CLEARY GOTTLIEB

7 November 2022

Climate and the Financial Sector

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

EU Updates

General

20 October 2022: The ISSB unanimously votes to require Scope 3 greenhouse gas emissions disclosure

The International Sustainability Standards Board of the IFRS Foundation (ISSB) decided to call for Scope 3 emission disclosures, following its consultation on proposed sustainability-related disclosure standards. When adhering to ISSB standards, companies will therefore need to make disclosures of Scope 1 emissions (direct emissions from a company), Scope 2 emissions (indirect emissions from electricity purchased and used) and, crucially, Scope 3 emissions (all other indirect emissions from the value chain – including the operations of suppliers, and the use of the products that are distributed, or the activities financed or insured, by the company). The ISSB is seeking to complete deliberations around the end of 2022, with a view to issuing finalised standards in early 2023 (here).

28 October 2022: ESMA issues a public statement on European

Common Enforcement Priorities

The European Securities and Markets Authority (ESMA) issued its annual Public Statement on European Common Enforcement Priorities. Macroeconomic environment and climate-related matters in financial and non-financial information (including transition plans) are included amongst this year's priorities. In particular, there is an emphasis of comprehensive disclosures on Taxonomy eligibility and alignment by non-financial undertakings and the need for financial undertakings to prepare for Taxonomy alignment reporting in 2024. National supervisors will incorporate ESMA's recommendations into their examinations when they assess the 2022 annual financial reports of listed companies, and take corrective actions where appropriate. ESMA will publish a EU-wide assessment report in spring 2024 (here).

1 November 2022: GFANZ releases pan-sector framework for financial institution transition

The Glasgow Financial Alliance for Net Zero (GFANZ) released its recommended pan-sector framework for Financial Institution Net-Zero Transition Planning (here). The framework is addressed at investments, financing, insurance, and the related products and services necessary to support real-economy net-zero transition. It outlines how to develop a transition plan as a set of strategic goals, implementing actions and accountability mechanisms, that turn net-zero commitments into action. Further, to facilitate measuring and reporting on institutions' progress, GFANZ has published guidance on measuring portfolio alignment (here). Whilst seeking to promote finance in playing an essential role in supporting the transition, GFANZ keeps urging policymakers to close the policy gap through economy-wide transition planning, and identifies where the international financial architecture must be reformed fundamentally to support a just global transition (here).

2 November 2022: the AMF published its recommendation regarding the publication of financial accounts

On 2 November 2022, the French *Autorité des marches financiers* (AMF) published its recommendation regarding the publication of financial accounts for 2022. On climate change, the AMF recommends that boards and audit committees become more involved in analysing the effects of climate change on the company's business, in preparing and monitoring the information communicated to the market and in ensuring consistency between financial and non-financial information. In particular, the regulator invites companies to provide more details on the assumptions used to measure the effects - or not - of climate risk in their accounts (here).

3 November 2022: EU governments aim for agreement next month on corporate sustainability due diligence directive

The draft EU Corporate Sustainability Due Diligence Directive, adopted by the European Commission on 23 February 2022, seeks to foster sustainable corporate behaviour by obliging large EU and foreign companies to conduct due diligence on any negative environmental and human rights impacts, across their value chains. EU governments are reviewing the proposed directive, and are in the process of finalising amendments next month, including in respect of the scope of application of the new rules to foreign companies, accountability and civil liability of businesses. For example, EU governments have agreed to set the net turnover *from the EU* as the only criterion for applying the new corporate sustainability due-diligence rules to foreign companies instead of the worldwide net turnover. The text of the agreement is still under negotiation and may change until EU governments officially vote it through (here).

Banking

2 November 2022: ECB concludes thematic review on the management of climate-related risks by EU banks

The European Central Bank (ECB) wants to put banks on schedule to meet climate goals (here). The review highlights that, despite improvements, banks still need to better identify and manage climate and environmental risks. Further, the ECB sets deadlines for banks to progressively meet all supervisory expectations by the end of 2024. The ECB also published a compendium of good practices observed in some banks, demonstrating that swift progress is possible and aiming to facilitate the improvement of practices across the sector (here). Frank Elderson, Member of the ECB's Executive Board, emphasised separately that banks must adapt the way they do business to account for climate-related and environmental risks (here).

Asset Management

2 November 2022: the classification of funds is scrutinised

Since the European Union's Sustainable Finance Disclosure Regulation (SFDR) came into force in March 2021, asset managers have been required to classify funds sold in the EU as Article 6, 8, or 9, depending on their sustainability objectives. According to a report by Morningstar (here), 383 funds that altered their SFDR status: 342 were upgrades, the vast majority (315) of which moved to Article 8 (funds claimed to promote environmental/social characteristics) from Article 6 (funds claiming no ESG characteristics), while seven upgraded to Article 9 (funds claimed to have "a sustainable objective") from Article 6 and 20 funds reclassified to Article 9 from Article 8; meanwhile, 41 downgraded to Article 8 from Article 9. Some of the reclassifications emerged ahead of the upgraded disclosure regime SFDR Level II coming into effect in January 2023, and as a result of the combination of the EU Commission and European Supervisory Authorities recently indicating that Article 9 funds should only make sustainable investments based on the definition provided by Article 2 No. 17 of the Disclosure Regulation, only with exception to cash and assets used for hedging purposes (here).

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