LATHAM & WATKINS

ESG in Asset Management: A Global Perspective

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Introduction

The global asset management community has long been among the leaders in recognising the investment and risk management benefits of tracking the environmental, social, and governance (ESG) performance of the assets it invests in. This pressure from the asset management community has driven companies to make better disclosures in relation to ESG criteria. Concurrently, global regulators are recognising the important role of financial institutions in helping to achieve crucial ESG outcomes by introducing new regulations that place direct obligations on asset managers to produce both entity- and (in some cases) product-level ESG disclosures. This briefing provides a snapshot of the global regulatory landscape in the context of ESG-related disclosures.

Various jurisdictions are starting to introduce mandatory ESG disclosures for asset managers. Although climate-related disclosures (one strand of the "E" in ESG) have taken priority to date[1], the regulatory landscape for a broader spectrum of ESG disclosures is starting to take shape. While the EU has been a first-mover in taking a more expansive and prescriptive approach to ESG disclosures, the UK, the US, and Asia are now beginning to make strides in setting their own ESG-related disclosure requirements. These measures aim to ensure that disclosures are consistent and to avoid so-called "greenwashing", whereby funds or products are labelled as green or sustainable but do not necessarily meet objective agreed standards as to what actually constitutes a green or sustainable product.

Consequently, asset managers with a global footprint (whether based on their own geographical footprint or the locations of their investors) have to grapple with a range of emerging regimes and reconcile the various requirements. While the overarching aim is to have consistent, comparable standards so that investors can readily compare offerings, what is emerging is much more of a piecemeal approach.

This briefing pulls together the strands of regulation emerging across the US, the EU, the UK, and Asia to help global asset managers understand the requirements across jurisdictions. It also looks at the potential for global disclosure standards to be developed in this area.

1 This is largely driven by the formal adoption by 191 Parties globally to commit to limit global warming to well below 2ºC, and preferably to 1.5ºC, compared with pre-industrial levels in line with the Paris Agreement.

US

The Division of Examinations (Division) of the Securities and Exchange Commission (SEC) published a Risk Alert on 9 April 2021 regarding its review of ESG investing in the asset management sector. The Risk Alert highlighted the Division's three key areas of focus for ESG in the context of SEC examinations: portfolio management, performance advertising, and marketing and compliance programs. With respect to portfolio management, the Division noted that examinations will include a review of firms' ESG policies, procedures, and practices; due diligence and processes for selecting and monitoring investments according to disclosed ESG investing approaches; and proxy voting to ensure that proxy voting decision-making is consistent with ESG disclosures. Regarding performance advertising and marketing, the Division noted that examinations will include a review of firms' filings, marketing materials, responses to due diligence questionnaires, and other similar materials that commit to follow certain ESG frameworks. Finally, on compliance programs, the Division noted that examinations will include a review of firms' written policies and procedures regarding ESG investing practices and their implementation and oversight. In the examination context, the Division has produced extensive document requests regarding ESG practices, including with respect to compliance policies and procedures, disclosures, marketing, use of metrics, internal controls, and — critically — substantiation of ESG practices in line with ESG policies and disclosures.

The Risk Alert also highlighted certain observed ESG-related deficiencies and internal control weaknesses in recent examinations of investment advisers. These include:

- Portfolio management practices inconsistent with disclosures about ESG approaches
- Controls inadequate to maintain, monitor, and update clients' ESG-related investing guidelines, mandates, and restrictions
- Proxy voting inconsistent with advisers' stated approaches
- Unsubstantiated or otherwise potentially misleading claims regarding ESG approaches
- Inadequate controls to ensure that ESG-related disclosures and marketing are consistent with the firm's disclosures and practices
- Compliance programs not adequately addressing relevant ESG issues

To address such deficiencies and weaknesses, the Division offered effective practices to consider. First, firms should ensure that disclosures are clear, precise, and tailored to actual practices. Second, firms should institute policies and procedures that address ESG investing. Third, firms should integrate compliance personnel in the ESG process. With respect to funds that reference ESG investing considerations in their offering documents, the SEC expects clear disclosure of the criteria or metrics used in selecting and diligencing investments, monitoring investments, and measuring impact. The Division also expects advisers to adopt and implement policies and protocols with respect to monitoring such practices and identifying and navigating related risks and conflicts of interest related to such practices.

In May 2021, SEC Chair Gary Gensler testified before the House Financial Services Committee that ESG disclosure rulemaking was one of his top priorities. On 7 July 2021, in a speech before the Asset Management Advisory Committee, he stated that he has directed SEC staff to formulate ESG disclosure recommendations specific to asset managers. In particular, Chair Gensler is investigating whether asset managers should disclose the criteria and underlying data they use when making claims related to sustainability and diversity and inclusion. He is also seeking to standardise naming conventions for funds that use ESG-related descriptors such as "green," "sustainable," "low-carbon," etc. Chair Gensler appears particularly focused on funds and advisers that hold themselves out to the public as investing with an emphasis on sustainability or other ESG considerations. He is also promoting diversity in the asset management industry, and has suggested requiring disclosure of aggregated demographic information about an adviser's employees and owners, diversity and inclusion practices, and factors considered in selecting other advisers in order to enhance transparency in the asset management industry.

Although the US has not yet adopted any formal ESG rulemaking in the asset management space, based on the strong stance of Chair Gensler, many expect the SEC to adopt standards that will apply broadly to ESG industry participants. However, other current SEC Commissioners have questioned whether ESG is an area that can be suitably regulated by the SEC. As such, disclosure obligations with respect to ESG practices may apply before the adoption of prescriptive ESG standards.

Europe

The disclosure regime applicable to asset managers based in the EU, or marketing products to investors based in the EU, is made up of three key pieces of legislation:

- The Sustainable Finance Disclosure Regulation (SFDR)
- The EU Taxonomy Regulation (the Taxonomy)
- The Non-Financial Reporting Directive (NFRD), which is currently being revised pursuant to the Corporate Sustainability Reporting Directive (CSRD)

In addition, changes will be made to MiFID, AIFMD, and UCITS (key sectoral legislation for investment firms and fund managers) in order to embed sustainability changes directly within the existing sectoral frameworks, which will include certain disclosure requirements. The regime in the EU is broader than what is emerging globally, as it does not just focus on climate-related disclosures.

SFDR

The SFDR establishes a disclosure and transparency regime in relation to the integration of sustainability risks by asset managers in their investment processes at both entity and fund (product) level. The purpose of the regime is to require the disclosure of specific information regarding the approach to the integration of sustainability risks and the consideration of adverse sustainability impacts in order to provide investors with greater transparency and facilitate the overall aim of the EU's Sustainable Finance Action Plan to reorient capital flows towards sustainable investments.

The SFDR applies to "financial market participants" and "financial advisers". This includes, among others, firms providing portfolio management services and fund managers. While an EU alternative investment fund manager (AIFM) is in scope of the entity- and product-level disclosure requirements, the position regarding non-EU AIFMs is still unclear. In the European Commission's response to a set of questions from the European Supervisory Authorities about the application of SFDR, the Commission confirmed that a non-EU AIFM must comply with SFDR (including the financial product-related provisions) when marketing into Europe by means of a National Private Placement Regime. However, the Commission did not specifically address the application of the entity-level requirements in this scenario. Uncertainty therefore remains in relation to whether non-EU AIFMs must comply with the entity-level disclosure requirements when marketing into the EU.

Under the SFDR, asset managers are required to make various entity-level disclosures on their website. These include: (i) information about policies on the integration of sustainability risks into the investment decision-making process; (ii) consideration of principal adverse impacts of investment decisions on sustainability factors; and (iii) information on how remuneration policies are consistent with the integration of sustainability risks.

The product-level disclosure requirements apply in respect of financial products, which include MiFID-managed portfolios, alternative investment funds, and UCITS. Under the SFDR, products must be classified as "Article 6", "Article 8", or "Article 9". Article 6 products are those that do not have specific ESG or sustainability-related objectives. However, basic disclosures regarding sustainability risks are required for such products, meaning that asset managers must make SFDR product-level disclosures whether or not their funds are ESG funds.

Article 8 products are those that promote environmental or social characteristics, provided that the investee company also follows good governance practices. Article 9 products are those that constitute "sustainable investments" as defined in the SFDR. These are investments that: (i) contribute to an economic or social objective; (ii) do not significantly harm any other economic or social objective; and (iii) involve an investee company that follows good governance practices. There is currently significant variance across the market in relation to the classification of Article 8 funds due to the fact that SFDR does not prescribe the composition of investments or minimum investment thresholds in order to attain this classification. It should be noted however that, as part of its Renewed Sustainable Finance Strategy, the Commission is considering a proposal for minimum sustainability requirements for financial products under Article 8 SFDR in order to guarantee minimum sustainability performance. The timeline for this assessment has not been confirmed, however, coupled with the increasing focus by regulators on greenwashing this is driving caution for some firms in relation to their Article 8 approach.

The SFDR took effect on 10 March 2021. However, the Level 2 measures (which provide the crucial detail on how to comply with the high-level framework legislation) are still being drafted, and their application has been delayed until 1 July 2022. In the meantime, due to the lack of detail and difficulties in obtaining the relevant underlying data needed for the disclosures, asset managers have tended to make their disclosures at a high level.

The Taxonomy

The Taxonomy is a green classification system that translates the EU's climate and environmental objectives into criteria for specific economic activities for investment purposes. It recognises economic activities as green, or "environmentally sustainable" if they make a substantial contribution to at least one of the EU's climate and environmental objectives, while at the same time not significantly harming any of these objectives and meeting minimum social safeguards.

The Taxonomy amends the SFDR disclosure requirements to extend the information to be disclosed to investors for Article 8 products and Article 9 products that promote environmental characteristics. Therefore, asset managers need to be conscious of this when classifying a fund as an Article 8 or Article 9 product under the SFDR.

In addition to product-level disclosures, the Taxonomy imposes entity-level disclosure requirements for entities in scope of the NFRD. Therefore, asset managers in scope of the NFRD are required to disclose information to the public on how and to what extent their activities are associated with environmentally sustainable economic activities (as defined under Article 8 of the EU Taxonomy).

NFRD/CSRD

The NFRD also imposes its own disclosure obligations on entities within scope (i.e., large public interest entities that exceed 500 employees during the financial year). The NFRD is currently being revised with the aim of delivering a comprehensive corporate reporting framework with qualitative and quantitative information to facilitate the assessment of companies' sustainability impacts and risks. This revision, pursuant to the CSRD, will significantly expand the number of entities in scope (to include all large companies, without any employee threshold, and all listed SMEs (excluding listed micro-enterprises)). The reporting requirements will also be extended, including a requirement to report according to mandatory EU sustainability reporting standards.

The proposed changes under the CSRD will not only extend the scope of entities subject to NFRD/CSRD reporting obligations, but also those that are required to comply with the entity-level disclosure requirements under the Taxonomy. Together with the Taxonomy, the NFRD/CSRD will ensure that in-scope entities disclose their environmental performance information as well as information about their Taxonomy-aligned economic activities.

Germany

The SFDR and the EU Taxonomy Regulation apply in Germany directly, and the NFRD has been implemented into German law. In addition to the EU rules and regulations described above, national guidance on ESG has been published, including a Guidance Notice of the German Federal Financial Supervisory Authority (BaFin) on dealing with sustainability risks from the end of 2019.

Most recently, BaFin published a Consultation Paper with draft guidelines for sustainable investment funds. The guidelines include minimum requirements for certain domestic investment funds that are labelled or marketed as sustainable or green (or similar) and aim to address potential greenwashing.

Pursuant to the draft guidelines, investment funds need to include one of three alternatives in their investment terms and conditions in order to be considered sustainable:

- **Investment in sustainable assets:** Investment funds may include a provision in their investment terms and conditions requiring the investment fund to invest at least 75% of the funds in sustainable investments. The investment terms must generally ensure that the issuer or the portfolio company of a sustainable investment: (i) makes a significant contribution to at least one objective as set out in Article 2(17) of the SFDR or Article 9 of the Taxonomy; (ii) does not significantly harm (other) environmental or social objectives; and (iii) takes the governance considerations referred to in Article 2(17) of the SFDR into account.
- **Sustainable investment strategy:** If no fixed investment limit is applied when managing a sustainable investment fund, the investment fund may qualify as a sustainable investment fund if the investment terms stipulate that sustainability aspects/factors are the decisive factor for the selection of at least 75% of the funds' assets, or that a sustainable investment strategy is pursued in the management of the entire investment fund, e.g., by way of a best-in-class strategy. Furthermore, the investment terms must ensure that the investment strategy does not significantly harm any environmental or social objectives and that governance considerations are taken into account.
- **Replication of a sustainable index:** If a sustainable index is replicated as part of a passive investment strategy, detailed information on the sustainable character of this index must be included in the investment terms. Furthermore, the investment terms must ensure that environmental or social objectives are not significantly harmed and that the governance considerations referred to in Article 2(17) of the SFDR are taken into account.

BaFin emphasised in the Consultation Paper the necessity of a sufficient level of detail of the sustainability-related requirements in the investment terms and conditions in order to avoid greenwashing, and provided a number of negative examples that are considered too generic.

UK

The UK has chosen not to adopt the EU disclosure regime now that it is no longer part of the EU. Instead, the UK is planning to introduce its own framework, based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The UK Financial Conduct Authority (FCA) published a Consultation Paper on 22 June 2021 on introducing climate-related financial disclosure rules and guidance for asset managers.

The FCA proposes to apply its disclosure requirements to asset managers, investment portfolio managers, UK UCITS management companies, full-scope UK AIFMs, and small authorised UK AIFMs. However, firms with less than £5 billion in assets under management on a three-year rolling average would be exempt. In-scope products would include authorised funds, unauthorised alternative investment funds, and portfolio management services. The FCA intends to capture different types of fund management activities, as well as wider portfolio management activities. The proposed approach also aims to bring into scope asset management activities conducted by private equity firms. While the requirements would not apply directly to overseas firms, they would provide UK firms with the flexibility to make disclosures at a group level, in respect of their global business, if they choose to do so.

Under the FCA's proposals, firms would need to make both entity- and product-level disclosures, as follows:

- **Entity-level disclosures:** Firms would be required to publish, annually, an entity-level TCFD report on how they take climate-related risks and opportunities into account in managing or administering investments on behalf of clients and consumers. These disclosures would need to be made in a prominent place on the main website for the firm's business, and would cover the entity-level approach to all assets managed by the UK firm.
- **Product- or portfolio-level disclosures:** Firms would be required to produce, annually, a baseline set of consistent, comparable disclosures in respect of their products and portfolios, including a core set of metrics. Depending on the type of firm and/or product or portfolio, these disclosures would either be:
  - Published in a TCFD product report in a prominent place on the main website for the firm's business, and included, or cross-referenced and hyperlinked, in an appropriate client communication; or
  - Made upon request to certain eligible institutional clients

If asset managers provide discretionary portfolio management services to institutional clients that are themselves subject to climate-related financial disclosure obligations, those clients could request "on-demand TCFD product reports" once a year. Firms would also be required to provide data on the underlying holdings of their products once a year to clients who request it to satisfy their own climate-related financial reporting obligations.

The disclosures would, in general, be mandatory, with limited flexibility for firms to provide some disclosures on a "best efforts" basis (e.g., where methodologies for certain metrics are not yet widely established). Firms would also be permitted to use proxy data or make assumptions to address any gaps. As part of its proposals, the FCA has taken into account other related requirements that firms face internationally, and has stated that it aims to ensure consistency with both EU and international requirements, as far as possible.

The FCA intends to implement the disclosure requirements in two tranches, with the largest firms required to make their first disclosures by 30 June 2023, and other firms in scope required to make their first disclosures by 30 June 2024. On-demand disclosures would need to be provided from 1 January 2023 and 1 January 2024, respectively. The FCA also plans to set out further details of a UK green taxonomy in the coming months.

In addition, the FCA has published guidance for asset managers that sets out guiding principles regarding disclosures by funds that make ESG-related claims. The FCA aims to ensure that any ESG-related claims are clear and not misleading, both when a fund is applying for authorisation and on an ongoing basis. This outcomes-focused approach is helpful for asset managers seeking to understand how to comply with the intention of the rules.

Aside from these specific developments for asset managers, in the UK there are currently ESG-related disclosure obligations at an entity level, including a climate-related disclosure regime, based on the TCFD framework, for certain listed issuers. This climate-related disclosure regime is due to be expanded to all listed issuers from 1 January 2022. Further, the UK government has consulted on introducing mandatory climate-related financial disclosures by publicly quoted companies, large private companies, and limited liability partnerships.

Hong Kong

In Hong Kong, the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have set up a cross-agency steering group to coordinate the management of climate and environmental factors in the financial sector. The initial focus is on the environmental limb of ESG, specifically on ensuring that there are consistent, comparable, and “decision-useful” climate-related disclosures from asset managers. A key action point for Hong Kong is to require that climate-related disclosures are aligned with all (not just some) of the TCFD recommendations no later than 2025.

On 20 August 2021, the SFC published the consultation conclusion on the proposed requirements for fund managers to take climate-related risks into consideration in their investment management and risk management processes, and to make appropriate disclosures to meet investors’ growing demand for climate risk information and to combat greenwashing. Per the consultation conclusion, the SFC issued amendments to the Fund Manager Code of Conduct (FMCC) and a circular setting out expected standards for fund managers managing collective investment schemes to take climate-related risks into consideration in their investment and risk management processes.

The requirements cover four key elements, namely governance, investment management, risk management, and disclosure. These will focus on climate-related risks at the initial stage and will apply to fund managers managing collective investment schemes. There is a two-tiered approach: (i) all fund managers will be required to meet baseline requirements; and (ii) fund managers with assets under management of HK$8 billion or above for any three months in the previous reporting year (Large Fund Managers) will be required to comply with the enhanced standards.

The new requirements will be implemented in phases beginning in August 2022. The SFC expects fund managers to develop governance structures, policies, and procedures that are commensurate with the nature, size, complexity, and risk profiles of their firms and the investment strategies adopted by each fund.

In relation to disclosures, the baseline requirements are as follows:

- **Governance:** Fund managers are required to make adequate disclosures covering their governance arrangements for the oversight of climate-related risks, whether the board or board committee will review the risk management framework covering climate-related risks, and the process and frequency by which the board will be informed of such risks. Funds also have to describe the management’s roles and responsibilities in relation to monitoring climate-related risks and ensuring that management is regularly informed of efforts to manage climate-related risks. This is an entity-level disclosure obligation.

- **Investment management and risk management:** Fund managers are required to disclose the steps taken to incorporate relevant and material climate-related risks into the portfolio construction and investment management processes, and describe the processes for identifying, assessing, managing, and monitoring climate-related risks, including the key tools and metrics used. This is an entity-level disclosure obligation.

- **Irrelevance of climate-related risk:** Fund managers are required to disclose the types of investment strategies or funds under their management for which climate-related risks have been assessed to be irrelevant. Funds must maintain internal records clearly illustrating the rationale for such assessment, and must be able to explain the rationale to investors when asked, or for compliance review purposes. This is an entity-level or fund-level disclosure obligation.

The disclosure requirements in the FMCC will only be applicable to those fund managers who are responsible for the overall operation of funds. They will not be applicable to those who manage only part of a fund.

The enhanced standards for Large Fund Managers are as follows:

- Large Fund Managers are required to describe the engagement policy and preferably provide examples to illustrate how material climate-related risks are managed in practice, including how the engagement policy is implemented. This is an entity-level disclosure obligation.
- Large Fund Managers are required to provide the portfolio carbon footprints of Scope 1 and Scope 2 greenhouse gas emissions data associated with the funds' underlying investments at the fund level, where data is available or can be reasonably estimated, together with the calculation methodology, underlying assumptions, and limitations, as well as the proportion of investments that are assessed or being covered (e.g., in terms of the net asset value). This is a fund-level disclosure obligation.

The enhanced standards will be applicable to Large Fund Managers irrespective of whether they have funds with an ESG or climate-related focus.

The disclosure requirements incorporate the concept of double materiality (disclosure of both financial materiality — i.e., how climate affects the value of a fund's assets — and the external environmental impact of the fund's activities). Fund managers should apply the principle of proportionality in determining how to comply with the requirements. Where fund managers delegate the investment management function to sub-managers, they retain the overall responsibility for complying with the SFC's requirements.

However, the SFC acknowledges that improving disclosures is far from straightforward, as asset managers face major data challenges, and the ability of asset managers to provide the required disclosures will depend on access to the right data as well as the reliability and comparability of that data. Therefore, improving information provided by companies operating in the real economy is crucial.

Aside from these specific developments for asset managers, in relation to listed issuers, the Stock Exchange of Hong Kong (HKEx) has implemented a "comply or explain" regime requiring issuers to disclose "[p]olicies on identification and mitigation of significant climate-related issues which have impacted, and those which may impact, the issuer".

Singapore

In Singapore, the Monetary Authority of Singapore (MAS) has set up a Green Finance Industry Taskforce (GFIT). Its mandate is to help accelerate the development of green finance through four key initiatives: (i) develop a taxonomy; (ii) enhance environmental risk-management practices of financial institutions; (iii) improve disclosures; and (iv) foster green finance solutions. On 19 May 2021, the GFIT published a detailed implementation guide for climate-related disclosures by financial institutions, including asset managers.

The guide sets out best practices aligned with the TCFD recommendations and details sector-specific recommended disclosure practices. Other than improving the quality of climate disclosures, the guide promotes more consistent and comparable disclosures across financial institutions. The disclosures for asset managers cover the following areas:

- **Governance:** Asset managers should describe the board's oversight of climate-related risks and opportunities, and describe management's role in assessing and managing climate-related risks and opportunities.
- **Strategy:** Asset managers are expected to describe: (i) the climate-related risks and opportunities the organisation has identified over the short, medium, and long term; (ii) the impact of climate-related risks and opportunities on the organisation's businesses, strategy, and financial planning; and (iii) the resilience of the organisation's strategy, taking into consideration different climate-related scenarios.
- **Risk management:** Asset managers should describe the organisation's processes for identifying, assessing, and managing climate-related risks, and how these processes are integrated into the organisation's overall risk management.
- **Metrics and targets:** Asset managers are expected to: (i) disclose the metrics used by the organisation to assess climate-related risks and opportunities in line with its strategy and risk management process; (ii) disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas emissions, and the related risks; and (iii) describe the targets used by the organisation to manage climate-related risks and opportunities and performance against targets.

Further, the MAS will set out early next year its regulatory expectations on the disclosure standards that retail funds in Singapore with an ESG investment objective must meet. The aim is to ensure that investors can better understand the criteria that an ESG fund uses to select its investments, and that investors receive periodic updates on whether the investment objectives of an ESG fund has been met.

Global

As well as jurisdiction-specific initiatives, there are also efforts to create global disclosure standards. These would have the advantage of ensuring consistent disclosures that would be easily comparable.

A major initiative for the International Organization of Securities Commissions (IOSCO) is creating mandatory investment disclosures by asset managers and for investment products. IOSCO has been considering how the TCFD's recommendations could form the basis of a client-facing sustainability disclosure regime for asset managers, and published a consultation on sustainability-related practices, policies, procedures, and disclosures in asset management on 30 June 2021.

IOSCO sets out five recommendations for securities regulators and policymakers to consider implementing domestically. These include:

- Setting regulatory and supervisory expectations for asset managers in respect of: (i) the development and implementation of practices, policies, and procedures relating to sustainability-related risks and opportunities; and (ii) related disclosure. IOSCO suggests that asset managers could consider referencing the TCFD framework in their disclosures.
- Clarifying and/or expanding on existing regulatory requirements or guidance, or, if necessary, creating new regulatory requirements or guidance to improve product-level disclosure to help investors better understand: (i) sustainability-related products; and (ii) material sustainability-related risks for all products. This would include naming conventions and rules regarding labelling and classification.
- Introducing supervisory and enforcement tools to ensure that asset managers comply with the requirements.
- Encouraging industry participants to develop common sustainable finance-related terms and definitions to ensure consistency throughout the global asset management industry.
- Promoting financial and investor education initiatives relating to sustainability.

By setting clearer guidance for asset managers, the aim is to reduce opportunities for greenwashing. IOSCO notes that, in the longer term, detailed methodologies that underpin more forward-looking scenario-based disclosures and metrics, such as climate value-at-risk, are likely to be key to aligning portfolios with climate goals.

Commentary

A manager/sponsor that is planning to market a fund across multiple jurisdictions will therefore need to consider the following, in addition to any ESG-related compliance obligations and voluntary measures that the manager/sponsor is already subject to at an entity level in the jurisdiction(s) in which it operates:

- Whether its existing ESG policies are adequate when measured against international standards and investors' expectations (particularly institutional investors who are themselves subject to various ESG-related compliance obligations and voluntary measures)
- Whether the above policies have been/are being implemented in practice and, if not, whether any past compliance issues need to be disclosed to prospective investors and what actions need to be taken to ensure that the policies are fully implemented going forward with respect to the fund
- Whether the manager/sponsor is prepared to substantiate the ESG statements and disclosures regarding their investing practices
- In which jurisdictions the fund will be marketed, so that the relevant ESG disclosure and transparency rules in such jurisdictions are complied with (note that this analysis would typically be conducted at the same time as the analysis of applicable marketing and placement rules for such jurisdiction)
- Whether the fund has a particular ESG focus or strategy and is therefore potentially subject to particular classification and/or enhanced compliance rules under the applicable regulations
- The particular ESG requirements of the targeted investor base, which may include DFIs, non-profit organisations, and regulated institutions whose investment processes often include very specific ESG-related conditions

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