ESG UPDATE
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Global ESG Disclosure Regimes

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EXECUTIVE SUMMARY

GENERAL

- Two leading professional associations in the accounting world released a joint report highlighting trends in ESG reporting and assurance. The groups studied the climate and ESG disclosures of 1,400 companies across 22 global jurisdictions. They concluded that, while the frequency of reporting ESG information is high, the incidence of assurance is not, and there are meaningful differences in practice across jurisdictions. The use of TCFD and SASB both doubled from 2019 to 2020.
- Research from Audit Analytics showed that the use of multiple ESG frameworks is increasing. A full 80% of the 1,283 companies assessed reported against more than one framework in 2020, compared to 68% in 2019. Common frameworks include GRI, SASB, the UN Sustainable Development Goals, TCFD and the UN Global Compact.

EUROPEAN UNION

- The 100-day comment period on the Draft European Sustainability Reporting Standards Exposure Drafts closed on August 8. EFRAG reported receiving over 750 comments. Next, the designated EFRAG bodies will consider the comments submitted. EFRAG expects to provide the initial set of Draft ESRS to the European Commission in November 2022 to be considered for adoption.
- ISSB Chair Emmanuel Faber urged the European Parliament to prioritize advancing international alignment among sustainability disclosure regimes, even at the expense of Brussels's ambitious timeline. Mr. Faber urged his EU colleagues to recognize that "the prize of aligning" outweighs adherence to a strict schedule. He also noted that the calendar for the ISSB to release its first two standards has likely slipped from late 2022 into early 2023.
- The EFRAG Sustainability Reporting Board convened in late August to discuss agenda topics including, *Alignment with IFRS Sustainability Standards*. The political agreement reached in June on the CSRD by the European Council and the European Parliament prioritized "integrating the content of global baseline standards to be developed by the ISSB." EFRAG noted that it is working diligently "to achieve highest possible alignment" with the ISSB approach yet cautioned that "further changes will be needed" down the line.

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UNITED STATES

- *The Inflation Reduction Act of 2022*, signed into law by President Joe Biden on August 16, amends the Clean Air Act (CAA) to define the carbon dioxide produced by the burning of fossil fuels as an "air pollutant." This is the first time that Congress has clearly delegated the power to regulate greenhouse gases to the EPA. As such, the IRA changes the legal and regulatory landscape that underpinned the U.S. Supreme Court's June 30 decision in *West Virginia v. EPA*. While the IRA does not provide any further authority to the SEC regarding CO_2 and climate, the Act's explicit designation of carbon dioxide as an air pollutant would seem to strengthen the Commission's position to require disclosures.
  - The IRA includes Section 60111 related to Greenhouse Gas Corporate Reporting. This section provides additional funding ($5M) and authority for EPA to enhance standardization and transparency of corporate climate actions, plans and pledges.
- Following the closure in June of the formal comment period on the SEC's proposed Climate Disclosure Rule, several organizations have reviewed the submissions in an attempt to identify trends and points of departure. These analyses reveal strong support for the SEC approach to align with recognized international approaches, specifically the TCFD framework and the emerging ISSB regime. Commenters expressed concerns with compliance costs and shared a diverse set of perspectives on the inclusion of Scope 3 emissions, the definition of "materiality," and the Commissions' underlying authority to mandate climate disclosures. According to the Commission's latest rulemaking agenda, the SEC is looking to finalize the Climate Disclosure Rule in October.
- Republican Attorneys General (AGs) from 21 states submitted joint comments to the SEC regarding the Commission's proposed Enhanced Disclosures Rule. The officials questioned the SEC's authority to issue the rule; raised First Amendment objections; and, opined that it would fail arbitrary-and-capricious review. The AGs also cited the recent U.S. Supreme Court ruling in *West Virginia v. EPA*, and argued that, "the SEC's view of its authority in the Proposed Rule would violate the major questions doctrine."
- States led by Republicans are increasingly taking aim at ESG investment practices by restricting or banning investment of state funds. Florida has banned state pension fund managers from incorporating ESG factors into investments. Texas has barred major investment houses, including BlackRock, BNP Paribas SA, Credit Suisse Group AG and others from conducting certain business over claims that they "boycott energy companies." (Some of the companies have

objected to Texas' characterization, citing their major investments in fossil fuels.) Investment houses expressed concerns that they will be forced to pick sides between Red and Blue states.

United Kingdom

- Two financial regulatory agencies in the UK issued reviews of the quality of TCFD disclosures issued by companies under the UK's disclosure regime. The Financial Conduct Authority noted that, compared with 2020, the number of companies making disclosures that were either partially or mostly consistent with the TCFD framework increased significantly. The FCA did express concern that some companies merely checked the box by including disclosures that "appeared to be very limited in content." The Authority provided detailed sets of data, guidance and expectations, and cautioned that it may take action if disclosures do not improve. The FCA also highlighted its support for the initiative under the ISSB to create "a common global baseline sustainability-related reporting standard."
- In a related report, the UK Financial Reporting Council released a more granular analysis of the disclosures of 25 premium listed companies perceived to face greater climate change-related risks. This effort focused on companies in sectors including financial services, energy, transportation, materials and buildings, agriculture, food and forestry. The FRC determined that, while the companies analyzed "have generally risen to the challenge," there was "a range of maturity in companies' disclosures." The Council set forth five primary avenues that companies should consider that could significantly improve their TCFD disclosures and financial statements reporting in relation to climate change.

IFRS-ISSB

- The public comment period for the IFRS-ISSB Exposure Drafts on sustainability-related and climate-related disclosures closed on July 29. In recent comments, ISSB Chair Emmanuel Faber noted that ISSB now expects to issue final rules early in 2023, rather than later this year.
- Comment letters submitted to IFRS-ISSB by Chief Financial Officers and institutional investors, respectively, stressed broad consensus for globally aligned sustainability standards. The CFOs also urged IFRS-ISSB to accelerate efforts to encompass sustainability topics beyond climate, such as social issues.
- ISSB Chair Faber noted that the board is contemplating these other climate disclosures initiatives, including the SEC effort. He noted that a working group including the ISSB and authorities from five jurisdictions – the U.S., China,

Japan, the European Union and the U.K. – is meeting regularly to coordinate and understand disclosure expectations from each.

California

California's Climate Corporate Accountability Act (SB260) failed narrowly to receive final approval during the waning days of the legislative session in Sacramento. The measure, which had already passed the state Senate, reportedly fell short of approval in the state Assembly by a single vote. The failure of SB260 was an exception in an otherwise monumental legislative session on climate. California legislators approved $54 billion in climate spending, passed sweeping new restrictions on oil and gas drilling and mandated that California stop adding carbon dioxide to the atmosphere by 2045.