

ESG for financial services firms: Pillar 1 – Governance



Environmental, Social and Governance (ESG) and sustainability obligations and expectations now extend beyond climate-related risks and encompass governance and social considerations such as diversity, equity & inclusion (DE&I) and tackling non-financial misconduct. Our multidisciplinary financial services team is well-placed to advise clients on responding to the latest ESG developments and meeting the expectations of both regulators / law enforcement agencies and other market participants. We can also help clients to evaluate opportunities and advise them on how to most effectively manage emerging risks.

Our ESG offering for financial services firms

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”:

1. Governance.
2. Risk identification, assessment and mitigation.
3. Policies and procedures.
4. Product design, labelling, manufacturing and distribution.
5. Disclosures and reporting.
6. Regulatory interventions, investigations and disputes.

This brochure sets out our approach in relation to governance (“Pillar 1”).

Our services in relation to governance

There is a range of support we can offer to clients in effectively building ESG considerations into their governance arrangements. This includes:

- Reviewing existing governance arrangements and suggesting enhancements to address ESG considerations – we can support across the full spectrum of relevant issues including in relation to the operation and composition of the board and board committees, reporting and escalation frameworks, management information flows, training programmes, and the way in which ESG developments are identified and embedded into the client’s frameworks.

- Undertaking culture and conduct reviews.
- Conducting board effectiveness reviews for both regulated and unregulated entities.
- Advising clients on individual accountability and compliance with the UK’s Senior Managers and Certification Regime (SMCR) (including updating Statements of Responsibility and advising on considerations relating to the allocation of prescribed responsibilities) as well as in relation to directors’ duties under UK law.
- Conducting governance and lessons learned reviews to identify potential and actual weaknesses, analyse root causes of issues that have arisen and suggesting remedial steps to address deficiencies.

Our tools and products

In addition to providing bespoke advice, we have developed a number of tools and products to support clients. These include:

- **ESG Updater.** Our multi-jurisdictional ESG updater keeps clients informed of the latest developments and best practices in ESG globally, including from regulators in the UK, US, Australia and EU. Receiving this updater service can help clients ensure that their ESG strategies remain aligned with standards and expectations as they evolve.
- **Anti-Greenwashing Tool.** In light of the FCA’s Anti-Greenwashing Rule, we have developed an anti-greenwashing tool to assist clients in identifying potential greenwashing risks within their financial products and promotional materials.
- **Tailored Training Programmes.** Working with our clients, we can design a tailored internal training programme to address specific needs and concerns amongst different populations of staff and provide

practical guidance on managing ESG-related matters and risks.

- **Podcasts and Blogs.** Our series of podcasts and blog posts on Global Regulation Tomorrow can serve as an invaluable tool for clients navigating the ESG landscape by providing timely and accessible insights into key issues and developments.

Why instruct Norton Rose Fulbright?

Instructing Norton Rose Fulbright provides access to:

- **A multidisciplinary team of experts.** Our team comprises a blend of contentious and advisory lawyers and risk advisory experts, enabling us to provide a broad range of advice across all key jurisdictions.
- **A team with a depth of experience.** We have a broad understanding of how financial services firms operate. We understand the issues which arise when managing regulatory risks and balancing internal sensitivities and can help clients to navigate these complexities.
- **A team that can provide market insights.** We have a broad view of common practices across the professional services market due to our diverse client base.
- **Advice which can benefit from legal privilege.** Provided certain steps and protocols are followed, it may be possible for a client to assert privilege over advice that we provide, which has a number of benefits including protecting such advice from disclosure.

Our experience

Our team has extensive experience of advising financial services firms on ESG issues. Some of our recent experience includes:

- Advising an international bank on integrating considerations of climate-related financial risks into governance, risk management and disclosure frameworks in line with relevant prudential regulatory guidance and the TCFD Recommendations.
- Advising an international corporate on its end-to-end risk governance processes.

- Conducting a board effectiveness and broader governance review for a large Asian bank which involved considering branch committee and sub-committee dynamics; interactions with the executive team and head office, board and senior management; the reporting lines within the bank and overall interactions between the key players in London within the bank.
- Advising a global bank across a broad spectrum of disciplines, with a core focus on the governance issues the bank faced over the last few years. We are trusted, strategic advisors in regular close contact with senior executives and members of the board and have provided intensive support throughout this time, including conducting sensitive board reviews.
- Assisting an investment group with a board effectiveness review and more generally with the implementation of the SMCR and subsequently producing a report which has been shared with the FCA.
- Advising a large international group following discussions with the FCA in respect of its governance within the UK. This included reviewing a number of committee structures, the board effectiveness and escalation channels and providing a report in respect of our findings.
- Conducting a governance “lessons learned review” on behalf of a UK bank arising from errors in the bank’s regulated loan documentation, which gave rise to enforceability issues and substantial financial remediation. The issue has been described by the bank as the most significant compliance issue in its recent history.

Key Contacts



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