

SUSTAINABILITY: RECENT ESG DEVELOPMENTS

April 2021

Environmental, Social and Governance ("ESG") factors have fast risen to the top of the board agenda across all sectors, with increasing awareness that a failure to address these matters can be detrimental both financially and reputationally. Investor pressure, internal governance and the proliferation of regulatory requirements and voluntary standards across the globe makes this a complex area to manage.

This newsletter is intended to assist banks, financial investors and corporates in keeping up to date with ESG developments.

Further details of these and previous developments can also be found on our <u>Green and Sustainable Finance Topic Guide</u> on the <u>Clifford Chance Financial Markets Toolkit</u> and further related resources can be found on our <u>Clifford Chance ESG page</u>.

LEGAL AND REGULATORY REQUIREMENTS

Europe

(19 March 2021) The EU Commission's Platform on Sustainable Finance expert group published a report in response to a Commission request for advice on the existing and potential use of the EU taxonomy framework for enabling the financing of the transition towards a sustainable economy. The Commission intends to consider the advice when finalising the draft delegated act on climate mitigation and adaptation, in the context of the Taxonomy Regulation, and when preparing its renewed sustainable finance strategy and other sustainable-finance related initiatives. | <u>Report</u> | <u>Platform webpage</u> Environment Social Governance | Market wide

(17 March 2021) The European Supervisory Authorities (ESAs), (ESMA, EBA, EIOPA) issued a Consultation Paper seeking input on draft Regulatory Technical Standards (RTS) regarding disclosures of financial products investing in economic activities that contribute to an environmental investment objective under the Taxonomy Regulation. The closing date for responses to the consultation is 12 May 2021. | <u>ESMA press release</u> | <u>Consultation</u> | <u>Draft RTS under the SFDR</u> Environment Social Governance | <u>Market wide</u>

This regular newsletter is a digest of key developments on Sustainability and ESG from around the Clifford Chance network, including:

- Legal and Regulatory Requirements
- Official Publications
- Industry Guidance, Voluntary Codes and Publications
- Rating Agency, Index Provider and Data Services
- Advocacy Group Publications
- ESG Trends Emerging from COVID-19
- Clifford Chance Briefings and Blogs
- Clifford Chance Events To subscribe for future editions, please click here

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(12 March 2021) The European Commission consultation on its proposals to establish a European single access point (ESAP) stating that accessibility and transparency around ESG data and rating providers is key, closed 12 March 2021. Various trade and industry associations have submitted their responses. | <u>Responses</u> | <u>Consultation</u> Governance | Corporates

(10 March 2021) The Sustainable Finance Disclosure Regulation (SFDR), which is part of the European Commission's Action Plan on Sustainable Finance, came into effect, 10 March 2021. It requires the publication of extensive information on the integration of sustainability risks and its effect on performance, alongside other information. | <u>Press release</u> | <u>Regulation</u> **Environment Social Governance** | <u>Market-wide</u>

(25 February 2021) The European Commission noted that they are looking into the sustainability issues, including environmental benefits, as part of the review of the two Horizontal Block Exemption Regulations and the Horizontal Co-operation Guidelines. | <u>Press release</u> | <u>Horizontal Block Exemption Regulations and Horizontal Co-operation Guidelines</u> <u>Environment Social Governance</u> | <u>Market-wide</u>

Italy

(17 March 2021) The Bank of Italy has provided guidance on the application of the Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR) and the related draft regulatory technical standards (RTS) proposed by the European Supervisory Authorities (EBA, ESMA, EIOPA) to harmonise the content and presentation of the information required by the SFDR. Many SFDR provisions came into force on 10 March 2021, while the RTS are expected to come into force on 1 January 2022. | Webpage (in Italian)

Environment Social Governance | Market-wide

(4 March 2020) The Commissione Nazionale per le Società e la Borsa (Consob) issued a warning notice on sustainability-related disclosures in the financial services sector, which is intended to remind financial market participants and financial advisors of disclosure obligations under the Sustainable Finance Disclosure Regulation (SFDR) coming into force on 10 March 2021. | <u>Warning notice</u> (in Italian)

Environment Social Governance | Market-wide

Luxembourg

(12 March 2021) The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), issued a communiqué concerning the application of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) and its draft regulatory technical standards (RTS). | <u>Press release</u> | <u>Regulation (EU)</u> 2019/2088

Environment Social Governance | Market-wide

(26 February 2021) The Luxembourg Parliament lodged a new bill (Bill No. 7774) implementing certain provisions of the PEPP Regulation, SFDR and Taxonomy Regulation. | <u>Bill</u> (in French) Environment Social Governance | Market-wide

Netherlands

(11 March 2021) A Private Member's bill (*Wet verantwoord en duurzaam internationaal ondernemen*) submitted to the Netherlands Lower House of Parliament aims to set a legal minimum for international corporate social responsibility. This legislative proposal introduces a general duty of care for companies with regard to possible adverse effects of their activities on human rights, labour rights or the environment in a country outside the Netherlands. | <u>Legislative proposal</u> (in Dutch) **Social Governance** | Market-wide

United Kingdom

(24 March 2021) The Department for Work & Pensions (DWP) published a consultation on the consideration of social risks and opportunities by occupational pension schemes. The DWP is seeking views on the effectiveness of occupational pension scheme

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trustees' current policies and practices in relation to 'social' factors, as part their wider obligations in relation to environmental, social and governance considerations. The consultation closes on 16 June 2021. | <u>Summary page</u> | <u>Consultation</u> Social Governance | Pension funds

(24 March 2021) The Department for Business, Energy & Industrial Strategy (BEIS) published a consultation seeking views on proposals to require mandatory TCFD aligned climate-related financial disclosures from publicly quoted companies, large private companies and Limited Liability Partnerships (LLPs). The consultation closes 5 May 2021. | <u>Summary page</u> | <u>Consultation</u> | <u>Impact assessment</u>

Environment Social Governance | Market-wide

(18 March 2021) The Department for Business, Energy and Industrial Strategy (BEIS) published a consultation paper setting out proposals to strengthen the UK's framework for major companies and the way they are audited. The proposals are in response to recommendations made by three independent reviews commissioned by the Government in 2018. The consultation closes 8 July 2021. | Press release | Consultation | Sir John Kingman's Independent review of the Financial Reporting Council | Competition and Market Authority's statutory audit market study | Sir Donald Brydon's independent review of the quality and effectiveness of audit

Governance | Market-wide

(11 March 2021) The Financial Conduct Authority (FCA) published a Primary Market Technical Note on disclosures in relation to ESG matters, including climate change on 11 March 2021. This Technical Note was published in final form in Policy Statement 20/17 and clarifies existing disclosure obligations for a wider scope of issuers. | <u>Technical Note</u> (December 2020) | <u>Policy</u> Statement 20/17

Environment Social Governance | Market-wide

United States of America

(15 March 2021) The U.S. Environmental Protection Agency (EPA) finalised and implemented the Cross-State Air Pollution Rule Update, a rule requiring a reduction in power plant emissions in 12 states. These twelve states are "upwind states" that contribute to increased levels of emissions in "downwind states," and must reduce their emissions pursuant to the Clean Air Act. The EPA rulemaking comes after the U.S. Court of Appeals for the District of Columbia Circuit held that the EPA was not properly implementing the Clean Air Act because the agency was not protecting downwind states. | <u>Rule update</u> Environment Social | Market-wide

OFFICIAL PUBLICATIONS

International

(24 March 2021) The Network for Greening the Financial System (NGFS) published a technical document entitled: 'Adapting central bank operations to a hotter world: Reviewing some options'. | <u>Paper</u> Environment Social Governance | Banks

(1 March 2021) The UN Principles of Responsible Investment (UNPRI) recommended that G7 and G20 governments commit to policy reforms aligning financial regulatory frameworks with sustainability goals. This briefing can also be found on the recently launched UNPRI Regulation Database. | <u>Policy briefing</u> | <u>Database</u> Environment Social Governance | <u>Market-wide</u>

(26 February 2021) The United Nations Framework Convention on Climate Change (UNFCCC) published an interim Nationally Determined Contributions (NDC) Synthesis Report. NDCs are national climate action plans setting out the country's objectives to address climate change. The report summarises information contained in the 48 new or updated NDCs provided by 75 countries. <u>Report</u>

Environment Social Governance | Market-wide

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Europe

(12 March 2021) A European Commission report, undertaken by Steer, has been published which aims to help the European Commission, supported by the Platform on Sustainable Finance, to design a methodology to assess the likely green impacts of investment in the aviation ecosystem. | <u>Press release</u> (February 2021) | <u>Executive summary</u> (February 2021) Environment Social Governance | Aviation

Germany

(25 February 2021) The Sustainable Finance Committee (SFC) appointed by the German Federal Government published a report entitled 'Shifting the Trillions – A Sustainable Financial System for the Great Transformation' presenting 31 recommendations on how the transformation of the German economy can be financed with a sustainable financial system. | <u>Federal Ministry of Finance</u> <u>press release</u> (in German) | <u>SFC press release</u> (in English) | <u>SFC Final report</u> (in German) (132 pages) Environment Social Governance | <u>Market-wide</u>

Italy

(25 March 2021) The Bank of Italy published 'Green Bonds: the Sovereign Issuers' Perspective', which identifies the main benefits and costs for sovereign issuers. | <u>Press release</u> (in Italian) | <u>Press release</u> (in English) | <u>Report</u> (in English) **Environment Social Governance | Sovereigns**

Netherlands

(22 March 2021) De Nederlandsche Bank (DNB) is one of the first central banks to publish its first progress report on financial climate risks and opportunities as part of its Annual Report. The progress report is based on the globally adopted recommendations issued by the Task Force on Climate-related Financial Disclosures. | <u>Press release</u> (in Dutch) | <u>Press release</u> (in English) | <u>Annual Report</u> (in English Dutch) (189 pages, Climate-related reporting p72) Environment Social Governance | <u>Market-wide</u>

Singapore

(9 March 2021) Ravi Menon, Managing Director, Monetary Authority of Singapore (MAS) gave a keynote address at the Bloomberg Investment Conference on 'The Future of Capital is Green'. | <u>Transcript</u> Environment Social Governance | Market-wide

(28 January 2021) The Green Finance Industry Taskforce (GFIT), convened by the Monetary Authority of Singapore (MAS), launched a public consultation proposing a taxonomy for Singapore-based financial institutions to identify activities that can be considered green or transitioning towards green. The GFIT's 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. Consultation closed 11 March 2021. | <u>Press release</u> | <u>Consultation</u> (114 pages)

Environment Social Governance | Market-wide

Spain

(17 March 2021) The National Securities Markets Commission (CNMV) published its strategic activity plan for 2021. Rodrigo Buenaventura, president of the CNMV, highlighted that one of the plan's strategic objectives is focused on promoting initiatives that contribute to a more sustainable capital markets. Further, the CNMV aims at developing a set of recommendations to improve its sustainable financial products. | <u>Strategic activity plan</u> (in Spanish) | <u>Press release</u> (in Spanish) Environment Social Governance | Market-wide

(2 March 2021) The Government of Spain published general guidelines for its sustainable development strategy. The guidelines, which form part of Spain's 2030 climate agenda, cover eight environmental challenges such as poverty and inequality; climate

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and environmental emergency; the gap in gender inequality and discrimination, along with the strategic policies needed to address them. | <u>Press release</u> (in Spanish) | <u>Guidelines</u> (in Spanish) Environment Social Governance | Market-wide

United Kingdom

(30 March 2021) The Department of Business, Energy & Industrial Strategy (BEIS) announced that a third of UK's FTSE100 companies have signed up to the United Nation's Race to Zero campaign. | <u>Press release</u> Environment Social Governance | Corporates

(30 March 2021) The Cabinet Office published the COP President, Alok Sharma's keynote speech at the FT Climate Capital summited on working with businesses, investors, governments and the civil society on the road to net zero. | <u>Transcript</u> Environment Social Governance | Market-wide

(24 March 2021) The Chancellor of the Exchequer, Rishi Sunak, has issued two letters addressed to the Financial Conduct Authority (FCA) and the Prudential Regulation Committee (PRC) requiring the financial regulators to have regard to the UK's commitment to a net zero economy by 2050 when considering how to advance their objectives and discharge their functions. | <u>Press release</u> | Letter to the FCA | Letter to the PRC Environment Social Governance | Market-wide

(22 March 2021) HM Treasury (HMT) and the Department for Business, Energy & Industrial Strategy (BEIS) commissioned the City of London Corporation to lead an independent taskforce to boost socio-economic diversity in UK financial and professional services. | HMT and BEIS letter

Social Governance | Financial Institutions

(15 March 2021) The Department of Business, Energy & Industrial Strategy (BEIS) and The Parker Review Committee published the results of its survey on how to improve the ethnic and cultural diversity of UK boards, setting out timescales to encourage greater diversity. | <u>Press release</u> | <u>Report</u>

Social Governance | Market-wide

(12 March 2021) The Investment Association (IA) published its response to the Department of Work and Pensions consultation entitled 'Taking action on climate risk: improving governance and reporting by occupational pension schemes'. | <u>Response</u> | <u>Consultation</u> (January 2021)

Environmental Governance | Pension Funds

(11 March 2021) The UK Government launched the Modern Slavery Statement Registry bringing modern slavery statements together in one place and making it easier to find and compare them. | <u>Guidance</u> Social Governance | Market-wide

United States of America

(23 March 2021) The Federal Reserve announced that it will create a Financial Stability Climate Committee, which will develop and implement a program that responds to climate change risks to the financial system. The Committee will work with the Financial Stability Oversight Council, a multi-agency group responsible for detecting and responding to emerging risks to the financial system, and will increase the Federal Reserve's involvement and influence over climate-risk. | <u>Transcript</u> Environment Social Governance | Market-wide

(18 March 2021) The UN Principles of Responsible Investment (UNPRI) outlined policy objectives that federal financial regulators in the United States can take to revise the U.S. regulatory regime to better promote the integration of ESG factors into investment practice. This briefing can also be found on the recently launched UNPRI Regulation Database. | <u>Policy briefing</u> | <u>Database</u> Environment Social Governance | <u>Market-wide</u>

(17 March 2021) The Commodity Futures Trading Commission (CFTC) announced the creation of the Climate Risk Unit (CRU) to focus on the role of derivatives in understanding, pricing, and addressing climate-related risk and transitioning to a low-carbon economy. | <u>Press release</u>

Environment | Market-wide

(15 March 2021) Acting Chair of the Securities and Exchange Commission (SEC) Allison Herren Lee issued a statement calling for public input from investors, registrants, and other market participants on the development of disclosure requirements related to

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climate change as well as other environment, social, and governance concerns. The SEC also listed 15 questions for the public along with a webform and email box. | Public statement & questions

Environment Social Governance | Market-wide

(10 March 2021) The Department of Labor announced that it will not enforce two rules promulgated by the previous administration, 'Financial Factors in Selecting Plan Investments' and 'Fiduciary Duties Regarding Proxy Voting and Shareholder Rights', after stakeholders reported to the Department that the two rules failed to take into consideration the role of ESG factors in retirement investments and that promulgation of the two rules had a 'chilling effect on appropriate integration of ESG factors in investment decisions'. | <u>Statement</u>

Environment Social Governance | Market-wide

(4 March 2021) The Securities and Exchange Commission (SEC) announced the creation of a Climate and ESG Task Force in the Division of Enforcement with the intention of developing initiatives to identify ESG-related misconduct and provide expertise to teams working on ESG-related matters across the Division. | <u>Press release</u>

Environment Social Governance | Market-wide

(24 February 2021) The Securities and Exchange Commission (SEC) initiated a review to assess how companies are disclosing the risks they face from climate change. The SEC will evaluate how public companies address the topics identified in 2010 Obama-era climate disclosure guidance. The 2010 interpretive release advises public companies to establish a process for identifying climate change matters that are material to the company and to include relevant disclosures in their SEC filings. | Statement | 2010 guidance

Environment Governance | Market-wide

INDUSTRY GUIDANCE, VOLUNTARY CODES AND PUBLICATIONS

International

(18 March 2021) The International Capital Markets Association (ICMA) Asset Management and Investors Council (AMIC) issued a statement on ESG transparency of Asset-Backed Securities. | <u>ICMA Homepage</u> Environment Social Governance | Market-wide

(10 March 2021) Institutional Investors Group on Climate Change (IIGCC) launched the Net Zero Investment Framework. It provides a set of recommended actions and methodologies which have been developed by the 70 plus IIGCC members who are participating in IIGCC's Paris Aligned Investment Initiative. | <u>IIGCC Homepage</u> Environment Social Governance | Market-wide

(3 March 2021) The Climate Disclosure Standards Board (CDSB) and the World Benchmarking Alliance (WBA) issued a set of recommendations based on discussions in a multi-stakeholder roundtable hosted by the two organisations on 11 February 2021 to strengthen policy coherence between the different legislations and requirements of the EU sustainable finance agenda. | <u>Recommendations</u> | <u>February roundtable discussions</u>

Environment Social Governance | Market-wide

(2 March 2021) The Sustainability Accounting Standards Board (SASB) announced that the SASB eXtensible Business Reporting Language (XBRL) taxonomy is open for a 60-day public comment period ending on 22 April 2021. | <u>SASB Homepage</u> Environment Social Governance | Market-wide

Europe

(30 March 2021) Federation of European Risk Management Associations (FERMA) issued its first sustainability risk guide for European risk managers based on examples of good practice. | <u>FERMA Homepage</u> Environment Social Governance | Asset managers

(16 March 2021) Invest Europe produced a guide which aims to assist GPs and portfolio managers who are starting to consider ESG risks and opportunities. It aims to highlight how climate change is influencing the market while also providing various case studies and other materials which members can make use of to navigate ESG and climate change considerations. | <u>Climate change guide</u>

Environment Social Governance | Asset managers

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(15 March 2021) Association for Financial Markets in Europe (AFME) published a discussion paper entitled 'ESG Disclosure and Diligence Practices for the European Securitisation Market' outlining the role securitisation can play in developing sustainable finance specifically post pandemic. | <u>Press release</u> | <u>Discussion paper</u>

Environment Social Governance | Market-wide

(8 March 2021) European Financial Reporting Advisory Group (EFRAG) published two reports submitted to the European Commission setting out recommendations on the development of EU sustainability reporting standards in response to the mandates issued on 25 June 2020. | Press release

Environment Social Governance | Market-wide

(4 March 2021) Association for Financial Markets in Europe (AFME) launched their latest European ESG Finance quarterly data report which includes issuance of green, social and sustainable bonds and ESG fund management. | <u>Report</u> Environmental Social Governance | Market-wide

Luxembourg

(25 February 2021) The Luxembourg Stock Exchange (LuxSE) announced a new section of the Luxembourg Green Exchange (LGX) dedicated to Climate Aligned Issuers (CAI) and built on the Climate Bonds Initiative (CBI) issuer screening and research. | <u>LSE Homepage</u>

Environment Social Governance | Market-wide

United Kingdom

(26 March 2021) The Investment Association (IA) published a report outlining the features the industry would like to see so that it meets the government's funding needs and the needs of savers. | <u>Data strategy paper</u> Environment Social Governance | Asset managers

(24 March 2021) The UK Islamic Finance Council (UKIFC) published a report noting that only 1% of Principles for Responsible Investment (PRI) signatories worldwide are based within the Organisation of Islamic Co-operation (OIC) member states. | Press release | Report

Environment Social Governance | Market-wide

(22 March 2021) The IFRS Foundation trustees announced the formation of a working group to accelerate convergence in global sustainability reporting. The working group will provide technical recommendations and develop further the climate prototype released in December 2020. | <u>Press release</u> | <u>Prototype</u>

Environment Social Governance | Market-wide

(17 March 2021) The Investing and Saving Alliance (TISA) published a Good Practice Guide on Responsible and Sustainable Investing, which is intended to help financial services firms understand their environmental, social and governance (ESG) reporting obligations under the SFDR. | <u>Press release</u>| <u>Good Practice Guide</u> Environment Social Governance | Market-wide

(16 March 2021) Green Finance institute (GFI) published the Green Finance Education Charter to help finance professionals to incorporate sustainable finance practices and principles into their business. | <u>Charter</u> Environment Social Governance | Market-wide

(15 March 2021) CFA Society of the UK introduced a globally available ESG certificate for financial professionals involved in sustainable investing who want to integrate ESG issues into their decision-making. | <u>CFA UK Homepage</u> Environment Social Governance | Asset managers

(8 March 2021) The IFRS Foundation trustees published an update on the feedback received from its September 2020 consultation paper confirming a need for global sustainability reporting standards and that the IFRS Foundation should play a role in setting these standards. | <u>Press release</u> | <u>Consultation paper</u> (September 2020) Governance | <u>Market-wide</u>

RATING AGENCY, INDEX PROVIDER AND DATA SERVICES

United Kingdom

(17 March 2021) FTSE Russell launched the Sustainable Investments Insights Hub bringing together the SI research, data analysis and commentary on the green economy, fixed income, climate change integration, diversity and inclusion. | <u>FTSE</u> <u>Russell Homepage</u>

Environment Social Governance | Market-wide

(17 March 2021) FTSE Russell published a paper on how sovereign bonds could be affected by climate change risks. | <u>FTSE</u> <u>Russell Homepage</u>

Environmental | Market-wide

ADVOCACY GROUP PUBLICATIONS

United Kingdom

(15 March 2021) The London School of Economics (LSE) Grantham Research Institute on Climate Change and the Environment and the School of Oriental & African Studies (SOAS) Centre for Sustainable Finance published a report examining the role central banks and financial institutions could play in supporting the transition to net-zero greenhouse gas emissions along with recommendations. | <u>LSE Homepage</u>

Environment Social Governance | Financial Institutions

(11 March 2021) Pensions & Investment Research Consultants Ltd (PIRC) published its UK Shareholder Voting Guidelines 2021 which sets out recommendations on best practices in relation to board structure, remuneration policy and management of social and environmental issues. | <u>Guidelines</u>

Governance | Corporates

ESG TRENDS EMERGING FROM COVID-19

United Kingdom

(12 March 2021) Pensions and Lifetime Savings Association (PLSA) published Stewardship and Voting Guidelines 2021 stating that the pension fund investors must be aware during the AGM season how companies respond to the pandemic and how it may impact workforce and governance practices. | <u>PLSA Homepage</u> Governance | Pension funds

CLIFFORD CHANCE BRIEFINGS AND BLOGS

- (25 March 2021) Clifford Chance Briefing: UK Government publishes proposals on audit and corporate governance reform
- (24 March 2021) Clifford Chance Blog: Exploring the latest trends in economic sanctions and trade controls
- (24 March 2021) Clifford Chance advises on Indonesia's first sustainability-linked bond
- (23 March 2021) Clifford Chance Blog: <u>Corporate investigations in Hong Kong upcoming changes, key principles and hot</u> topics
- (22 March 2021) Clifford Chance Blog: <u>APRA accepts rare court enforceable undertaking to improve risk and compliance</u> weaknesses from major insurer
- (22 March 2021) Clifford Chance Briefing: <u>APAC ESG perspectives: Australian key considerations</u>
- (18 March 2021) Clifford Chance Briefing: ESG trends to watch in 2021 (in Chinese)
- (16 March 2021) Clifford Chance Blog: Lower Courts Grapple with International Organization Immunities after US Supreme Court's decision in Jam
- (11 March 2021) Clifford Chance Blog: <u>European Parliament adopts position on corporate due diligence and accountability</u>, now hands baton to Commission

- (11 March 2021) Clifford Chance Blog: Microsoft announces widespread hack of Exchange Server software
- (10 March 2021) Clifford Chance Briefing: Focus on Hydrogen: Strategy for hydrogen energy in the Netherlands
- (8 March 2021) Clifford Chance Briefing: ESG: Staying ahead of the regulatory curve in Europe

CLIFFORD CHANCE EVENTS

Clifford Chance's Spring 2021 Perspectives webinar programme will present various legal and business topics including:

- (8 June 2021) Trade and climate change what does the pathway to COP26 and beyond look like?
- (22 June 2021) Asia and Europe: China's opening-up and green agenda

(25 February 2021) Clifford Chance Global Funds Week 2021: Panel Discussion - <u>Sustainability Regulation - The New Rules</u>, Their Relevance to European and Non-European Investment Managers, and Market Practice Thus Far.

(23 February 2021) Clifford Chance Global Funds Week 2021: Panel Discussion - ESG: Trends and Predictions

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