ESG UPDATE
EXECUTIVE SUMMARY
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Global ESG Disclosure Regimes

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EXECUTIVE SUMMARY

General

- The G7 Ministers of Climate, Energy and the Environment, meeting in Sapporo, Japan, called for "urgent and enhanced action at all levels across all sectors to achieve the transformation towards net zero, circular and nature positive economies." As highlighted in the Ministers' Communiqué, a key element of this action relates to "Climate-related financial disclosures." The Ministers identified the ISSB standards and the TCFD Framework as foundations for "more ambitious disclosure requirements." They also voiced support for capacity building in developing countries focused on "building governance measurement and disclosure systems for GHGs and other environmental impacts." The G7 is comprised of Canada, the European Union, France, Germany, Italy, Japan, the United Kingdom and the United States.

European Union

- Data generated by Refinitiv indicate that over 10,000 companies based outside of the EU will be pulled into the regulatory orbit of the Corporate Sustainability Reporting Directive (CSRD). The CSRD includes rather modest thresholds that trigger its extra-territorial reach: its obligations attach to non-European companies "generating a net turnover of at least €150 million in the EU and which maintain at least one EU subsidiary or branch." According to the Refinitiv data, the non-EU companies impacted are based primarily in the United States (31%), Canada (13%) and the UK (11%). Corporations in Japan, China, Switzerland and the Cayman Islands, among other jurisdictions, are also likely to be implicated by the requirements.
- Stakeholders sent a pair of letters to European Commission officials demanding Brussels stick to the timeline for CSRD implementation. The decision in March by the Commission to defer work on the second set of ESRS – related to sector-specific standards and to SMEs – prompted the letters. The stakeholders also expressed concerns regarding the possibility that the Commission may be considering substantive changes to ESRS Set 1 on sector-agnostic standards. A broad coalition consisting of investors, civil society organizations, sustainable companies, trade unions and multi-stakeholder alliances submitted one letter; investor groups UN PRI and Eurosif penned the second.

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- Following the Commission's decision in March to prioritize work on implementing ESRS Set 1, EFRAG is discussing "how to put in place, with a high priority, an ESRS implementation support function." As part of this initiative, EFRAG is reportedly focusing its work on three key areas: materiality assessments, value chains and inventory of datapoints. EFRAG noted that the development of ESRS Set 2 – dedicated to SMEs and to sector-specific standards – remains on EFRAG's agenda as a "key task." EFRAG reports significant progress on developing sector-specific standards for oil and gas and for coal and mining, and states that it will continue to develop the standard for listed SMEs whilst awaiting further direction from the Commission.

United States

- The U.S. Securities and Exchange Commission (SEC) missed its self-imposed April deadline to issue the final Climate Disclosure Rule. There are several reasons for the delay, including the sheer volume of public comments received (over 15,000); the 2022 U.S. Supreme Court decision in *West Virginia v. EPA* (regarding the Major Questions Doctrine); and, threatened lawsuits from federal and state GOP officials. Meeting in Washington in April with SEC officials and business representatives, EU officials said they would apply their more stringent Scope 3 reporting requirements to U.S. companies should the SEC not include sufficient Scope 3 disclosures in its final rule. The CSRD includes an equivalency provision that may exempt an entity from reporting in the EU if it reports elsewhere under an equivalent regime. Should the SEC's final rule exclude robust Scope 3 disclosure requirements, multi-national U.S. companies may thus be obliged to meet Brussels' even more stringent requirements.
- In his latest appearance before the U.S. House Financial Services Committee (HFSC), SEC Chairman Gary Gensler offered a vocal defense of the proposed Climate Disclosure Rule. He faced significant pushback from GOP majority lawmakers, some of whom stated the rulemaking exceeded the Commission's authority and demanded the rule be rescinded. In response, Chair Gensler stated: "We're not a climate policy agency… This is about companies that are already making [climate] disclosures and trying to bring some consistency to that disclosure…. Many of the comments we received from actual investors have said they would like to have better consistency around greenhouse gas emissions."
- The day before Chair Gensler testified to the HFSC, the SEC received a fresh demand from two subcommittee chairs of that Committee for information regarding the Commission's decision-making process. The respective chairs of

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the Subcommittees on Capital Markets and on Oversight and Investigations submitted a letter "to reiterate our concern regarding the legal authority for the radical regulatory agenda" that they allege the SEC is pursuing under Mr. Gensler's chairmanship. The chairmen wrote: "By the Commission's own estimates … the climate rule alone would cost companies two-and-a-half times more than all SEC disclosures they currently make. They demanded information from the Commission regarding its consideration of *West Virginia v. EPA* in its rulemakings on climate and other regulatory priorities.

- American corporations are preparing to meet the requirements of the SEC's final Climate Disclosure Rule, even as they anxiously await its release. PwC and Workiva recently surveyed 300 corporate executives at U.S.-headquartered public companies with $500 million or more in annual revenue. The survey concluded that "70% of business leaders report they are not waiting for the SEC to finalize the climate disclosure rules and will proceed with compliance regardless of when they become U.S. law." Moreover, while almost all respondents are placing more of a priority on ESG reporting now than before the rule was proposed, a full 40% of respondents acknowledged their companies were not prepared to meet their anticipated disclosure obligations. A combination of voluntary corporate commitments, investor demands, customer and stakeholder expectations and climate disclosure regimes in other global markets has led companies to act even in the absence of a final SEC rule.
- During remarks delivered to a conference of state securities administrators, SEC Commissioner Jaime Lizárraga cited climate and ESG disclosures among a list of "critical investor protection issues." Commissioner Lizárraga, a Democratic appointee who took office in July 2022, also provided his definition of "promoting responsible capital formation." His definition consisted of several elements, including: "meeting investor demand for accurate, reliable, and standardized disclosures in areas such as climate and ESG."

United Kingdom

- The UK government released an updated Green Finance Strategy, revising the first iteration (issued in 2019). The intent of the revised strategy is to mitigate climate-related risk and damage while increasing the amount of capital available to finance "net zero, climate resilience and environmental objectives." In concert, the UK government announced public consultations related to: disclosure of corporate transition plans; implementing the UK Green Taxonomy; and, regulating ESG ratings providers. The government will launch the first two

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consultations later this year. The consultation on ESG ratings providers is already open (see next bullet). Finally, the UK has endorsed the ISSB standards and has launched a call for evidence on Scope 3 GHG emissions reporting.

- The UK has opened a consultation on regulating ESG ratings providers: Future regulatory regime for Environmental, Social, and Governance (ESG) ratings providers. The UK, while noting the growing importance of ESG ratings in helping investors identify sustainable financing opportunities, also voiced concerns with the methodologies they employ and over potential conflicts of interest. The UK, recognizing that "growing reliance on unregulated ESG ratings, particularly in investment decisions, can raise risks… considers there is clear benefit to be gained from improving the transparency of methodologies, governance, and processes of ESG ratings providers. These outcomes could be brought about through regulation." The consultation notes that the International Organization of Securities Commissions, the Organisation for Economic Co-operation and Development and the European Securities and Markets Authority have all suggested a stricter focus on ESG ratings and data. The comment period closes on June 30.

IFRS-ISSB

- During a supplementary meeting, the ISSB considered further transitional relief for companies preparing to report under IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information*. The ISSB tentatively decided "to introduce a transition relief in IFRS S1 that would allow an entity to report on only climate-related risks and opportunities (as set out in IFRS S2 Climate-related Disclosures) in the first year it applies IFRS S1 and IFRS S2." The ISSB stated: "The relief will enable companies to focus initial efforts on ensuring they meet investor information needs around climate change. It means companies can prioritise putting in place reporting practices and structures to provide high-quality, decision-useful information about climate-related risks and opportunities in the first year of reporting using the ISSB Standards."
- The ISSB announced plans to open a consultation in May related to "its proposed methodology for revising the SASB Standards to improve their international applicability." ISSB clarified its intention is to "make targeted amendments" to "maintain and enhance the SASB Standards." The consultation will be open for 90 days. ISSB added that, "The project affects approximately 20% of the metrics included in the SASB Standards, meaning most of the metrics will remain untouched." Separately, the ISSB plans to publish a request for information in

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May regarding its agenda priorities with a focus on four potential projects: biodiversity; ecosystems and ecosystem services; human capital; human rights; and integration in reporting.

CALIFORNIA

- On April 18, the California Senate Judiciary Committee advanced the Climate Corporate Data Accountability Act (Senate Bill 253) and the Climate-Related Financial Risk Act (Senate Bill 261). The Committee passed both measures by identical votes of 9-1 and referred each to the Senate Appropriations Committee. SB 253 directs corporations with more than $1 billion in annual revenues to disclose all scopes of their greenhouse gas emissions. SB 261 would require "a covered entity … to prepare a climate-related financial risk report disclosing the entity's climate-related financial risk and measures adopted to reduce and adapt to climate-related financial risk disclosed." The CalChamber and other business groups oppose both measures. SB 253 is set for a hearing in the Senate Appropriations Committee on May 1. SB 261 is on the Appropriations Committee agenda for May 8.

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