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# November 11, 2022

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# COP27 Update: Carbon Credit Proposals in Spotlight

**November 11, 2022**

**By Jason Halper**
Partner and Co-Chair | Global Litigation

The spotlight has shone brightly on carbon credits during the first week of COP27 in Sharm El-Sheikh, Egypt. On November 9, John Kerry, the U.S. Special Presidential Envoy for Climate, **announced** the **"Energy Transition Accelerator" (ETA)**, a billion-dollar carbon credit program designed to help private companies in wealthier countries support developing countries to reduce their reliance on fossil fuels. According to the announcement, "operating at the scale of national or subnational jurisdictions, the ETA will produce verified greenhouse gas emission reductions, which participating jurisdictions will have the option of issuing as marketable carbon credits." The program has been developed by the U.S. State Department in partnership with The Rockefeller Foundation and the Bezos Earth Fund. The U.S. government and its partners are aiming to develop the initiative "with input from governments, experts, the private sector, and civil society" and expect it to operate until 2030, possibly extending to 2035.

Kerry's proposal followed the publication of the **Africa Carbon Markets Initiative Roadmap Report**, which sets out **plans** to create a voluntary carbon market producing 1.5 billion carbon credits a year by 2050 by leveraging $120 billion USD. This proposal is supported by a consortium of African countries (Kenya, Malawi, Gabon, Nigeria and Togo) and carbon credit market participants. The Egyptian Stock Exchange has also used the platform of COP27 to **launch** an African voluntary carbon market, the African Market for Carbon Certificates, which will be developed over the next year.

**Taking the Temperature: The use of carbon credits in connection with meeting emissions reduction targets remains controversial. Kerry's proposal has re-sparked this type of debate, including whether such a carbon offset program is compatible with a United Nations report published earlier this week, which states that carbon offsets should be high-quality and used only as a last resort. The report states that for companies to achieve their net zero goals, they "must use credits associated with a credibly governed standard-setting body that has the highest environmental integrity with attention to positive social and economic outcomes where the projects or jurisdictional programs are located." Some European delegates, including German state secretary Jochen Flasbarth, have expressed skepticism regarding the ETA proposal and have raised concerns that it may duplicate existing European initiatives.**

**At COP27, Ambassador Kerry has defended the proposal, explaining that it "is not some grandma-grandpa credit, but a 2022 credit," and that "every company that takes part still has to reach net zero by 2050, nobody is off the hook, nobody is trying to pull a fast one. If we don't find more money, multiply renewable energy sixfold, we ain't gonna get this job done." Furthermore, he added that "We are not going to waddle – this has to move as rapidly as crisis demands."**

**Regardless of one's current views, carbon markets will continue to mature and possibly be subject to government regulation. As that occurs, many open issues around the utility of carbon offsets should become clearer. For the moment, however, we expect continued debate and disagreement about the use of carbon credits to meet emissions reduction commitments and the use of such credits to continue to grow.**

# Disclosure: UK Publishes Disclosure Framework for Transition Plans

**November 11, 2022**

Disclosure

**By Duncan Grieve**
**Special Counsel | White Collar Defense and Investigations**

The UK's Transition Plan Taskforce (TPT) has **announced** the publication of a "gold standard" **Disclosure Framework** and **Implementation Guidance** for how companies should develop, test and report on climate transition plans. The UK Chancellor announced the formation of the TPT in November 2021 at COP26 as part of the UK's plans to become the world's first net zero financial center and to address the fact that "early plans have varied in quality and often lack detail on the short-term actions that are being taken to achieve" climate targets. Alongside the Disclosure Framework, the TPT has also launched a regulatory sandbox aimed at testing pilot disclosures and assisting users to prepare their own transition plans. The Disclosure Framework and the Implementation Guidance are open for public consultation until February 28, 2023.

The TPT recommends that a transition plan should cover:

- A company's high-level ambitions to mitigate, manage, and respond to the changing climate and to leverage opportunities of the transition to a low greenhouse gas and climate resilient economy.
- Short-, medium-, and long-term actions the company intends to take to achieve its ambitions along with details as to how these actions will be financed.
- Governance and accountability procedures that support the delivery of the plan and regular reporting.
- Measures to address material risks to, and leverage opportunities for, the natural environment and stakeholders.

Sacha Sadan, ESG Director, Financial Conduct Authority (FCA), said: "Our ESG strategy supports the role of finance in delivering a market-led transition to a more sustainable economy. We strongly welcome today's publication of the Transition Plan Taskforce's Disclosure Framework and Implementation Guidance. The FCA has been actively involved in the development and drafting of these initial outputs. We look forward to using the final outputs as we move to strengthen our transition plan disclosure expectations of listed companies and regulated firms."

**Taking the Temperature: The thrust of the TPT Framework is not revolutionary. Its focus on climate-related governance, testing, and fact-based assessment and disclosure echoes the type of guidance provided in the U.S. by the Securities and Exchange Commission and other financial regulators and under the EU's various sustainability**

**directives, including the Corporate Sustainability Reporting Directive and the Sustainable Finance Disclosure Regulation. While a helpful clarification for UK entities, the challenge for boards and management raised by the TPT Disclosure Framework and its analogs in other jurisdictions is to take action based on applicable guidance and manage conflicting regulatory initiatives to the extent the company is subject to more than one regulatory scheme. To do so, directors and officers should consider: (i) the establishment of processes (or the quality of how those processes function) for identifying, assessing, and making decisions regarding climate-related risks and opportunities, including risks of physical assets and transition risks; (ii) periodically testing the adequacy of these processes; (iii) even if not directly applicable, taking into account guidance in other jurisdictions regarding governance or disclosure in order achieve a best-in-class approach; and (iv) rigorously assessing the risks associated with potential challenges for greenwashing or its corollary, greenhushing.**

# Disclosure: CDP to Incorporate ISSB Climate Disclosure Standards into Platform

**November 11, 2022**

Disclosure

**By Timbre Shriver**
Associate | Global Litigation

On November 8, non-profit sustainability disclosure platform provider CDP and the International Sustainability Standards Board (ISSB) **announced** that CDP will integrate the ISSB's climate-related disclosure **standards** into CDP's disclosure platform. In 2022, 18,700 companies globally—worth almost $61 trillion and encompassing half of global market capitalization—have utilized CDP's platform to disclose environmental information. The ISSB standard, when it is finalized, will be included into CDP's questionnaires, which in turn are issued to companies annually. For further details on the standards, and their path to finalization, see our **recent articles**.

In addition to this development, the ISSB **announced** during COP27 the establishment of the ISSB's **Partnership Framework**, which was created to "support preparers, investors and other capital market stakeholders as they prepare to use [International Financial Reporting Standards (IFRS)] Sustainability Disclosure Standards." The Framework includes over 20 partnership organizations.

Emmanuel Faber, Chair of the ISSB, said: "The ISSB is committed to delivering an effective, efficient disclosure eco-system for global capital markets, resulting in decision-useful climate-related disclosures. By aligning the CDP platform to the ISSB's climate-related standard, we are reducing the burden on entities and moving a step closer to that common language for disclosures. With the demand for robust disclosure as strong as ever, we are delighted that 18,000 preparers will be voluntarily disclosing data structured to IFRS S2 from the 2024 disclosure cycle."

**Taking the Temperature: The balkanization of climate-related disclosure standards remains a significant challenge for companies globally, one made that much harder by lack of consensus on related issues like emissions measurement standards. Companies should welcome developments such as this that advance the goal of something resembling a global consensus on appropriate sustainability disclosure. We expect to see this trend continue with future alignment and merging of currently competing standards as markets select their preferred formats and regulatory oversight overtakes voluntary frameworks published by non-governmental organizations.**

# ESG Ratings: Findings on Variation Between ESG Ratings Providers

**November 11, 2022**

ESG Ratings

**By Sara Bussiere**
Associate | Global Litigation

The Review of Finance recently published a paper entitled **Aggregate Confusion: The Divergence of ESG Ratings**, which disclosed the findings of an investigation into the "divergence of sustainability ratings." The authors investigated six ESG ratings providers: Kinder, Lydenberg, and Domini (KLD); Sustainalytics; Moody's ESG (Vigeo-Eiris); S&P Global (RobecoSAM); Refinitiv (Asset4); and MSCI. The paper found not only that the ratings providers failed to reach the same conclusion on a company's ESG rating, but also that "in most cases there was little agreement among them" and that "ESG rating divergence is not merely a matter of varying definitions but a fundamental disagreement about the underlying data." The paper was supplemented by a subsequent *Wall Street Journal* **article** written by one of the paper's authors.

The paper offers two reasons for the divergence: "What ESG raters choose to measure, and whether it is measured consistently," which the **authors** respectively term "theorization" and 'commensurability.'" The paper suggests that one method for improving ratings would be for regulators to establish disclosure standards that require "all companies to disclose certain ESG-related data, as the information reported by companies is the main source of data for ratings." They additionally **suggest** that regulators could impose mandatory auditing of ESG data similar to that required of financial statements, so that ESG-related disclosures are reviewed and approved based on consistent standards.

**Taking the Temperature: ESG ratings are a hot topic. As we have recently discussed, U.S. Senate Banking Committee Ranking Member Pat Toomey (R-PA) has requested various information from ESG-ratings providers and the European Securities and Market Authority announced that it is considering increased regulation of the ESG ratings sector. But the conclusions in the Review of Finance Study by and large are consistent with our in-depth discussion of ESG ratings, namely, that the lack of transparency around data considered and weightings accorded various factors and overall methodology, coupled with the sheer volume of ratings in the market, renders it difficult for investors and other consumers of this information to understand how to use it accurately and effectively. Like the authors of the paper, our "call for greater transparency and precision" in the ESG ratings marketplace reflects these challenges.**

# Green Finance: NZBA Publishes First Progress Report

**November 11, 2022**

Green Finance

**By Jeffrey Nagle**
**Partner | Finance**

On November 9, the UN-convened Net-Zero Banking Alliance (NZBA) **announced** the publication of its first **progress report**. The NZBA reported that over half of its members have now set intermediate (*i.e.*, 2030) decarbonization targets and that 90% of the 43 banks that were due to publish targets by the end of October have done so. The report "captures an aggregated view of the intermediate targets that have been reported by members." Since its inception in April 2021, the NZBA has almost tripled in size from 43 founding members to 122 member banks hailing from 41 different countries and representing 40% of global banking assets. Members of the NZBA are required to declare intermediate decarbonization targets within 18 months of joining the alliance. The targets should "prioriti[z]e areas of the member's business based on [greenhouse gas (GHG)] emissions, GHG intensities and/or financial exposure in their portfolio, must align with no/low-overshoot 1.5°C transition pathways, as specified by credible science-based climate scenarios, and must be achieved by 2030."

For more on the efforts of the NZBA, please refer to our October 25, 2022 **Cadwalader Climate** regarding the open letter that the NZBA sent to its members.

**Taking the Temperature: Institutional investor climate alliances such as NZBA, the Glasgow Financial Alliance for Net-Zero (GFANZ) and Climate Action 100+ have been subject to challenge recently on several fronts. On October 19, 2022, 19 Republican state attorneys general issued civil investigative demands to six U.S. banks seeking information related to their membership in NZBA and raising antitrust concerns. Earlier this year, Arizona's Attorney General indicated he would investigate potentially collusive activity involving Climate Action 100+. This month, five Republican senators sent letters to the heads of ESG practices at 51 law firms raising concerns about their clients' involvement in "climate cartels" and stating that "Congress will increasingly use its oversight powers to scrutinize the institutionalized antitrust violations being committed in the name of ESG." GFANZ itself recently dropped a requirement that its members commit to the United Nations-supported Race to Zero minimum standards, supposedly after several banks threatened to withdraw in part over concerns about antitrust challenges. Even the progress reported by NZBA is tempered by its own acknowledgment that faster action is needed, while the non-profit ShareAction observed "crucial gaps" in the NZBA report, including "a failure to include emissions-heavy sectors such as chemicals and agriculture" and "problems with inconsistent metrics, for example widespread use of intensity over absolute emissions reduction and varying approaches to fossil fuel targets." We will write separately on the validity, or lack thereof, of the antitrust concerns raised regarding investor climate alliances. Today's**

**takeaway is that such alliances are under scrutiny from Congress and NGOs, which threatens to chill collaboration in the climate reduction area and, with it, potential progress that otherwise might be made on industry-wide bases.**