

ESG for financial services firms: Pillar 6 – Regulatory interventions, investigations and disputes



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 contentious matters including regulatory interventions, investigations and disputes ("Pillar 6").

Our services in relation to regulatory interventions, investigations and disputes

Our comprehensive contentious ESG offering supports our clients in dealing with interventions by regulators, in dealing with both internal and external investigations and enquiries arising across the ESG landscape and with disputes, including in connection with potential breaches of:

- The FCA Principles.
- The FCA's Anti-Greenwashing Rule (including green- and social washing).

- Advertising codes and rules, including those of ASA and the FCA's financial promotion rules.
- Listed company climate-related disclosure obligations.
- The UK Market Abuse Regulation.
- Directors' duties.

We can support clients through all stages of an investigation process including scoping and terms of reference; identifying and reviewing relevant materials; conducting interviews and other fact-finding; drafting and responding to reports and recommendations.

We also have experience of designing and implementing remediation programmes to address effectively any identified issues or lessons learned.

We also advise clients on whistleblowing incidents in this space and on complaints and claims including litigation involving S138D FSMA claims, third party activists, and claims of misrepresentation arising from statements made about DE&I credentials.

In the DE&I space, we can leverage our contentious ESG experience to support our clients in relation to:

- Enhancements to governance arrangements including whistleblowing policies and procedures, employee handbooks and investigation protocols.
- Training and guidance in respect of non-financial misconduct and other hot topics.
- Supporting internal investigations and responding to incidents.

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 and to support investigations into potential issues and concerns.
- **Tailored Training Programmes.** Working with our clients, we can design a tailored internal training program 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 a UK listed international travel and tourism company following a report to regulators by an environmental charity raising concerns regarding the adequacy of climate-related disclosures in the annual reports and accounts. We assisted in responding to two separate enquiries from the FCA and the FRC relating to the client's risk management framework, its process for identifying the principal risks facing the company and the adequacy of its disclosure in its published reports. Both the FCA and the FRC closed their enquiries with no action being taken.
- Advising a client in relation to serious concerns of non-financial misconduct. This included advice relating to notification obligations, the approach to conducting and managing the findings of an internal investigation and strategic and regulatory advice in relation to a fit and proper assessment in respect of a senior manager.
- Advising a large financial services firm in relation to an internal investigation into concerns raised by a number of individuals relating to the culture of the firm. This included conducting a culture review and fact-finding investigation regarding the extent to which there was any substance in the concerns raised and advising on remediation activity with a view to addressing the findings.

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