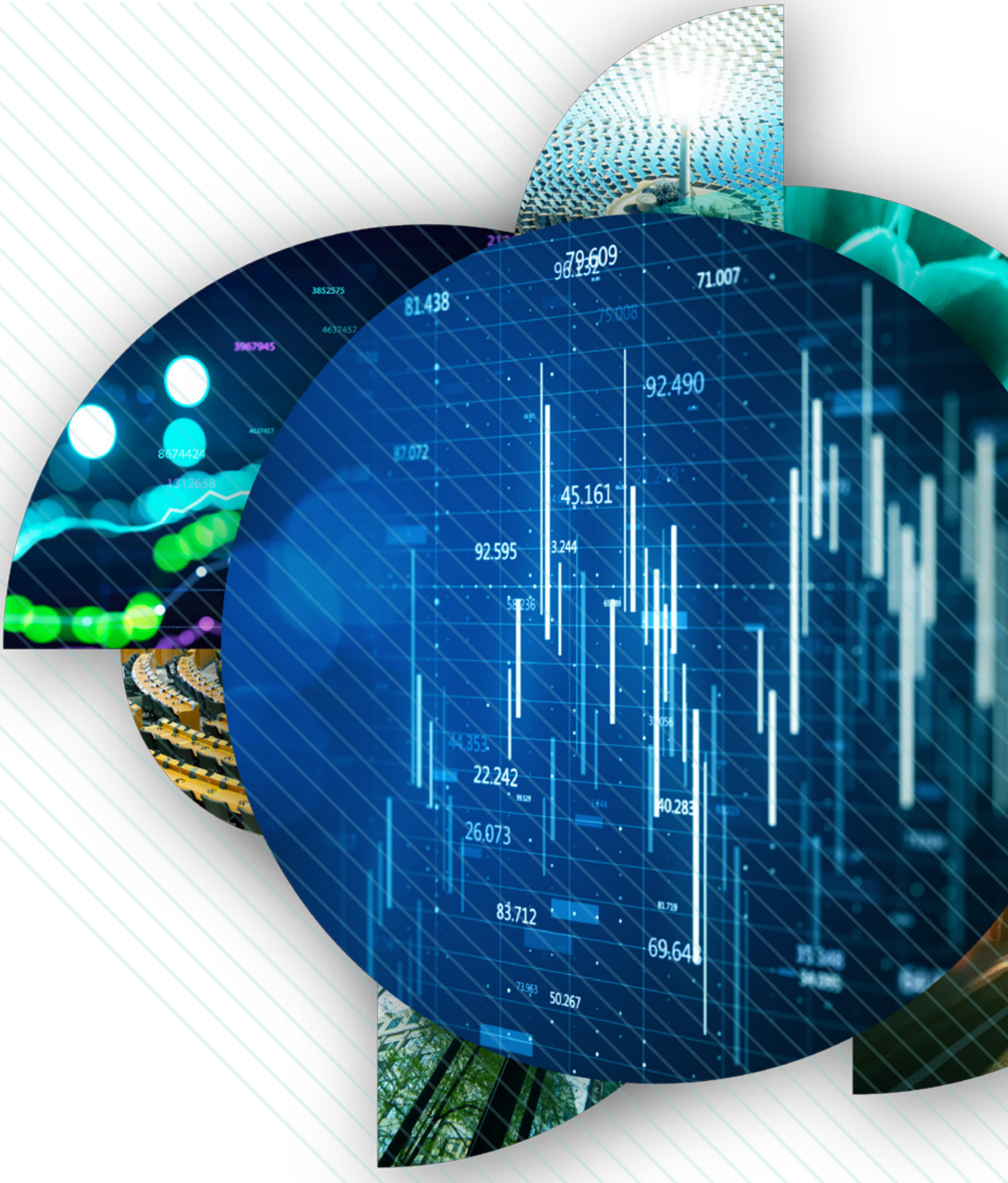
NORTON ROSE FULBRIGHT

ESG | Sustainability

Financial Services regulatory ESG updater

6 March – 6 April 2025



Introduction

Environmental, Social and Governance (ESG) is changing the landscape for financial institutions as a wide range of stakeholders including investors increasingly expect them to make their operations more sustainable. Financial services regulators also view ESG as a priority, embedding the principles of climate-related financial risks into their supervisory frameworks and dealing with institutions that may be making exaggerated or unsubstantiated sustainability-related claims that do not stand up to closer scrutiny (so-called 'greenwashing'). However, the key problem for institutions, particularly those operating cross border, is that there is limited uniformity in regulation, financial services regulators are at different stages in developing their ESG regulatory framework particularly in relation to disclosures and taxonomy. It is therefore critical that institutions monitor the latest announcements from the regulators.

The purpose of this updater is to track ESG regulatory developments from the period 6 March 2025 to 6 April 2025, from the United Kingdom, France, Europe Union, the Netherlands United States, Australia, and certain international regulators.

This month's highlights

19 March 2025 - FCA drops 'name and shame' and D&I proposals: key takeaways for firms

After much speculation regarding the fate of various outstanding Financial Conduct Authority (FCA) initiatives in relation to investigation announcements, diversity and inclusion (D&I) and non-financial misconduct, the FCA confirmed that:

1. it will no longer take forward the following proposals to:
    - implement a new public interest test for announcing investigations into regulated firms (known as the 'name and shame' proposals);
    - introduce new rules aimed at improving D&I in regulated firms; and
2. it will take some further time to consider its approach to non-financial misconduct in order 'to get this right.'

Our key take-aways can be found here.

United Kingdom

25 March 2025 - FCA publishes voluntary survey for ESG ratings providers

The Financial Conduct Authority (FCA) launched a voluntary survey to inform the future regulation of ESG ratings and broader sustainability disclosures.

The FCA explains that as it develops the future regulatory regime for ESG ratings providers, it is engaging widely to inform its approach, which includes ESG ratings providers and users. As part of this, it previously (in November 2024) invited firms from all sectors who may be users of ESG ratings and sustainability disclosures to respond to a survey.

ESG ratings providers are now being invited to complete a voluntary survey, which will inform the FCA's cost benefit analysis and policy development and aims to help ensure that the future regulation is both proportionate and tailored to the needs of the market.

The survey requests information to help the FCA better understand the ESG ratings market, including the business models and group structures used to provide ESG ratings; how ESG ratings are constructed and distributed; and what policies and processes firms have in place. The FCA also wants to understand how firms interact with the broader sustainability disclosures, which will inform its approach to the future regulatory regime in this area.

Next steps

Firms are encouraged to respond to the survey by 2 May 2025, although responses can be provided until 16 May 2025.

3 April 2025 – FCA shares feedback and response to DP23/1 on finance for positive sustainable change

The FCA published the feedback it received to discussion paper DP23/1 on finance for positive change, along with its response and next steps.

Background

DP23/1 was published in February 2023, with the aim of encouraging an industry-wide dialogue on firms' sustainability-related governance, incentives and competences. The FCA noted at the time that it intended to use the feedback in considering what the industry would find most helpful in this developing area and in developing its future regulatory approach.

Feedback

The FCA notes that the responses it received were generally positive about the importance of sustainability matters and the role of the themes outlined in DP23/1. It summarises the feedback received in relation to:

- Objectives, purpose, business and strategy.
- The role of the board and senior management.
- Accountability.
- Incentives and remuneration.
- Investor stewardship.
- Training and competence.

Common themes across the responses received included the need for new regulations (e.g. the Consumer Duty and the Sustainability Disclosure Requirements (SDR)) to "bed in" before determining whether any additional rules would be needed. The role of the International Sustainability Standards Board standards, and previously the Task Force on Climate-Related Financial Disclosures recommendations, in establishing a global baseline for sustainability disclosures was also mentioned.

FCA response

In its response, the FCA welcomes the level of engagement and flags the important role the engagement and dialogue has played in building its understanding of the state of play. It highlights the rules it has introduced since DP23/1 in relation to some of the themes, including the Consumer Duty, the SDR and labelling rules, and the Anti-Greenwashing Rule, and notes that many respondents to DP23/1 acknowledged the importance of these measures.

The FCA recognises the importance of allowing time for new measures to be implemented before introducing further rules in these areas, and that current practices are still developing in the areas covered by the DP that are not captured by these measures.

Next steps

The FCA confirms that it is not currently considering introducing new rules on the themes discussed in DP23/1, although it notes that those themes remain important to firms' success in embedding sustainability considerations, delivering value to consumers, and supporting market integrity. It plans to continue monitoring developments in the market to ensure it is functioning well, focusing on areas where potential harm to consumers, market integrity or competition is greatest and where it thinks regulatory action can make a positive difference.

The FCA also explains that it will continue to promote the themes discussed in DP23/1 through other domestic and international initiatives, including carrying out supervisory engagement, bringing market participants together to develop market-led solutions, and influencing the global stage.

European Union

1 April 2025 - Advancing Sustainable Finance: Technical Criteria for New Activities & First Review of the Climate Delegated Act

The EU Platform on Sustainable Finance (Platform) published a report 'Advancing Sustainable Finance: Technical Criteria for New Activities & First Review of the Climate Delegated Act'. In the report the Platform responds to the European Commission's (Commission) request to review and provide recommended amendments to the technical screening criteria of the economic activities included in the Climate Delegated Act adopted in 2021. The report also develops technical screening criteria for a list of new economic activities and 'do no significant harm' (DNSH) criteria for activities to be included in Annex II of the Climate Delegated Act, as "adapted" activities.

1 April 2025 - MEPs fast-track vote on stop-the-clock proposal

On 26 February 2025, the Commission published an "Omnibus package" (the Omnibus) aimed at simplifying and aligning its sustainability reporting and due diligence laws. The Omnibus seeks to introduce amendments to the EU Corporate Sustainability Reporting Directive (CSRD), Corporate Sustainability Due Diligence Directive (CS3D) and Taxonomy reporting. The proposal consists of two draft Directives which cover, respectively, a) dates for implementation and b) scope of application and substantive requirements. Our briefing note is here.

Among the proposals in the Omnibus is a 'stop-the-clock' proposal which will delay the application of the CSRD and the associated EU Taxonomy for all companies not yet subject to their reporting obligations by two years, and the CS3D by one year.

The European Parliament issued a press release stating that it had voted in favour of fast tracking its work on the stop-the-clock proposal to postpone the application of social and environmental reporting and due diligence measures. The European Parliament will decide on Thursday whether to delay the application of the requirements. If MEPs endorse the text on Thursday, the draft rules will only need formal approval by the Council to enter into force.

On the Thursday, the European Parliament voted to postpone the application dates for new EU laws on due diligence and sustainability reporting requirements. With 531 votes for, 69 against and 17 abstentions, MEPs supported the Commission proposal, part of wider simplification efforts aimed at strengthening the EU's competitiveness. To enter into force, the draft law now requires formal approval by the Council, which endorsed the same text on 26 March 2025.

France

3 April 2025 – The AMF and ACPR joint unit publishes its analysis of the French structured product market

The Autorité des Marchés Financiers (AMF) and the Autorité de Contrôle Prudentiel et de Résolution (the French Prudential Supervisory and Resolution Authority, ACPR) have carried out a detailed analysis of the annual inflows, main marketing channels and characteristics of structured products sold to retail investors.

The aim of the mapping exercise is to identify those structured products that are sold to retail investors, both as life insurance and as securities accounts. It aims to precisely quantity trends in annual inflows, and to identify the main marketing channels, as well as the main characteristics of these products.

The mapping exercise brought a number of lessons to light, including that the use of ESG criteria in structured products declined significantly over the period.

The Netherlands

There have been no reported updates this month.

United States- SEC and CFTC

17 March 2025 – SEC extends 'Names Rule" compliance deadlines

The Securities and Exchange Commission (SEC) issued "a six-month extension" on the compliance dates for rule amendments on investment company names "that are likely to mislead investors about the investment company's investments and risks."

As previously covered, the SEC adopted amendments to Rule 35d-1 ("Investment company names") to (i) require that funds with an investment focus (e.g. related to "ESG") "adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus that the fund's name suggests," (ii) update "the rule's notice requirements" and (iii) establish additional "recordkeeping requirements."

The extension pushes the compliance deadlines for larger fund groups from 11 December 2025 to 11 June 2026, and for smaller fund groups from 11 June 2026 to 11 December 2026.

3 April 2025 – SEC votes to end defence of Climate Disclosure rules

The SEC voted to end its defence of the rules requiring disclosure of climate-related risks and greenhouse gas emissions. The rules created a detailed and extensive special disclosure regime about climate risks for issuing and reporting companies.

According to the agency press release, the SEC staff "sent a letter to the court stating that the Commission withdraws its defence of the rules and that Commission counsel are no longer authorized to advance the arguments in the brief the Commission had filed. The letter states that the Commission yields any oral argument time back to the court."

SEC Commissioner Caroline A. Crenshaw criticized the SEC's decision to withdraw from defending the rule in court. She argued that the rule was developed through a rigorous, years-long process and that abandoning its defence is both unlawful and politically motivated. Ms. Crenshaw accused the SEC of sidestepping the Administrative Procedure Act by effectively allowing the rule to be dismantled without proper legal processes. She urged the SEC to either defend the rule or formally revise it through appropriate procedures, warning that the current approach undermines good governance and policymaking.

4 April 2025 – OCC withdraws from interagency guidance on climate risk

The Office of the Comptroller of the Currency (OCC) will no longer follow interagency guidance on climate-related risk management for large financial institutions.

On October 23, 2023, the OCC, FDIC and Federal Reserve Board issued joint guidance that provided a high-level framework for the safe and sound management of "exposures to climate-related financial risks" principles. (See previous coverage). The joint principles required financial institutions to integrate climate-related financial risk consideration into governance, policies, strategic planning, risk management, data and reporting and scenario analysis.

Acting Comptroller of the Currency Rodney E. Hood said the joint guidance was "overly burdensome and duplicative" of existing guidance which requires banks to maintain a sound risk management framework including as to "potential exposures to severe weather events or natural disasters." He said that the agency would "continue to look for appropriate opportunities to calibrate regulatory requirements to be effective, not excessive," while ensuring the integrity of the federal banking system.

Australia

7 March 2025 - Australian Sustainable Finance Institute and member banks exchange sustainable finance information

The Australian Competition and Consumer Commission (ACCC) has granted interim authorisation to the Australian Sustainable Finance Institute (ASFI) and its member banks. The authorisation allows the parties to exchange information regarding the current constraints on sustainable finance and investments. The aim of the collaboration is to support the development of reform proposals for the Government.

Whilst in collaboration, the parties must still abide by competition protocol for the handling of competitively sensitive information. The interim authorisation allows the ASFI and its member banks to engage in the proposed conduct whilst the ACCC considers the substantive application.

18 March 2025 - Active Super's $10.5 million greenwashing penalty

The Federal Court of Australia handed down a judgement ordering Active Super to pay a $10.5 million penalty for making misleading statements about its investments in contravention of the false or misleading provisions under sections 12DB(1)(a) and 12DF(1) of the Australian Securities and Investments Commission Act 2011.

In June 2024, Active Super's trustee, LGSS Pty Ltd (LGSS) claimed that it eliminated investments that posed a risk to the environment and community, including gambling, oil tar sands and coal mining. In addition, following the Ukraine invasion, Active Super made representations that it would no longer invest in Russian companies. It was found that Active Super held direct and indirect investments in gambling, coal mining and oil tar sands companies. The company also held investments in a Russian entity.

LGSS's misleading conduct enhanced its ability to attract investors to the Active Super fund and improved its reputation as an ESG contributor. The contravening conduct continued over an extensive period of time (approximately two and a half years), concerned substantial investments and likely led investors to lose confidence in ESG programs. Consequently, Justice O'Callaghan did not apply a reduction to the penalty. This was so despite LGSS taking steps to improve its compliance systems and having no previous allegations of similar misconduct.

This was ASIC's third greenwashing action. The case demonstrates ASIC's commitment to taking on misleading marketing and greenwashing claims made by companies.

20 March 2025 - Victorian government introduces Energy Efficiency Bill

The Victorian state government has introduced the Victorian Energy Efficiency Target Amendment (Energy Upgrades for the Future) Bill 2025.

The Bill extends the state's current legislative framework to allow the Victorian Energy Upgrades (VEU) program to continue until 2045. The VEU program offers appliance discounts, for mandated upgrades, to households and businesses to incentivise the use of energy efficient products.

In addition, the Bill provides the Essential Services Commission with a range of new and expanded enforcement tools to encourage and enforce compliance. The proposed new power authorises the regulator to issue improvement notices to current or accredited persons who represent themselves to be acting in accordance with the Victorian Energy Efficiency target scheme.

26 March 2025 - Bill for climate damage liability introduced

The Liability for Climate Change Damage (Make the Polluters Pay) Bill was introduced to Parliament. The Bill aims to hold corporations liable for climate damage caused by their emissions.

The Bill gives people and businesses impacted by climate change fuelled events (such as Tropical Cyclone Alfred) the right to sue coal and gas corporations for damages. These damages will be calculated based on a corporations share in global greenhouse gas emissions. In addition, the Bill provides an avenue for court injunctions ordering major emitters to reduce or cease activities that might cause climate damage.

31 March 2025 - ASIC issues sustainability reporting regulatory guide

After extensive public consultation, the Australian Securities and Investments Commission (ASIC) has published Regulatory Guide 280 Sustainability reporting (RG 280). RG 280 provides guidance for entities that are required to prepare a sustainability report containing climate-related financial information under Chapter 2M of the *Corporations Act 2001* (Cth).

RG 280 includes guidance in relation to:

- Sections on climate scenario analysis and disclosing scope 3 greenhouse gas emissions.
- More specific guidance for directors of reporting entities.
- Additional guidance on applying the sustainability reporting thresholds.
- ASIC's revised position on labelling of sustainability-related information in sustainability reports.
- Updated guidance on disclosing sustainability-related financial information outside of the sustainability report.

International regulators – FSB, IOSCO, Basel Committee, NGFS, SASB, IFRS, ISSB

There have been no reported updates this month.

Brochures and resources

ESG is high on the regulatory agenda.

To help our financial services clients navigate the complexities associated with embedding ESG considerations and compliance into their businesses, we have designed our ESG offering around the following 6 "Pillars": (i) Governance(ii) Risk identification, assessment and mitigation (iii) Policies and procedures (iv) Product design, labelling, manufacturing and distribution (v) Disclosures and reporting (vi) Regulatory interventions, investigations and disputes.

We have also produced a number of resources, including articles, podcasts and newsletters, to help clients navigate this evolving, complex landscape:

Financial services: Regulation tomorrow

Our blog, Financial services: Regulation tomorrow offers a convenient resource for those keeping track of the evolving and increasingly complex global financial services regulatory environment.

Financial Services Regulatory Developments in ESG

Developed by our global financial services regulatory lawyers and integrated risk advisory group, our Financial Services Regulatory Developments in ESG Hub provides resources and insights to help clients stay informed of key regulatory developments in the sector.

ESG and Sustainability Insights newsletter

Our ESG and Sustainability Insights newsletter brings together recent insights and resources on key topics affecting your business, including climate change and regulation, business and human rights, sustainable finance, energy transition and more.

US Regulatory Intelligence

Written and edited by practicing lawyers, our newsletter goes out each business day to 20,000 market participants. The news covers all significant events in U.S federal financial regulation and regulatory enforcement.

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