CLEARY GOTTLIEB

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Climate and the Financial Sector

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

General

27 September 2023 [EU] – **ESRB Advice on Prudential Treatment of Environmental and Social Risks**

The European Systemic Risk Board (ESRB) has published its advice on the prudential treatment of environmental and social risks. This advice considers the prudential treatment from a systemic risk perspective, rather than from a microprudential risk management perspective. The ESRB highlights the specificity of climate change risks, which are likely to become an important driver of broader environmental and social risks. The ESRB notes that there have already been a number of severe weather events and that these events highlight the uncertainty and riskiness of the environment in which the financial system operates. In this context, the ESRB notes that the traditional risk management methods have shortcomings and may not be adequate to capture the full range of climate-related financial risks. Therefore, the ESRB believes that environmental and social risks need to be considered from a macroprudential perspective. The ESRB notes that the existing macroprudential framework can be used to address climate risks, in particular through systemic risk buffers (SyRBs) and borrower-based measures (BBMs). However, the ESRB stresses the need for targeted adjustments. The ESRB concludes that "*the immediate priority must be to consider how existing micro- and macroprudential tools can be used, and how this can be done* *consistently and transparently, both in the EEA and globally through the Basel Committee on Banking Supervision*". [link]

13 September 2023 [Global] – **Speech on Changes To the BCBS Core Principles for the Treatment of Climate Risks**

The Secretary General of the Basel Committee on Banking Supervision (BCBS) gave a speech at the Eurofi Financial Forum outlining proposed changes to the BCBS Core Principles, which are subject to a consultation. One of the proposed changes to the standard relates to climate-related financial risks. The proposed changes would improve both supervisory practices and banks' risk management. The BCBS expects banks to have a better understanding of the interactions between climate and financial risks and to take into account the fact that risks can materialize over different time horizons. The public consultation on the changes to the BCBS Core Principles is expected to close in October 2023. [link]

25 September 2023 [France] – **The AMF Commits To Promoting Sustainable Finance**

The French *Autorité des marchés financiers* (AMF) confirms in a publication on its website that sustainable finance is an integral part of all of its mandates and activities. The AMF also reiterates its priorities in the area of sustainable finance, namely to support issuers in implementing the EU taxonomy and new sustainability reporting standards, to clarify regulatory requirements, and to promote data quality. [link]

26 September 2023 [France] – **ACPR Chair Pledges Focus on Transition Planning.**

In an interview with Revue Banque, Ms. Nathalie Aufauvre, Chairwoman of the ACPR, stated that the transition plans of financial institutions will be particularly scrutinized by the regulator. The ACPR Chair recommends that transition plans be integrated into Pillar 2, as part of the annual supervisory review and evaluation process (SREP) of financial institutions. The ACPR calls for the integration of climate risk into existing supervisory areas such as governance, business model and risk management. [link]

28 September 2023 [EU] – **ESMA Reaffirms Its Role in Sustainable Finance in Its 2024 Annual Work Program**

In its 2024 annual work program, the European Securities and Markets Authority (ESMA) states that it will continue to implement the priorities set out in its Sustainable Finance Roadmap 2022-2024 (here) by (i) analyzing and addressing greenwashing risks, (ii) providing training and guidance to national supervisors on sustainable finance, and (iii) developing ESG market monitoring indicators. In addition, key objectives set out in the annual work program include, in particular, contributing to the financing of the EU's transition to a more sustainable economy, promoting effective and consistent integration of sustainability factors into supervisory and regulatory activities, and (iii) monitoring of ESG market developments and climate risks. [link]

Asset management

28 September 2023 [EU] – **ESAs Publishes its Annual Report on Principal Adverse Impact Under SFDR**

The Joint Committee of the European Supervisory Authorities (ESAs) has published its second annual report on the extent of voluntary disclosure of principal adverse impact (PAI) under Article 18 of SFDR. This report follows the first report published in July 2022, in which the ESAs concluded that the level of voluntary disclosure varies significantly across jurisdictions. In the 2023 report, the ESAs launched a survey to collect information on the current state of voluntary disclosure of PAI at the entity level under the SFDR. The ESAs highlight that while there are still a significant number of differences in disclosure requirements across jurisdictions, the results of the survey show an overall improvement in the use of voluntary disclosure. For example, the ESAs note that disclosures are clearer and easier to find on companies' websites. According to the ESAs, there is room for improvement, particularly in the explanation of non-consideration of PAIs and in the disclosure of the degree of alignment with the Paris Agreement. The future versions of the report will include an assessment of the PAI disclosure template and the disclosure of engagement policies. [link]

Insurance

28 September 2023 [UK] – **Pensions Regulator Sanctions the Failure To Publish a Report on Climate Change**

The Occupational Pension Schemes Regulation requires pension schemes to publish a climate change report. This climate change report must be publicly available and published within seven months of the end of the pension scheme's financial year. For the first time, the Pensions Regulator has fined a pension scheme for failing to publish this report. Applying its policy on financial penalties, the Pensions Regulator has decided to impose a fine of £5,000. [link]

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