ESG Trends and Hot Topics

May 2022

Key Developments

Hot topics in ESG for directors and executives to consider:

- A wave of proposed new corporate climate and sustainability reporting standards from the ISSB, EU, UK and US, among others, means companies will begin to be subject to increasingly prescriptive, and potentially divergent, ESG reporting requirements and heightened liability risks for their ESG disclosures
  - Companies, particularly those operating in multiple jurisdictions, should assess what disclosure standards will apply at the parent level and to their subsidiaries and what steps will be needed to comply with the new standards when in force
- Global market for sustainable finance products like green and social bonds, loans and equity and sustainability-linked debt continues to grow dramatically, while the long anticipated EU Green Bond Standard is expected to be finalized soon
  - When considering opportunities to participate in the market for sustainable finance products, companies should monitor potentially heightened market or regulatory standards
- Financial institution regulators continue to focus on climate risks and related disclosures in their regulatory and supervisory practices
  - Financial institutions, including banks, insurers, and asset managers should continue to assess the impact of climate change on their strategy, governance, risk management, policies, procedures and limits, as well as their climate-related disclosure and reporting obligations
- While some board diversity laws have been subject to challenge and a range of US diversity-related lawsuits have been dismissed, investors and regulators continue to focus on companies' board and workforce diversity policies and practices
  - Companies should continue to monitor whether their policies and practices are aligned with the latest investor and regulatory requirements

In this Issue

Disclosure and Governance Updates

Global

ISSB Proposes Sustainability Reporting Standards. On March 31, 2022, the IFRS Foundation's International Sustainability Standards Board (ISSB) published two draft standards aimed at providing a global sustainability reporting baseline for organizations. The ISSB is a standard-setting board for ESG reporting established in 2021. The ISSB's first proposed standard would require reporting entities to disclose material information about all significant sustainability-related risks and opportunities to which they are exposed, where "materiality" would be determined in the context of information necessary for users of general purpose financial reporting to assess enterprise value. The second proposed standard is specific to climate and would require disclosures on climate-related governance and management, identification of significant climate-related risks and opportunities (within a time horizon over which each could be expected to affect an entity's business model) and qualitative disclosure on current and anticipated effects of significant climate-related risks and opportunities on an entity's value chain. The ISSB's draft climate standard builds off of the existing Task Force on Climate-Related Financial Disclosure (TCFD) framework. The ISSB aims to finalize the new standards by the end of 2022. However, it is unclear the extent to which the standards will be incorporated into or aligned with regulatory requirements, given the US SEC's own proposed climate rules and the EU's proposed CSRD requirements (each discussed below) do not currently reference the ISSB standards.

Beta Release of Taskforce on Nature-related Financial Disclosures (TNFD) Framework. On March 15, 2022, the Taskforce on Nature-related Financial Disclosures (TNFD) released the first "beta" version of its Nature-Related Risk and Opportunity Management and Disclosure Framework. The TNFD launched in 2021 with the endorsement of the G7 and the G20, and its Taskforce Members consist of 34 senior executives from global companies such as AB InBev, AXA, BlackRock and UBS. The TNFD draws inspiration from, and aims to co-exist alongside, the highly influential TCFD. The three core components of the proposed TNFD framework are: (1) a series of recommended fundamental concepts and definitions for understanding nature-related risks and opportunities; (2) draft disclosure recommendations similar to the TCFD framework; and (3) guidance for the incorporation of nature-related risk and opportunity assessment into corporate and financial institution decision-making. A final version of the TNFD framework is scheduled to be released in September 2023. Also in March 2022, the Network of Central Banks and Supervisors for Greening the Financial System (NGFS), members of which include the US Federal Reserve, the Bank of England and the European Central Bank, issued a statement highlighting the importance of improving disclosure of, and the need for further study and scrutiny of, nature-related financial risks.

United States

SEC Proposes Expansive New Climate-Related Disclosures. In March 2022, the SEC proposed new climate-related disclosure requirements that would require SEC reporting companies to dramatically expand the breadth, specificity and rigor of climate-related disclosures in their SEC periodic reports and registration statements. Among other new requirements, the proposed rules would require that companies calculate and disclose their greenhouse gas emissions (scopes 1 and 2 and, if certain conditions are met, scope 3); applicable climate-related risks; any climate transition plan, internal carbon price, climate-related targets or goals adopted by the company, and progress against such plan, targets and goals; how a company's board and management oversee climate-related risks; and audited, disaggregated climate-related impacts on existing financial statement line items if the aggregated impact is 1% or more of the total line item. S&C's memo on the proposed rules is available here. Our memo analyzing the impact of the proposed rules on foreign private issuers is available here, and our memo analyzing certain key implications for financial institutions is available here.

SEC Reopens Comment Period on Pay Versus Performance Rule. On January 27, 2022, the SEC announced that it was reopening a comment period on its proposed "pay versus performance" rule. The SEC's 2015 proposed pay versus performance rule would have required disclosure of: the CEO's total compensation and the CEO's "actual" pay; the average of named executive officers' total compensation and the average of the named executive officers' "actual" pay; and the registrant's and its peers' annual total shareholder return. In reopening the comment period, the SEC is proposing to expand the required disclosures to include, among other things, a company-selected performance metric, that, in the registrant's assessment, represents the most important performance measure used to link compensation actually paid to company performance. Our client memo on the reopening is available here.

Supply Chain Due Diligence – Enactment of the Uyghur Forced Labor Prevention Act. On December 23, 2021, President Biden signed into law H.R. 6256, known as the Uyghur Forced Labor Prevention Act (UFLP). The UFLP requires companies to avoid importing goods into the US made with the forced labor of Uyghurs and other minority groups in China's Xinjiang Uyghur Autonomous Region (XUAR). The UFLP creates a rebuttable presumption to be applied by US Customs and Border Protection starting from June 21, 2022 that any goods produced wholly or partly in XUAR result from forced labor and are therefore prohibited from entering the US. Additionally, any goods produced by entities identified by an interagency Forced Labor Enforcement Task Force (FLETF) are also subject to this presumption, irrespective of whether they are produced in XUAR or elsewhere. A US importer may rebut this presumption by, among other things, establishing "clear and convincing evidence" that an imported good was not made with any forced labor.

California Board Diversity Laws Invalidated. On April 1, 2022, a California Superior Court ruled AB 979, one of California's two board diversity statutes, violated the California Constitution. AB 979 would require publicly held California corporations and publicly held foreign corporations whose principal executive offices are located in California to have a minimum number of directors from "underrepresented communities," which includes racial minorities and members of the LGBTQ community, on their boards. See our full memo on this decision here. Subsequently, on May 13, 2022 a California Superior Court also invalidated the other diversity statute, SB 826. SB 826 would require publicly held California corporations and publicly held foreign corporations whose principal executive offices are located in California to have a minimum number of female directors on their boards. See our full memo on this decision here. Both decisions may be appealed.

UK

UK Expands TCFD-Aligned Disclosure Requirements. The UK has taken several steps towards requiring TCFD-aligned reporting for all large UK and UK-listed companies:

- On December 23, 2021, the UK Financial Conduct Authority (FCA) adopted new rules that require issuers with a UK standard listing of shares or GDRs representing equity shares on the main market of the London Stock Exchange to either provide TCFD-aligned disclosure or explain why such disclosure has not been provided. The new rules took effect with respect to accounting periods beginning on or after January 1, 2022. Equivalent rules have applied to issuers with a UK premium listing from January 1, 2021.
- On December 24, 2021, the FCA adopted new rules requiring large asset managers (with assets under management over £50 billion) and life insurers and FCA-regulated pension providers (each with assets over £25 billion) to publish annual entity-level and product-level reports with TCFD-aligned disclosures. The first reports are due June 30, 2023. Other asset managers, life insurers and regulated pension providers (subject to a £5 billion exemption threshold) will need to report from June 30, 2024.
- Lastly, for accounting periods starting from April 6, 2022, all qualifying UK-registered companies and LLPs will need to report TCFD-aligned disclosures in their non-financial information statement. The new regulations cover, among others, UK companies with more than 500 employees and £500 million annual net turnover (in each case on a consolidated basis).

Mandatory Diversity Target Disclosure for UK Listed Issuers. On April 20, 2022, the FCA published final revisions to the UK Listing Rules and Disclosure Guidance and Transparency Rules to improve transparency on the diversity of boards of directors and executive management of UK-listed issuers. The revised rules will introduce an annual "comply or explain" reporting regime with respect to board-level diversity targets prescribed by the FCA, which are: (1) at least 40% of the board are women, (2) at least one of the senior board positions (Chair, CEO, Senior Independent Director or CFO) is a woman and (3) at least one board member is from a minority ethnic background. The rules will also require the annual disclosure of diversity information on the board and executive management in a prescribed format. S&C's memo on the new rules can be found here.

European Union

European Commission Proposes Corporate Sustainability Due Diligence Directive. On February 23, 2022, the European Commission published a draft Directive on Corporate Sustainability Due Diligence (CSDD) which, if implemented, would require in-scope companies to both identify and prevent, end and/or mitigate adverse impacts of their global operations and activities on human rights and the environment. The scope of the proposed CSDD Directive is broad and, as envisaged, would extend to in-scope companies' subsidiaries and global value chains, and extraterritorially, applying to non-EU companies generating significant revenue in the EU. Certain in-scope companies will also be required to adopt a corporate climate plan to ensure that their business model and strategy are compatible with the Paris Agreement goals of limiting global warming to

1.5°C. S&C's memo on the proposed CSDD Directive can be found here.

Publication of EFRAG Draft EU Sustainability Reporting Standards. On April 29, 2022, the European Financial Reporting Advisory Group (EFRAG) published its exposure drafts for the European Sustainability Reporting Standards (ESRS). The ESRS constitute the first set of standards that will be required under the proposed EU Corporate Sustainability Reporting Directive (CSRD). Following its implementation, the CSRD will require large EU and EU-listed companies to comprehensively disclose how sustainability considerations are integrated into their businesses and how material ESG impacts, risks and opportunities are identified and managed. The European Parliament and Council are currently negotiating the final legislative text for adoption of the CSRD, which is expected by the end of 2022. The draft ESRS would require companies to report sustainability matters on the basis of the "double materiality" standard, disclosing *both* the material risks posed by their operations to society *and* the material environmental and other ESG risks facing their own business and operations. Certain requirements would be subject to a rebuttable presumption that they are material to all companies.

EU Taxonomy Update. Following significant political debate within the EU, in February 2022 the European Commission proposed to include certain fossil gas and nuclear power activities within the scope of the EU Taxonomy. New nuclear power plant projects for energy generation and modifications and updates of existing nuclear installations would be covered as "nuclear-related activities" and certain electricity generation and heating and cooling from fossil gas would be covered as "gas-related activities," which could each be counted as Taxonomy-aligned activities for the purpose of the reporting requirements under the Taxonomy Regulation. The EU Parliament is expected to vote on this proposal by July 2022. A second delegated act establishing technical criteria for the remaining Taxonomy environmental objectives (regarding water and marine resources, circular economy, pollution prevention and biodiversity) is expected to be published before the end of 2022.

EU Proposes New Anti-Greenwashing Consumer Protections. On March 30, 2022, the European Commission proposed a series of changes to existing EU consumer rules, aiming to help consumers make informed and environmentally sustainable product-purchasing decisions. The Commission has proposed amendments to the Consumer Rights Directive to require traders to provide consumers with information on the durability and reparability of products. Additionally, the Commission has proposed changes to the Unfair Commercial Practices Directive, including expanding the list of product characteristics about which a trader cannot mislead consumers to cover environmental or social impacts (and durability/reparability). Furthermore, the proposals widen the list of prohibited unfair commercial practices to include certain forms of "greenwashing" (*e.g.*, making generic, vague environmental claims; and displaying a voluntary sustainability label which is not based on third-party verification).

Litigation Developments

US Supreme Court Hears Greenhouse Gas Regulation Lawsuit. On February 28, 2022, the Supreme Court heard oral arguments in *West Virginia* v. *US Environmental Protection Agency*, which raises the issue of whether the EPA has the power to regulate greenhouse gas emissions. The plaintiffs (twenty Republican-led states) argued that the EPA has exceeded its statutory authority under the Clean Air Act by implementing measures such as emissions caps. Many large power companies sided with the EPA in amicus briefs. Although the oral argument focused largely on the EPA's remit, the Court may avoid reaching the substantive question on standing grounds.

US Courts Dismiss Board Diversity Lawsuits. A group of high-profile suits in US federal courts brought by private plaintiffs claiming that directors of public companies had breached fiduciary duties and/or made misstatements in securities filings as a result of inadequate diversity policies or discriminatory practices have ended in dismissals. In one of the latest examples, *Kiger v. Qualcomm*, a derivative action brought against Qualcomm's directors decided in November 2021, a Delaware federal district court found that, among other things, defendants' statements about having "goals" of assembling a diverse board were not actionable under US securities laws and the plaintiff failed to identify any specific violations of anti-discrimination laws to support a breach of fiduciary duty claim. The dismissals indicate there is a high hurdle for derivative lawsuits challenging US board diversity going forward.

Vale S.A. SEC Enforcement Action. In April 2022, the SEC filed a complaint in a New York federal court against Vale S.A., alleging it made false and misleading claims about the safety of its dams prior to the January 2019 collapse of its Brumadinho dam. The SEC's complaint alleges that Vale knew about safety shortcomings in its Brumadinho dam, but continued to assure investors in presentations and sustainability reports that all of its dams were in stable condition. The complaint alleges breaches under Sections 10(b), 17(a) and 13(a) and Rules 10b-5, 12b-20 and 13a of the Securities Exchange Act of 1934. When announcing the charges against Vale, the Director of the SEC's Division of Enforcement noted that investors rely on ESG disclosures in sustainability reports, signaling an early focus of the SEC's newly created Climate and ESG Task Force.

ClientEarth Pre-Action Letter to Shell plc. On March 15, 2022, ClientEarth, an environmental law non-governmental organization, announced that it had sent a pre-action letter to Shell plc's board of directors. ClientEarth stated that it intends to seek permission from the UK High Court to bring a derivative action against Shell's directors for breach of their statutory duties under the UK Companies Act 2006 to act in a way that promotes the company's success, and to exercise reasonable care, skill and diligence. ClientEarth alleged that Shell's long-term viability is endangered by the board's alleged failure to properly manage climate risks, leaving Shell ill-prepared for the energy transition to net zero. If ClientEarth brings a derivative action in the UK High Court, it would be the first such case in the UK which seeks to hold directors personally liable in this way.

Sustainable Finance Developments

The sustainable finance market set another record in 2021 for the amount of ESG debt issued across various different instruments including green, social and sustainable bonds and loans and sustainability-linked loans and bonds. The total volume of ESG debt issued globally in 2021 was over US$1.6 trillion (a 115% increase from 2020) according to Bloomberg data, with the most significant levels of growth coming from sustainability-linked loans and bonds (with total volumes of US$530 billion in 2021). Overall, green bonds continued to be the largest contributor to the ESG debt market (comprising approximately 45% of total sustainable debt issued in 2021).

EU Green Bond Standard Developments. The European Commission initially proposed a EU Green Bond Standard (GBS) in July 2021 as a voluntary standard for issuers wishing to align with best market standards. On November 30, 2021, the Rapporteur for the Committee on Economic and Monetary Affairs of the European

Parliament proposed changes to the EU GBS which, if implemented, would significantly depart from the Commission's initial EU GBS proposal. Most notably, the amendments would expand the scope of the EU GBS to include transparency requirements for all bonds marketed in the EU with a sustainable objective and would eventually require mandatory EU GBS designation for all environmentally sustainable bond issuances. Negotiations are currently ongoing between the Commission and the European Parliament and Council to agree the final version of the EU GBS.

EBA Sustainable Securitization Report. On March 2, 2022, the European Banking Authority (EBA) published a report examining the introduction of sustainability into the EU's securitization market. The EBA Report concluded that a dedicated framework for sustainable securitization is currently unnecessary, but that the scope of the proposed EU GBS framework should instead be amended to apply to securitizations, subject to various adjustments. In particular, the EBA recommended that the EU GBS requirements should apply to the originator rather than the securitization vehicle and that the Securitisation Regulation be amended to extend voluntary disclosures relating to the principal adverse impact of securitization investments on ESG factors to all. The European Commission is expected to submit a report by June 2022 to the European Parliament and Council on the creation of a sustainable securitization framework, alongside a possible legislative proposal.

Update on Export Finance Lending Policies. Several notable recent developments in export finance have signaled an increased focus on sustainability. In January 2022, the OECD published a new version of the Arrangement on Officially Supported Export Credits which implements, among other changes, a new restriction on export credit and tied aid support for unabated coal-fired power plants - those without operational carbon capture utilization and storage (CCUS). This change closes off all avenues for OECD export finance support for coal-fired power plants without CCUS. In March 2022, the Council of the European Union issued a statement that EU Member States would, by the end of 2023, set their own deadlines for ending export credit support for all fossil fuel energy sector projects. S&C's memo examining these and other export finance sustainability developments is available here.

Shareholder Engagement Developments

Institutional Investors and Proxy Advisors Update Their Proxy Voting Guidelines for 2022. Large institutional investors and proxy advisors updated their proxy voting guidelines for the 2022 proxy season, with an increased focus on environmental and social issues, such as climate accountability and oversight of environmental and social risks, a continued emphasis on increasing diversity on boards and throughout the workforce and a fresh interest in dual class shares and SPAC governance. Failure to provide appropriate disclosures and policies related to such issues may result in negative votes and voting recommendations, both in connection with stockholder proposals and in director elections. The ISS US policy updates are available here. The Glass Lewis updates to its 2022 US Policy Guidelines and its 2022 ESG Initiatives Policy Guidelines are available here. S&C will publish its annual proxy season review this summer.

ESG Activism Continues to Grow. In Q1 2022, 73 new activist campaigns were launched globally, with the US representing 60% of the new campaigns according to data from Lazard. As both activist campaigns and investor focus on ESG issues become more frequent, it has become increasingly common for activists to incorporate ESG critiques into their theses. For example, Carl Icahn recently launched proxy contests against McDonald's Corp, and Kroger Co., seeking the appointment of two new directors at each company, based on concerns over the welfare and treatment of pigs, specifically the use of gestation crates in pork production, in the companies' supply chains. In an open letter to McDonald's shareholders, Icahn claimed that the McDonald's board needs more independent directors to push for transparency and progress on the Company's ESG goals. In Q1, Macellum Capital Management also launched a proxy contest against Kohl's, seeking the nomination of 10 candidates to Kohl's 14-member board. Among other critiques, Macellum has criticized the Company for its lack of diversity at the executive level and the recently-settled FTC complaint accusing the Company of greenwashing.

Financial Institution Developments

(a) General

Implications of SEC's Proposed Climate Rule for Financial Institutions. The SEC's proposed climate disclosure rule (discussed above) would have particular ramifications on the cost and complexity of financial institutions' SEC disclosures, particularly considering the significant challenges financial institutions face in disclosing their Scope 3 GHG emissions. The disclosure of Scope 3 GHG emissions, which would capture financed emissions (e.g., emissions from companies to which they provide debt or equity financing) and insured emissions (e.g., emissions of insurance and reinsurance underwriting portfolio), would likely be mandatory for many financial institutions based on the disclosure triggers under the proposed rule. Further, the increased focus of financial regulators on incorporating climate risks into their regulatory and supervisory practices as well as demands from investors and other stakeholders for more information on financial institutions' climate commitments may lead financial institutions to take climate-related actions (such as undertaking climate scenario analysis, preparing transition plans and setting emissions reduction targets or goals) that would trigger disclosures requirements under the proposed SEC rule. See S&C's memo analyzing certain key implications of the proposed rules on financial institutions here.

(b) Banking

US OCC and FDIC Propose Climate-related Financial Risk Management Principles. On December 16, 2021, the Office of the Comptroller of the Currency (OCC) released and requested public comments on draft principles that provide large OCC-regulated institutions (those with total assets of more than US$100 billion), including national banks, federal savings associations and federal branches or agencies of foreign banking organizations, with a high-level framework for management of exposures to climate-related financial risks. The principles outlined six key aspects of climate-related financial risk management: Governance; Policies, Procedures, and Limits; Strategic Planning; Risk Management; Data, Risk Management, and Reporting; and Scenario Analysis. They also offered principles for incorporating climate-related financial risks in various traditional risk categories, such as credit risk, liquidity risk, operational risk, legal and compliance risk, and other financial and nonfinancial risks. S&C's memo on the proposed principles can be found here. On March 30, 2022, the Federal Deposit Insurance Corporation (FDIC) also released and requested public comments on a substantially identical set of draft principles targeted at large financial institutions (those with total assets of more than US$100 billion) regulated by the FDIC.

European Central Bank Climate Risk Stress Test and Assessment of Bank

Progress on Climate Risks. On January 27, 2022, the ECB launched a supervisory climate risk stress test to assess the preparedness of European banks for dealing with the financial and economic consequences of climate risks. The exercise will be undertaken during the first half of 2022, followed by publication of the results by the ECB. Relatedly, on March 14, 2022, the ECB published its assessment of the progress European banks have made on disclosing climate and environmental risks. The ECB concluded that while there has been progress since its first assessment in 2020, no bank fully meets ECB supervisory expectations, including an assessment that the level of bank disclosure on climate and environmental risks is insufficient.

Bank of England Dear CEO Letter to International Banks on Supervisory Priorities and Launch of Climate Stress Tests. On January 12, 2022, the Bank of England Prudential Regulation Authority (PRA) sent a Dear CEO letter to international banks regarding its 2022 supervisory priorities for international banks active in the UK. The letter flagged climate-related financial risks as a key supervisory focus area for 2022 and stated that "assessment of a firm's management of climate-related financial risks will be included in all relevant elements of the supervisory cycle" and that from 2022, the PRA "will incorporate supervision of climate-related financial risks into our core supervisory approach." The PRA also highlighted diversity and inclusion as another area of supervisory focus. In May 2022, the Bank of England published results from the second round of its Biennial Exploratory Scenario stress testing exercise on the financial risks from climate change, which was launched in February 2022. The Bank of England warned that banks could face a 15% diminishment of annual profits if the risks to their business posed by climate change are not properly managed.

(c) Investment Funds and Asset Management

Implementation of the EU Sustainable Finance Disclosure Regulation Continues. In April 2022, the European Commission published regulatory technical standards (RTS) supplementing the Sustainable Finance Disclosure Regulation (SFDR), which define the implementation of ESG-related disclosure requirements under both the SFDR and the EU Taxonomy Regulation. The RTS apply at both an entity and product level, and include annexes and templates for principal adverse impact statements, pre-contractual disclosures for certain financial products (including those promoting environmental or social characteristics, and those which invest exclusively in "sustainable investments") and template periodic disclosure documents for certain financial products. It is expected that the RTS will apply from January 1, 2023.

US Department of Labor Request for Information on Climate-Related Financial Risks. On February 14, 2022, the US Department of Labor's Employee Benefits Security Administration (EBSA) requested feedback on examples of actions the agency could take to "protect the life savings and pensions of US workers and families from the threats of climate-related financial risk". EBSA has stated that the request for comments does not necessarily imply a commitment to subsequent rulemaking.

SEC Proposed Amendments Relating to ESG Matters. On May 25, 2022, the SEC proposed amendments to Rule 35d-1 under the Investment Company Act of 1940 (the "Names Rule") which currently requires registered investment companies whose names indicate a focus on a particular type of investment to invest at least 80 percent of the value of their assets in those investments. The proposed amendments to the Names Rule would extend the requirement to any fund name with terms suggesting that the funds focus on investments with particular characteristics, including fund names with terms indicating that the investment decisions incorporate ESG factors. Additionally, the SEC also proposed amendments to rules and reporting forms relating to the incorporation of ESG factors by funds and advisers. These proposed changes would apply to registered investment companies and advisers, and would (i) require additional specific disclosure requirements regarding ESG strategies in fund disclosures; (ii) implement a prescriptive, tabular disclosure approach for ESG funds to facilitate investor comparisons of ESG funds; and (iii) require certain environmentally focused funds to disclose GHG emission associated with their portfolio investments. Full S&C client memos on the proposals will be published shortly.

(d) Insurance

US NAIC Adopts Insurer Climate Survey to Align with TCFD. The National Association of Insurance Commissioners (NAIC) announced on April 8, 2022 that it has adopted a new standard for insurance companies to report climate-related risks in alignment with the TCFD's reporting standards. NAIC's new standard will require insurance companies to respond to an annual survey by November 2022. NAIC's revised survey will ask companies to identify and assess climate-related risks on insurance and reinsurance portfolios by geography, business division, or product segments. Fifteen US states representing approximately 80% of the US insurance market have committed to requiring the NAIC survey in 2022 for insurance companies licensed in their jurisdictions.

Bank of England Dear CEO Letter to Insurers on Priorities for UK Insurers. On January 12, 2022, the Bank of England sent a Dear CEO letter regarding the PRA's 2022 priorities for life and general insurers operating in the UK. The letter flagged climate-related financial risks as a key PRA priority for 2022. The letter notes that firms should take a forward-looking, strategic and ambitious approach in managing climate-related financial risks across their business, including in both underwriting and investment. The PRA also highlighted diversity and inclusion as another area of supervisory focus. Additionally, on May 24, 2022, the Bank of England indicated in the results of its Biennial Exploratory Scenario stress testing exercise on the financial risks from climate change that insurers could face a 15% diminishment of annual profits if the risks to their business posed by climate change are not properly managed.

Competition Law Developments

European Commission Proposes Antitrust Rules Governing Sustainability Cooperation Among Competitors. On March 1, 2022, the European Commission proposed revisions to the rules and guidelines that would make it easier for competing companies to collaborate to generate pro-competitive efficiencies without breaching EU competition law. The draft rules and guidelines for the first time explicitly include sustainability objectives. The Commission's view is that cooperation between competitors, when conducted within appropriate parameters, may lead to sustainability benefits and is, in fact, essential for the EU's digital and green transition. A particularly promising revision was the introduction of a new chapter on sustainability agreements, including those setting sustainability standards, which provides guidance on when such agreements fall outside, and how such agreements will be assessed when they fall within, the scope of the EU-wide prohibition on anti-competitive agreements.

New EU Guidelines on State Aid for Climate, Environmental Protection and Energy

Come into Force. The European Commission's new Guidelines on State Aid for Climate, Environmental Protection and Energy (CEEAG) came into force on January 1, 2022. The CEEAG outline how the European Commission assesses whether to authorise State aid in the energy and environmental sectors granted by EU Member States as compatible with the EU internal market. The guidance informs aid recipients about how to structure and approach publicly financed projects to obtain the required European Commission approval. The CEEAG seeks to align the State aid rules with the new objectives of the European Green Deal of a reduction of 55% net greenhouse gas emissions and carbon neutrality by 2050. One of the ways that the CEEAG does this is by expanding the scope of investments and technologies that Member States can support to cover new areas, such as renewable hydrogen, clean mobility, resource efficiency and biodiversity.

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.