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Developments at COP15

December 16, 2022

By Jason Halper
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Tough Negotiations: As the end of COP15 approaches, negotiations to reach agreement on a post-2020 global biodiversity framework continue but progress remains slow. As we **previously discussed**, the framework provides 2030 and 2050 milestones, including for 2030, conservation of at least 30% globally of land and sea areas (known as 30 by 30), restoration of at least 20% of degraded water systems and reduction of invasive species by at least 50%. The first draft of the framework also addresses financial support for countries to meet the anticipated goals of the framework, which has evolved as a major sticking point. It has been reported that a group of developing nations walked out of discussions over whether wealthier countries, such as China and Brazil, should receive more aid for biodiversity. This discontent comes as COP15 held its first ever "finance day" on December 15, where speakers made the case that financial institutions must see climate action and nature restoration as a single issue.

Nature Action 100: A new global investor engagement initiative, Nature Action 100, was announced at the conference. The initiative is intended to help tackle nature loss and biodiversity decline by fostering collaboration among investors and corporations on nature-related risks and dependencies in the companies in which asset managers invest. The initiative's Secretariat and Corporate Engagement workstreams will be co-led by **Ceres** and the **Institutional Investors Group on Climate Change (IIGCC)**. According to the **IIGCC**, "Investors will focus on companies in key sectors that are deemed to be systemically important to the goal of reversing nature and biodiversity loss by 2030. They will work to ensure companies are taking timely and necessary actions to protect and restore nature and ecosystems."

Unlocking Finance for Nature: Finance group Aviva and the NGO World Wide Fund for Nature (also known as World Wildlife Fund) (WWF) **announced** a report containing seven "foundational building blocks" to mobilize the required private finance to protect and restore nature. These building blocks can be found **here**. The over-arching purpose of these building blocks is to establish clear and measurable goals and targets at the company, national, and international levels that can be aligned. For example, one building block is "[m]easurable, legally binding, national nature goals which are aligned with" any post-2020 global biodiversity framework. Aviva's head of government engagement–sustainability, Patrick Arber, stated, "We need the equivalent of a Paris Agreement for nature – and global and national policy and regulatory frameworks to deliver it."

Regulation: FCA Establishes ESG Advisory Committee

December 16, 2022

Regulation

By Duncan Grieve
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This week, the UK's Financial Conduct Authority (FCA) **announced** the establishment of an ESG Advisory Committee to assist the FCA Board with executing its ESG-related responsibilities. The Advisory Committee is tasked with supporting the FCA Board in "executing oversight of ESG-related issues relevant to the FCA as a corporate entity and as a regulator." Furthermore, the Advisory Committee will advise the FCA Board on relevant ESG topics and offer views on how the FCA should "develop its ESG strategy in keeping with the organization's statutory objectives and regulatory principles."

In August, the FCA **sought** applications for experts with "in depth knowledge of ESG issues in the financial sector" to serve on the Advisory Committee. Individuals currently employed by FCA-regulated firms are not eligible for appointment. All members are appointed in their personal capacity and must abide by the FCA's conflict of interest policy. The Advisory Committee has six external "ESG experts drawn from civil society" to serve on the Advisory Committee, along with the FCA's Chair, other FCA non-executive directors, and the FCA's Director of ESG. The Advisory Committee is **expected** to meet approximately four times per year and ad hoc as required.

Taking the Temperature: The FCA continues to take positive steps to enhance its expertise and influence within the rapidly-developing ESG sector. As we previously highlighted, last month the FCA announced its intention to establish a voluntary code for ESG data and ratings providers to bring about greater market transparency. Now with the Advisory Committee, the FCA can consult ESG experts as the agency develops regulations that align with emerging global standards and market expectations. It is expected that the newly-established ESG Advisory Committee will play an important role in the development of future regulation arising from live consultations consistent with the regulator's stated objective to promote trust and transparency in the sustainable finance sector.

Regulation: EBA Publishes Sustainable Finance Roadmap

December 16, 2022

Regulation

By Simon Walsh
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On December 13, the European Banking Authority (EBA) **announced** the publication of its roadmap on sustainable finance, which outlines the "objectives and timeline for delivering mandates and tasks in the area of sustainable finance and environmental, social and governance (ESG) risks." The roadmap sets out the EBA's plan for the next three years to "integrate ESG risks considerations" into the banking framework and to "support the EU's efforts to achieve the transition to a more sustainable economy." This roadmap follows various legislative acts and initiatives that have allocated to the EBA "new mandates and tasks in the area of sustainable finance and ESG risks."

The roadmap identifies eight key objectives for sustainable finance: (1) Transparency and Disclosures; (2) Risk Management and Supervision (including transition plans); (3) Prudential Treatment of Exposures; (4) Stress-Testing; (5) Standards and Labels; (6) Greenwashing; (7) Supervisory Reporting; and (8) ESG Risks and Sustainable Finance Monitoring. According to the EBA, the roadmap builds on and replaces the **December 2019 EBA Action Plan on Sustainable Finance** and reflects "necessary adjustments following the market and regulatory developments, including new mandates and new areas of focus."

As the EBA executes the **roadmap** and its ESG mandates, the EBA intends to (among other things) support the "solid and consistent implementation of the EU and international agenda on sustainable finance." To that end, the EBA reiterated the importance of cooperation between EU and international institutions to ensure that a consistent approach is taken when developing and implementing an ESG-related regulatory framework. The EBA also will seek to ensure that ESG requirements "reflect the materiality of ESG factors and risks, taking into account not only the size and complexity of institutions but also other factors determining the materiality of ESG risks."

Taking the Temperature: While ESG regulatory initiatives have been "prolific in recent years," the fast-paced development of European legislation and frameworks has caused confusion and issues for market participants based on the lack of uniformity and clarity across markets. For example, we previously covered the decisions by numerous asset managers to recategorize certain investment funds' sustainability profiles due to the lack of clarity on what qualifies as a "sustainable asset" under the Sustainable Finance Disclosure Regulation. It is positive for market participants that the EBA intends to, as part of its roadmap, closely collaborate at an international level in carrying out its broad and ambitious sustainable finance objectives to produce a more globally consistent regime.

Litigation and Enforcement: Asset Manager Self-Reporting of Greenwashing Regulatory Breach

December 16, 2022

Litigation and Enforcement

By Rachel Rodman
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The Australian Securities & Investments Commission (ASIC) **issued** three infringement notices to the Australian unit of a large U.S.-headquartered asset manager for greenwashing infringements. The breach involved three funds that were set up to exclude certain tobacco investments but excluded only manufacturers of cigarettes and related products, not companies involved in the sale of such products. The ASIC was concerned that the disclosure statements for these funds "may have been liable to mislead the public by overstating an exclusion, otherwise known as an investment screen." The asset manager **described** the omission in the disclosure statement as an "inadvertent error" and an "unintended misdescription" that "did not result in any adverse financial impact on investors."

The asset manager was fined a total of AUD 39,960 ($26,873) for the greenwashing infringements. ASIC Deputy Chair Sarah Court said "Greenwashing is not limited to environmental claims but extends to misleading ethical propositions. Entities which seek to promote ethical investing must ensure their statements are accurate and able to be substantiated." Deputy Chair Court also stated that "Investors can feel strongly about not investing in tobacco production, manufacturing and sales, and where tobacco-exclusion investments are promoted, the entity making those claims must be able to substantiate the full exclusion of those investments."

Taking the Temperature: The ASIC has been clear that enforcement activity against greenwashing "is a current ASIC priority," and this is the second time the Australian financial regulator has taken action against greenwashing. In October, Tlou Energy received a similar infringement notice and paid AUD 53,280 (approximately $34,000). The regulator in June also published an information guidance sheet on how to avoid greenwashing when offering or promoting sustainability-related products. The ASIC likely will continue to pay close attention for evidence of greenwashing and related regulatory breaches. ASIC is also not alone. Other regulators across the globe are similarly pursuing ESG-related claims against financial institutions as part of a broader effort to protect investors and ensure integrity in this sector of the financial markets. For example, as we previously reported, the UK's Advertising Standards Authority ruled in October that two advertisements about a major UK retail bank's green credentials were "misleading" and "omitted material information." Financial institutions should take great care to ensure that all ESG-related statements and marketing materials meet the relevant legislative and regulatory standards and are completely accurate and defensible based on contemporaneously documented support.