GIBSON DUNN

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

We are pleased to provide you with Gibson Dunn's ESG update for Winter 2023. This update covers the following key developments from November and December 2023.

I. GLOBAL

1. Institutional Shareholder Services (ISS) publishes 2024 Benchmark Policy Updates

On December 19, 2023, the proxy advisor ISS published its updated 2024 Benchmark Proxy Voting Policies, which will apply to shareholder meetings that take place on or after February 1, 2024. ISS have also published separate regional update documents announcing policy changes for each of the Americas, EMEA and Asia-Pacific. The main changes by ISS concern executive compensation, board composition and diversity, and risk oversight.

These updates by ISS follow the 2024 guidelines on proxy voting polices published earlier in November 2023 by Glass Lewis.

2. ICMA publishes new voluntary code of conduct for ESG ratings and data products providers

On December 14, 2023, the ICMA published a new voluntary Code of Conduct for ESG ratings and data products providers in line with IOSCO recommendations. Setting out 6 different principles, the Code introduces clear standards for ESG ratings and data product providers, and clarifies their interaction with wider market participants. The 6 principles concern: (1) good governance; (2) securing quality (systems and controls); (3) conflicts of interest; (4) transparency; (5) confidentiality (systems and controls); and (6) engagement (systems and controls).

The overarching aims of the Code are to: (1) improve the availability and quality of information provided to investors at product and entity levels; (2) enhance market integrity through increased transparency, good governance and sound systems and controls; and (3) improve competition through better comparability of products and providers.

ESG ratings and data products providers who sign up to the Code will need to make a public annual statement of application which explains their approach to implementing the Code. An implementation period of 6 months for ESG ratings providers, and 12 months for ESG data products providers, will then apply. By the time this period lapses, the 6 principles should be embedded within the provider's organization. Providers that have agreed to adopt the Code will also be listed on the ICMA's website.

Based heavily on the IOSCO recommendations, the ICMA intends for the Code to be applied internationally and a step towards creating a globally consistent regulatory framework. A hybrid event for stakeholders will take place at the London Stock Exchange on January 31, 2024 to discuss how the Code will work in practice.

3. **Network for Greening the Financial System (NGFS) publishes Recommendations toward the development of scenarios for assessing nature-related financial risks**

On December 13, 2023, the NGFS published a Technical Document providing recommendations toward the development of scenarios to assess nature-related economic and financial risks. The Technical Document is premised upon a two-part framework required for conducting forward-looking risk assessments: (1) envisioning consistent narratives to identify different hazards; and (2) exploring methods and tools e.g. models and data needs, to assess the impacts of such hazards and the ability to mitigate them. It also highlights the specificities of nature-related risks as opposed to climate-related risks, and discusses and outlines potential ways forward.

The NGFS intends for the Technical Document to pave the way for the future development of nature-related scenarios and the ability of central banks and supervisors to conduct comprehensive forward-looking nature risk assessments.

4. **COP28 countries agree deal to transition away from fossil fuels**

On December 13, 2023, representatives from nearly 200 countries reached a deal at the COP28 summit to transition away from fossil fuels in the effort to meet global net zero emissions by 2050. Specifically, governments are called upon to triple renewable energy capacity globally by 2030, accelerate efforts to reduce coal use, focus on technologies such as carbon capture and storage and low-carbon hydrogen production, and phase out fossil fuel subsidies. All countries will need to set "*ambitious*" emissions targets over the next 2 years to limit global warming to 1.5°C above pre-industrial levels. However, the agreement does recognize that targets should be set in light of "*different national circumstances*", taking into account poorer nations.

5. **IOSCO publishes a final report presenting supervisory practices across its members to address greenwashing**

On December 4, 2023, the IOSCO published a final Report on Supervisory Practices to Address Greenwashing. The Report discusses the initiatives undertaken in various jurisdictions to address greenwashing, in line with IOSCO recommendations published in November 2021 (Report 1 and Report 2) and the subsequent Call for Action in November 2022, with the aim of increasing visibility of the roles that regulators are playing in this space. It also sets out the challenges hindering the implementation of these recommendations, including data gaps, transparency, quality, and reliability of ESG ratings, consistency in labelling and classification of sustainability-related products, evolving regulatory approaches, and capacity building needs.

The IOSCO highlighted that the main findings of the Report indicate the following:

- There is no global definition of greenwashing.
- Most jurisdictions have supervisory tools and mechanisms in place to address greenwashing in the area of asset managers and their products.
- Educational, awareness measures and capacity building activities are being used as proactive tools to prevent greenwashing. However, addressing greenwashing also requires financial education initiatives, both at investor and industry levels.
- The ESG ratings and data products markets are growing rapidly.
- Steps are reportedly being taken by Affiliate Members Consultative Committee (AMCC) members to improve the consistency of terminology, which could lead to better classification of funds and labelling.
- Enforcement measures such as infringement notices, fines, revocations of licenses, and suspension of businesses have been applied to greenwashing cases. Civil or criminal liability can also be applicable depending on the severity of the particular case.
- The cross-border nature of sustainable finance investments requires adequate sharing of information, data and knowledge between countries.

6. **International Organization of Securities Commissions (IOSCO) publishes a Consultation Report to promote the integrity and orderly functioning of the Voluntary Carbon Markets (VCMs)**

On December 3, 2023, the IOSCO published a 90-day consultation report outlining a set of 21 'Good Practices' to promote the integrity and orderly functioning of the VCMs. The proposed 'Good Practices' relate to regulatory frameworks, primary market issuance, secondary market trading, and use and disclosure of use of carbon credits. Although not legally binding, the IOSCO's intention is that they help to support sound market structures and enhance financial integrity in the VCMs, allowing for carbon credits to be traded in an orderly and transparent way.

The proposed 'Good Practices' build on the Key Considerations included in the November 2022 Discussion Paper, the feedback received in response to that Discussion Paper, and IOSCO members' knowledge and oversight of financial markets. They also draw upon existing good practices and principles for well-functioning markets, such as IOSCO's Objectives and Principles of Securities Regulation (including the derivatives markets).

The deadline for comments from relevant regulators, authorities and market participants on the proposed 'Good Practices' is March 3, 2024.

7. **COP28**: **the global climate summit convenes in United Emirates**

The 2023 UN Climate Change Conference convened in Dubai over the first few weeks of December, with the spotlight on climate finance, gender-responsive climate action, the energy transition and climate mitigation. Notable developments on the finance front include the announcement by the UK, France, the World Bank, the African Development Bank Group, the European Bank for Reconstruction and Development, and the Inter-American Development Bank (**IDB**) of new commitments to expand the use of climate resilient debt clauses (**CDRC**s)—which allow the lenders to pause debt for countries that are faced with a natural disasters—in their lending. The UK announced the first ever CDRC to Senegal, the first in Africa. In addition, a consortium of multilateral development banks and funders, States and NGOs announced the issuance of Guiding Principles for Financing Climate and Health Solutions, which aim to foster collaboration between funders and accelerate the allocation of finance to countries and communities for climate and health solutions.

Elsewhere during the conference, the new Gender-Responsive Just Transitions & Climate Action Partnership was endorsed by over 60 state parties, making a series of commitments to support women's economic empowerment and ensure women's livelihoods are protected during the just transition.

8. **Basel Committee proposes mandatory climate change disclosures by banks**

On 29 November, 2023, the Basel Committee on Banking Supervision—the primary global standard setter for the prudential regulation of banks—issued a public consultation paper on its proposed Pillar 3 disclosure framework for climate-related financial risks. The consultation seeks the views of stakeholders on various qualitative and quantitative disclosure requirements that would complement the work of other standard setters, including the International Sustainability Standards Board (**ISSB**) and provide a global common disclosure baseline for internationally active banks. The Committee will use feedback from the consultation process to consider which requirements should be mandatory and which should be subject to national discretion.

9. **International Capital Markets Association issues updates to Guidance Handbook**

On November 29, 2023, the International Capital Market Association (**ICMA**) and Executive Committee of the Principles published an updated edition of the Guidance Handbook, which gives guidance on the Green Bond Principles (2014), Social Bond Principles (2017), Sustainability Bond Guidelines (2017) and Sustainability-Linked Bond Principles (2020). The updated edition includes further guidance on relabelling bonds as GSS bonds post-issuance, use of proceeds of GSS bonds, bonds issued by "pure play companies" (i.e. organisations that are mainly or entirely involved in environmentally and/or socially sustainable activities), impact reporting, and identifying target populations for the purpose of Social Bonds.

10. **International Capital Markets Association (ICMA) and the Executive Committee of the Principles update the Guidance Handbook**

On November 29, 2023, the ICMA and the Executive Committee of the Principles published an updated edition of the Guidance Handbook, replacing the January 2022 edition.

The Guidance Handbook provides market participants with sought-after additional information on how to interpret the Green Bond Principles, Social Bond Principles, Sustainability Bond Guidelines and Sustainability-Linked Bond Principles (collectively, the Principles), as well as advice on their practical application for transactions. The updated Guidance Handbook also now includes the Q&As initially published separately which concern secured green, social and sustainability bonds (GSS Bonds) (*Chapter 3*), sustainability-linked bonds (*Chapter 4*), and GSS bonds related to pandemics and social projects to support fragile and conflict states (*Chapter 8*). Further guidance is also provided on re-labelling (*Chapter 1.18*), net asset value (*Chapter 2.1*), pure play companies (*Chapter 2.1*), impact reporting (*Chapter 2.3*), and social bonds (*Chapter 2.3*).

The revised Guidance Handbook seeks to support market development and underpin market integrity. The ICMA intends for the Guidance Handbook to be widely circulated and used by the green, social, sustainability and sustainability-linked bond market (GSSS bond market).

11. **Basel Committee consults on a disclosure framework for climate-related financial risk**

On November 29, 2023, the Basel Committee on Banking Supervision published a public consultation paper on the disclosure of climate-related financial risks. In particular, the Committee is evaluating how a Pillar 3 disclosure framework would further its mandate to strengthen the regulation, supervisions and practices of banks worldwide to enhance financial stability. The Committee is also investigating the potential design of such a framework. Its initial proposals for the framework include qualitative and quantitative disclosure requirements, bank-specific metrics for quantitative climate disclosures, forecasts, and quantitative disclosure requirements subject to jurisdictional discretion.

The Committee intends for the disclosure framework to complement the work of other standard setters, including the International Sustainability Standards Board (ISSB), and provide a common disclosure baseline for internationally active banks.

The consultation is part of the Committee's approach to addressing climate-related risks to the global banking system. The deadline for stakeholder feedback is February 29, 2024, with a revised or final proposal expected to be published in Q3-Q4 2024. The Committee is further contemplating a potential implementation date of January 1, 2026, one year after the effective date proposed by the ISSB and after the expiration of the ISSB's proposed transitional arrangements.

12. **Abu Dhabi launches its first ESG benchmark index**

Ahead of the COP28 summit, on November 28, 2023 the Abu Dhabi Securities Exchange (**ADX**) announced the launch of its ESG benchmark index developed in collaboration with FTSE Russell. The benchmark is designed to provide investors with a tradable ESG benchmark that ranks companies according to ESG scores sourced from London Stock Exchange Group (LSEG) Data & Analytics. The companies will be measured on an annual basis based on their public reporting.

The index will initially include 24 companies that are listed on the ADX market and are constituents of the FTSE ADX General Index.

13. Global Reporting Initiative releases new draft climate and energy standards

On November 21, 2023, the Global Reporting Initiative (**GRI**) published two draft standards designed to support organisations in their accountability efforts relating to their climate change impacts. The first is a new draft Climate Change Standard to assist organisations in disclosing their climate change transition and adaption plans and actions and in explaining their use of carbon credits and GHG removals. The second is a draft revised Energy Standard, which includes an additional management disclosure on the role of the organisation's energy policies and commitments in the transition to a decarbonised economy, as well as extended requirements on energy consumption and generation.

Both drafts are currently subject to public comment period; interested parties can submit online comments on the draft by February 29, 2024.

14. Glass Lewis publishes 2024 Benchmark Policy Guidelines, including guidelines for shareholder proposals and ESG-related issues

On November 16, 2023, the proxy advisor Glass Lewis published its 2024 Benchmark Policy Guidelines which apply to shareholder meetings held on or after January 1, 2024. The Guidelines set out Glass Lewis' views on current market practice and its approach in different global markets for 2024, including the US, UK, France, Germany, Switzerland, MENA, China, Hong Kong, and Singapore.

The key changes seen in this year's edition vary between markets but largely focus on areas including the following:

- Director attendance levels;
- Cyber risk oversight;
- Executive ownership guidelines;
- Utility of compensation clawback provisions;
- Material weaknesses in internal controls over financial reporting;
- Board accountability for climate-related issues;
- Board oversight of ESG issues; and
- Clarification on remuneration at financial institutions.

Glass Lewis has also published a 2024 edition of its Guidelines for Shareholder Proposals and ESG-Related Issues which apply globally. The main updates here concern board accountability for climate-related issues, consideration for engagement between companies and investors, and recommendations on non-financial reporting.

15. **CFA Institute, PRI and GSIA announce harmonised definitions for sustainable investments**

On November 1, 2023, the CFA Institute, Principles for Responsible Investment (PRI) and the Global Sustainable Investment Alliance (GSIA) issued a new paper containing harmonised definitions aimed at clarifying the language of responsible investment. In particular, the harmonised definitions serve to promote consistent and precise use of terminology with regard to five existing responsible investment terms: “screening”, “ESG integration”, “thematic investing”, “stewardship” and “impact investing”, and thereby to deepen understanding of the nuances of responsible investment approaches.

The paper is available on the each of the respective organizations’ websites: CFA Institute here, PRI here, and GSIA here.

16. **International Bar Association publishes report on use of arbitration in ESG-related disputes**

On October 30, 2021, the International Bar Association (**IBA**) published a Report on use of ESG contractual obligations and related disputes, based in part on a survey of in-house and counsel and compliance staff at large multinationals by the IBA’s ESG subcommittee. The report addresses use of ESG-related obligations in both commercial contracts and investment treaties, as well as the role of arbitration in the resolution of ESG-related disputes.

On the commercial front, the report notes the proliferation of ESG-specific requirements in commercial contracts in the past decade, including references to the Equator Principles, UN Guiding Principles on Business and Human Rights and the Green Loan principles, and the availability of model ESG clauses such as those developed by The Chancery Lane Project and American Bar Association. The report anticipates an increased inclusion of termination rights for breach of ESG obligations as regulation in this area increases.

On the investment front, the report finds that the language adopted in some modern model investment treaties indicates that States are seeking investment that furthers the E, S and G elements of their sustainability agenda, and that specific substantive ESG-related standards are making an appearance in model investment treaties. Further, that there are frequent carve outs for the State’s right to regulate on issues including ESG matters.

Finally, on the matter of dispute resolution, the report points to the survey’s finding that one of the most important factors in the choice of disputes resolution mechanisms to resolve ESG disputes is confidentiality. This, in turn, likely presages the increased use of arbitration to resolve ESG disputes (especially contractual disputes) in future.

II. UNITED KINGDOM

1. **UK enacts The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2023**

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No 2) Order 2023 (SI 2023/1387) (Amendment No 2 Order) came into force on January 1, 2024. The Amendment No 2 Order was made on December 13, 2023 and, alongside the Greenhouse Gas Emissions

Trading Scheme (Amendment) Order 2023 (SI 2023/850) and the Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2023 (SI 2023/994), is part of a package of legislation targeting reforms to the UK Emissions Trading Scheme (UK ETS).

The Amendment No 2 Order has implemented amendments to the UK ETS which concern the following:

- Capping of free allocation for aviation at 100% of emissions;
- Amending free allocation rules for electricity generators, including clarification of the definition of combined heat and power (CHP) plants and electricity generator, as well as an updated definition of electricity generator which only considers electricity exports for the baseline period 2019-2023 rather than all electricity exports since 2005; and
- Clarification for carbon capture and storage (CCS) plants, including that an industrial installation that installs a capture plant is not disqualified from receiving free allocation.

2. **FCA publishes 46th Edition of Primary Market Bulletin featuring guidance on ESG stewardship and TCFD disclosure obligations compliance**

On December 19, 2023, the FCA released its 46th edition of the Primary Market Bulletin. This edition focuses on providing guidance in two areas:

1. Shareholder cooperation regarding ESG stewardship more generally and with respect to Article 10 of the UK Market Abuse Regulation (MAR), under which it is an offence to unlawfully disclose inside information.
The FCA advised that two pre-existing resources remain relevant to issues on shareholder activism, engagement and cooperation: (1) a letter from the FSA to the Association of British Insurers titled “Shareholder engagement and the current regulatory regime” dated August 19, 2009; and (2) the FSA’s Market Watch 20 dated May 20, 2007.

Further, the FCA clarified that the earlier outcome in the case of FCA v Sir Christopher Gent does not alter its approach to the MAR and should also not inhibit engagement between companies and their shareholders.

2. Procedures and policies by sponsors for compliance with the Task Force on Climate-Related Financial Disclosures (TCFD) disclosure obligations.
The FCA also discussed its assessment of how sponsors have made changes to their procedures to ensure listing applicants have systems in place to comply with the TCFD requirements. As required by the Listing Rules, premium and standard listed companies must include climate-related financial disclosures in their annual reports consistent with the TCFD disclosure requirements. The FCA’s findings were largely positive and the review found most sponsors had amended their policies to take into account the increased focus on climate-related matters.

The FCA further noted its expectations that sponsors should have sufficient skills, knowledge and expertise to interpret and apply relevant elements of the FCA Handbook. It also flagged the importance of sponsors providing their staff with appropriate training, including in relation to general developments in climate and sustainability-related disclosure.

3. **Climate related risks features in the FRC's areas of supervisory focus and priority sectors for 2024/25**

On December 6, 2023, the Financial Reporting Council (FRC) announced its 2024/25 supervisory focus areas and priority sectors for both corporate reporting review and audit quality inspections. However, the FRC observed that it monitors companies and audits from all sectors, and the priority sectors are just one risk factor amongst many that are taken into a consideration when making its selections.

The FRC declared its 4 areas of supervisory focus to be: (1) risks related to the current economic environment, such as going concern, impairment, recoverability and recognition of tax assets/liabilities; (2) climate-related risks, including Task Force on Climate-related Financial Disclosures (TCFD); (3) implementation of IFRS 17 – Insurance Contracts; and (4) cash flow statements.

In addition, when selecting corporate reports and audits for review, the FRC has 5 priority sectors: (1) construction and materials; (2) food producers; (3) gas, water and multi-utilities; (4) industrial metals and mining; and (5) retail. The FRC has also stated that the financial services sector, including banking and insurance, will continue to be a focus of review and will be included annually in its selections.

4. **Financial Conduct Authority publishes final rules on sustainability disclosure and investment labels**

On November 28, 2023, the Financial Conduct Authority (**FCA**) published a Policy Statement containing its final rules and guidance on sustainability disclosure requirements (SDR) and investment labels, which aim to improve trust and transparency to the market for sustainable investment products. The new regime applies (albeit in different respects) to UK asset managers and to FCA-authorised firms who make sustainability-related claims about their products and services, and is for the benefit of both professional and institutional investors as well as "retail investors", i.e. consumers.

The new regime comprises the following package of measures: (i) an anti-greenwashing rule to ensure that sustainability-related claims are fair, clear and not misleading, (ii) four new product labels to help consumers navigate the investment product landscape, (iii) naming and marketing rules for investment products to ensure accurate use of sustainability-related terms, (iv) consumer-facing information requirements to help consumers understand key sustainability product features, (v) detailed information requirements in pre-contractual, ongoing product-level and entity-level disclosures for the benefit of institutional investors and consumers, and (vi) requirements for distributors to ensure that product-level information such as labelling is made available to consumers.

5. **Sustainability disclosure and labelling regime confirmed by the FCA**

On November 28, 2023, the Financial Conduct Authority (FCA) announced in its Policy Statement the introduction of its new UK Sustainability Disclosure Requirements and a new investment labels regime to improve the trust, transparency and credibility of sustainable investment products, increase consumer protection through greater access to information when investing, and also minimise greenwashing by companies.

The new FCA regime will introduce the following measures:

1. From May 31, 2024, an anti-greenwashing rule for all FCA-authorised firms to ensure sustainability-related claims are fair, clear and not misleading. Final guidance providing further clarity on this rule is due to be published prior to the rule's introduction once its public consultation closes on January 26, 2024;

2. From July 31, 2024, the application of 4 different product labels (Sustainability Focus, Sustainability Improvers, Sustainability Impact, and Sustainability Mixed Goals) to investment products to help investors understand what their money is being used for, based on clear sustainability goals and criteria;

3. From December 2, 2024, naming and marketing requirements for UK asset managers so investment products cannot be described as having a positive impact on sustainability when they do not; and

4. From December 2, 2025, ongoing product-level and entity-level disclosures for firms with assets under management exceeding £50 billion. Additionally, from December 2, 2026, entity-level disclosures will be extended to firms with assets under management exceeding £5 billion.

The measures do not yet apply to portfolio management products and services, and the FRC plans to consult on this in early 2024.

6. **UK to set out regulatory rules for ESG ratings industry imminently**

On November 8, 2023, Financial Times reported that the UK government will publish a formal proposal for regulation of agencies that evaluate companies' environmental, social and governance performance as early as January 2024. The Treasury is said to be examining whether this will require new legislation or can be achieved through measures implemented under existing laws. The proposal will take into account responses from a consultation process which ended in June 2023, with a government response to the consultation due to be published by the Treasury "in due course".

Ministers have not ruled out the possibility of the creation of a new supervisory body to take on this function, but it is more likely that the remit of the Financial Conduct Authority will be expanded. The FCA is currently developing a voluntary code of conduct for ESG ratings and data product providers (see our earlier update here).

The European Commission proposed new regulations for ESG rating providers on June 13, 2023. See also update on Hong Kong (below) on development of an ESG ratings and data providers code of conduct.

7. **Financial Reporting Council indicates intention to drop proposed ESG-related changes to UK Corporate Governance Code**

Following consultation with stakeholders on proposed revisions to the UK Corporate Governance Code (the governance code applicable to all companies with a 'premium listing' on the London Stock Exchange), the Financial Reporting Council announced on November 7, 2023 that it will only be taking forward a small number of its original 18 proposals, and will be abandoning the proposals relating to the role of audit committees on environmental and social governance, and to modifications to existing code provisions around diversity, over-boarding, and Committee Chairs engaging with shareholders. The updated Code will be published in January 2024.

This follows the announcement by the UK government, on October 16, 2023, that it was withdrawing the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations following concerns by companies on burdensome and ever-increasing reporting requirements.

III. EUROPE

1. **European Insurance and Occupational Pensions Authority (EIOPA) seeks feedback on its proposed approach to tackle greenwashing in the insurance and occupational pension sectors**

EIOPA has launched a public consultation on its Consultation Paper on the Opinion on sustainability claims and greenwashing in the insurance and pensions sectors. The principles within the Opinion aim to pave the way for a more effective and harmonised supervision of sustainability claims across Europe and thereby limit the risk of greenwashing in the insurance and occupational pensions sectors. The deadline for submission of comments is March 12, 2024.

2. **European Commission proposes to update free allocation rules to implement EU emissions trading system**

The European Commission has opened a consultation process on the proposed updates to multiple regulatory acts under the Delegated Regulation for the implementation of the EU emissions trading system (ETS). The intention is to allow transitional EU-wide rules for harmonised free allocation of emission allowances. The consultation will close on January 2, 2024.

3. **European Parliament's Economic and Monetary Affairs Committee (ECON) adopts position on regulation to increase ESG ratings transparency and competition**

On December 4, 2023, ECON adopted its position on a regulation by the European Commission aimed at enhancing transparency and competition in ESG ratings. ECON advocates for changes to the rules proposed by the European Commission – in particular:

- breaking down the ESG rating into separate E, S and G factors to avoid rating obscuring poor performance on any of these individual metrics;
- promoting the "double materiality" approach, i.e. whether the delivered rating addresses both material financial risk to the rated entity and the material impact of the rated entity on the environment and society;
- increasing transparency on the methodologies, models and key rating assumptions which rating providers use in their ESG rating activities; and
- boosting competition in favour of smaller rating providers.

The regulation aligns with other EU sustainability initiatives. On December 20, 2023, the Council of the EU has agreed its negotiating mandate on the proposal for a regulation on ESG ratings. In its negotiating mandate, the Council clarified the circumstances under which ESG ratings fall under the scope of the regulation, providing further details on the applicable exemptions.

4. **European Securities and Markets Authority (ESMA) presents methodology for climate risk stress and considers use of ESG controversies to monitor greenwashing**

On December 19, 2023, ESMA published two articles outlining (i) an approach to modelling the impact of asset price shocks from adverse scenarios involving climate-related risks, and (ii) exploring the use of ESG controversies for the purpose of monitoring greenwashing risk. ESMA is holding a webinar on the topics on February 7, 2024.

5. **European Central Bank (ECB) and the European Systemic Risk Board (ESRB) publish report on climate-related financial stability risks**

On December 18, 2023, the ECB and the ESRB published a joint report on the impact of climate change on the EU financial system. The reports sets out a framework for addressing risk by gathering evidence on the most important financial stability indicators and looks to develop a macroprudential strategy for addressing climate broader nature-related risks.

6. **European Banking Authority (EBA) proposes voluntary EU label for green loans**

On December 15, 2023, EBA published a response to the European Commission's call for advice on green loans and mortgages. In its response, EBA suggests the introduction of a voluntary EU label for green loans based on a common EU definition and as well as the integration of the concept of a 'green mortgage' and its key sustainability features in the Mortgage Credit Directive. In particular, EBA proposes that:

- such EU definition and labelling framework incorporate a degree of flexibility to facilitate market participants' credible efforts in contributing to environmental objectives;
- for the labelling framework to include information on the long-term benefits of investing in energy-efficient solutions, documentation requirements and availability of financial support schemes; and

- when reviewing the Mortgage Credit Directive, the European Commission consider integrating the concept of green mortgages as well as the expected features of these loans.

7. **Council of the EU and European Parliament strike deal on the Corporate Sustainability Due Diligence Directive; European Securities and Markets Authority (ESMA) consults on draft guidelines on enforcement of sustainability information**

On December 14, 2023, the Council of the EU and the European Parliament reached a provisional agreement on the Corporate Sustainability Due Diligence Directive, which will oblige firms to integrate their human rights and environmental impact into their management systems. Eligible companies will be required to make investments, seek contractual assurances from partners, improve their business plans or provide support to their partners from SMEs in order to identify, assess, prevent, mitigate and remedy the negative impact of their activities on people and the planet. Companies' business model will also have to comply with limiting global warming to 1.5°C. In addition, supervisory authorities will be able to launch inspections and impose penalties on non-compliant companies, including fines of up to 5% of their net worldwide turnover. As a next step, the provisional agreement needs to be endorsed and formally adopted by both institutions.

On December 15, 2023, ESMA published a consultation paper on a set of draft guidelines on enforcement of sustainability information, with responses sought by 15 March 2024. The main goals of the draft guidelines are to ensure that national competent authorities carry out their supervision of listed companies' sustainability information under the Corporate Sustainability Reporting Directive (CSRD), the European Sustainability Reporting Standards and Article 8 of the Taxonomy Regulation in a converged manner; and to establish consistency in, and equally robust approaches to, the supervision of listed companies' sustainability and financial information. ESMA says this will facilitate increased connectivity between the two types of reporting.

8. **European Securities and Markets Authority (ESMA): "Update on the guidelines on funds' names using ESG or sustainability-related terms – Postponement of Publication"**

On December 14, 2023, ESMA has published a statement that it has postponed the adoption of the Guidelines on ESG and sustainability-related terms in fund names to ensure that the outcome of reviews of AIFMD and the UCITS Directive may be fully considered. In particular, the text of the provisional agreement resulting from the interinstitutional negotiations contains two new mandates for ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair, or misleading. ESMA plans to adopt the Guidelines shortly after the date of entry into force of AIFMD and UCITS Directive revised texts.

9. **European Securities and Markets Authority (ESMA) to launch and participate in Common Supervisory Action on ESG disclosures for Benchmarks Administrators**

On December 13, 2023, ESMA announced that it will launch a common supervisory action (CSA) with national competent authorities (NCAs) on environmental, social and governance disclosures under the EU Benchmarks Regulation. This is ESMA's first CSA in its role as a direct supervisor of benchmarks administrators. It will be carried out by ESMA and the NCAs during 2024 and until Q1 2025.

10. **ESAs put forward amendments to sustainability disclosures for the financial sector**

The three European Supervisory Authorities (European Banking Authority, European Insurance and Occupational Pensions Authority, and European Securities and Markets Authority – togethers the ESAs) are finalising amendments to the Sustainable Finance Disclosure Regulation (SFDR), proposing new social indicators, streamlined disclosure frameworks for adverse impacts, and additional product disclosures on greenhouse gas emissions reduction targets. The Final Report was published on December 4, 2023. Other revisions include improvements to "Do No Significant Harm" disclosures, simplified disclosure templates, and other technical adjustments regarding derivatives and sustainable investment calculations.

11. **Loan Market Association (LMA) updates sustainable lending glossary**

In December 2023, the LMA updated its sustainable lending glossary, produced in conjunction with the Loan Syndications and Trading Association and the Asia Pacific Loan Market Association. The glossary (which was first published in March 2020 and was last revised in August 2021) intends to assist the transparency of terms in the rapidly evolving sustainable lending market and provides an alphabetical list of terms, concepts, institutions, and agreements relevant to green and sustainable lending transactions.

12. **European Green Bonds Regulation published in Official Journal**

On November 30, 2023, the Official Journal of the EU has published Regulation (EU) 2023/2631 of the European Parliament and of the Council on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds. This Regulation lays down uniform requirements for issuers of bonds that wish to use the designation 'European green bond' or 'EuGB' for their environmentally sustainable bonds, and entered into force on December 2023, 2023, and will apply from December 21, 2024.

13. **EU finalises European Green Bond Regulations**

On November 30, 2023, Regulation (EU) 2023/2631 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds was published in the Official Journal of the European Union. The Regulation provides for uniform requirements for issuers of environmentally sustainable bonds who intend to designate their bonds as "European green bonds" or "EuGB". See our earlier update here.

14. **EU Commission publishes proposal for carbon certification framework**

On November 30, 2023, the EU Commission published its proposal for a new regulation establishing a voluntary EU certification framework for carbon removals. The proposal sets out quality criteria ("Qu.AL.ITY critera") for carbon removal activities that take place in the EU, rules for the independent verification of carbon removals, and rules to recognise certification schemes that can be used to demonstrate compliance with the EU framework.

The proposal is now under discussion by the European Parliament and the Council, with the Commission due to develop tailored certification methodologies for the different types of carbon removal activities based on the QU.A.L.ITY criteria, supported by an expert group which will meet in the first quarter of 2023.

15. **COP28: EU Parliament pushes for end of global fossil fuel subsidies by 2025**

On November 21, 2023, the EU Parliament adopted a resolution calling, among other things, for the EU and all parties at COP28 to end all direct and indirect fossil fuel subsidies as soon as possible, and by 2025 at the latest. The resolution also called for an end to all environmentally harmful subsidies as soon as possible and latest by 2027, at both EU and Member State levels, and called on Member states to improve their national reporting of fossil fuel subsidies and plan for their phase-out in the upcoming revisions of their national energy and climate plans.

16. **EU Parliament and Council agree to introduce "ecocide" offence**

On November 16, 2023, it was announced that the Parliament and Council have reached a provisional agreement on a new EU directive that will impose new criminal sanctions for environmental harm. The directive was first proposed in December 2021, to replace the existing Environmental Crime Directive 2008 and establish minimum rules that bring the existing criminal regime into alignment with the objectives of the EU's Green Deal.

The agreed directive will introduce "qualified offences" described by the Parliament as "comparable to ecocide", whereby stricter sanctions are imposed for intentional acts that caused destruction, irreversible, widespread and substantial damage, or long-lasting widespread and substantial damage to an ecosystem of considerable size of environmental value, or to a natural habitat within a protected site, or to the quality of air, soil or water.

Specific new offences include timber trafficking, illegal recycling of polluting components of ships, and serious breaches of legislation on chemicals.

The provisional agreement is due to be formally adopted by both the European Parliament and the Council. The press releases of the Commission, Parliament and Council are available here, here and here.

17. **European Parliament and Council agree on new EU Methane Regulation**

On November 15, 2023, it was announced that the European Parliament and Council have reached a provisional agreement on a EU new regulation to reduce energy sector methane emissions in Europe and in global supply chains. The regulation was first proposed in December 2021, under the banner of the European Green Deal, with the aim of preventing avoidable release of methane into the atmosphere and minimise methane leaks by fossil energy companies operating in the EU.

The EU Methane Regulation, in its agreed form, will impose obligations on companies in the oil, gas and coal sectors, including requiring oil and gas companies to carry out regular surveys of their equipment to detect and repair methane leaks on the EU territory within specific deadlines, banning routine venting and flaring by the oil and gas sectors and limiting venting from thermal coal mines from 2027, and requiring companies in all three sectors to carry out an inventory of closed, inactive, plugged and abandoned assets with a view to monitoring and mitigating their emissions as soon as possible.

The regulation also targets methane emissions related to imported oil, gas and coal into the EU, including by establishing a methane transparency database where data on methane emissions reported by importers and EU operators is made available to the public, and by requiring the Commission to establish methane performance profiles of countries and companies to allow importers to make informed choices on their energy imports.

The provisional agreement is due to be formally adopted by both the European Parliament and the Council. The press releases of the Commission and Council are available here and here.

18. **European Commission proposes postponement of pending European Sustainability Reporting Standards until June 2026**

On October 24, 2023, the Commission published a proposal for a Decision postponing the deadlines for adoption of the second tranche of European Sustainability Reporting Standards (**ESRS**) (i.e. the sector-specific standards) which underpin the disclosure requirements of the EU's new comprehensive sustainability rules in the Corporate Sustainability Reporting Directive (**CSRD**) . The current deadline is June 30, 2024, but the Commission is proposing a two-year delay until June 2026, in order to allow companies within the scope of the to focus on implementation of the first tranche of ESRS. These first-tranche standards were adopted on July 31, 2023 and are sector-agnostic, applying to all companies within scope of the CSRD. This is in response to a demand from the corporate sector.

The Commission also proposes that the adoption date for the ESRS to be used by certain non-EU companies with business in the EU be likewise postponed by two years, to June 2026.

The feedback period on the Commission proposal closes on December 19, 2023.

IV. NORTH AMERICA

1. **New York State Department of Financial Services (NYFDS) adopted guidance for New York State-regulated banking and mortgage institutions related to climate change risks**

On December 21, 2023, NYFDS adopted guidance aimed at assisting institutions with the management of material financial and operational risks from climate change. NYFDS has not currently set a timeline for implementing the guidance, but it will be issuing a request for information in 2024 in order to ascertain the steps regulated institutions are taking, or are planning to take, to identify, monitor, and control these risks.

2. **BlackRock, Inc. (BlackRock) sued by U.S. state for allegedly misleading ESG representations**

On December 18, 2023, Tennessee filed a consumer protection lawsuit in Tennessee state court against BlackRock, alleging the company had misled or made false representations to the state's consumers regarding the incorporation of ESG into its investment strategy.

3. **Commodity Futures Trading Commission (CFTC) proposes federal guidelines targeting voluntary carbon markets**

As reported in our recent client alert, on December 4, 2023, the CFTC issued proposed guidance focused on the trade of voluntary carbon credit derivative contracts listed on CFTC-regulated exchanges. The guidance is directed at such exchanges and provides factors for them to consider in light of applicable regulatory standards, including requirements designed to support quality standards and appropriate governance and validation, among other topics. The public has until February 16, 2024 to comment on the proposed guidance.

4. **U.S. Environmental Protection Agency's (EPA) adopts final rule to targeting methane and other air pollutants from the oil and natural gas industry**

On December 2, 2023, the EPA adopted a final rule consisting of several initiatives aimed at preventing an estimated 58 million tons of methane emissions between 2024 and 2038, a nearly 80% reduction of projected methane emissions without the rule. Among other things, the final rule will include new source performance standards to reduce methane and smog-forming volatile organic compounds from new or modified sources as well as emissions guidelines clarifying how states can use their existing program in plans for limiting methane emissions from existing sources.

A detailed summary of this final rule is summarized in our recent client alert.

5. **California AB 1305 author shares his intent for first reporting deadline**

In October, California adopted the "Voluntary Carbon Market Disclosures Act," which imposes website disclosure requirements on (1) business entities that market or sell voluntary carbon offsets within California and (2) entities operating in California that make certain sustainability claims (e.g., achieving net zero emissions, carbon neutrality, or significant emission reductions, among others), with additional disclosure obligations if such entities purchase or use voluntary carbon offsets sold in the state. The statute provides that the required disclosures must be "updated no less than annually," but does not specify when the first set of disclosures were required. The law became effective on January 1, 2024.

On November 30, 2023, the California Assembly member who authored AB 1305 submitted a letter to the Clerk of the Assembly stating his intention that the first annual disclosure should be posted by January 1, 2025, and to provide a more formal letter to the Assembly Daily Journal after the State Assembly reconvened in early January.

6. **EPA Office of Environmental Justice and External Civil Rights receives funding for environmental and climate justice community change grants**

On November 21, 2023, the Biden-Harris administration announced the funding of approximately $2 billion in the EPA's Community Change Grants through the Inflation Reduction Act. The funds are described as "the largest single investment in environmental justice in history" and are to be used to support the deployment of community-driven clean energy projects, bolster climate resilience, and strengthen communities' abilities to combat environmental and climate change challenges.

7. **Glass Lewis announces several new and revised ESG-related proxy voting policies**

On November 16, 2023, Glass Lewis published its updated voting policies for the U.S. The policies became effective on January 1, 2024. Noteworthy changes related to ESG topics include two new policies on cyber risk oversight and board oversight of environmental and social issues, and a revised policy on board diversity. The first new policy provides that, where a company has been materially impacted by a cyberattack, Glass Lewis may recommend votes against appropriate directors should Glass Lewis find the board's oversight, response or disclosures concerning cybersecurity-related issues to be insufficient or if they are not provided to shareholders. In addition, when evaluating the board's role in overseeing environmental and/or social issues, Glass Lewis will examine a company's committee charters and governing documents to determine if the company has codified a meaningful level of oversight of and accountability for a company's material environmental and social impacts. Glass Lewis also clarified that it will review a company's disclosures for a rationale or plan to address the lack of board diversity, including a timeline on intended appointments, in making voting recommendations.

8. **U.S. Federal Insurance Office (FIO) to collect information on homeowners' insurance to assess climate-related financial risk to consumers**

On November 1, 2023, the FIO published a public notice of its intention to collect zip-code-level insurance data from insurers as part of its effort to assess the possible impact of climate-related financial risks on Americans. Based on feedback to a prior proposal, the FIO revised its data collection request to reduce the estimated number of hours insurance companies need to comply with the request.

V. APAC

1. **Partnership for Carbon Accounting Financials (PCAF) and China-based Green Finance Forum of 60 (GF60) forms partnership to harmonise greenhouse gas accounting methodologies for financial institutions in China**

On December 21, 2023, PCAF announced that it has entered into a strategic partnership agreement with GF60 which is aimed at harmonizing greenhouse gas accounting methodologies for financial institutions in China, and enhancing the capability of such financial institutions to calculate the greenhouse gas emissions of their financial activities. PCAF will assist the Chinese financial sector in implementing PCAF standards and it observed that the collaboration will ultimately help to promote China's progress in decarbonization.

GF60 is a non-profit international green finance and sustainability platform operated by the Shanghai Jinsinan Institute of Finance.

2. **First ESG Disclosure Guidance for China's insurance industry released**

At a press conference held in Beijing on December 13, 2023, the Insurance Association of China (IAC) launched the Chinese insurance industry's first ever Guidelines for Environmental, Social and Governance Information Disclosure by Insurance Institutions. Expected to help improve the quality of ESG disclosures in the insurance industry, the Guidelines set standards for insurance companies to disclose ESG information, including providing guidance both on disclosure content and disclosure methods.

The self-regulatory Guidelines take reference from international ESG disclosure standards such as the Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), and the Stock Exchange of Hong Kong, whilst seeking to incorporate the unique characteristics of China and the Chinese insurance industry such as disclosure requirements for rural revitalization, insurance agent management and enhancement, sustainable insurance products, and green investment of insurance funds.

3. **Philippines relaxes rules to encourage lending for green projects**

On December 13, 2023, the Philippine central bank, Bangko Sentral ng Pilipinas, announced that it will temporarily allow banks to set aside lower reserves for sustainable bond sales and increase their lending capability. In particular, the reserve requirement rate for green, social, sustainability, and other sustainable bonds issued by banks will be gradually reduced from the current rate of 3% to 0%: the rate will fall to 1% in the first year after the change takes effect, before being cut to 0% in the second year. The central bank has also approved an additional 15% single borrower limit on loans to finance sustainable projects, including transition to decarbonization. Both measures will be in place for 2 years, subject to review, and constitute part of the central bank's 11-point Sustainable Central Banking Strategy established to combat climate change.

4. **Thailand Finance Ministry and investment management industry launches 22 new mutual funds to support Thailand's ESG goals**

At a joint press conference on December 8, 2023, Thailand's Ministry of Finance, the Federation of Thai Capital Market Organizations (FETCO), Thailand's Securities and Exchange Commission (SEC), the Stock Exchange of Thailand (SET) and Thailand's Association of Investment Management Companies (AIMC) announced the launch of a new Thailand ESG Fund (Thai ESG Fund). The Fund consists of 22 new mutual funds with a fundraising target of 10 billion baht by the end of the year to accelerate sustainable development in Thailand, and progress towards carbon neutrality and net-zero greenhouse gas emissions. All Thai ESG Funds will largely invest in domestic assets such as debt securities or stocks of listed companies that meet disclosure requirements for emissions disclosures and reduction targets, and that are themed around environmental protection or sustainability.

5. **Monetary Authority of Singapore (MAS) releases Code of Conduct for ESG Rating and Data Product Providers**

On December 6, 2023, MAS published both its finalised Singapore Code of Conduct for ESG Rating and Data Product Providers and an accompanying Checklist for such providers to self-attest their compliance with the voluntary Code. It builds upon the recommendations from the International Organisation of Securities Commissions (IOSCO) for good practices by ESG rating and data product providers. A list of providers who have publicly adopted the Code will be available on the International Capital Market Association's (ICMA) website, subject to the provider notifying the ICMA of their publication.

The industry Code seeks to establish baseline industry standards for transparency in methodologies and data sources, governance, and management of conflicts of interest that may compromise the reliability and independence of the products.

MAS are implementing the industry Code on a 'Comply or Explain' basis: ESG rating and data product providers are to state they comply with the principles and best practices set out in the Code or explain why they do not. Third party assurance or audit may also be sought by providers for their self-attestation on the Checklist. Providers are encouraged by MAS to disclose their adoption of the Code and publish a completed Checklist on their websites within 12 months of the Code's publication.

6. **Monetary Authority of Singapore taxonomy for sustainable finance**

On December 3, 2023, the Monetary Authority of Singapore (MAS) launched the Singapore-Asia Taxonomy for Sustainable Finance, which sets out detailed thresholds and criteria for defining green and transition activities that contribute to climate change mitigation across eight focus sectors. Transition activities are those that do not meet the green thresholds now but are on a pathway to net zero or contributing to net zero outcomes. The taxonomy was drawn up with support and recommendations from the Climate Bonds Initiative. Whilst aimed at providing guidance for Singapore-based financial institutions, asset owners and investment managers, it is also expected to be used by companies, regulators, policymakers and other financial market participants seeking to identify and allocate capital to "green" and transition activities.

7. **Hong Kong Stock Exchange and China Beijing Green Exchange sign MOU to promote green finance**

On November 28, 2023, Hong Kong Exchanges and Clearing Limited (HKEX) announced the signing of a Memorandum of Understanding (MOU) with the China Beijing Green Exchange (CBGEX) – the designated trading platform for the Emissions Trading Scheme under the Beijing Municipal Government – to explore cooperation in areas such as building an ESG ecosystem, promoting green and sustainable finance, and contributing to the green development of the Belt and Road Initiative.

HKEX and CBGEX will be jointly exploring cross-border sustainable development, with a focus on addressing China's growing demand for green infrastructure investments and its shift to a low-carbon economy. Both exchanges will also research green and transition finance, collaborate on capabilities building for ESG standards and information disclosure, and explore opportunities in the carbon market.

8. **Hong Kong postpones mandatory climate disclosures for listed issuers**

On November 3, 2023, the Hong Kong Stock Exchange (HKEX) announced that it would postpone the implementation of proposed Listing Rule amendments on climate-related disclosures from January 2024 to January 2025, after seeking market feedback on the proposed amendments (consultation paper here). The proposed new rules were informed by the new IFRS S2 Climate-related Disclosures promulgated by the International Sustainability Standards Board (**ISSB**). The HKEX is postponing implementation in order to allow issuers more time to familiarize themselves with the new climate-related disclosure requirements and to give itself time to take account of recommended approaches on scalability and phasing-in of disclosure requirements which the ISSB is providing global regulators in its upcoming ISSB Adoption Guide.

9. **Australia announces Sustainable Finance Strategy**

On November 2, 2023, the Australian Treasury released a consultation paper outlining its Sustainable Finance Strategy, which is aimed at mobilizing private investment needed in coming decades, enabling Australian firms to access the capital needed to finance their own transitions, ensuring that financial opportunities and risks presented by climate change are identified and well managed, and aligning Australia's capital markets with emerging international standards on sustainable finance. This is consistent with the Australian government's adoption of a "climate first" approach to sustainable finance reforms.

Key proposals cover:

- **Reporting**: Implementing mandatory climate reporting requirements for large companies and financial institutions from July 2024 onwards, to ensure standardized disclosure of climate and other sustainability-related financial opportunities and risks.

- **Taxonomy**: Developing an Australian sustainable finance taxonomy, to provide a comprehensive medium-term framework for understanding how certain economic activities and investments align with good sustainability outcomes, and to provide a consistent set of metrics for firms and investors to support credible transition planning.

- **Labelling**: Improving sustainability labelling for investment products, to provide more consistent information on design and sustainability characteristics of products labelled as "green", "sustainable", "ESG", or similar.

- **Sector Guidance on Emission Reduction**: Developing national sectoral emissions reduction pathways, to provide firms and investors with clearer policy guidance on anticipated emissions reductions trajectories and priorities in key sectors, supporting more rigorous corporate transition planning and increasing accountability.

The consultation process ended on December 1, 2023 and the results will inform ongoing policy development and regulatory engagement on sustainable finance in Australia.

10. **ICMA to form a working group to develop an ESG ratings and data providers code of conduct for Hong Kong Securities and Futures Commission**

On October 31, 2023, the International Capital Market Association (**ICMA**) announced that it is convening a working group to lead the development of a voluntary code of conduct for ESG ratings and data product providers based in Hong Kong.

The code will be informed by the recommendations from the International Organization of Securities Commission's report on "Environmental, Social and Governance Ratings and Data Product Providers", and the working group is expected to release its draft code of conduct for public consultation in early 2024.

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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