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Contributing Editor:

Carmen X. W. Lu

Wachtell, Lipton, Rosen & Katz

glg Global Legal Group

Sustainability for Asset Managers


Brenden Carroll


Mikhaelle Schiappacasse


Thomas Kim


Philippa List

Dechert LLP

Introduction

The role of sustainability matters in the operations and investment management activities of asset managers has long been a subject of discussion and, in some jurisdictions, controversy. In recent years, however, the conversation has become more urgent and focused, driven by the growing evidence of the global impact of climate change. These concerns underlie the United Nations 2030 Agenda for Sustainable Development and 2015 Paris Agreement on Climate Change (**Paris Agreement**). The Paris Agreement's central aim is to keep global warming below 1.5°C above pre-industrial levels and to combat climate change and direct capital flows towards low greenhouse gas emissions and climate-resilient development. The Paris Agreement was the impetus for a growing body of law and regulation in the European Union (**EU**) focused on environmental, social and governance (**ESG**) concerns and, in particular, ESG and sustainable investment. In other jurisdictions, including the United States (**US**), Hong Kong and Singapore, regulators have either adopted, or proposed to adopt, regulations or guidelines focused on similar concerns, although their scope and purpose may differ in significant ways from the EU.

At the same time, the conversations relating to sustainability and ESG have become much more political and nuanced, particularly in the US. For example, in the US, private litigants, "red state" attorneys general and other US government officials have continued to scrutinise sustainability- and ESG-related investment activities and proxy voting practices. By contrast, certain investors, "blue state" officials and regulators continue to advocate for the inclusion of sustainability and ESG factors in asset managers' investment decision-making and proxy voting practices.

These conversations and controversies, which reflect differing attitudes on sustainability and its role in asset management, will likely continue for the foreseeable future, particularly with the upcoming change in presidential administrations in the US. For global asset managers, it is increasingly difficult to navigate the differing regulatory approaches to, and investor views on, sustainability in the jurisdictions in which they seek to offer and manage investment products. These challenges will likely continue.

In this chapter, we will discuss the primary regulatory framework relating to sustainable finance and ESG in several key jurisdictions, namely the EU, the United Kingdom (**UK**), Hong Kong, Singapore and the US.

EU

The EU has been leading the way in adopting rules and regulations focused on sustainable investment – with the EU Commission taking the decision in 2016 to make sustainable development a political priority – and sustainability has remained front and centre of legal and regulatory developments ever since.

For the EU, sustainable finance is about reorienting investment towards sustainable technologies and businesses, recognising that major public and private investment is needed to make the EU's financial system sustainable and ensure European Member States are climate-neutral by 2050. To achieve this, the EU adopted its Action Plan on Sustainable Growth (**Action Plan**) in 2018,[1] which set out 10 action points[2] with the key objectives of: (i) reorienting capital flows towards sustainable investment, in order to achieve sustainable and inclusive growth; (ii) managing financial risks stemming from climate change, environmental degradation and social issues; and (iii) fostering transparency and long-termism in financial and economic activity. It followed this with a renewed strategy for financing the transition to a sustainable economy in 2021.[3] In terms of numbers, a European Parliamentary report[4] published in September 2024 has indicated that, as of 2024, there is an estimated €6.6 trillion of ESG assets under management, representing 38% of total assets under management in the EU (€17.2 trillion).

But What Does This Mean in Practice?

The current EU sustainable finance framework is built around three main pieces of legislation:

- **The Taxonomy Regulation**,[5] which entered into force on 12 July 2020, with the majority of its operative provisions taking effect on 1 January 2022. It has essentially created a classification system for environmentally sustainable economic activities, helping to steer investments towards activities aligned with a net-zero trajectory by 2050 and broader environmental objectives. The regulation establishes the concept of a "taxonomy-aligned investment", which, in essence, is an investment that contributes substantially to certain specified environmental objectives, does not significantly harm those objectives, and complies with certain minimum safeguards and technical asset-level screening criteria. It aims to increase transparency and combat greenwashing, in order to foster climate-friendly businesses and scale up sustainable investment across the EU.
- **The Sustainable Finance Disclosure Regulation (SFDR)**,[6] which came into effect on 10 March 2021, and was subsequently amended by the Taxonomy Regulation, seeks to provide for (i) a harmonised understanding of what constitutes "sustainable investment",[7] and (ii) a

uniform, mandatory set of disclosure and reporting obligations relating to sustainability issues in connection with investment activity, including in the offering documentation and annual accounts for investment products. It mandates financial market participants to communicate sustainability-related information to investors and requires disclosing how sustainability risks affect investments and the adverse impacts of such investments on the environment and society. In practice, the SFDR splits the fund universe into three categories: Article 6 funds (i.e. non-ESG funds); Article 8 funds (which promote sustainability characteristics); and Article 9 funds (which include a sustainability objective).

- **The Corporate Sustainability Report Directive (CSRD)**,[8] which entered into force on 5 January 2023, with Member States having had until 6 July 2024 to implement its provisions into national law. The rules apply on a phased basis between 2024 and 2028, with "large public interest companies" (with over 500 employees) the first to come in scope of these requirements. The CSRD amends the requirements of the Non-Financial Reporting Directive (**NFRD**)[9] by including a broader set of large companies, listed small and medium-sized enterprises (**SMEs**) and foreign companies generating a net turnover of more than €150 million in the EU and having a subsidiary undertaking or a branch in the EU. It also requires more detailed reporting on ESG impacts, in particular on greenhouse gas (**GHG**) emissions.

These three pieces of legislation are arguably the cornerstones of the sustainability framework in the EU, but they are complemented by other pieces of primary and secondary legislation, including (but not limited to):

- the Climate Benchmarks Regulation,[10] in force since 23 December 2020, which introduced two new types of benchmarks (i) an EU Climate Transition Benchmark, with a "decarbonisation trajectory" evidenced by a measurable, science-based and time-bound movement towards alignment with the objectives of the Paris Agreement, and (ii) an EU Paris-Aligned Benchmark;
- delegated legislation to supplement the Taxonomy Regulation including (amongst others): the EU Taxonomy Climate Delegated Act,[11] which classifies which activities best contribute to mitigating and adapting to the effects of climate change for the purpose of the Taxonomy Regulation, as amended by the Amending Taxonomy Climate Delegated Act;[12] the Environmental Delegated Act which sets out the other environmental objectives set out in the Taxonomy Regulation; and the Complementary Climate Delegated Regulation (**CCD Regulation**)[13] which sets out the conditions under which nuclear and natural gas energy activities can be included in the list of economic activities covered by the Taxonomy Regulation (amending the EU Taxonomy Climate Delegated Act); and
- amendments to existing secondary legislation relating to the Alternative Investment Fund Managers Directive (**AIFMD**),[14] the Undertakings for Collective Investment in Transferable Securities (**UCITS**) Directive,[15] and the Markets in Financial Instruments Directive (**MiFID**).[16]

These pieces of primary and secondary legislation are likely to be familiar to market participants, although in the case of the CSRD, relatively new in terms of implementation and application of the requirements. There are, however, changes to come in the field of sustainability, which are likely to bring challenges.

With regard to the SFDR, on 14 September 2023, the EU Commission issued both public and targeted consultations[17] on the implementation of the SFDR generally. The consultations form part of a comprehensive assessment of the framework to assess the potential shortcomings of the SFDR, focusing on legal certainty, the useability of the regulation, and its ability to play its part in tackling greenwashing. The consultations asked respondents to consider, aside from questions of the costs and effectiveness, and alignment of the SFDR with other legislation, whether a labelling system for Financial Products should be established either in substitution for, or in addition to, the current "Article 8" and "Article 9" categorisation.

While a summary report on the responses was issued on 23 December 2023,[18] the final position of the EU Commission has not been published, and is currently expected mid-2025. If the proposed changes are adopted, it could potentially mark a significant change for financial market participants and result in extensive work – and possibly costly in terms of time and system uplifts – to satisfy any new requirements.

More immediately market participants will be looking at proposed changes to the level two Regulatory Technical Standards (**RTS**) included in the final report published by the ESAs on 4 December 2023[19] setting out their proposed amendments to the RTS which includes:

- additional mandatory and voluntary social indicators of principal adverse impacts (**PAI**) and adjustments to certain PAIs and their calculation;
- introducing a set decarbonisation (the ESAs' preferred term is "GHG emissions reduction") targets where a "Financial Product" states this as one of its aims; and
- "simplification" of the pre-contractual and periodic disclosure templates (which would require financial market participants to redraft their existing disclosures).

While broader proposals to amend provisions relating to the "do no significant harm" (**DNSH**) principle were deferred to the review of the Level 1 text, a requirement to disclose criteria or thresholds used to assess DNSH has was added.

The report, as of writing, is with the EU Commission to approve, amend or reject; following which the European Parliament and Council of the EU may also comment. When the revised RTS may come into force is unclear, but it is currently expected to be during the course of 2025. When, or perhaps if, these RTS take effect, they will require significant work from market participants to ensure that they comply with the new requirements.

Other changes that are going to impact the legal and regulatory landscape in the EU include:

- A new directive on corporate sustainability due diligence (**CSDDD**),[20] to establish a legal framework and corporate due diligence duties regarding the human rights and environmental adverse impacts on a company's own operations, and that of the subsidiaries and business partners in their chain of activities. It requires companies operating in the EU that meet certain prescribed thresholds, or non-EU companies carrying out a certain amount of business in the EU, to incorporate mandatory human rights and environmental due diligence into their core business activities, including the adoption of measures aimed at preventing, mitigating or ceasing activities causing adverse impacts on human rights or environmental factors. The directive also requires that in-scope companies establish climate change mitigation plans. The CSDDD also introduces civil liability for companies that intentionally or negligently fail to comply with the law's obligations, aimed at protecting natural or legal persons.

- A legislative proposal for a Regulation on the transparency and integrity of ESG rating activities, which will introduce a regulatory framework governing the activities of ESG rating providers operating in the EU. The text of the legislation was finally agreed between the EU legislative bodies in November 2024.[21] It introduces obligations on ESG rating providers to ensure they charge clients fair, reasonable, transparent and non-discriminatory fees, disclose details of their methodology and key rating assumptions, separate rating activity from business activity, and declare conflicts of interest. It envisages amongst other things, that EU ESG rating providers must apply for authorisation from the European Securities and Markets Authority (**ESMA**), meet certain organisational requirements (for example, general principles concerning their governance and their approach to rating methodologies and maintaining robust procedures regarding their oversight function), and would be expected have robust conflicts of interest arrangements in place. The next step is for the Regulation to be published in the Official Journal of the European Union. It will enter into force 20 days after its publication in the Official Journal and apply 18 months following its entry into force.
- The introduction of guidelines for investment funds using ESG or sustainability-related terms (for example, "transition", "climate", "net zero", "governance", "impact") in their names (**Guidelines**). The purpose of the Guidelines is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names. The Guidelines are relevant for all fund documentation and marketing communications and start applying from 21 November 2024.

The EU regulatory framework has endeavoured to promote and sympathetically regulate the development of sustainable finance, but many challenges remain to make economies and financial systems environmentally and socially sustainable. As the EU Parliamentary Report notes, the question of whether there is a trade-off between economic prosperity and sustainable development remains a crucial topic of debate.

UK

Although a great deal of existing EU legislation was "onshored" into the UK statute book following the UK's exit from the EU on 31 January 2020, this approach was not extended to any EU legislation taking effect after this time. In the context of ESG, this means that the Taxonomy Regulation, the SFDR and the CSRD, as well as the amendments to existing legislation (i.e., the AIFMD, UCITS Directive and MiFID) are not part of UK law – regulating sustainable finance is an area where the UK and EU are following divergent paths.

Despite taking a different approach, the UK government remains committed to fighting climate change, endorsing the recommendations of the Task Force on Climate-related Financial Disclosures (**TCFD**) in 2017,[22] and making the implementation of the TCFD proposals a central part of its 2019 Green Finance Strategy.[23]

The Financial Conduct Authority (**FCA**) has also introduced climate-related disclosure requirements, aligned with the TCFD's recommendations, for asset managers, life insurers, and FCA-regulated pension providers. The disclosures include: (i) "entity-level disclosures"; and (ii) "product or portfolio-level disclosures".

These disclosure rules have applied to in-scope UK asset managers with assets under management (**AUM**) of £50 billion or more since 1 January 2022 and from 1 January 2023 for firms with an AUM between £5 billion and £50 billion. Firms with an AUM less than £5 billion are exempt from the reporting regime. The FCA's rules and guidance are set out within the ESG Sourcebook of the FCA Handbook.

The other main sustainability-related development in the UK is the introduction of rules relating to sustainability disclosure requirements (**SDR**) and investment labels, providing for, in summary, the following:[24]

(1) A general anti-greenwashing rule. This rule will apply to all FCA-authorised firms and reiterates and reinforces the message that sustainability-related claims must be clear, fair and not misleading.
(2) Sustainability investment labels. FCA-authorised firms may choose to use one of four product labels – Sustainability Focus, Sustainability Improvers, Sustainability Impact, and Sustainability Mixed Goals. The FCA expressly states that the labels are not designed to be in a hierarchy.
(3) Consumer facing disclosures. These are intended to help consumers understand the key sustainability-related features of an investment product and must be set out in a standalone document. Unlike for SFDR, there is no mandatory template for these disclosures.
(4) Detailed disclosures. These are targeted at a wider audience (institutional investors and consumers seeking more information) and take the form of: (i) product level precontractual disclosures (for example, in the fund prospectus); (ii) ongoing sustainability-related product level disclosures to be reported annually; and (iii) a sustainability entity report prepared at firm level addressing management of sustainability-related risks and opportunities.
(5) Naming and marketing rules. Where products are not using one of the four investment labels, these rules will restrict the use of certain sustainability-related terms (such as "ESG", "green" or "sustainable") in product names and marketing materials provided to retail investors.
(6) Requirements for distributors (such as investment platforms). These are to ensure that product-level information (including labels) is made available and is clear to consumers.

These new rules apply only to investment managers that are FCA regulated and (other than the general anti-greenwashing rule) they do not apply to non-UK funds (although, certain of the rules, such as the anti-greenwashing rule, may apply to non-EU firms indirectly to the extent their funds are distributed by UK distributors who are subject to the requirements). The FCA has also confirmed that firms and funds that are out of scope of the sustainability label rules may not apply them voluntarily. In terms of timing, the general "anti-greenwashing" rule which applies to all FCA authorised firms has applied since 31 May 2024. The FCA has also published finalised guidance on the anti-greenwashing rule.[25]

There is a phased implementation of the SDR from July 2024, with firms using product labels and those firms using sustainability-related terms without product labels working to a slightly different timeline. Firms could begin to use labels, with accompanying disclosures, from 31 July 2024, and the naming and marketing rules – with accompanying disclosures – apply from 2 December 2024 (subject to a short grace period until 2 April 2025 in certain circumstances). Ongoing product-level and entity-level disclosures for firms with AUM in excess of £50 billion commence on 2 December 2025 and the entity level disclosure rules are extended to firms with AUM over £5 billion from 2 December 2026.

The FCA has consulted on extending the SDR and labelling regime to portfolio managers, and initially intended to publish its final rules in the second half of 2024. However, on 29 September 2024, the FCA amended this timeline, and now intends to publish a Policy Statement and further information about implementation in Q2 2025. The FCA has also indicated that it will consult on extending the regime to overseas funds. Initial indications were that the consultation would be launched in Q3 2024, but this deadline has not been met and the exact timing of this is unclear.

In terms of other developments, the FCA's Business Plan 2024–25,[26] published in April 2024, makes it clear that sustainability will remain a priority – with a focus on greenwashing, the transition to net zero, and the protection of nature. Other plans include the development of a regulatory regime for ESG ratings providers, with the aim of improving transparency and promoting good conduct in the ESG ratings market in 2025.[27] The UK government consulted on a regulation of ESG ratings providers in 2023, and published its formal response on 14 November 2024.[28] The response confirms that the government will proceed with its proposal to bring the provision of ESG ratings within the scope of the UK regulatory perimeter. Once legislation is passed, the FCA will then develop the standards and regulatory requirements that will need to be met by ESG ratings providers.

To date, the UK has predominantly focused on climate change, rather than the broader sustainability-related concerns that are the focus of the EU regulators and legislators, although the FCA has stated that it will "leverage the extensive work we have already done recently, and over the years, on governance, diversity, culture and purpose", and that it is "working actively with our international partners to develop robust and commonly agreed international standards on ESG that can serve global markets effectively".

In summary, both the EU and UK legislative and regulatory bodies continue to focus on sustainability. However, their divergent approaches mean that it will become increasingly complex to navigate the overlapping but distinct legal and regulatory requirements as they evolve.

Hong Kong

Hong Kong's regulatory framework with regard to climate change and sustainable investment has gradually taken shape in recent years. Although the Climate Action Plan 2030+ published by the Hong Kong Environmental Bureau in January 2017 originally centred on green finance, the Hong Kong Securities and Futures Commission (**SFC**) and Hong Kong Exchanges and Clearing Limited (**HKEX**) have taken cues from international bodies and Mainland China to develop a regulatory agenda that goes beyond this initial focus.

There are three key drivers underlying Hong Kong's regulatory agenda with respect to sustainable investment: (i) Mainland China's status as a signatory to the Paris Agreement, the provisions of which apply to Hong Kong; (ii) the conviction of key regulators (including the SFC and HKEX) that climate change is a real threat and a source of financial risk to investors; and (iii) Hong Kong's position as an international financial centre, which necessitates proactive engagement with financial participants on climate risk-related issues.

In light of these drivers, the SFC's and HKEX's efforts have been directed at: (i) the disclosure of listed companies' environmental information and climate-related risks; (ii) the integration by asset managers of climate change factors into their investment and risk management processes; and (iii) ensuring accurate product disclosure of green investments, consistent with international standards, and avoiding greenwashing. Like regulations in other parts of the world, such as in the EU, the UK and Singapore, the rules in Hong Kong continue to develop and evolve to meet emerging needs. At the time of writing, the following are the key measures that have been taken:

- **ESG Reporting Guide for Hong Kong listed companies**: the Hong Kong Stock Exchange published guidelines on mandatory reporting on ESG (**ESG Reporting Guide**),[29] which came into effect on 1 July 2020. The ESG Reporting Guide is currently applicable to Hong Kong listed companies and imposes two levels of disclosure obligations: (i) mandatory disclosure requirements; and (ii) "comply or explain" provisions. However, with effect from 1 January 2025, the ESG Reporting Guide will be amended and renamed to the Environmental, Social and Governance Reporting Code (**ESG Reporting Code**). Under the ESG Reporting Code, listed issuers will be required to make climate-related disclosures based on the IFRS S2 Climate-related Disclosures published by the International Sustainability Standards Board (**ISSB**) in June 2023.[30]
- **SFC circular**: the SFC released a circular to management companies of SFC-authorised unit trusts and mutual funds on "green" or "ESG" funds on 11 April 2019,[31] which was subsequently amended on 29 June 2021.[32] The circular sets out the SFC's expectations on the "product-level" disclosure obligations of SFC-authorised funds that incorporate ESG factors as their key investment focus with the goal of improving their comparability, transparency and visibility. To accompany the circular, the SFC also set up a dedicated website to list all SFC-authorised funds that categorised themselves as ESG funds.
- **Revised Fund Manager Code of Conduct**: on 20 August 2022, the Fund Manager Code of Conduct was revised to incorporate SFC requirements on Management and Disclosure of Climate-related Risks by Fund Managers,[33] which sets out amendments to the existing SFC Fund Manager Code of Conduct. The document establishes high-level principles setting out the governance, investment management, risk management and disclosure obligations of fund managers with respect to climate risks. The requirements largely reference the recommendations of the TCFD – and notably allow for a two-tier approach (i.e., with baseline requirements for all fund managers and enhanced standards for fund managers with AUM exceeding a threshold of HK$8 billion).

In late-2022, the SFC noted that it has largely achieved the objectives set out in the 2018 Strategic Framework, and moving forward will focus on: (i) enhancing corporate disclosure standards, potentially embedding those of ISSB; (ii) monitoring the implementation of and enhancing existing climate risk-related measures; and (iii) developing a regulatory framework for carbon markets.

More recently, the Hong Kong Monetary Authority (**HKMA**) published the Hong Kong Taxonomy for Sustainable Finance (**HK Taxonomy**) on 3 May 2024 for adoption in the local market.[34] The HK Taxonomy, which provides a framework for classifying green activities, currently covers 12 economic activities in four sectors, namely (i) power generation, (ii) transportation, (iii) construction, and (iv) waste management. The HK Taxonomy was developed based on the Common Ground Taxonomy,[35] an in-depth comparison exercise analysing the commonalities and differences between the EU and China taxonomies. The expectation is that the HK Taxonomy would be interoperable with the EU Taxonomy and the China Taxonomy.

Singapore

Singapore is actively harnessing finance as a force for good to transform economies, infrastructure and societies towards a greener, net zero world. At the heart of this, Singapore's political leadership has emphasised Singapore's commitment to combatting climate change at an accelerated pace.[36] Looking beyond its own "net zero by 2050" plans, Singapore aims to play a broader role in the climate change agenda by establishing itself as the premier financial hub for green and sustainable finance in Asia.[37]

Fundamental to fulfilling Singapore's vision is the "Finance for Net Zero Action Plan" (**FiNZ Action Plan**), launched by the Monetary Authority of Singapore (**MAS**) in April 2023. The FiNZ Action Plan sets out MAS' strategies to mobilise financing to catalyse net zero transition and decarbonisation efforts in Singapore and broader Asia. A summary of these strategic outcomes is set out below:[38]

- **Climate data and disclosures**
  The MAS has focused its regulatory agenda on promoting consistent, comparable and reliable climate data and disclosures, so as to safeguard against greenwashing risks:
  - The MAS' Circular on the Disclosure and Reporting Guidelines for Retail ESG Funds (CFC 02/2022) came into effect on 1 January 2023. All retail ESG funds must disclose their ESG investment objectives, approaches, criteria and metrics in their offering documents. Additionally, such funds must periodically disclose their ESG-related investments and how their ESG objectives have been met.
  - The Singapore-Asia Taxonomy (**Singapore-Asia Taxonomy**) was published on 3 December 2023 and is among the first globally to introduce the concept of a "transition" category.[39] The Singapore-Asia Taxonomy adopts a "traffic light" system which classifies economic activities and projects as "Green" (environmentally sustainable), "Amber" (transition) or "Ineligible" based on their contributions to at least one of the Taxonomy's five environmental objectives while not causing significant harm to the remaining objectives. These environmental objectives, which are aligned with those of the EU Taxonomy, are as follows: (1) climate change mitigation; (2) climate change adaptation; (3) protect healthy ecosystems and biodiversity; (4) promote resource resilience and circular economy; and (5) pollution prevention and control. It should be noted that the Singapore-Asia Taxonomy currently only sets out economic activities and technical screening criteria in respect of the objective of climate change mitigation. The remaining four objectives will be introduced in future iterations of the Singapore-Asia Taxonomy. As the Singapore-Asia Taxonomy is not mandatory or implemented in any regulation, the application of the Singapore-Asia Taxonomy is currently voluntary.
  - The Accounting and Corporate Regulatory Authority and the Singapore Exchange Regulation are in the process of developing mandatory climate reporting requirements for listed issuers and large non-listed companies, using requirements aligned with the ISSB standards.[40] Beginning in FY2025, listed issuers will be required to report and file annual climate-related disclosures, with large non-listed companies being expected to do the same in FY2027.
  - The MAS has launched Gprnt (pronounced "Greenprint") on 16 November 2023, an integrated digital platform which aims to simplify ESG reporting by enabling businesses to automatically convert economic data into meaningful sustainability-related data. In its initial stages, Grpnt will focus on addressing reporting needs of small and medium enterprises, and will progressively scale its capabilities and network of data sources to serve the needs of multi-national corporations, financial institutions and national authorities. The intent is to support the generation of high quality ESG data to allow the financial sector to allocate capital towards green and transition initiatives more efficiently.[41]
  - As financial market participants are increasingly integrating ESG data into their investment strategies and risk management, the use of ESG ratings and data products has grown. The MAS has implemented a Code of Conduct for ESG Rating and Data Product Providers on 6 December 2023 to establish baseline industry standards on governance, transparency and management of conflicts of interest on the use of ESG ratings and data, so as to protect against greenwashing risks.[42] This Code of Conduct is applicable on a "comply or explain" basis, i.e., ESG rating and data product providers should comply with such code or explain their non-compliance.
- **Green and transition solutions and markets**
  The MAS is also actively promoting green and transition financing solutions and markets:
  - This includes certain government grants to enhance the Sustainable Bond Grant Scheme and Sustainable Loan Grant Scheme, so as to offset the expenses incurred for external review of sustainable debt instruments such as green, social, sustainability, sustainability-linked and transition loans and bonds. This has helped to spur significant growth in sustainable debt issuance out of Singapore.[43]
  - The MAS has also launched the Financing Asia's Transition Partnership (**FAST-P**) which aims to mobilise up to US$5 billion in collaboration with public, private and philanthropic sector partners to de-risk and finance green and transition projects in Asia. The Singapore government will contribute concessional funding that is matched by similar funding from anchor partners, to catalyse private capital to achieve this target programme size. As part of FAST-P, the MAS will be establishing three initiatives, namely the Energy Transition Acceleration Finance Partnership (**ETAF**), Green Investments Partnership (**GIP**), and Industrial Transformation Partnership (**ITP**), to address climate financing gaps and support the bankability of green projects in Asia.[44]
- **Climate-resilient financial sector**
  In December 2020, the MAS published the Guidelines on Environmental Risk Management for Asset Managers (**ENRM Guidelines**).[45] The ENRM Guidelines are largely aligned with the recommendations of the TCFD and cover

the areas of: (i) governance and strategy; (ii) research and portfolio construction; (iii) risk management; and (iv) stewardship and disclosure. The ENRM Guidelines have since been supplemented by information papers in May 2022 that highlight certain good and bad practices in asset management, as well as areas where further work is required, which serves as a reference point for asset managers when managing environmental risk.

- **Credible transition plans**
  The MAS issued consultation papers on 18 October 2023 where it proposed certain supervisory guidelines on transition planning for asset managers to support the global transition to a net zero economy (**TPG Guidelines**). The TPG Guidelines sets out the MAS' expectations for asset managers to put in place sound transition planning processes to drive climate change mitigation and adaptation measures by their clients and/or investee companies. In particular, the TPG Guidelines are intended to supplement the ENRM Guidelines by providing further specificity with respect to asset managers' transition planning processes.[46]

In summary, Singapore has made significant strides in the ESG space so as to position itself as a hub for green finance and ESG investing in Asia. Singapore continues to monitor the latest ESG trends and initiatives globally to strengthen its own sustainable investment regulatory framework, and has actively fostered international cooperation in the ESG space to drive cross-border green and transition financing.[47]

United States

In the US, political power is divided between the federal government and the states. At the federal level, the US has lagged behind many other jurisdictions, including the EU and UK, in adopting legislation or regulations relating to ESG and sustainable finance in the asset management industry. The US Securities and Exchange Commission (**SEC**), under Chair Gary Gensler, had proposed two sets of significant rules that would: (i) establish uniform climate risk disclosure standards for US public reporting companies; and (ii) impose ESG disclosure requirements on certain US investment funds and investment managers. As of the date of this publication (November 2024), however, only one set of rules has been adopted, although the SEC has stayed their implementation pending judicial review relating to litigation that, among other things, challenged the SEC's authority to adopt the rules. The other set of rules was never adopted and, with the recent presidential elections in the US, may never be adopted.

The SEC has, however, adopted rule amendments that standardise fund-naming conventions and require funds that include terms in their names indicating that their investment decisions incorporate one or more ESG factors (such as "socially responsible investing" or "green") to invest a minimum percentage of their assets in companies with the particular characteristics suggested by their names. Funds will generally be required to comply with these new requirements in late 2025.

There has been far more activity at the state level within the US. Some state governments are attempting to prohibit the investment of state funds (including state pension funds) with managers or funds that boycott certain industries, such as fossil fuels and firearms, while other states choose to only invest with managers or funds that limit their exposure to fossil fuels, for example. Moreover, as discussed above, "red state" attorneys general and other US government officials have been increasingly critical of ESG-related investment activities and proxy voting practices. These state officials have questioned the use of ESG factors on several fronts, including whether ESG practices represent a conflict of interest and a breach of fiduciary duties. State officials have also questioned whether there are antitrust concerns arising from, for example, commitments to developing investment practices addressing climate change and the de-carbonisation goals of the Paris Agreement.

The SEC's Climate Change Disclosure Rules

On 6 March 2024, the SEC adopted, by a 3–2 vote, its long-awaited comprehensive rules for enhancing and standardising climate-related disclosures by US public companies in periodic disclosure reports and in registration statements for public offerings (**Climate Change Disclosure Rules**).[48]

The Climate Change Disclosure Rules were first proposed in March 2022 and generated a significant response from industry participants, environmental groups, policymakers and others. Following concerns that the proposed rules would be overly burdensome, costly and subject to legal challenge, the SEC significantly pared back the scope of the Climate Change Disclosure Rules, such as by limiting the requirement to disclose greenhouse gas emissions to larger reporting companies and eliminating the Greenhouse Gas Protocol (**GHG**) Scope 3 emissions disclosure requirement altogether. Nonetheless, within a week of adoption, several petitions were filed by public and private actors in various US federal courts to challenge the Climate Change Disclosure Rules (relating to, among other things, the SEC's authority to adopt the rules). As of the date of this publication, these legal challenges are pending, although the SEC has stayed the implementation of the Climate Change Disclosure Rules pending judicial review.

If implemented, the Climate Change Disclosure Rules would represent a major expansion of the SEC's disclosure regime. The Climate Change Disclosure Rules would address climate-related risk by:

- mandating new disclosures to be made in annual reports and in registration statements regarding the oversight of climate-related risk, climate-related impacts on business, and GHG emissions;
- requiring "large accelerated filers" and "accelerated filers" to provide attestations of their disclosure of GHG Scope 1 and Scope 2 emissions (notably, the final rules do not require disclosure of Scope 3 emissions); and
- requiring certain climate-related disclosure in the notes to registrants' financial statements.

However, even if the SEC succeeds in its current litigation, the incoming Trump Administration could nonetheless rescind the Climate Change Disclosure Rules.

The SEC's proposed ESG rules for investment funds and managers

On 25 May 2022, the SEC proposed a framework requiring US-registered investment companies and business development companies and certain US-registered investment advisers to disclose their ESG investment practices (**Proposal**).[49] The Proposal came in the wake of substantial scrutiny by the SEC and its staff of disclosure practices involving ESG investment strategies. The Proposal was intended to promote "consistent, comparable, and reliable" information to investors and to facilitate informed decision-making related to ESG investment products and strategy offerings. In particular, the Proposal would seek to change existing disclosure practices by (among other provisions):

- expressly requiring ESG-related disclosures in fund prospectuses and annual reports and investment adviser regulatory filings (where funds and strategies use ESG investment techniques);
- implementing a standardised approach for certain types of ESG funds to disclose their ESG investing processes; and
- for the first time, requiring the disclosure of GHG emissions data in certain circumstances.

The disclosure requirements would vary depending upon whether a fund is categorised as an "integration fund", "ESG-focused fund" or "impact fund", which would be defined as follows:

- **Integration funds**: An integration fund would be defined as a "fund that considers one or more ESG factors alongside other, non-ESG factors in its investment decisions, but those ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio".
- **ESG-focused fund**: An ESG-focused fund would be defined as a "fund that focuses on one or more ESG factors by using them as a significant or main consideration (1) in selecting investments or (2) in its engagement strategy with the companies in which it invests". This includes "any fund that has a name including terms indicating that the fund's investment decisions incorporate one or more ESG factors", and any fund whose sales literature or advertisements "indicate that the fund's investment decisions incorporate one or more ESG factors by using them as a significant or main consideration in selecting investments".
- **Impact funds**: Impact funds would be a sub-set of ESG-focused funds and would be defined as ESG-focused funds "that seek to achieve a specific ESG impact or impacts".

The SEC also proposed to amend Form ADV Part 2A to require registered investment advisers that consider ESG factors as part of their advisory business to disclose information similar to that required in fund registration statements and annual reports. Specifically, the Proposal would require registered advisers to provide: a description of the ESG factors considered in providing advisory services and how they are incorporated; and, if ESG factors are considered when selecting, reviewing or recommending portfolio managers, a description of the factors considered and how they are incorporated.

These rules have not been adopted and, with the recent presidential elections in the US, may never be adopted.

The SEC's "Names Rule" amendments

Section 35(d) of the Investment Company Act of 1940 prohibits a US-registered investment company or business development company from adopting any word or words as part of its name or title that the SEC finds materially deceptive or misleading. The SEC adopted Rule 35d-1 (**Names Rule**) under Section 35(d) in 2001 to meet this objective. The Names Rule deems certain types of fund names to be materially deceptive or misleading for the purposes of Section 35(d) unless certain conditions are satisfied, such as the adoption of a policy to invest at least 80% of a fund's assets in the particular type of investment, industry, country or geographic region suggested by its name (**80% Investment Policy**).

On 20 September 2023, the SEC adopted amendments to the Names Rule (**Names Rule Amendments**). Among other things, the Names Rule Amendments expanded the scope of funds subject to the Names Rule by requiring a fund to adopt an 80% Investment Policy if its name suggests a focus "in investments that have, or whose issuers have, particular characteristics". The Names Rule Amendments identify terms indicating that a fund's investment decisions incorporate one or more ESG factor(s) as examples of names indicating a focus on investments or issuers having particular characteristics. For these purposes, the term "ESG" would include terms such as "socially responsible investing", "sustainable", "green", "ethical", "impact" or "good governance" to the extent that they describe E, S and/or G factors that may be considered when making an investment decision. In expanding the scope of the Names Rule to capture funds that include terms in their names indicating that their investment decisions incorporate one or more ESG factors, the SEC was seeking to address potential investor confusion and "greenwashing" concerns.

Under the Names Rule Amendments, funds will retain some flexibility in defining the contours of their required 80% Investment Policies, ascribing definitions to the terms used in those policies, and determining (in many instances) what investments are appropriate to include in the 80% Investment Policy "basket". However, any investment focus-related terms used in a fund's name will be required to be defined "consistent with those terms' plain English meaning or established industry use".

The Names Rule Amendments became effective on 11 December 2023. However, the SEC adopted a fairly lengthy compliance period. For example, fund groups with net assets of $1 billion or more will have 24 months to comply with the amendments (i.e., on or before 10 December 2025).

US Employee Retirement Income Security Act of 1974 (ERISA)

ERISA is a complex regulatory scheme generally applicable to private sector US employee benefit plans and certain investment vehicles in which such plans invest (Plans). ERISA imposes stringent fiduciary duties on any person with discretionary control over the management of a Plan's assets or who renders ERISA defined "investment advice" with respect to such assets (Fiduciary).

ERISA requires a Fiduciary to act prudently, "solely in the interest" of the Plan's participants and beneficiaries, and "for the exclusive purpose" of providing benefits under the Plan. Under this standard, in managing a Plan's assets or choosing investment products for the Plan, a Fiduciary cannot subordinate the financial interests of Plan participants to achieve ancillary ESG- or sustainability-related goals. The issue of considering ESG and sustainability factors in a Fiduciary's investment decisions has become increasing politicised. For example:

- Under both Republican and Democratic administrations, the US Department of Labor (**DOL**), the US agency responsible for interpreting and enforcing ERISA, has issued regulatory guidance addressing the extent to which ESG factors can be used to support a position that a given investment is in the best economic interest of the Plan (and the extent ESG factors can be used as a "tiebreaker" when investments are otherwise substantially identical).

- While the DOL has consistently indicated that ERISA does not necessarily prohibit Fiduciaries from making investment decisions that reflect ESG and sustainability factors, but cautioned that Fiduciaries may not subordinate the interests of Plans to further ESG and sustainability goals, the DOL guidance under different administrations has disagreed as to the extent to which ESG and sustainability factors may be used to support a Fiduciary's investment decision.

The DOL's currently effective guidance reiterates that a Fiduciary always has a duty under ERISA to act as a prudent expert in making investment decisions and retains the core principle that a Fiduciary must focus on relevant risk-return factors and cannot subordinate the interests of participants and beneficiaries under the Plan. However, the current guidance also addresses the concern that the prior administration's guidance may have had the effect of discouraging consideration of ESG and sustainability factors even where it is in the financial interest of the Plans to consider such factors. The current guidance makes it clear that a Fiduciary's investment decision must be based on factors relevant to a risk and return analysis and such factors may include ESG and sustainability factors. However, with the recent presidential elections in the US, this guidance may continue to evolve.

State-level legislation

Investment managers looking to market products that consider sustainability or ESG factors across different state and national jurisdictions need to be cognisant of state laws in the US that prohibit or require the incorporation of sustainability or ESG factors into the investment process. A number of states have adopted legislation prohibiting forms of ESG investing. These "anti-ESG" rules generally fall into two categories: boycott bills; and legislation prohibiting forms of ESG investing. The rapid adoption of these rules by Republican-dominated legislatures reflects an underlying concern that consideration of ESG factors unnecessarily favour political and social causes at the expense of shareholder return. Boycott bills aim to prevent state assets from being used to invest in, or do business with, financial institutions that boycott certain favoured industries in a state, such as firearms, fossil fuels, and certain mining, agricultural, and timber practices. For example, Arkansas has a rule that requires state pension plans to divest from certain financial institutions that boycott the energy, fossil fuels, firearms, or ammunition industries. Rules prohibiting forms of ESG investing seek to prevent public entities such as agencies or state pension funds from considering ESG criteria when investing state assets. For example, North Dakota prohibits the investment of state funds for the purpose of "social investment". In one instance, the asset management industry has successfully challenged one of these state rules in US federal court.[50]

Conversely, states under Democratic control have been proactive in promoting ESG investing. Certain states have enacted laws permitting public fund managers to incorporate non-financial criteria into their investment strategies. For example, Illinois and Maryland have incorporated ESG and other non-pecuniary criteria in making investment decisions with regard to state funds. Additionally, certain states have passed legislation prohibiting public investments in companies or industries deemed environmentally or socially detrimental by the government. For example, Connecticut and Maine have even taken the step of divesting public dollars from being invested in the firearms or fossil fuel industries, respectively.

Managers should be aware that EU-mandated disclosure requirements bring ESG and/or sustainability investment activities to light that may run afoul of conflicting state laws in the US.

Endnotes

1 Action Plan: Financing Sustainable Growth is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0097&from=EN

2 To summarise, the 10 action points are: (1) establishing an EU classification system for sustainable activities; (2) creating standards and labels for green financial products (including an EU Green Bond Standard); (3) fostering investment in sustainable projects; (4) incorporating sustainability considerations when providing financial advice; (5) developing sustainable/low-carbon benchmarks; (6) better integrating sustainability in credit ratings and market research; (7) clarifying institutional investors' and asset managers' duties regarding sustainability; (8) incorporating sustainability in prudential requirements; (9) strengthening sustainability disclosure and accounting rulemaking; and (10) fostering sustainable corporate governance and reducing short-termism in capital markets.

3 The Strategy for Financing the Transition to a Sustainable Economy is available here: https://eur-lex.europa.eu/resource.html?uri=cellar:9f5e7e95-df06-11eb-895a-01aa75ed71a1.0001.02/DOC_1&format=PDF

4 The Parliamentary Report is available here: https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762852/EPRS_BRI(2024)762852_EN.pdf

5 Regulation 2020/852 of 18 June 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN

6 Regulation (EU) 2019/2088. The consolidated version, as amended by the Taxonomy Regulation, is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02019R2088-20200712&from=EN

7 "'[S]ustainable investment' means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance."

8 Directive 2022/2464 of 14 December 2022.

9 Directive 2014/95 EU.

10 Regulation (EU) 2019/2089, available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2089&from=EN

11 Commission Delegated Regulation (EU) 2021/2139 is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2139&from=EN

12 Commission Delegated Regulation (EU) 2023/2485 is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302485

13 Commission Delegated Regulation (EU) 2022/1214 is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1214&from=EN

14 Directive 2011/61/EU.

15 Directive 2009/65/EC.

16 Directive 2014/65/EU.

17 The public consultation is available here: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13961-Report-on-the-Sustainable-Finance-Disclosure-Regulation/public-consultation_en and the targeted consultation available https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2023-sfdr-implementation_en

18 The summary report on the SFDR consultations is available here: https://finance.ec.europa.eu/document/download/0f2cfde1-12b0-4860-b548-0393ac5b592b_en?filename=2023-sfdr-implementation-summary-of-responses_en.pdf

19 The Final Report is available here: https://www.esma.europa.eu/sites/default/files/2023-12/JC_2023_55_-_Final_Report_SFDR_Delegated_Regulation_amending_RTS.pdf

20 CSDDD is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760

21 The latest draft text of the EU ESG Ratings Regulation is available here: https://data.consilium.europa.eu/doc/document/PE-43-2024-INIT/en/pdf

22 The TCFD has over 1,000 supporters, which are headquartered in 55 countries, span the public and private sectors and include organisations such as corporations, national governments (Belgium, Canada, Chile, France, Japan, Sweden and the UK), government ministries, central banks, regulators, stock exchanges and credit rating agencies.

23 The Green Finance Strategy is available here: https://assets.publishing.service.gov.uk/media/5d38238f40f0b604e42729fd/190716_BEIS_Green_Finance_Strategy_Accessible_Final.pdf

24 The FCA published its final policy statement in November 2023, setting out the details following a November 2021 discussion paper and an October 2022 consultation, available here: https://www.fca.org.uk/publication/policy/ps23-16.pdf

25 The Finalised Guidance is available here: https://www.fca.org.uk/publication/finalised-guidance/fg24-3.pdf

26 The FCA's Business Plan 2024–25 is available here: https://www.fca.org.uk/publications/business-plans/2024-25

27 See 8 August 2024 article published on reuters.com and available here: https://www.reuters.com/world/uk/britain-propose-law-next-year-regulate-esg-raters-2024-08-08/

See also the FCA's Regulatory Initiatives Grid interim update from October 2024 that indicates a consultation on an ESG ratings regulation is planned for Q4 2024, available here: https://www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid/interim-update

28 The UK governments response to a future regulatory regime for Environmental, Social and Governance (ESG) ratings providers is available here: https://assets.publishing.service.gov.uk/media/6735d760b613efc3f18230da/UK_Government_consultation_response_on_a_future_regulatory_regime_for_Environmental__Social__and_Governance_ratings_providers.pdf

29 The ESG Reporting Guide is available here: https://en-rules.hkex.com.hk/rulebook/environmental-social-and-governance-reporting-guide-0

30 The HKEX Consultation Conclusions on the Enhancement of Climate-related Disclosures under the Environmental, Social and Governance Framework (April 2024) is available here: https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2023-Climate-related-Disclosures/Conclusions-Apr-2024/cp202304cc.pdf; The Implementation Guidance for Climate Disclosures under HKEX ESG reporting framework (April 2024) is available here: https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Exchanges-guidance-materials-on-ESG/guidance_enhanced_climate_dis.pdf

31 The SFC circular dated 11 April 2019 is available here: https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC18

32 The amended SFC circular dated 29 June 2021 is available here: https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=21EC27

33 https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/codes/fund-manager-code-of-conduct/Fund-Manager-Code-of-Conduct_Eng_20082022.pdf?rev=9aae7a8541054823b7f4626749e56cf8

34 https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2024/20240503e1.pdf

35 https://finance.ec.europa.eu/system/files/2021-12/211104-ipsf-common-ground-taxonomy-instruction-report-2021_en.pdf

36 https://www.mas.gov.sg/news/speeches/2023/speech-by-ms-indranee-rajah-at-icma-9th-annual-conference-of-the-principles-on-28-june-2023; https://www.mas.gov.sg/news/speeches/2023/speech-by-ms-indranee-rajah-at-icma-9th-annual-conference-of-the-principles-on-28-june-2023; https://www.mas.gov.sg/news/speeches/2023/speech-by-dpm-heng-swee-keat-at-the-point-zero-forum; https://www.mas.gov.sg/news/speeches/2023/official-launch-of-sgfin

37 https://www.mas.gov.sg/news/speeches/2023/official-launch-of-sgfin; https://www.mas.gov.sg/news/media-releases/2023/mas-launches-finance-for-net-zero-action-plan; https://www.mas.gov.sg/development/sustainable-finance/green-finance-industry-taskforce

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39 https://www.mas.gov.sg/news/media-releases/2023/mas-launches-worlds-first-multi-sector-transition-taxonomy

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43 It is estimated that Singapore accounts for more than half of the cumulative issuances of sustainable debt in Southeast Asia: https://www.mas.gov.sg/news/speeches/2023/official-launch-of-sgfin#:~:text=Based%20on%20estimates%2C%20Singapore%20accounts,of%20sustainable%20debt%20was%20issued

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45 https://www.mas.gov.sg/regulation/guidelines/guidelines-on-environmental-risk-management-for-asset-managers

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47 https://www.mas.gov.sg/news/speeches/2023/official-launch-of-sgfin

48 The Enhancement and Standardization of Climate-Related Disclosures for Investors, Rel. Nos. 33-11275 & 34-99678 (6 March 2024), available here: https://www.sec.gov/files/rules/final/2024/33-11275.pdf

49 Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Rel. Nos. IA-6034 & IC-34594 (25 May 2022), available here: https://www.sec.gov/files/rules/proposed/2022/ia-6034.pdf

50 In August 2024, the US District Court for the Western District of Missouri issued a permanent injunction blocking two Missouri Securities Division rules that required broker-dealers and investment advisers to obtain written consent from clients using a state-prescribed script prior to providing advice that "incorporates a social objective or other nonfinancial objective".

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Disclaimer

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Brenden Carroll represents US registered investment companies and investment advisers in regulatory, transactional and compliance matters. These matters include the development and launch of new fund products, including funds that incorporate ESG factors into their investment processes. He advises clients on the preparation of registration and proxy statements and seeking exemptive, interpretive and no-action relief from the SEC. He also advises boards of directors/trustees of US registered investment companies on fund governance and fiduciary oversight matters. Mr. Carroll has significant experience with money market funds and he was actively involved in advising money market fund sponsors on the SEC's money market fund reforms that were adopted in 2010, 2014 and 2015. He also has extensive experience in matters relating to the SEC's "pay-to-play" rule, which imposes special restrictions on the political activities of investment advisers seeking to do business with state and local pension plans. He has assisted clients with obtaining exemptive relief from the SEC from the rule's two-year "time out" provision.

Dechert LLP
1900 K Street, N.W., Washington, D.C. 20006
USA

Tel: +1 202 261 3458
Email: brenden.carroll@dechert.com
LinkedIn: www.linkedin.com/in/brenden-carroll-818237304

Mikhaelle Schiappacasse's practice focuses on the structuring, establishment, management, marketing, and restructuring of fund platforms and investment funds, across a broad range of domiciles and asset classes, including hedge, private debt, real estate, private equity and fund of funds. Ms. Schiappacasse also advises on the establishment of asset management businesses, including the drafting and negotiation of shareholders' agreements and limited liability partnership agreements. She also acts for investment funds and their managers on general corporate, regulatory and compliance matters. Ms. Schiappacasse is a Co-Head of Dechert's Global Sustainability Practice, and in this capacity, she is a leading member of the firm's ESG working groups and advises asset managers on compliance with the EU Sustainable Finance Disclosure Regulation and the EU Taxonomy Regulation and other European ESG-related regulatory matters.

Dechert LLP
25 Cannon Street, London, EC4M 5UB
United Kingdom

Tel: +44 20 7184 7433
Email: mikhaelle.schiappacasse@dechert.com
LinkedIn: www.linkedin.com/in/mikhaelleschiappacasse

Thomas Kim focuses his practice on advising private equity, venture capital, private credit and other alternative fund managers on the structuring, establishment and marketing of private funds. He is experienced in the raising of closed-ended funds focusing on impact and sustainable investments, including funds that focus on climate technology, renewable energy, natural climate solutions, carbon credits and environmental infrastructure. Mr. Kim also has significant experience advising sovereign wealth funds, multilateral development banks and other institutional investors in their private fund investments, in particular in the climate action, impact and sustainable investment space. Having spent the earlier part of his career in London, he is familiar with European ESG-related regulations and regularly advises asset managers on compliance with the Sustainable Finance Disclosures Regulation and Taxonomy Regulation.

Dechert LLP
One George Street, #16–03, Singapore 049145
Singapore

Tel: +65 6730 6961
Email: thomas.kim@dechert.com
LinkedIn: www.linkedin.com/in/thomasjkim

Philippa List is a professional support counsel for Dechert's financial services practice group. Ms. List advises on EU and UK legal and regulatory developments and trends. She sits on various EU and UK industry working groups, including in relation to AIFMD reform, Sustainability and ESG matters and post-Brexit regulatory change. She is actively involved in driving the practice group's AIFMD 2.0., Sustainability and ESG and ELTIF 2.0 initiatives and is also a member of Dechert's digital asset working group and was actively involved in the LIBOR and Brexit taskforces. Her recent work includes working on a range of regulatory, derivatives and trading related matters for a number of clients in various jurisdictions.

Dechert LLP
25 Cannon Street, London, EC4M 5UB
United Kingdom

Tel: +44 20 7184 7872
Email: philippa.list@dechert.com
URL: www.dechert.com/people/l/philippa-list.html

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