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LEGISLATIONS DIRECTORY: INSIGHTS ON ALL MAJOR SUSTAINABILITY LEGISLATIONS (2023 EDITION)

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EXECUTIVE SUMMARY

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With more countries committed to a net-zero ambition, the number of mandatory ESG disclosures which organizations must adhere to has risen. The scope of ESG-related disclosures is expanding across borders, influencing organizations who are not headquartered in the country in which the regulatory body is domiciled. An overview of some of the key ESG-related disclosures across the EU, UK, U.S. and Asian Pacific (APAC) region will help to gauge a high-level understanding of the disclosure requirements currently or imminently set to impact businesses.

Disclaimer: the following content is accurate as of April 2023. Content may be revised in the future based on updated regulations/directives/legislations/acts.

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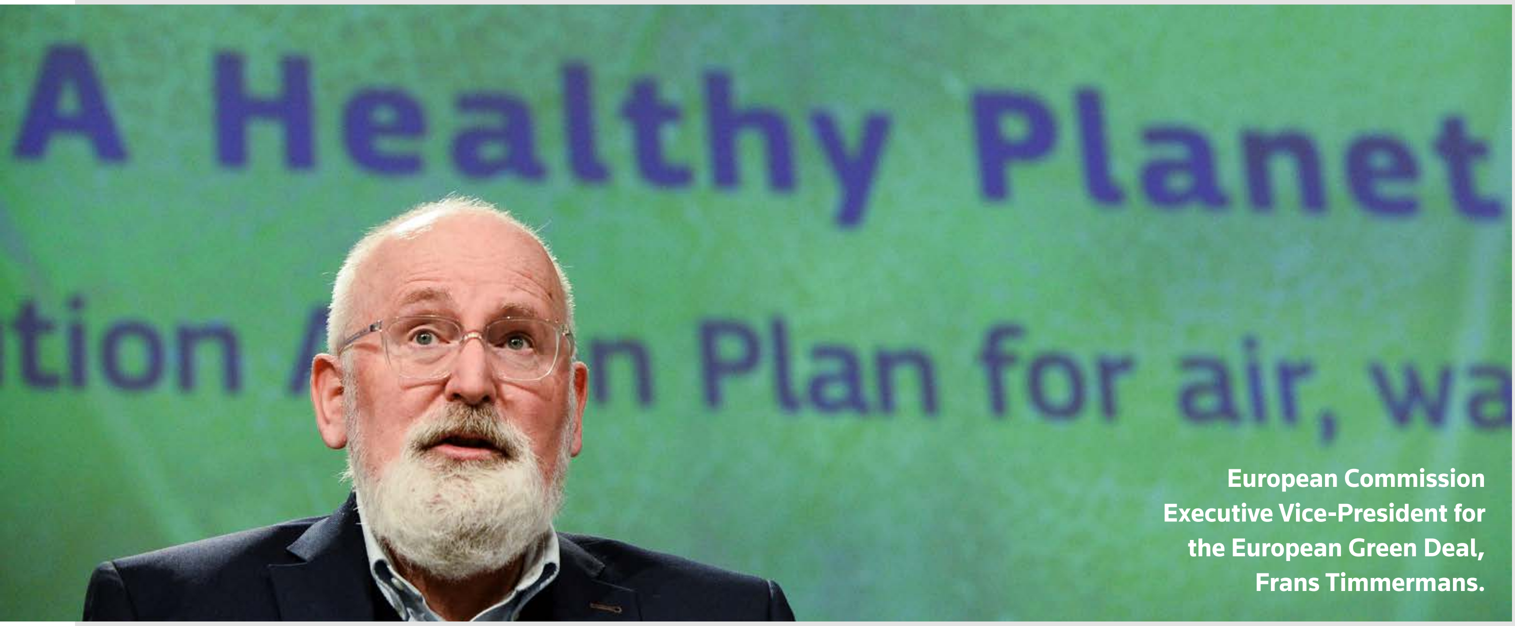
WHY IT MATTERS:

Organizations need to understand which ESG reporting obligations they must adhere to, especially if operating across multiple jurisdictions. With a growing number of regulations, directives, acts, frameworks and standards, each with varying requirements, scope and implementation dates, it is difficult to stay abreast of the mandatory disclosures required of each organization.

ACTIONABLE INSIGHTS:

For organizations considering their ESG disclosures, the following may be applicable depending on the jurisdiction of operation.

- With the EU leading the way on ESG legislation, organizations need to prepare in advance to report on a growing number of requirements: the European Green Deal continues to enhance ESG reporting rigor. The Corporate Sustainability Reporting Directive (CSRD) and Sustainable Finance Disclosure Regulation (SFDR) are already in force, with the Corporate Sustainability Due Diligence Directive (CS3D) set to follow
- Evaluate the additional disclosures required under the UK's Financial Conduct Authority's (FCA) Sustainable Disclosure Requirements (SDR): organizations within scope need to include double materiality disclosures, with the related Taskforce on Climate-related Financial Disclosures (TCFD) requirements already in force
- Scope 3 reporting is likely to be required under the Securities and Exchange Commission (SEC) climate proposal: until now, many U.S. and international companies have only been required to report their Scope 1 and 2 emissions and may therefore need to begin measuring the full scope of their greenhouse gas (GHG) emissions
- Assess the multitude of ESG disclosure requirements across the APAC region: organizations need to familiarize themselves with country specific ESG requirements due to the absence of a single regulatory body



European Commission Executive Vice-President for the European Green Deal, Frans Timmermans.

JOHANNA GERON/REUTERS

EUROPEAN UNION

EU CORPORATE SUSTAINABILITY REPORTING DIRECTIVE (CSRD)

OVERVIEW:

The CSRD is being introduced as part of the European Green Deal, which mandates companies to report on their:

1. Environmental matters
2. Social matters (including employee treatment)
3. Respect for human rights
4. Anti-corruption and bribery
5. Diversity on company boards [1]

The directive introduces double materiality assessments to ensure disclosures are based on the full lifecycle of products. Those reporting under the CSRD will need to digitally tag disclosures and be in a machine-readable format. Finally, limited third-party assurance will be required, which will drive investor and other stakeholder confidence that data has been gathered using a sufficiently robust process.

WHY IS THIS DIRECTIVE NEEDED?

The CSRD has been created to replace the Non-Financial Reporting Directive (NFRD). The legislation aims to expand the level of detail within ESG disclosures. The information being disclosed under the NFRD was considered insufficient in supporting the decisions of investors and other stakeholders, especially with multiple reporting frameworks being deployed [2].

WHO IS IMPACTED BY THIS DIRECTIVE?

Compared with its predecessor, the NFRD, the CSRD has broadened the scope of which companies will be required to report. EU-based companies* and companies with significant operations in EU jurisdictions will be obliged to adhere to CRSD rules.

Specifically, the CSRD will apply to:

- Large public interest entities with 500 or more employees (who are already subject to NFRD disclosures)
- Large companies that meet two out of three of the following: 250 or more employees, net turnover of over 40 million euros ($42 million) and a balance sheet total of over 20 million euros ($21 million)
- Small and medium enterprises (SMEs) listed on EU regulated markets, with the exception of micro undertakings, that meet two out of three of the following: 10 or fewer employees, a maximum turnover of 700,000 euros ($0.75 million) and a maximum of 350,000 euros ($0.37 million) total assets
- Non-EU companies with over 150 million euros ($158 million) net turnover and a subsidiary within the EU falling in scope of the EU companies (as outlined above) or a branch within the EU generating over 40 million euros ($42 million) net turnover [2]

** Including the EEA (European Economic Area)*

TIMELINE:

- **December 2022:** publication of the CSRD requirements
- **January 2023:** CSRD entered into force. Those already reporting to the NFRD to continue to do so until they produce their first CSRD report (see next bullet point)
- **January 2024:** CSRD applies for those already reporting under the NFRD (to be published in 2025, based on 2024 data)
- **January 2025:** CSRD applies for large companies not currently reporting with the NFRD (to be published in 2026, based on 2025 data)
- **January 2026:** CSRD applies to SMEs (to be published in 2027, based on 2026 data) with streamlined guidelines
- **January 2028:** CSRD applies for third-country undertakings who fall in scope (to be published in 2029, based on 2028 data) [1]

WHAT DO INDUSTRY EXPERTS HAVE TO SAY ABOUT THIS DIRECTIVE?

It is widely recognized that the EU is ahead of other jurisdictions in setting sustainability reporting standards, as Abraham Orden, Security and Risk Advisory at Wipro Limited, highlighted in a recent Reuters Events webinar. Speaking on a Reuters Events webinar, Laura Asiala, Chief Sustainability Officer at Wholeworks LLC, said: "companies should be required to provide reliable, specific information in a standard reporting manner to ensure a full and fair disclosure of all material facts," which the CSRD intends to achieve.

EU SUSTAINABLE FINANCE DISCLOSURE REGULATION (SFDR)

OVERVIEW:

The European Commission introduced the SFDR to increase the level of transparency around sustainability risks and improve the integration of adverse impacts into investment considerations [3].

The regulation outlines specific requirements for how and what sustainability information needs to be disclosed. There are different levels of disclosure requirements depending on three product categorizations, which are as follows:

- **Article 6:** products which include financially material ESG risks in investment decision processes
- **Article 8:** products which endorse their environmental and social features
- **Article 9:** a sustainable investment objective is aligned to the product [4]

The SFDR disclosures are split into two phases:

- **Core disclosures** (Level 1) applicable to Articles 6, 8 and 9 products
- **Enhanced disclosures** (Level 2) applicable to Articles 8 and 9 products [4]

Level 1 disclosures on principal adverse impacts (PAIs) must be undertaken on a comply or explain basis. Level 1 disclosures reflect entity level information. Disclosures involve information on financial market participant (FMP) policies related to identifying and prioritizing PAIs. Any actions planned or undertaken to address the PAIs, as well as engagement with policies, also need to be described. Level 2 disclosures require publishing the PAI statement [3].

The SFDR includes the obligation for financial products aligned to sustainable investing to comply with 'do no significant harm' (DNSH) requirements under Article 2(17). Under the SFDR, DNSH requires financial products to have no significant harm to environmental or sustainable objectives. This involves outlining any PAI and associated tolerances [5].

WHY IS THIS REGULATION NEEDED?

SFDR disclosures will improve the transparency around the environmental and social features of financial products [4]. It therefore aims to prevent greenwashing financial products and advice within the EU, whilst also encouraging further investment in sustainability products and businesses [6].

WHO IS IMPACTED BY THIS REGULATION?

FMPs and financial advisors within the EU will need to ensure greater transparency of sustainability risks by publishing standardized disclosures on the integration of ESG within the entity and the product offering [3].

TIMELINE:

- **March 2021:** SFDR Level 1 disclosures applicable, with a reference period of January 2022 to December 2022
- **June 2021:** FMPs to disclose and retain a PAI statement on their websites
- **January 2022:** SFDR Level 2 disclosures applicable, with a reference period of January 2023 to December 2023
- **June 2024:** FMPs to disclose their second PAI statement

WHAT DO INDUSTRY EXPERTS HAVE TO SAY ABOUT THIS REGULATION?

Eli Reisman, Senior Director of Product Management at Factset, emphasized that companies have expressed difficulties regarding their compliance with SFDR due to the multiple data providers required to report on all SFDR obligations, in a recent Reuters Events webinar discussion. Organizations need to be able to collate multiple datasets to then produce their SFDR report.

EU TAXONOMY

OVERVIEW:

The EU Taxonomy focuses on the environmental sustainability of economic activities. At Reuters Events: Sustainability Reporting & Communications Europe 2022, Hakan Lucius, Head of Corporate Responsibility and Civil Society at the European Investment Bank, explained the EU Taxonomy provides "a common definition of what is environmentally sustainable".

The EU Taxonomy includes a list of economic activities and detailed criteria to determine whether a green label can be applied [7]. There are six environmental objectives that underpin the taxonomy:

1. Climate change mitigation
2. Climate change adaptation
3. Sustainable use and protection of water and marine resources
4. Transition to a circular economy
5. Pollution prevention and control
6. Protection and restoration of biodiversity and ecosystems

The list of activities deemed as environmentally sustainable are specified within the technical screening criteria published for each of the environmental objectives within the delegated acts [8]. Each objective includes 'substantial contribution' and 'do no significant harm' (DNSH) criteria, which determines whether activities are eligible and taxonomy aligned. The DNSH criteria require no significant harm to any of the six environmental objectives.

WHY IS THIS REGULATION NEEDED?

The EU Taxonomy forms part of the European Green Deal, helping the EU to achieve its 2030 climate and energy targets [9]. Investors need to be able to determine which assets are likely to inflict a positive impact on the environment. A common language is required to facilitate comparison, which the EU Taxonomy aims to deliver. Carlos Eduardo Martins, Senior Portfolio Manager at European Stability Mechanism, explained at Reuters Events: Sustainability Reporting & Communications Europe 2022, comparing assets is difficult and therefore an equal viewpoint is required.

Martins also clarified the two main objectives of the EU Taxonomy, which are to promote further funds being channeled into environmentally significant investment and to prevent greenwashing. The taxonomy limits the activities which companies and investors can classify as being 'climate friendly' [7].

WHO IS IMPACTED BY THIS REGULATION?

The regulatory requirements apply to financial product providers within the EU, who need to disclose the investments that fall under the criteria. Listed and large companies are also expected to publish the proportion of their turnover and capital expenditure which complies with the taxonomy [7].

There are three groups who will need to adopt the EU Taxonomy:

- Companies with over 500 employees that were required to report under the Non-Financial Reporting Directive (NFRD) (now reporting under the Corporate Sustainability Reporting Directive (CSRD))
- Financial market participants (FMPs) who offer and distribute financial products within the EU
- Those within the EU and member states that are setting public measures, standards or labels for green financial products or bonds [9]

TIMELINE:

- **June 2020:** EU Taxonomy regulation published and applicable as of July 2020
- **December 2021:** Climate Delegated Act published and applicable as of January 2022
- **December 2021:** Disclosures Delegated Act published and applicable as of January 2022
- **July 2022:** Complementary Delegated Act published and applicable as of January 2023 [8]
- **H1 2023:** remaining four EU Taxonomy environmental objective Delegated Acts to be published [4]

WHAT DO INDUSTRY EXPERTS HAVE TO SAY ABOUT THIS REGULATION?

Lucius stressed at Reuters Events: Sustainability Reporting & Communications Europe 2022, that to avoid greenwashing and misinterpretations it requires reaching a degree of detail

The City of London financial district.

HENRY NICHOLLS/REUTERS

UNITED KINGDOM

UK GREEN TAXONOMY

OVERVIEW:

The science-based UK Green Taxonomy is a classification system identifying environmentally sustainable economic activities. It is based on the EU Taxonomy, covering the same six environmental objectives (see EU Taxonomy chapter above for the details of these six objectives). Similar to the EU Taxonomy, each environmental objective will be underpinned by technical screening criteria categorizing how each activity can make a substantial contribution to the environmental objective.

The UK Green Taxonomy aims to:

- Provide investors with transparency and stability to efficiently compare companies' environmental performance, enabling evidence-based decisions based on ESG data
- Improve companies' understanding of environmental impacts through taxonomy-aligned disclosures, such as the proposed Sustainable Disclosure Requirements (SDR)
- Act as a reference point for companies in terms of clear performance targets

There are three core principles which govern the application of the UK Green Taxonomy outlined within the UK Government's Greening Finance Roadmap:

- Robust and evidence-based
- Accessible to investors
- Designed to facilitate the UK's role within the global transition

WHY IS THIS REGULATION NEEDED?

The growing focus on the climate has substantially increased the number of investment products sold as sustainable or labelled 'ESG'. However, there are growing concerns regarding the accuracy of these claims and whether ESG is no more than a marketing strategy. Consequently, investors may be misinformed about the sustainability of investments.

As a framework for the SDRs, the UK Green Taxonomy will outline specific activities or investments that are 'green'. This universal benchmark ensures measurements are objective and consistent across industries.

The UK Taxonomy:

- **Increases transparency and uniformity in ESG terminology** enabling investors and companies to make informed decisions to help boost sustainable investment and prevent greenwashing
- **Improves corporate accountability** as the new guidelines are likely to open up further avenues for regulators and investors to hold corporates to account in respect of sustainability. For instance, shareholders may

be able to bring claims against a corporate for losses caused by misleading information in its reporting on sustainability

- **Lowers barriers for investors** acting as effective and responsible stewards of capital

WHO IS IMPACTED BY THIS REGULATION?

Reporting against the UK Green Taxonomy will form part of a business's SDR disclosures. SDR requires disclosures by all Financial Conduct Authority (FCA) regulated firms including: corporates, asset managers, asset owners and the creators of investment products centered around the four key themes identified by the Taskforce on Climate-related Financial Disclosures (TCFD) recommendations: governance, strategy, risk management and metrics & targets. In many cases, these entities are already required to implement the TCFD on a comply or explain basis. In practice, this means:

- Additional resources allocated to compliance functions across all industries
- Increased ESG-related shareholder litigation
- Additional responsibilities for financial regulators such as the FCA and Prudential Regulation Authority (PRA) which are working alongside the government to develop guidelines and regulations for implementation and enforcement

TIMELINE:

- **Dec. 14, 2022:** HM Treasury delays legislative timeline for implementing the UK Green Taxonomy
- **2023:** final implementation timeline for the UK Green Taxonomy to be published by the UK Government, as noted by The Green Finance Institute (GFI)

WHAT DO INDUSTRY EXPERTS HAVE TO SAY ABOUT THIS REGULATION?

Experts across various industries support the design and roll out of the UK Green Taxonomy. For instance, at Reuters Events: Sustainability Reporting & Communications Europe 2022, Elizabeth Aceituno of the World Wide Fund for Nature Inc. (WWF) highlighted that the taxonomy enables disclosure which is, "one of the building blocks towards getting sustainable finance to be more mainstream". This is because the taxonomy defines which economic activities enable the transition towards net zero therefore providing clarity into sustainable investments.

In practice, taxonomies "get companies to report on capital expenditure" explained Ingrid Holmes, Executive Director of GFI, at Reuters Events: Sustainability Reporting & Communications Europe 2022. This indicates increased transparency of financial metrics enables stakeholders to understand the various infrastructure investments firms are undertaking to mitigate or adapt to climate change.

UK SUSTAINABLE DISCLOSURE REQUIREMENTS (SDR)

OVERVIEW:

The SDR, a sustainability reporting mechanism, is founded on the Taskforce on Climate-related Financial Disclosures (TCFD) recommendations. However, the SDR goes beyond the TCFD because it requires double materiality and consideration for additional environmental and social impacts and risks on top of those arising from climate change.

The UK's SDRs are designed to:

- **Broaden the UK's sustainability reporting**, which currently focuses almost exclusively on climate-related risks, to cover a much fuller range of issues
- **Integrate and streamline a regulatory approach** bringing together sustainability-related reporting requirements under one roof for corporates and financial institutions
- **Provide asset owners with a granular insight** into the environmental and social impacts of firms in their portfolios

The FCA consultation CP22/20 proposed SDR and investment labels for FCA-regulated firms, building on the existing requirements under PS21/24. The enhanced disclosures require implementing the TCFD and codifying aspects of the FCA's guiding principles on design, delivery and disclosure of ESG and sustainable investment funds.

The FCA anticipates revisiting the SDR to incorporate the work of the International Sustainability Standards Board (ISSB) standards once the new standards are adopted. Similarly, the UK Green Taxonomy is still being developed and therefore, the SDR may be enhanced in the future to incorporate its criteria.

The proposed SDR contents includes:

- **Sustainable investment labels** designed to foster consumer trust by enabling consumers to better understand the investment product landscape
- **Consumer-facing product-level disclosures** outlining consistent information on a product's core sustainability

characteristics. Subsequently, providing consumers with transparency over the sustainability attributes of a product over time, or relative to alternative products

- **Detailed sustainability disclosures** intended for a range of stakeholders (including consumers and investors) outlining product and entity level pre-contractual and ongoing performance disclosures. Additionally, an entity report detailing how companies manage sustainability related risks and opportunities
- **Naming and marketing rules** limiting firms from using specific sustainability related terminology except when the product applies sustainable investment labels
- **Wide-ranging 'anti-greenwashing rule'** covering all FCA regulated firms
- **Requirements for distributors** ensuring consumers have easy access to product level information

The FCA is therefore proposing the following three labels, classifying products based on investment objectives:

- **Sustainable Focus** – products sustaining a high degree of environmental and/or social sustainability, aligning with a specific theme of environmental and/or social sustainability
- **Sustainable Improvers** – products which improve the sustainability of assets over time
- **Sustainable Impact** – products explicitly seeking to overcome social or environmental problems, intended to achieve positive outcomes

These mutually exclusive and non-hierarchical labels will simplify descriptions on consumer-facing documents. The use of labels is not mandatory, but if a firm does not oblige it will be subject to naming and marketing restrictions that limit product descriptions, with respect to sustainability factors.

WHY IS THIS REGULATION NEEDED?

Due to concerns that sustainability-related claims may sometimes exaggerate or mislead consumers, The SDR is a means of protecting consumers and build public trust in sustainable products.

ULTIMATELY, THE SDR ENABLES:

- The ability to compare information on how firms affect and are affected by sustainability-related issues
- Combatting greenwashing and ensure investors are provided with the correct information on how funds impact social or environmental sustainability
- A clear signal that the FCA recognizes greenwashing as a barrier to sustainable investment and that sustainability issues can be material to investors' allocation of capital

WHO IS IMPACTED BY THIS REGULATION?

The SDR impacts distributors of sustainable investment products which the FCA defines as products with "an explicit environmental and/or social objective". This includes financial advisers and investment platforms, which are specifically targeting consumers in this instance.

Initially, in-scope companies with more than £50 billion ($60.8 billion) assets under management (AUM) will be expected to make entity-level disclosures 24 months after the SDR policy statement - currently by June 2025. All other in-scope firms, with more than £5 billion ($6.1 billion) AUM, will be expected to make entity-level disclosures 36 months after the SDR policy statement, by June 2026.

Companies who fall into the SDR scope will need to clearly display a sustainability label on the web or app page of the investment product, as well as providing access to the consumer facing disclosure (see the section on UK Green Taxonomy for more details).

TIMELINE:

- **Jan. 25, 2023:** end of the consultation period for CP22/20
- **Q3 2023:** publication of policy statement finalizing SDR rules
- **Likely to be Q3 2024*:** initial disclosures
- **Likely to be Q3 2025*:** first ongoing product level disclosures
- **Likely to be Q3 2025*:** largest in-scope firms to make entity-level disclosures
- **Likely to be Q3 2026*:** all other in-scope firms, with more than £5 billion ($6.1 billion) AUM, to make entity-level disclosures

** In late March 2023, the FCA announced a delay in publishing the policy statement and stated that subsequent dates would be adjusted accordingly: we have interpreted this to mean that dates which were planned for June are therefore likely to be pushed back to around Q3 each year.*

FIZKES/SHUTTERSTOCK

The FCA requires companies to report on the representation of women and ethnic minorities on executive teams and boards.

FINANCIAL CONDUCT AUTHORITY (FCA) DIVERSITY AND INCLUSION ON COMPANY BOARDS AND EXECUTIVE MANAGEMENT

OVERVIEW:

As of April 2022, the FCA requires listed firms to disclose diversity targets within their annual financial reports. Specifically, firms need to report on the representation of women and ethnic minorities on executive teams and boards. This will increase transparency to enable investors to analyze the diversity of leadership teams. The reporting requirements also covers the diversity policies of key board committees, shedding light on the consideration of wider diversity characteristics.

The 'comply or explain' statement targets are as follows:

- At minimum, the board should consist of 40% women
- At a minimum, one woman should hold a senior board position (Chair, CEO, CFO or Senior Independent Director (SID))
- At a minimum, the board should consist of one individual from an ethnic minority background, excluding white ethnic groups

WHY IS THIS REGULATION NEEDED?

Establishing targets on a 'comply or explain' basis for the diverse groups is intended as a positive reporting benchmark to encourage progress. Primarily, this regulation was designed to:

- Initiate diversity and inclusion considerations within senior levels of listed companies and throughout their businesses
- Enhance transparency for stakeholders by establishing comparable information on the diversity of a firm's board and executive teams
- Provide improved data for companies and investors to assess progress and inform shareholder engagement and investment decisions, thus enhancing market integrity

Ultimately, enhanced diversity data leads to increased transparency strengthening incentives for in-scope companies to deliver greater diversity on their boards. Additional benefits include improving the quality of corporate governance and company performance in due course.

WHO IS IMPACTED BY THIS REGULATION?

Organizations affected by the Listing Rule encompasses UK and foreign firms with, in the words of the FCA, "equity shares, or equity shares represented by certificates (including global depositary receipts), admitted to either the premium or standard listing segments of the FCA's Official List in the UK or considering admission to such listings".

Additionally, closed-ended investment funds and sovereign controlled companies are within the scope of firms impacted by this regulation. However, open-ended investment companies and shell companies are not within regulatory scope.

TIMELINE:

- **April 1, 2022:** diversity targets to be published within annual reports for in scope firms
- **Q2 2023:** new disclosures published within annual financial report

which becomes complex in nature. There is a need for a common language to ensure unanimous understanding and facilitate comparison between organizations and industries.

EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CS3D/CSDDD/CSDD DIRECTIVE)

OVERVIEW:

The CS3D (variously referred to as CS3D, CSDDD or CSDD Directive) has been proposed to encourage sustainable and responsible corporate conduct. This involves the identification, termination, prevention and mitigation of any adverse human rights or environmental impacts within operations, subsidiaries and value chains [10].

The directive establishes new duties for directors of companies within scope, which incorporates forming and overseeing a due diligence process that is then integrated into the corporate strategy. Specified large companies will need to establish a plan which aligns their business strategy with the 1.5 Celsius (34.7 Fahrenheit) pathway under the Paris Agreement [10].

WHY IS THIS DIRECTIVE NEEDED?

The directive fosters a number of benefits for companies, countries and citizens. Companies can develop their risk management and adaptability with the enhanced awareness of harmful environmental actions and human rights violations. Increased oversight will also improve human rights and environmental protection, as well as offer greater stakeholder awareness on these key issues [10].

WHO IS IMPACTED BY THIS DIRECTIVE?

Approximately 13,000 EU companies and 4,000 non-EU companies will be impacted by the CS3D [6]. Large EU limited liability companies will be obliged to adhere to the CS3D, falling under either Group 1 companies with 500 or more employees and a net global turnover of at least 150 million euros ($158 million), or Group 2 companies with 250 or more employees, a net global turnover of at least 40 million euros ($42 million) and operating within high impact sectors such as textiles or agriculture.

Non-EU companies which fall in scope of the CS3D include those active within the EU, meeting the turnover thresholds of either Group 1 or 2 companies, generated within the EU. Micro enterprises and small and medium enterprises (SMEs) are not bound by the regulation, but supporting measures are proposed for SMEs who could be indirectly impacted [10].

TIMELINE:

The CS3D proposal was drafted in February 2022 and is awaiting review and agreement by the European Parliament and Council (a process which normally takes a year). After the directive is adopted, member states will be granted two years to transpose into their domestic legal framework and communicate this back to the Commission. Current expectations are for the CS3D to be mandatory around 2025 or 2026.

EU GREEN CLAIMS DIRECTIVE

OVERVIEW:

In continuing efforts to enhance disclosures and minimize greenwashing risks under the European Green Deal, in March 2023 (i.e. at the time of writing this whitepaper) the EU released a proposed law on green claims.

The directive will focus on voluntary claims issued by companies on their environmental impacts or product performance, with the intended audience of consumers. These claims would not be included as part of any other EU rules.

WHY IS THIS DIRECTIVE NEEDED?

Some of the environmental claims based on companies and products can be misleading to consumers since there are no common rules for voluntary disclosures. The proposed directive is intended to improve the reliability of green claims with verifiable and comparable information. Reliability of green claims will be enhanced through the requirement to disclose scientific evidence to support claims, as well as the need for an independent, accredited verifier to check claims. Clarity on green claims will protect consumers from possible greenwashing risk and support the drive towards a more circular and green EU economy.

WHO IS IMPACTED BY THIS DIRECTIVE?

The EU Green Claims Directive will be applicable to traders of products or traders within business-to-consumer (B2C) commercial practices. The directive will cover all consumer products which are sold in the EU but not within the scope of any existing EU laws. Member states will need to transpose the directive into their domestic legal framework.

TIMELINE:

- **March 2023:** proposal adopted by the Commission on a Directive on green claims
- **2023 to 2024:** European Parliament and the Council to review and approve the directive

U.S. President Joe Biden celebrates the enactment of the Inflation Reduction Act of 2022, which he signed into law in August.

KEVIN LAMARQUE/REUTERS

UNITED STATES

U.S. INFLATION REDUCTION ACT (IRA)

OVERVIEW:

The U.S. IRA of 2022 was signed into law on Aug. 16, 2022. Concerning ESG, it will direct new federal spending toward reducing carbon emissions, to cut Americans' energy costs whilst creating new jobs and to aid U.S. efforts in addressing climate change. The act directs $393.7 billion funding to climate efforts through tax incentives, grants and loans; including energy ($250.6 billion), manufacturing ($47.7 billion) and environment ($46.4 billion).

WHY IS THIS ACT NEEDED?

The IRA was enacted to decrease inflation by reducing the deficit, lowering prescription drug prices and investing in clean domestic energy production. Included in the clean energy remit was a plan to promote the research and development and commercialization of cutting-edge clean technologies, such as clean hydrogen, and carbon capture and storage. The IRA sits alongside the Bipartisan Infrastructure Law (BIL) and the Creating Helpful Incentives to Product Semiconductors (CHIPS) and Science Act to improve U.S. economic competitiveness.

WHO IS IMPACTED BY THIS ACT?

Investment by the IRA will be beneficial to companies who need to reach ambitious net-zero goals. It will prime the market for clean energy and will further this with investments into clean manufacturing and zero-emissions transportation like electric vehicles. Tax credits will also be expanded for clean energy like wind turbines, batteries and solar panels.

Business will be impacted positively by the certainty that the IRA brings them. The new law provides companies with stable, long-term incentives to drive this clean energy revolution. The IRA will extend production and investment tax credits for 10 years, up from the previous 3 years prior to the IRA's enactment.

The IRA will also be beneficial to domestic supply chains in the U.S. and will boost competitiveness whilst creating millions of jobs. This is through the investment in manufacturing, where facilities may be built or adapted to compete on the global clean energy stage. With new factories come new jobs and the IRA has the potential to build a positive multiplier effect into areas which receive investment.

Oil and gas companies, however, will be required to pay more taxes under the ruling. Equally, companies that have book profits of over $1 billion will now be required to pay a 15% book minimum tax. This is compounded by the 1% tax that companies will need to pay on stock buybacks.

TIMELINE:

- **Sept. 27, 2021:** introduced as the Build Back Better Act
- **Nov. 19, 2021:** passed the House of Representatives
- **Aug. 7, 2022:** passed the Senate as "Inflation Reduction Act of 2022"
- **Aug. 16, 2022:** IRA signed into law by President Joe Biden

U.S. SECURITIES EXCHANGE COMMISSION (SEC) CLIMATE DISCLOSURE RULES

OVERVIEW:

In March 2022, the U.S. SEC proposed new rules for U.S. organizations to disclose information related to climate change. This new proposal, if adopted, is set to mark the first time Scope 3 (as well as Scope 1 and 2) disclosures have been mandated for U.S. publicly listed companies. The governance of climate-related risks is also required in line with the Taskforce on Climate-related Financial Disclosures (TCFD) requirements. However, there are likely to be significant legal challenges following any approval of the rules citing the lack of necessity or appropriateness of Scope 3 reporting.

WHY IS THIS REGULATION NEEDED?

The SEC's potential climate disclosure rules follow the Corporate Sustainability Reporting Directive (CSRD) regulations in the EU (though there are also important differences between the two – for example, it is not expected that the SEC will adopt the double materiality approach adopted by the CSRD). They bring full value chain reporting to U.S. based companies. The SEC itself states that these proposals for greenhouse gas (GHG) emissions disclosures will provide investors with decision-useful information to assess a registrant's exposure to, and management of, climate-related risks, and in particular transition risks. The SEC argues that its disclosures are similar to already broadly accepted disclosures such as the TCFD and GHG Protocol.

WHO IS IMPACTED BY THIS REGULATION?

The SEC climate disclosure proposals are set to be rolled out to public companies in the U.S. More specifically, they are set to apply to companies which include registrants subject to the disclosure requirements imposed by the following forms: S-1, F-1, S-3, F-3, S-4, F-4, S-11, 6-K, 10, 10-Q, 10-K and 20-F.

Depending on filer status, companies will need to report using the dates outlined in the timeline below. Limited assurance is initially required over Scope 1 and 2 emissions. This is consistent for both U.S. and foreign private issuers (FPI) scoping. The intention from the SEC, however, is for large accelerated filers and accelerated filers only to move to reasonable assurance in either 2026 or 2027 based on filing category and clarification of this will be released in the final ruling. The benefits to investors are more likely to justify the costs for these types of organizations. Scope 3 emissions are not subject to assurance at present due to the unique challenges of data collection and cost.

FPIs are subject to all the above rules in the proposal. They will have to consider home jurisdiction requirements and their interaction with the potential SEC rules, which may prove inconsistent.

TIMELINE:

The following dates were based on the assumption of a December 2022 adoption data and may therefore change due to the ongoing delay in adoption.

- **March 21, 2022:** SEC published its proposal for climate-related disclosures
- **June 17, 2022:** comments based on the SEC proposal submitted
- **April 2023:** final ruling expected
- **February 2023:** first climate disclosures (Scope 1 and 2) to be reported on by large-accelerated filers (filed in 2024) (delayed)
- **February 2024:** GHG emissions, Scope 3 and intensity metric to be reported on by large-accelerated filers (filed in 2025) (likely to be delayed)
- **2024/2025:** accelerated filers and non-accelerated filers will need to report Scope 1 and 2 in the financial year 2024 (filed in 2025)
- **2025/2026:** accelerated filers and non-accelerated filers will need to report Scope 3 in the financial year 2025 (filed in 2026)
- **2025/2026:** smaller reporting companies (SRCs) will need to report GHG metrics including Scope 1 and 2 in the financial year 2025 (filed in 2026). SRCs will be exempt from Scope 3 reporting

WHAT DO INDUSTRY EXPERTS HAVE TO SAY ABOUT THIS REGULATION?

From a Reuters Events webinar, Bob Hirth, Board Member and Co-Vice Chair of the Sustainability Accounting Standards Board (SASB) said that if the SEC climate rules are approved, companies will have a thicker 10-k statement. Hirth also suggests that companies will need to have an upfront section talking about climate related matters that follows the TCFD framework. Chelsea Mozen, Senior Director of Impact and Sustainability at Etsy stated that companies will also need to add a GHG emissions table in Scope 1, 2 and 3.

U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

OVERVIEW:

The U.S. ERISA is a federal law set by the U.S. Department of Labor (DOL) that sets minimum standards for most voluntarily established retirement and health plans in private industry, to provide protection for individuals in these plans.

On Nov. 22, 2022, regarding sustainability and with its 'Final Rule', the ERISA removed barriers to ESG investing in retirement plans. More specifically, under the ERISA, the U.S. DOL rule clarifies that fiduciaries can consider climate change and ESG "factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations".

WHY IS THIS REGULATION NEEDED?

After consultation with stakeholders, the DOL concluded that rules issued in 2020 during the Trump administration "unnecessarily restrained plan fiduciaries ability to weigh environmental, social and governance factors when choosing investments, even when those factors would benefit plan participants financially".

During the consultation period, stakeholders questioned whether the 2020 rules appropriately reflected the scope of fiduciaries' duties under ERISA to act in the interest of plan participants and beneficiaries. Stakeholders also questioned the DOL's consideration of evidence which focused on ESG considerations and how they can improve long term investment value. This pertained to the fact that the 2020 rules caused a negative effect on the integration of ESG factors in investment decisions.

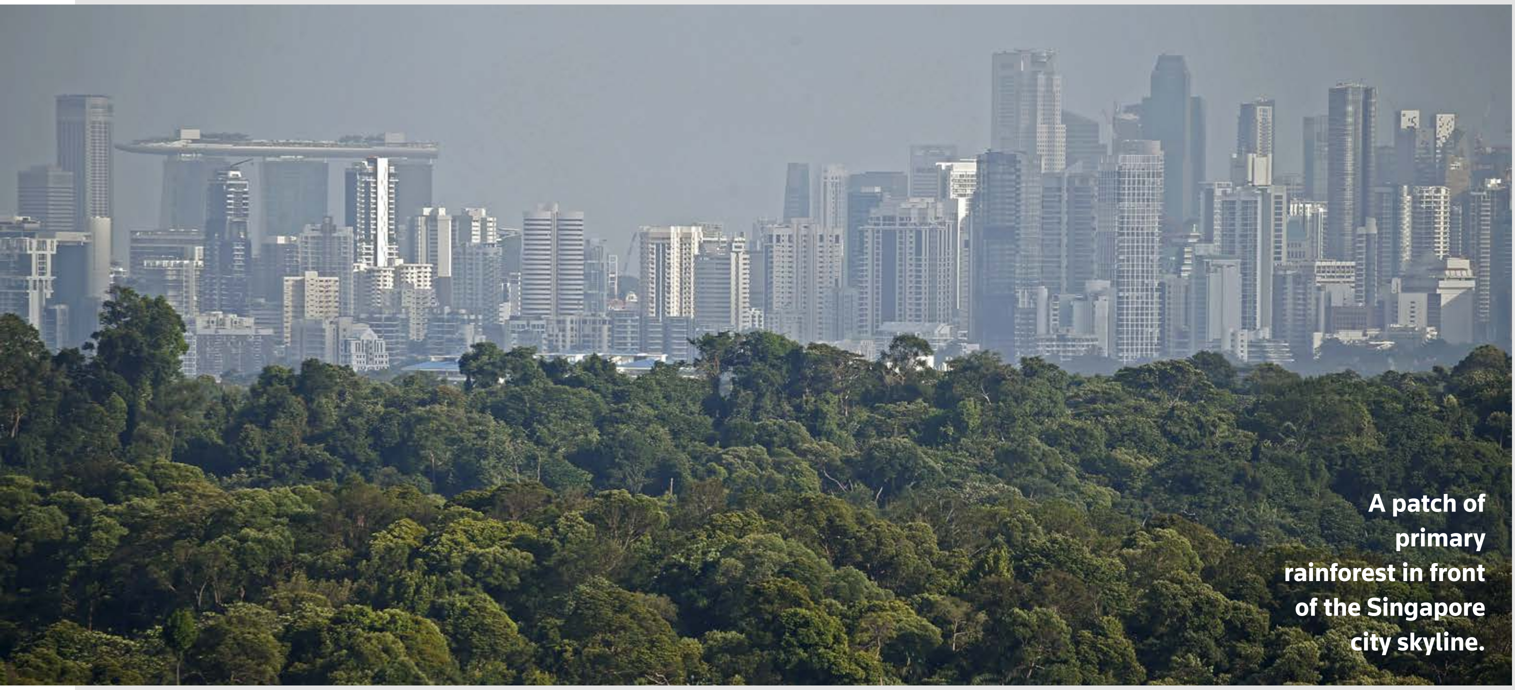
The DOL highlighted the need to bring more clarity with regards to whether ESG factors should be considered by stating that the previous rule and terminology was "confusing and susceptible to inferences of bias against the treatment of climate change and other ESG factors". Crucially, while retaining the need for prudence, the new Final Rule provides a broader definition of risk-return factors which allows ESG factors to be included, if relevant, in risk-return analysis.

WHO IS IMPACTED BY THIS REGULATION?

Funds, financial institutions and investment managers that market products to ERISA plans and fiduciaries who manage ERISA assets need to consider the Final Rule. They will need to understand how their products and activities are impacted by the Final Rule and evaluate if changes to investments may be required. It is likely that ESG investment decisions will be subject to state and federal scrutiny – while there is no requirement for ESG considerations to be documented, it may be wise to document the considerations undertaken in determining whether ESG factors were relevant to the risk-return analysis undertaken.

TIMELINE:

- **Nov. 20, 2020:** a final rule was published by the DOL (Financial Factors in Selecting Plan Investments) which included amendments to ERISA's Investment Duties regulation
- **Dec. 16, 2020:** a related final rule was published by the DOL (Fiduciary Duties Regarding Proxy Voting and Shareholder Rights) with amendments to the Investment Duties regulation
- **Jan. 20, 2021:** Executive Order (E.O.) 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, directed federal agencies to review regulations adopted between Jan. 20, 2017 and Jan. 20, 2021 and those that were inconsistent with the E.O 13990.
- **March 10, 2021:** DOL announced it was reviewing the 2020 rules and issued an enforcement policy statement under ERISA
- **Oct. 14, 2021:** DOL published a Notice of Proposed Rulemaking (NPRM) to amend the "Investment Duties" regulation
- **Nov. 22, 2022:** DOL approved Final Rule with regulatory text which requires fiduciary determination of factors that include the economic effects of climate change and other ESG considerations on the particular investment
- **Dec. 16, 2022-onwards:** DOL questioned over the scope of fiduciaries' duties under ERISA to act prudently and solely in the interest of plan participants and beneficiaries
- **Feb. 1, 2023:** general applicability date of the Final Rule
- **Mar. 20, 2023:** President Biden vetoed a Congress' resolution to overturn the Final Rule. Meanwhile, a lawsuit (filed in January 2023) which challenges the Final Rule is ongoing (at the time of writing)



A patch of primary rainforest in front of the Singapore city skyline.

EDGAR SU/REUTERS

ASIA-PACIFIC

ASIAN PACIFIC (APAC) REGULATIONS

Unlike the UK, U.S. and European market, APAC countries do not have one overarching regulatory body to implement ESG legislation and disclosures. Without a sole regulator, the APAC region is a fragmented market, with varying ESG legislations across different countries. However, in recognizing the need for enhanced transparency of sustainability products, ESG policy development, including APAC taxonomies, have risen significantly [11]. There have been ESG fund requirements introduced by Hong Kong, Malaysia, Taiwan, Australia, India, Japan, New Zealand, Singapore, Thailand and the Association of Southeast Asian Nations (ASEAN). However, within APAC, China, Hong Kong and Singapore are generally seen as more progressive in terms of ESG regulation adoption.

The Monetary Authority of Singapore (MAS) introduced disclosure and reporting guidelines for retail ESG funds, applicable from January 2023, to reduce the risk of greenwashing [12]. The guidelines require continued disclosures of ESG-labelled funds which includes the investment strategy, investment selection criteria and metrics, and all risks identified [6]. Similarly, the Singapore Exchange (SGX) published a consultation paper in December 2022, outlining 27 ESG metrics for SGX-listed companies. The SGX announced that climate reporting will be mandatory from 2023 on a comply or explain basis for financial, energy, agriculture, food and forest product sectors, with companies operating within the materials and buildings and transportation sectors to follow in 2024 [6]. Finally, the Hong Kong Stock Exchange (SEHK) published Guidance on Climate Disclosures in November 2021, to comply and align to the Taskforce on Climate-related Financial Disclosures (TCFD).

The fragmentation of the APAC region is emphasized further by the number of ESG-related taxonomies. The Association of Southeast Asian Nations (ASEAN) has established the ASEAN Taxonomy for Sustainable Finance, creating a common language for sustainable economic activities and financial instruments. However, the MAS is supporting the green and transition taxonomy being developed by the Green Finance Industry Taskforce (GFIT) for Singapore-based financial institutions. Earlier this year, it was reported that India is intending on producing its own taxonomy to classify sustainable economic activities and technologies [13]. Consequentially, the number of ESG disclosure requirements continues to grow, which may result in mounting pressure for more internationally recognized standards, such as that being delivered by the International Sustainability Standards Board (ISSB). International standards will enable some degree of uniformity amongst differing legislations across different countries.

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