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.

EU Updates

General

15 November 2022: European Supervisory Authorities publish a call for evidence on better understanding "greenwashing"

In light of increasing greenwashing risks, the European Commission earlier this year requested input from the three European Supervisory Authorities (ESAs) – EBA, EIOPA and ESMA – relating to greenwashing risks and supervision of sustainable finance policies. In this context, the ESAs, on 15 November, published a call for evidence on greenwashing. The call for evidence seeks input on potential greenwashing practices in the whole EU financial sector (including banking, insurance and financial markets), as these may affect all segments of the sustainable investment value chain. It seeks input on sustainability-related claims regarding both entities and products. The ESAs invite feedback to be provided by 10 January 2023; this will feed into the ESAs' progress report (expected for May 2023) and final report (expected for May 2024). (here)

15 November 2022: Financial Stability Board and Network for Greening the Financial System publish report highlighting data gaps as key challenge for climate scenario analysis

On 15 November, the Financial Stability Board (FSB) and the Network for Greening the Financial System (NGFS) published a joint report on climate scenario analyses undertaken by financial authorities to assess climate-related financial risks. The report is part of FSB and NGFS's work to better understand financial vulnerabilities and assess the implications of climate change on the financial sector. Scenario analysis is considered a critical tool for assessing potential implications of climate change; however, due to the heterogeneity in the methodologies, data used or sectors considered by the authorities across different jurisdictions, it is difficult to compare the results of the climate scenario analysis exercises and translate the findings into micro- or macro-prudential policies. Consequently, these climate scenario analysis exercises may underestimate the impact of climate change. The report (i) provides an overview of scenarios, models, data and metrics used in climate scenario analysis exercises, (ii) attempts to evaluate the implications of climate-change-related developments for the financial system as depicted in climate scenarios, and (iii) describes the main identified data gaps and approaches for addressing them. The report concludes that data gaps remain a key challenge for climate scenario analysis; addressing this gap will require further work in terms of global initiatives and cross-border cooperation. (here)

16 November 2022: ISSB votes in favour of making companies spell out climate transition plans

On 15 – 16 November, the International Sustainability Standards Board (ISSB) convened to discuss, amongst other things, climate-related disclosures – specifically, the feedback on the ISSB's draft climate reporting plans published in March. According to Bloomberg, the ISSB unanimously voted to make firms (i) "spell out their plans to cut emissions sufficiently to meet the Paris Agreement goals", and (ii) state the scope of their climate targets. The ISSB's climate and general disclosure reporting rules are expected to be finalised by the end of 2022 and to be published in 2023. (here and here)

Banks

16 November 2022: Fabio Panetta (ECB) gives speech on green transition, emphasising that shift away from fossil fuels need not lead to higher inflation

On 16 November 2022, Fabio Panetta, member of the ECB's Executive Board, gave a speech on the need to shift to green sources of energy and away from a high dependence on fossil fuel. Panetta explored the implications of green transition for energy prices: he argued that "the green transition need not lead to higher inflation"; indeed, it may help reduce inflationary pressures and "increase the European economy's resilience to fossil fuel price spikes and supply disruptions". This would require public policies that "compress the demand for fossil fuels and stimulate the production of cheaper renewable energy sources". In taking such policy action, a common European approach is "more likely to deliver the necessary reduction in energy intensity, protect our energy security and finance the investments required". (here)

Asset Managers / Funds

7 November 2022: Alternative Credit Council publishes ESG Integrated Disclosure tool to help improve private borrowers' ESG reporting

ESG Integrated Disclosure Project (ESG IDP) is an industry initiative formed by the Alternative Credit Council (the private credit affiliate of the Alternative Investment Management Association (AIMA)), the Loan Syndications and Trading Association (LSTA), and the United Nations-supported Principles for Responsible Investment (PRI), in co-operation with a group of leading alternative asset managers and credit investors. The goal of the ESG IDP is to promote greater harmonisation and consistency of disclosure of key ESG indicators by borrowers in private credit and syndicated loan transactions. On 8 November, the ESG IDP published its "Integrated Disclosure Template". The template is a set of general and industry-specific questions, which may be used in both sponsored and non-sponsored transactions. These questions are designed to support companies in developing their ESG-reporting capabilities and providing a consistent baseline of information. This, in turn, would enhance investors' ability to identify industry-specific ESG risks in their credit portfolios and compare meaningful data across alternative asset managers more consistently. (here)

11 November 2022: European Investment Fund commits EUR 250 million to mobilise climate-related investment

At the COP27 climate conference, the European Investment Fund (EIF) signed investments committing EUR 250 million with five equity funds to mobilise EUR 2.5 billion of climate action and environmental sustainability investment across Europe. The new financing contributes to the European Green Deal and REPowerEU, which aim to support Europe's path to net zero. The five funds will include Growth Blue Fund I, PureTerra Ventures, Zintinus Fund I, SUMA Capital Climate Impact Fund III and Eiffel Transition Infrastructure Fund. These funds will invest in food innovation, renewable energy, energy efficiency, the circular economy, blue economy and water. **(EC press release: here)**

14 November 2022: European Supervisory Authorities announce delay to their review of the SFDR RTS

On 1 January 2023, a new set of regulatory technical standards (RTS) will enter into force, supplementing the Sustainable Finance Disclosure Regulation (SFDR) in respect of content and presentation of certain information required to be disclosed in connection with sustainability-related financial products. On 14 November, the ESAs announced that their review of the SFDR RTS, originally due by 28 April 2023, will be delayed by up to six months. The delay is due to (1) the large number of expert bodies the ESAs are expected to consult, (2) the substantial and technically demanding nature of the review, and (3) the fact that substantial issues were not fully addressed in the original RTS and that the ESAs intend to draw on the discussions relating to the implementation of the current requirements to inform their work on the new RTS. (here)

17 November 2022: European Supervisory Authorities publish new set of Q&As on SFDR RTS

On 17 November, the ESAs published a new set of questions & answers relating to the SFDR RTS. The Q&As cover the following areas: (i) current value of all investments in principal adverse impacts (PAI) and Taxonomy-aligned disclosures; (ii) PAI disclosures; (iii) financial product disclosures; (iv) multi-option products, (v) Taxonomy-aligned investment disclosures; and (vi) financial advisers and execution-only financial market participants (FMPs). (here)

18 November 2022: ESMA launches consultation on use of ESG or sustainability-related terms in funds' names

The recent growth of investor demand for, and supply of, investment funds incorporating ESG factors has increased the risk of "greenwashing". One area where such risk may arise is the naming/labelling of funds when sufficient sustainability standards commensurate with such name/label have not been met. In May, ESMA had published a supervisory briefing on sustainability risks and disclosures in the area of investment management, which contained some principles-based guidance for funds' names with ESG and sustainability-related terms. On 18 November, ESMA published a consultation aiming to develop further guidelines in relation to this issue. ESMA's proposals include the following: (i) a general requirement that funds' names should not be misleading; (ii) quantitative thresholds requiring certain proportions of funds' investments to be aligned with specific terms used in funds' names (e.g., when a fund uses "ESG" in their name, 80% of its investment must be used to meet its ESG objectives; in addition, when it uses "sustainable", 50% within the 80% must be allocated to sustainable investments as defined in the SFDR); (iii) minimum safeguards necessary for the remaining, non-aligned investments of the funds; (iv) certain additional criteria for funds designating an index as a reference benchmark or using the word "impact" in their name. ESMA invites feedback to be provided by 20 February 2023. (here)

Insurance

18 November 2022: EIOPA underlines its commitment to help tackling climate change and announces future sustainable finance initiatives

EIOPA published a press release in which it "underlines its commitment to supporting the insurance and pensions sectors in tackling climate change" and outlines upcoming initiatives. These initiatives include: (i) providing guidance on the application of the SFDR; (ii) conducting stress tests to assess the resilience of Europe's occupational pensions sector against a climate change scenario; (iii) consulting (before the end of this year) on a dedicated prudential treatment of environmental and social objectives under Solvency II; (iv) publishing (in December) the first European-wide dashboard on the natural catastrophe insurance protection gap. EIOPA will present a full overview of the latest developments in its work on sustainable finance at its Sustainable Finance Conference on 7 December. (here)

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