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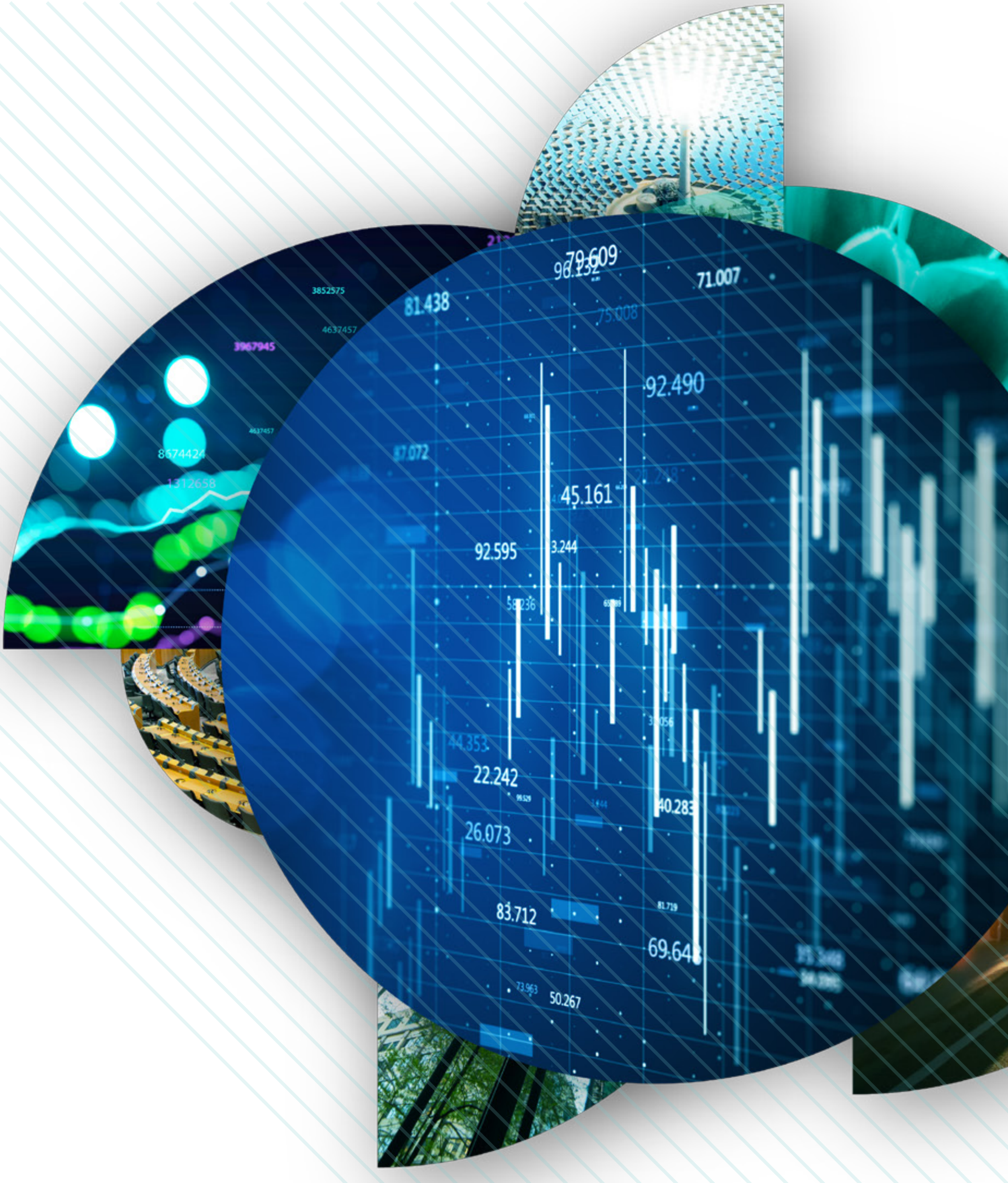
ESG | Sustainability

Financial Services regulatory ESG updater

6 February – 6 March 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 February 2025 to 6 March 2025, from the United Kingdom, France, Europe Union, the Netherlands United States, Australia, and certain international regulators.

This month's highlights

14 March 2025 - Changes to the ESG sourcebook – did you see Handbook Notice 127?

On 28 February 2025, the Financial Conduct Authority (FCA) issued Handbook Notice 127.

Given that Handbook Notices are fairly routine in the sense that they refer to Policy Statements that have already been published together or contain miscellaneous amendments to the Handbook they can easily be overlooked. But on this occasion, Handbook Notice 127 contained some interesting changes that the FCA has made to its ESG sourcebook and in this article we briefly cover these.

The changes are set out in the Sustainability Labelling and Disclosure Of Sustainability-Related Financial Information (Amendment) Instrument 2025 which the FCA Board approved on 27 February 2025. This instrument amends the ESG sourcebook and updates certain guidance provisions in other related sourcebooks to clarify certain existing rules. The key amendments are as follows.

Anti-greenwashing rule

The FCA has sought to clarify the scope of the 'the anti-greenwashing rule,' as under the amendments the FCA has removed the hyperlink to the Glossary term for the word 'communicates' in ESG 4.3.1R(1)(a) and ESG 4.3.1R(1)(b). This amendment ensures that the word 'communicates' will have its broader, natural meaning which will give proper effect to the rule as consulted on in CP22/20, as opposed to linking it specifically to financial promotions. Additionally, there has been confirmation that ESG 4.3.1R(1)(a) and ESG 4.3.1R(1) (b) are not intended to be read cumulatively. The FCA confirmed, paragraph ESG 4.3.1R(1) (a) will apply to communications that are not financial promotions and paragraph ESG 4.3.1R(2)(b) will apply to communications that are financial promotions.

The question of the scope of application of the anti-greenwashing rule was a key question and point of interpretation around implementation of the rule, with many focusing in on this defined term. For those whose implementation focused on the 'look through' definition of 'communicates' this amendment may amount to a relatively significant expansion of the application of the rule in practice. As ever it us important to place the rule in context and there remain limitations on its application – to communications in relation to a product or service – but even there, the terms are not defined and again should be given their natural meaning. In practice, firms are well advised to take an expansive interpretation of the scope of the rule in keeping with the FCA's policy intent.

Distributors

Under the amendments, the FCA has amended the word 'or' to 'and' in ESG 4.1.19R(2)(a) to clarify that where distributors are using the terms set out in ESG 4.3.2R(2) in either the name of a recognised scheme or a financial promotion relating to the scheme, they need to comply with both ESG 4.1.19R(2) (a) 'and' ESG 4.1.19R(2)(b). This means that distributors that distribute recognised schemes to retail clients must in relation to the relevant digital medium for the distributor's business:

1. Display the notice at ESG 4.1.19R(1) in a prominent place on the specific webpage or page on a mobile application or other digital medium at which the recognised scheme is offered; and
2. Include a hyperlink to the relevant webpage of the FCA website which sets out for retail clients further information in relation to the sustainability labelling and disclosure requirements under ESG 4 and ESG 5.

Feeder Funds

The FCA have made amendments to ESG 4.3.7R(3) to add the words 'where it is not using a sustainability label' so that it clarifies that a manager that is undertaking sustainability in-scope business in relation to a sustainability product that is a feeder fund, where it intends to use the terms in ESG 4.3.2R(2) in the product's name, must ensure that the manager complies with the requirements of ESG 4.3.5R(3) where they are not using a sustainability label.

Alignment with the SDR and TCFD reporting timeline

The TCFD rules require reports to be published by 30 June each year, and the FCA amendments to the SDR will require the first report to be published 16 months after a label is first used or the naming and marketing rules for sustainability terms set out in ESG 4.3.2R(2) apply. Managers can choose to start using labels at any time after 31 July 2024 and must comply with the FCA naming and marketing rules by 2 April 2025 and the reports must cover a 12-month period. The FCA are therefore not able to specify a deadline for the first year of SDR reporting as it will depend on when the label or terms are first used. However, under ESG 5.4.3R(3) firms will be able to choose to amend their publication date for subsequent SDR product-level reports if they would prefer to align with the TCFD, or any other reporting deadline. Firms must simply ensure there is no period of time which is not covered e.g., by issuing an interim report if necessary.

The changes are effective from 28 February 2025.

European Commission proposes "Omnibus package" amending sustainability reporting and due diligence requirements

On 26 February 2025, the European Commission published an "Omnibus package" aimed at simplifying and aligning its sustainability reporting and due diligence laws. Read our briefing note.

Financial services regulation and the carbon markets – the Australian perspective

In this latest podcast we explore the carbon market generally and then discuss the Australian financial services regime for carbon credits and when to apply for an AFS licence.

United Kingdom

12 February 2025 - Government consults on extending the UK ETS cap beyond 2030

The UK Emissions Trading Scheme (**ETS**) Authority launched a consultation on proposals for extending the UK ETS beyond the end of Phase I at midnight on 31 December 2030.

Background

The UK ETS is a cap-and-trade scheme that sets an overall limit on emissions for the sectors covered by the scheme. The downward trajectory of the cap is intended to drive emissions reductions in the covered sectors towards UK-wide climate targets.

Phase I of the ETS runs from 1 January 2021 until 31 December 2030. In December 2023, the long-term pathway for the UK ETS was published, setting out the ETS Authority's continuing commitment to the long-term future of the UK ETS. The ETS Authority also announced its intention (subject to consultation) to continue the UK ETS beyond 2030 until at least 2050.

Consultation

The ETS Authority is now seeking input on proposals for extending the UK ETS beyond the end of Phase 1, including in particular:

- Extending the UK ETS into a second phase from 1 January 2031 onward.
- The length of a post-2030 Phase II.
- Whether to allow banking of emissions allowances between Phase I and a post-2030 Phase II of the Scheme.

Next steps

The deadline for responses to the consultation is 9 April 2025.

12 February 2025 - The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2025

The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2025 (**the Order**) was laid before Parliament and published on legislation.gov.uk, along with an explanatory memorandum.

The Order makes amendments to the legislation that gives effect to the UK ETS, which incentivises decarbonisation by requiring operators to purchase allowances based on carbon emissions.

Some operators are given free allocation of allowances to mitigate the risk of carbon leakage, and there are two allocation periods – 2021-2025 and 2026-2030 – during which free allocation is calculated and provided to eligible operators. The Order moves the start of the second allocation period for stationary installations from 2026 to 2027, making 2026 a standalone year, and provides for the calculation of free allocation in the 2026 standalone scheme year.

In addition, the Order makes three changes to other aspects of the scheme, to:

- Require the publication of full details of transactions between accounts in the scheme's Registry after a three-year delay.
- Add limited exceptions to the prohibition on disclosure of Scheme data in order to support the development and implementation of related policies and support the statutory functions of the Climate Change Committee.
- Extend qualification criteria so that installations with low levels of emissions which started operations between 2nd January 2021 and 1st January 2024 inclusive can apply to be classed as Ultra-Small Emitters during the 2026-2030 period, thereby benefitting from a reduced administrative burden.

The Order will come into force on 31 March 2025.

14 February 2025 - FCA publishes update on extending SDR to portfolio management

The Financial Conduct Authority (**FCA**) updated its webpage for consultation paper CP24/8 on extending the sustainability disclosure requirements (**SDR**) and investment labels regime to portfolio management.

In the update, the FCA flags that it no longer plans to publish a policy statement in Q2 2025, as it wants to take the necessary time to ensure an extension of SDR to portfolio management delivers good outcomes for consumers, is practical for firms and supports growth of the sector.

The FCA notes that it will continue to reflect on the feedback and provide further information in due course.

European Union

24 February 2025 - EBA report on data availability and feasibility of common methodology for ESG exposures

The European Banking Authority (**EBA**) issued a report on data availability and feasibility of common methodology for ESG exposures. The report addresses points (a) and (b) of the mandate under Article 501c(1) of the Capital Requirements Regulation (**CRR**), requesting the EBA to assess the availability and accessibility of ESG data, and the feasibility of methodological standardisation for the identification and qualification of credit risk exposures to ESG risks in the banking book. For that purpose, the report investigates institutions' current practices and methodologies, based on the outcome of a qualitative industry survey and complementary desk-based analysis.

Next steps

The report will be complemented by further work with a view to addressing letters (c) and (d) of Article 501c(1) of the CRR, which mandates the EBA to assess the effective riskiness of exposures to environmental and social risks and the potential effects of an adjusted prudential treatment of such exposures.

26 February 2025 - Commission adopts Omnibus Sustainability and Investment packages

The European Commission (**Commission**) adopted an Omnibus Sustainability package and an Omnibus Investment package.

The Commission's work programme, published on 11 February 2025, announced a first series of "Omnibus" packages intended to address overlapping, unnecessary or disproportionate rules that are creating unnecessary burden for EU businesses. The proposals now published are designed to provide substantial simplification in the field of sustainability and EU investment programmes.

Omnibus Sustainability package

The Omnibus Sustainability package includes a:

- Proposal for two Directives amending the Corporate Sustainability Reporting Directive (**CSRD**) and the Corporate Sustainability Due Diligence Directive (**CSDDD**).
- Draft Delegated act amending the Taxonomy Disclosures and the Taxonomy Climate and Environmental Delegated Acts subject to public consultation.
- Proposal for a Regulation amending the Carbon Border Adjustment Mechanism (**CBAM**) Regulation.
- Proposal for a Regulation amending the InvestEu Regulation.

The main changes being proposed to the CSRD and the CSDDD are summarised in Q&As.

In particular, the CSRD is being changed so that the number of companies in scope will be reduced by about 80%. The reporting requirements would only apply to large undertakings with more than 1,000 employees (i.e. undertakings that have more than 1,000 employees and either a turnover above EUR 50 million or a balance sheet total above EUR 25 million). Companies outside the scope of CSRD (companies with up to 1,000 employees) may choose to report voluntarily on the basis of a simplified voluntary standard to be adopted by the Commission, based on the voluntary standards for SMEs developed by the European Financial Reporting Advisory Group.

A key proposed change to the CSDDD is to give companies more time to prepare for implementing the new framework by postponing, by one year, the transposition deadline (26 July 2027) and the first phase of the application of the sustainability due diligence requirements, covering the largest companies (to 26 July 2028). Also, the necessary guidelines by the Commission will be advanced to July 2026, allowing companies to build more on best practices and reduce their reliance on legal counselling and advisory services.

The proposed amendments to the Taxonomy Disclosures Delegated Act and the Taxonomy Climate and Environmental Delegated Acts include simplifying the reporting templates, introducing a materiality threshold to make disclosure of alignment for companies with less 10% eligible activities not mandatory, introducing the option of reporting partial disclosure to foster transition finance, simplifying and make more useful the Green Asset Ratio used by banks, reducing the scope for mandatory reporting on operational expenditure and simplifying certain 'Do no significant harm' criteria.

The changes to the CBAM Regulation include simplifying the small occasional importations of CBAM goods, below the maximum threshold of 50 tonnes per year. This threshold corresponds to approximately 80 tonnes of CO_2 equivalent on average per importer. These importers will no longer be subject to any CBAM obligation.

Omnibus Investment package

The Omnibus Investment package amends the InvestEu Regulation, the Regulation on the European Fund for Strategic Investments (**EFSI Regulation**) and legacy financial instruments.

The InvestEU and EFSI Regulations will be simplified with a view to reducing the frequency and the content of some reports.

The proposal to amend the InvestEU Regulation would also help mobilise additional EUR 50 billion of investment by increasing the size of the EU guarantee by EUR 2.5 billion and facilitating the combined use of the InvestEU guarantee with existing capacity available under three legacy programmes (EFSI, CEF Debt Instrument and InnovFin Debt Facility) to support new InvestEU financing and investment operations.

Next steps

The legislative proposals will be submitted to the European Parliament and the Council for their consideration and adoption.

The changes on the CSRD, CSDDD, and CBAM Regulation will enter into force once the co-legislators have reached an agreement on the proposals and after publication in the EU Official Journal.

In line with the Communication on simplification and implementation published on 11 January 2024, the Commission invites the co-legislators to treat these packages with priority, in particular the proposal postponing certain disclosure requirements under the CSRD and the transposition deadline under CSDDD, as they aim to address key concerns identified by stakeholders.

The Commission has issued a call for evidence on the draft Delegated act amending the Taxonomy Disclosures and the Taxonomy Climate and Environmental Delegated Acts. The call for evidence closes on 26 March 2025. The draft Delegated Act will be adopted after public feedback and will apply at the end of the scrutiny period by the European Parliament and the Council.

5 March 2025 - Commission Notice containing clarifications on technical screening criteria

The Commission issued a Notice which contains technical clarifications responding to frequently asked questions on the technical screening criteria set out in the Taxonomy Climate Delegated Act (including the amendments to the Taxonomy Climate Delegated Act) and the Taxonomy Environmental Delegated Act, as well as the disclosure obligations for the non-climate environmental objectives laid down in the amendments to the Taxonomy Disclosures Delegated Act.

France

5 February 2025 – AML approves first bond prospectus for European green bonds under the 'EuGB' standard

The Autorité des marchés financiers (**AMF**) approved a prospectus of Île-de-France Mobilités, enabling the first admission to trading on Euronext Paris of European green bonds under the EuGB standard and governed by French law. This issuance complies with the stipulations of the new European regulation which require the bond proceeds to be allocated to finance sustainable activities and complies with the enhanced transparency requirements.

This is the first prospectus approved for the admission to trading on Euronext Paris of EuGB bonds in France and one of the first in Europe.

The Netherlands

7 February 2025 - AFM published points of attention for prospectuses in 2025

The Dutch Authority for the Financial Markets (**AFM**) published certain points of attention that the AFM will focus on in 2025 when assessing (basic) prospectuses and supplements. These include:

1. **New requirements due to the EU listing Act**: The EU Listing Act will bring significant changes to the Prospectus Regulation in the coming years. There are already some amendments applicable that affect the content of the prospectus and are therefore relevant to take into account when drawing up prospectuses and supplements. Examples include amendments related to the risk factors, and the possibility to incorporate by reference future financial information.
2. **Increased focus on risk factors**: The AFM will focus on risk factor disclosure in its review of prospectuses, in addition, one of the alleviations for issuers is that a supplement is no longer required to supplement their bases prospectus(es) when new annual or interim financial information is published. This financial information can be incorporated by reference instead.
3. **Inform AFM about European green bonds in a timely manner**: The European Green Bond Regulation came into effect on 21 December 2024. The AFM supervises compliance with this Regulation. As the assessment of prospectuses within European green bonds is new, this assessment may take longer than usual. The AFM, therefore, requests that issuers who wish to issue European green bonds inform the AFM well in advance of their plan to do so.

United States- SEC and CFTC

11 February 2025 - SEC statement from acting Chairman on climate-related disclosure rules

The Securities and Exchange Commission (**SEC**) published a statement from Acting Chairman, Mark T. Uyeda. The statement discusses the Enhancement and Standardization of Climate-Related Disclosures for Investors rule.

In his statement, the acting Chairman makes the following key points:

- The Rule is currently being challenged in litigation consolidated in the Eighth Circuit and the SEC previously stayed effectiveness of the Rule pending completion of that litigation.
- The Rule is deeply flawed and could inflict significant harm on the capital markets and the US economy.
- During the comment period, many submissions argued for the Rule to not be adopted. Among the reasons were that the Rule would require a large volume of financially immaterial information, financially material climate-related risks were already subject to disclosure under existing rules, and the proposed rules overstepped the SEC's regulatory authority.
- The SEC's briefs previously submitted in the cases consolidated in the Eighth Circuit did not reflect the views of the Acting Chairman. The briefs defend the SEC's adoption of the Rule, but the Acting Chairman continues to question the statutory authority of the SEC to adopt the Rule, the need for the Rule, and the evaluation of costs and benefits.
- The Acting Chairman also questions whether the SEC followed the proper procedures under the Administrative Procedure Act to adopt the Rule.
- The Acting Chairman has directed SEC staff to notify the Court of the changed circumstances and request that the Court not schedule the case for argument to provide time for the SEC to deliberate and determine the appropriate next steps in these cases.
- The SEC will promptly notify the Court of its determination about the positions in the litigation.

Australia

11 February 2025 - Environmental group take Tamboran Resources to court over a proposed gas exploration project

Lock the Gate (**LTG**), an environmental activist group, had its first case management hearing in the Federal Court of Australia against the United States gas company Tamboran Resources (**Tamboran**). Justice Owens set down a two-day trial for 23 and 24 June 2025.

LTG are seeking an injunction to prohibit Tamboran from continuing their gas exploration project in the Northern Territory, which involves drilling and fracking exploratory wells to sell gas. LTG allege the Environment Minister, Lauren Moss, failed to lawfully assess the environmental plan by not identifying and considering climate change and water pollution risks in Tamboran's gas exploration application.

LTG's claim is the first legal challenge under the 'water trigger' amendments recently introduced to the *Environment Protection and Biodiversity Conservation Act 1999*, which requires consideration of likely significant impacts on water resources in relation to all forms of unconventional gas.

20 February 2025 - ACCC's 2025-2026 Compliance and Enforcement Priorities

The Australian Consumer and Competition Commission (**ACCC**) has released its Compliance and Enforcement Priorities for the 2025-2026 financial year. In the year ahead, the regulator will have a continued focus on environmental claims and sustainability.

This priority will include a focus on greenwashing in recognition of the substantial impact false or misleading green claims have on consumer trust and engagement. The ACCC will continue to proactively target greenwashing in a range of sectors including energy, food, fashion, and homewares.

The regulator aims to ensure its enforcement priorities do not deter genuine sustainability collaborations between businesses.

27 February 2025 - ACCC's second Annual Sustainability Reporting Summit

At the ACCC's second Annual Sustainability Reporting Summit, Deputy Chair Mick Keogh delivered the keynote address, highlighting the ACCC's focus on addressing consumer, fair trading, and competition issues related to environmental claims.

Mr Keogh discussed the intersection of sustainability collaborations and competition law, noting that the ACCC can exempt competitor cooperation from competition laws if it benefits the public. Mr Keogh stressed that competition law should not hinder sustainability collaborations that offer public benefits.

The regulator believes sustainability collaborations generally pose low competition risks and provide net public benefits. Examples of authorised collaborations include industry stewardship schemes, joint renewable energy purchases, and efforts to address recycling system disruptions.

3 March 2025 - Zenith in a $1.9 billion refinancing deal to support green energy projects

Zenith Energy, a leading independent power producer in Australia, specialises in sustainable, reliable remote hybrid power solutions. These solutions are vital for powering remote mining operations as they transition to renewable energy.

The company has secured $1.9 billion to refinance and expand its bank debt facilities, with a syndicate of 14 Australian and international lenders contributing. Over $1 billion of this funding is dedicated to green loans.

The green loan supports Zenith's commitment to sustainability, enabling the delivery of renewable energy technologies and low-emission solutions for mining operations across Australia.

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

There have been no reported updates this month.

Resources

ESG is high on the regulatory agenda. Businesses, governments, regulators, financial services firms and individuals all have a part to play in tackling climate change and this view is increasingly shared across society. In terms of financial markets, investors are increasingly seeking sustainable financial products and ESG investing, traditional investing combined with sustainable or otherwise philanthropic aims, has seen huge growth in recent years. Regulated firms are also seeking to improve their own ESG performance more generally to build stronger relationships with their stakeholders, including those who use their services. Whilst the growing emphasis on ESG presents opportunities for financial services providers, it also brings with it a number of risks, which need to be properly managed with a view to avoiding future regulatory investigations and enforcement.

We have 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.

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