handbook and Sustainability Principles

On June 22, 2023, the International Capital Markets Association ("**ICMA**") announced that the Green, Social, Sustainability and Sustainability-Linked Bond Principles (the "**Principles**") published revised 2023 editions of: (i) the Climate Transition Finance Handbook, which was originally launched in 2020 – the revisions include the progress made on climate transition guidance and disclosures; (ii) the Sustainability-Linked Bond Principles – the revisions include language for sovereign issuers together with revisions to the accompanying Key Performance Indicator registry; (iii) the Social Bond Principles – the revisions reflect the need to identify target populations and separately provide specific guidance for impact reporting for Social Bonds; and (iv) additional Q&As for green, social and sustainable bond securitisation, among other updates.

3. New reporting window open for signatories of the UN PRI and guidance published

Our May 2023 Update included an update on the release by the United Nations Principles for Responsible Investment ("**PRI**") of a report on "Minimum Requirements for PRI Investor Signatories." On June 14, 2023, the new reporting window for signatories of the PRI opened – this closes on September 6, 2023. PRI also published guidance on net zero and climate reporting in PRI's Investor

Reporting Framework, including (a) guidance to assist signatories of the Net Zero Asset Owner Alliance ("**NZAOA**") who choose to report on their NZAOA requirements through PRI's Investor Reporting Framework; (b) guidance to assist signatories of the Net Zero Asset Managers ("**NZAM**") initiative to report on their NZAM commitments; and (c) guidance for all PRI signatories on climate reporting, based on TCFD-aligned indicators.

4. OECD updates its Guidelines for Multinational Enterprises on Responsible Business Conduct

On June 8, 2023, the Organisation for Economic Co-operation and Development ("**OECD**") published an updated version of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Key updates include recommendations for enterprises to align with internationally agreed goals on climate change and biodiversity, recommendations on risk-based due diligence, and specific environmental responsibilities.

5. IEA-IFC issue a special joint report calling for ramping up clean energy investments in emerging and developing countries

On June 21, 2023, the International Energy Agency ("**IEA**") and the International Finance Corporation ("**IFC**") published a special joint report. The report examines how to scale up private finance for clean energy transitions, identifies key barriers and how to remove them, and sets out policy actions and financial instruments to deliver acceleration in private capital flows for energy transition.

6. Climate Action 100+ announces its second phase

On June 8, 2023, Climate Action 100+ announced the launch of its second phase. The second phase will run until 2030 and intends to drive greater corporate climate action, by shifting the focus from corporate climate-related disclosure to the implementation of climate transition plans.

7. Nature Action 100 releases investor expectations to support urgent corporate action on nature loss

Nature Action 100, which is a global investor engagement initiative to address biodiversity and nature loss, and its impact on shareholder value, has released a set of corporate actions intended to protect and restore nature and ecosystems. The Investor Expectation for Companies outlines six key focus areas for action: ambition, assessment, targets, implementation, governance and engagement. Among other expectations, target companies will be expected to publicly commit to minimising contributions to key drivers of nature loss and to conserve and restore ecosystems at the operational level and throughout value chains by 2030. The eight key sectors identified for action are: biotechnology and pharmaceuticals; chemicals, such as agricultural chemicals; household and personal goods; consumer goods retail, including e-commerce and speciality retailers and distributors; food, ranging from meat and dairy producers to processed foods; food and beverage retail; forestry and paper, including forest management and pulp and paper products; metals and mining.

II. United Kingdom

1. FCA outlines concerns about sustainability-linked loans market

The Financial Conduct Authority ("**FCA**") has outlined its concerns about the sustainability-linked loans ("**SLLs**") market by way of a letter to interested stakeholders and parties on June 29, 2023. Concerns have been raised around credibility (including increased transparency), market integrity, greenwashing, conflicts of interest and potentially weak incentives to issue SLLs. The FCA has noted that some of these concerns have been addressed by the recently published revision of the Loan Market Association's Sustainability-Linked Loan Principles, which the FCA believes should be more broadly adopted to drive further growth. The FCA does not currently plan to introduce regulatory standards or a code of conduct for the SLLs market, but has stated that it may reconsider this if the market needs it.

2. Climate Change Committee criticises UK's slow efforts to scale up climate action

The Climate Change Committee ("**CCC**") is an independent statutory body established under the UK Climate Change Act 2008 to advise the UK and devolved Governments on emissions targets, to report on progress and to prepare for the impacts of climate change. On June 28, 2023, the CCC issued its statutory progress report providing an overview of the Government's progress to date in reducing emissions. The report includes criticism of the Government's progress as slow and notes that the CCC's confidence in the UK's 2030 target has markedly declined since 2022.

3. CMA's enforcement powers to combat greenwashing under the UK Digital Markets, Competition and Consumers Bill

The UK Digital Markets, Competition and Consumers Bill was introduced to Parliament on April 25, 2023. It is presently in the Committee Stage with Committee debates having taken place through the month of June 2023. If adopted in its current form, it will give the UK Competition Markets Authority ("**CMA**") the power to, without a court process, impose directions or fines for the breach of consumer law protections which could extend to greenwashing.

4. FRC publishes report on influence of proxy voting advisors and ESG rating agencies and HMT consultation on regulation of ESG ratings providers ends

On June 15, 2023, the Financial Reporting Council ("**FRC**") published its report commissioned to look into the influence of proxy voting advisors and ESG rating agencies on actions and reporting by FTSE350 companies and investor voting decisions. This report was published during a period when His Majesty's Treasury had been consulting on a proposed regulatory regime for ESG ratings providers, which consultation period ended on June 30, 2023.

5. Consultation on UK non-financial reporting requirements

On June 8, 2023, the UK Department of Business and Trade ("**DBT**") and the FRC opened consultation in relation to a review of the non-financial reporting requirements UK companies need to comply with in their annual report filings and to meet requirements broader than the UK Companies Act (e.g. gender pay gap and modern slavery reporting). The review will also consider if certain matters remain fit for purpose, such as the current company size thresholds that determine certain non-financial reporting requirements, and the preparation and filing of accounts with Companies House. The consultation closes on August 16, 2023.

III. Europe

1. New Sustainable Finance Package published and crackdown on ESG rating providers

Our May 2023 Update included an update on the impending publication of the EU sustainable finance package as part of the EU's long-term vision to make Europe climate-neutral by 2050. On June 13, 2023, the European Commission published the new sustainable finance package with a view to encouraging private funding of transition projects and technologies and facilitating sustainable investments. The European Commission has added additional activities to the EU Taxonomy and, to mitigate the risk of greenwashing, proposed new rules for ESG rating providers to improve integrity, reliability and transparency in the sustainable investments market. If the rules are approved, ESG rating providers offering ratings in the EU will be required to seek prior authorisation from the European Securities and Markets Authority and to divest from conflicting activities (e.g. offering insurance to businesses that they rate).

2. European Commission consults on the first set of European Sustainability Reporting Standards

On June 9, 2023, the European Commission proposed for consultation the first set of European Sustainability Reporting Standards ("**ESRS**") under the Corporate Sustainability Reporting Directive ("**CSRD**"). This consultation closes on July 7, 2023. The ESRS will apply from January 1, 2024 (for financial years beginning on or after January 1, 2024). The first set of ESRS are sector-agnostic, with sector-specific standards to be adopted by June 2024.

3. European Parliament adopts position on Corporate Sustainability Due Diligence Directive

On June 1, 2023, the European Parliament adopted its position on the proposal for a directive on Corporate Sustainability Due Diligence and amending Directive ("**CSDDD**"). In April 2023, the European Parliament's committee on legal affairs adopted a draft report setting out a suite of amendments to the CSDDD as proposed by the European Commission, which the European Parliament has now adopted. Inter-institutional negotiations between the European Commission, the European Parliament and EU Member States on the CSDDD will now commence. Following formal adoption of the CSDDD, EU Member States will have two years to implement it into national legislation. The subject matter relates to rules to integrate (prevent, identify and mitigate) human rights and environmental impact into companies' governance and along their value chain, including pollution, environmental degradation and biodiversity loss.

4. EU Deforestation Regulation enters into force

Our May 2023 Update included an update on the adoption by the European Parliament of the final text of the EU Regulation aimed at tackling deforestation and forest degradation (the "**EU Deforestation Regulation**"). The EU Deforestation Regulation entered into force on June 29, 2023. Please refer to our earlier update in relation to the scope, purpose and applicability.

IV. United States

1. SEC delays climate change disclosure rulemaking once again

On June 13, 2023, in its updated rulemaking agenda for Spring 2023, the U.S. Securities and Exchange Commission ("**SEC**") indicated a goal of October 2023 for the adoption of proposed climate change rules. Although the "Reg Flex" agenda is not binding and target dates frequently are missed or further delayed, the Spring agenda indicates that these remain a near-term priority for the SEC. If adopted, the proposed rules will require a registrant to provide information regarding: (a) climate-related risks that are reasonably likely to have a material impact on its business, results of operations or financial condition; (b) greenhouse gas emissions; and (c) certain climate-related financial metrics in its audited financial statements.

2. PCAOB proposes an expansive non-compliance standard

On June 6, 2023, the Public Company Accounting Oversight Board ("**PCAOB**") proposed for public comment a draft auditing standard, *A Company's Noncompliance with Laws and Regulations*, PCAOB Release 2023-003, that could significantly expand the scope of audits and potentially alter the relationship between auditors and their SEC-registered clients. The standard would require auditors to identify all laws and regulations applicable to the company and from that set determine those laws and regulations "with which noncompliance could reasonably have a material effect on the financial statements"; incorporate potential noncompliance into the auditor's risk assessment; and identify whether noncompliance may have occurred through enhanced procedures and testing. If potential noncompliance is identified, the auditor must perform procedures to understand the nature of the matter and "determine" if noncompliance in fact occurred. This standard would mean, for example, that auditors would need to assess whether any climate change or other ESG-related regulations issued at the federal, state, local, international level could have a material effect on a company's financial statements and, if so, assess noncompliance. Our client alert on this proposal is available here.

3. North Carolina passes anti-ESG bill

In our May 2023 Update, we provided an update on various U.S. states that remained split on their approach to ESG matters. An anti-ESG bill has become law in North Carolina, after legislators voted to override the Governor's veto. The legislation bars state entities from considering ESG criteria when making investment and employment decisions.

4. House Appropriations Committee releases FY24 Financial Services and General Government Appropriations Bill prohibiting SEC funding for climate disclosure rules

The House Appropriations Committee released the Financial Services and General Government Bill for the fiscal year 2024 and approved the bill with riders that would prohibit the SEC from spending on various proposals, including the climate disclosure rules. The next step is for the legislation to be introduced in the Senate (where it may face resistance given the Democratic-majority).

5. July rumoured to be "ESG month" and Republican ESG Working Group releases interim report

Plans are rumoured to be afoot for the House Financial Services Committee's flagship "ESG month," with a full committee hearing on ESG on July 12 and subcommittee hearings to follow thereafter. The Republican ESG Working Group, which was formed in February 2023, released an interim report highlighting anti-ESG concerns on June 23, 2023.

6. ISS responds to State Treasurers' letter

On June 29, 2023, the Institutional Shareholder Services Inc. ("**ISS**") issued its response to a group of U.S. state treasurers and financial officers to address issues they raised in a letter dated May 15, 2023 to proxy advisory firms, including ISS. The response emphasises that ISS tailors its proxy voting advice, including on ESG, based on a client's needs and preferences, such that it may offer two different clients opposing recommendations about the same ballot measure. It further notes that many investors believe that incorporating material ESG factors into fundamental investment analysis can be consistent with their duty to manage the long-term financial prospects of their investment portfolios and a growing number of investors consider ESG factors as material to their proxy voting determinations as well. ISS has developed Special Voting Policies, such as a Climate Policy (based on the TCFD), Socially Responsible Investor Policy, Sustainability Policy, among others.

V. APAC

1. Updated ASEAN Taxonomy Version 2 released

On June 9, 2023, the ASEAN Taxonomy Board released the updated ASEAN Taxonomy for Sustainable Finance Version 2. The ASEAN Taxonomy has a multi-tiered approach which allows for different levels of adoption based on the individual member states' readiness. Version 2 provides the methodology that will be applied in setting the technical screening criteria for the Plus Standard and contains the technical screening criteria for all four environmental objectives for the energy sector, as well as the carbon storage, utilisation and storage enabling sector. Alongside the "Do No Significant Harm" and "Remedial Measures to Transition" criteria, Version 2 also introduces a third essential criteria – "Social Aspects." Three key social aspects are to be considered as part of the assessment: Respect Human Rights, Prevention of Forced and Child Labour and Impact on People Living Close to Investments.

2. Thailand issues Phase One of its green taxonomy

The Bank of Thailand and Thailand's Securities and Exchange Commission, together with the Climate Bonds Initiative, published the Thailand Taxonomy Phase One on June 30, 2023. Phase One of the Taxonomy focuses on economic activities relating to the energy and transportation sectors, and may be used as a reference for access to financial tools and services that support transition activities to address climate change. Phase Two of the Thailand Taxonomy will focus on the manufacturing, agriculture, real estate, construction and waste management sectors. The Thailand Taxonomy will employ the traffic light system, which is also employed in the ASEAN Taxonomy.

3. Malaysia rolls out new mandatory sustainability onboarding programme for PLC directors

The Securities Commission of Malaysia and the Malaysian stock exchange, Bursa Malaysia, have rolled out a new mandatory sustainability programme for onboarding directors of public listed companies. The "Mandatory Accreditation Programme (MAP) Part II: Leading for Impact (LIP)" is the second part of Bursa Malaysia's listing requirements and will take effect on August 1, 2023, requiring first-time directors and directors of listing and transfer applicants to complete the sustainability programme within 18 months from appointment/admission. Existing PLC directors will have up to 24 months to complete the programme.

4. Singapore consults on ESG data and ratings code of conduct, to digitise basic ESG credentials for MSMEs, and to strengthen access to climate transition data

On June 28, 2023, the Monetary Authority of Singapore ("**MAS**") launched a public consultation on a voluntary industry governance framework / code of conduct for providers of ESG ratings and ESG data products, which is modelled after the International Organization of Securities Commissions' recommendations of good practices set out in its global call for action in November 2022. The regime is proposed to be voluntary, where providers would ratify the code of conduct and explain why they are unable to comply. The consultation closes on August 22, 2023. MAS is also seeking feedback on its proposed criteria for the early phase-out of coal-fired power plants under its draft green taxonomy (which is to be named the Singapore-Asia Taxonomy). This consultation closes on July 28, 2023. On June 22, 2023, MAS, the United Nations Development Programme and the Global Legal Entity Identifier Foundation executed a statement of intent for "Project Savannah," to develop digital ESG credentials for micro, small and medium-sized enterprises (MSMEs). On June 27, 2023, MAS, the Secretariat of the Climate Data Steering Committee and Singapore Exchange executed a memorandum of understanding to strengthen access by stakeholders to key climate transition-related data.

5. UAE Independent Climate Change Accelerators launches UAE Carbon Alliance

The UAE Independent Climate Change Accelerators ("**UICCA**") has launched the UAE Carbon Alliance, a new coalition to advance the development and scaling of a carbon market ecosystem in the UAE and to facilitate the transition to a green economy in line with the UAE's Net Zero by 2050 Strategic Initiative. Founding members of the UAE Carbon Alliance include the UICCA, AirCarbon Exchange, First Abu Dhabi Bank, Mubadala Investment Company, TAQA, and Masdar.

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,

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