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CLEARY GOTTLIEB

27 February 2023

Climate and the Financial Sector

This weekly newsletter highlights climate-related regulatory, litigation and enforcement developments relevant to the financial sector.

General

22 February 2023 [International] – **UNPRI publishes a guide to filing impactful shareholder resolutions**

The guide provides investors with information on how to use shareholder resolutions to drive improvements at investee companies on ESG issues. It includes guidance on shareholder rights and eligibility, drafting and filing or co-filing a shareholder proposal, post-filing engagement, ways to build support for a shareholder proposal and a post-vote engagement plan. Country-specific factsheets are also provided, including for in France, Germany or the UK. [link - link]

22 February 2023 [UK] – **The Pensions Regulator launches a new campaign to ensure trustees meet their ESG and climate change reporting obligations**

Over the coming months The Pensions Regulator (TPR) will assess whether trustees in scope have published a statement of investment principles, including consideration of financially material ESG and climate change factors, and an implementation statement. It will then review a sample of statements to provide best practice for the sector. TPR will also publish a statement on the annual climate change report (TCFD) after receiving TCFD reports from relevant schemes. [link]

23 February 2023 [International] – **LMA, APLMA and LSTA update green, social and sustainability-linked loan principles and guidance**

The Loan Market Association (LMA), the Asia Pacific Loan Market Association (APLMA) and the Loan Syndications and Trading Association (LSTA) have jointly published updated Green Loan Principles (GLP), Social Loan Principles (SLP) and Sustainability-Linked Loan Principles (SLLP), together with updated guidance. The update reflects market developments in global sustainable finance markets and emphasises transparency, accuracy and integrity of disclosure and reporting. The updated GLP, SLP and SLLP will apply to loans originated, extended or refinanced on or after 9 March 2023. [link - link - link]

23 February 2023 [UK] – **The Green Technical Advisory Group advises on UK Green Taxonomy**

The Green Technical Advisory Group (GTAG), an expert group set up by the UK Government to advise on the design and implementation of the UK Green Taxonomy, publishes a report entitled *Promoting the international interoperability of a UK Green Taxonomy*. In this report, the GTAG makes 10 recommendations to promote harmonisation of the UK's taxonomy with others around the world, without compromising on robustness or science. The recommendations include (i) adopting the same broad concepts, methodologies and metrics as the EU taxonomy and advocating that other non-taxonomy jurisdictions do the same, (ii) streamlining language and requirements to maximise interoperability with non-EU jurisdictions, and (iii) promoting international comparability by adopting green taxonomy-related rules and guidance for subsidiaries and assets held in other jurisdictions. [link]

Asset management

20/21 February 2023 [EU] – **Responses to ESMA's consultation on proposed guidelines on funds' names using ESG or sustainability-related**

The European Securities and Markets Authority (ESMA) is seeking input from the financial industry on proposed guidelines for fund names using ESG or sustainability terms. ESMA's consultation, which opened on 18 November 2022, closed on 20 February 2023. Notable contributions include the following:

1. the European Fund and Asset Management Association (EFAMA) suggests that ESMA delays its proposed guidelines until the definition of sustainable investment is clarified and interoperability issues between the guidelines and other EU regulations are resolved. EFAMA also has concerns about the proposed numerical threshold approach and believes that funds using 'sustainable' should be required to reflect sustainability in their investment objective. Finally, it emphasises that a number of important elements still need to be addressed if ESMA is to proceed with the threshold approach. [link]

2. the International Swaps and Derivatives Association (ISDA) emphasises that a common cross-industry methodology for calculating the minimum proportions of sustainable investments for derivatives transactions is essential to maintain ESMA's objective of promoting standardised disclosures, and requests that ESMA provide sufficient time for the industry to reach consensus on the calculation thresholds for derivatives. [link]
3. the International Capital Market Association (ICMA) believes that to tackle greenwashing it is necessary to distinguish between three main types of fund labels based on their sustainability objective, which should then be reflected in the fund names. ICMA proposes a distinction between funds that (i) focus on ESG integration, (ii) include companies or financial instruments that are sustainable as measured by their impact on the environment and society, and (iii) contribute to measurable improvement. [link]
4. the Securities and Markets Stakeholder Group (SMSG) considers that the proposed quantitative threshold approach may be confusing for investors as it adds a threshold for sustainable investment while the definitions of the concepts and the underlying data are not yet finalised. It believes that a two-step approach (qualitative and then quantitative) would be more appropriate. SMSG sets out existing criteria that could be used to have the right to use an ESG term in the name (e.g. inclusion of thematic investments on an ESG theme, engagement strategies, relative rating improvement approach). [link]

23 February 2023 [France/EU] – **The AMF urges the European Commission to revise the SFDR without delay**

The European Commission (EC) acknowledges that the Sustainable Finance Disclosure Regulation (SFDR) needs to be improved as its lack of clarity creates opportunities for greenwashing. The *Autorité des Marchés Financiers* (AMF) supports the EC's intention to carry out a comprehensive assessment of the SFDR and then put the proposal up for review. However, it is concerned that failure to act soon will put significant pressure on national regulators to provide clarity and fears that each regulator may do so on its own in a disorderly manner. [link]

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