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THE ROLE OF ESG IN U.S. CAPITAL MARKETS

Panelists:
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MCLE Information (60 Minutes Credit)

- Most participants should anticipate receiving their certificate of attendance in 4-6 weeks following the webcast
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Today's Panelists

Crystal Simpson is a managing director and head of energy equity capital markets at Evercore, which includes sustainable energy & clean technology, oil & gas, power, mining and chemicals. Ms. Simpson has led more than 550 bookrun energy equity offerings. Since 2012, she has raised over $120 billion for energy companies, including Altus Power, Antero, Crescent Energy, EVgo, Gulfport, Lithium Americas, Plains All American, Piedmont Lithium, QuantumScape, Shell Midstream, Rice Energy, RSP Permian, Targa, Viper and Williams. She has deep experience leading initial public offerings, follow-ons, equity-linked offerings, private investments in public equities (PIPEs) and pre-IPO capital. She graduated *summa cum laude* from Washington & Lee University with a B.S. in business administration and accounting alongside a double major in broadcast journalism.

Oscar Sloterbeck is a senior managing director and leads Evercore ISI's Company Surveys Team. Mr. Sloterbeck was ranked No. 3 for economics in the 2023 Institutional Investor All-America Research Team survey, a position he has held since 2019. As head of Company Surveys, he oversees proprietary surveys of companies, investors and U.S. states, as well as teens and young adults. These surveys provide unique insights into the economy and market sentiment. Prior to joining Evercore, Mr. Sloterbeck spent three years at JPMorgan Investment Management on the macroeconomics team. He is a chartered financial analyst and earned his B.A. from the College of William & Mary.

Today's Panelists (Cont'd)

Hillary Holmes is Co-Chair of Gibson Dunn's Capital Markets practice group. Hillary advises corporations, investment banks and institutional investors on all forms of long-term and strategic capital raising, including sustainability-linked financings and IPOs. She regularly advises companies on obligations under federal securities laws, corporate governance and ESG issues. Chambers ranks her amongst the top lawyers for energy capital markets, energy transactions and corporate counseling, and Law 360 has twice named her an Energy MVP. Hillary earned her JD from the University of Pennsylvania Law School and her BA from Duke University, *cum laude*.

Jason Meltzer is a partner in Gibson Dunn's Litigation Department and a member of the firm's Class Actions and ESG Practice Groups. Jason has experience in a wide range of complex commercial litigation, with an emphasis on securities and consumer products class action defense. Jason has defended multiple class actions challenging ESG statements as false or misleading, routinely counsels Fortune 100 companies on minimizing litigation risks in connection with their ESG reports and disclosures, and has authored several publications on the topic. Jason earned his JD from the University of Pennsylvania Law School and his BA from the University of Pennsylvania, *magna cum laude*.

Marie Kwon is of counsel in the New York office of Gibson, Dunn & Crutcher. She is a member of the firm's Capital Markets and Securities and Regulation and Corporate Governance Groups. Marie's practice focuses on counseling corporations and financial institutions on a wide variety of capital markets transactions, including initial public offerings, secondary offerings, debt offerings and ESG financing. In addition, she has advised public companies on reporting obligations under the Exchange Act. Marie received her JD from Columbia Law School. She graduated *magna cum laude* from Brown University with a BA degree in International Relations and was a member of *Phi Beta Kappa*.

Webcast Agenda

01 Recent Research in ESG Financing

02 Current Context for ESG in U.S. Capital Markets

03 ESG in Equity Capital Markets

04 ESG in Debt Capital Markets

05 Litigation and Liability Management

06 Predictions for Future of ESG in Capital Markets

RECENT RESEARCH IN ESG FINANCING

01

EVERCORE ISI

Company Surveys

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3rd Annual ESG Survey

- Over 200 investors and nearly 200 corporates.
- Investor views of greatest opportunities/risks associated with ESG broken out by S&P sector.
- Corporate views on risk exposures, how well addressed are the risks, and drivers of ESG focus. Data broken out by S&P sector and by thematic sector.

Evercore ISI ESG Survey - ESG Dimensions & Sub-Categories

SASB Standards use five Sustainability Dimensions and breaks each dimension into numerous General Issue Categories. According to SASB, the Standards' general issue categories "represent 26 broad sustainability-related business issues" and allow for "cross-industry comparison of closely related industry-specific Disclosure Topics."

Environment

GHG Emissions
Air Quality
Energy Management
Water & Wastewater Management
Waste & Hazardous Materials Management
Ecological Impacts

Social Capital

Human Rights & Community Relations
Customer Privacy
Data Security
Access & Affordability
Product Quality & Safety
Customer Welfare
Selling Practices & Product Labeling

Human Capital

Labor Practices
Employee Health & Safety
Employee Engagement, Diversity & Inclusion

Business Model & Innovation

Product Design & Lifecycle Management
Business Model Resilience
Supply Chain Management
Materials Sourcing & Efficiency
Physical Impacts of Climate Change

Leadership & Governance

Business Ethics
Competitive Behavior
Management of the Legal & Regulatory Environment
Critical Incident Risk Management
Systemic Risk Management

Evercore Group L.L.C. references the SASB Materiality Map.

ESG Survey: Comparison of Investor & Corporate Responses

	Investors		Corporates				
	ESG Risks / Opportunities		ESG Risk Exposure		Addressing ESG Issues		Drivers Of Focus On ESG
	Biggest Risk / Opportunity	Smallest Risk / Opportunity	High Exposure	Low Exposure	"Best Addressed"	"Most Work To Do"	Biggest Driver
Energy	Environment	Human Capital	Human Capital, Leadership & Governance	Environment, Social Capital	Leadership & Governance	Business Model & Innovation	Corp. Board/ Mgmt.
Financials	Leadership & Governance	Environment	Human Capital	Environment	Leadership & Governance	Business Model & Innovation	Employees / Corp. Culture
Health Care	Social Capital	Environment	Social Capital	Environment	Human Capital	Business Model & Innovation, Environment	Employees / Corp. Culture, Corp. Board/ Mgmt.
Industrials	Environment	Human Capital, Social Capital	Business Model & Innovation	Environment, Social Capital	Leadership & Governance	Environment, Social Capital	Corp. Board/ Mgmt.
Information Tech	Business Model & Innovation, Leadership & Governance	Environment	Human Capital	Environment	Leadership & Governance	Business Model & Innovation	Customers
Real Estate	Environment, Leadership & Government	Human Capital	Leadership & Governance	Environment	Leadership & Governance	Business Model & Innovation, Environment	Investors
Utilities	Environment	Human Capital, Social Capital	Business Model & Innovation	Social Capital	Environment	Human Capital, Social Capital, Business Model & Innovation	Customers

CURRENT CONTEXT FOR ESG IN U.S. CAPITAL MARKETS

02

An Era of Heightened ESG Focus

- While the interest in ESG issues and risks has evolved steadily over the last decade, the past several years have witnessed an even greater focus on ESG by companies, investors, proxy advisors and regulators
  - Voluntary reporting by companies on ESG-related matters has increased
  - SEC and stock exchanges have adopted, or are proposing, ESG-related rules
  - ESG-related shareholder proposals (e.g., diversity and climate change) have become some of the most popular proposal topics in recent years
- With the growth of specialized ESG funds seeking to invest, 2022 and 2023 saw a significant increase in issuances of ESG debt products and a rapid increase in sustainable equity investments
- As investor demand for ESG financing increases, issuers are also realizing that presenting a coherent ESG strategy to investors opens up access to new pools of capital and opportunities to lock in favorable pricing
- Financial institutions/development banks and sovereign issuers are the most significant global ESG finance issuers

Why Do We Care About ESG

Many Investors Care: ESG is now mainstream with investors' ESG expectations implicating engagement, governance scores, shareholder proposals, director elections and access to capital

- 96% of the Global 250 (the top 250 companies by revenue) report on sustainability or ESG matters*
- ESG disclosure increasingly included in SEC filings

Many Vocal Shareholders Care: This proxy season, almost 500 E&S proposals were submitted, focusing mostly on climate change and diversity, equity and inclusion

The SEC Cares: In early 2022, the SEC proposed new climate-related disclosure requirements that would require public companies to provide an accounting of their greenhouse gas emissions, environmental risks and responsive measures

Plaintiffs Care: Litigation targeting ESG statements is increasing, as companies publish more information and consumers and shareholders demand more disclosures

Boards Care: Boards are evolving their oversight structures and investors expect ESG competence among directors

BUT 'Anti-ESG' Sentiment on the Rise: Over the last year, there has been a growing anti-ESG movement in the United States

**Source: KPMG, Survey of Sustainability Reporting 2022*

Some Reasons Why Investors' ESG Expectations Matter

- **Engagement**: companies will be expected to talk about E&S issues when engaging with investors, even if the meeting was intended to be about other matters like governance and executive compensation
- **Governance scores**: proxy advisor reports and scoring, which are visible to a company's institutional investors, now include E&S issues
- **Shareholder proposals**: E&S shareholder proposals are among the most popular proposal topics and increasingly getting high levels of support (e.g., climate change assessments, workforce diversity reporting)
- **Director elections**: E&S issues are increasingly forming the basis for lower support for directors as investors tighten their voting policies and activists leverage these issues in campaigns (e.g., vote no campaigns, even proxy contests)
- **Access to capital**: As of year-end 2021, the US SIF Foundation identified $8.4 trillion in total U.S.-domiciled assets under management using sustainable investing strategies, representing 13 percent of the total U.S. assets under professional management. Climate change was the most important specific ESG issue reported by money managers in asset-weighted terms, addressed across $3.4 trillion in assets*

**Source: US SIF Foundation, Report on US Sustainable and Impact Investing Trends (2022), available here*

Investor Focus on ESG

Investors Are Focused On E&S:

- Shareholder proposals are up by roughly 2% in 2023, continuing the upward trend from last year, with E&S shareholder proposals continuing to predominate
- But continuing the downward trend from 2022, average support for E&S proposals has dipped significantly compared to 2022

Institutional Investors Still Focused on ESG But With Less Support:

- BlackRock's support for ESG proposals declined in 2022: BlackRock noted many climate-related proposals are "more prescriptive or constraining on companies and may not promote long-term shareholder value"
  - Larry Fink no longer using ESG as it has become "weaponized" and "too politicized"
  - Oil and gas industry still has "vital role" to play
  - "For BlackRock, it's about financial value, not social or political values"
- Vanguard has indicated that it is not in the business of influencing or dictating companies' ESG strategies

Institutional Investor Views on ESG Shareholder Proposals

BlackRock and Vanguard Suggested Reasons for Lower Support For ESG Proposals

BlackRock's support for ESG proposals ***declined in 2022:***

- In 2022, BlackRock supported 24% of environmental and social proposals, down from 43% in 2021
- BlackRock has noted that many climate-related shareholder proposals in 2022 are "more prescriptive or constraining on companies and may not promote long-term shareholder value"
- BlackRock will generally support climate proposals that request disclosure on the effects of the energy transition, quantitative information on GHG emissions and targets, and how climate-related political activities support long-term strategy. BlackRock will generally not support proposals that "implicitly are intended to micromanage companies," including those that request changes to strategy or business model or address matters that are not material to long-term shareholder value

Vanguard has indicated that it is ***not in the business of influencing or dictating companies' ESG strategies:***

- Vanguard supports sufficient disclosure of a company's risks to allow the market to properly value the company's stock and is focused on long-term shareholder value
- Vanguard is more likely to support proposals that address shortcomings in current disclosure relative to market norms or widely accepted frameworks (e.g., SASB, TCFD), reflect an industry-specific and materiality-driven approach, and are not overly prescriptive

SEC's Increasing Focus on ESG

Since 2020 ↓	The SEC's Division of Examinations makes ESG investing an examination priority
August 2020 ↓	SEC adopts rules requiring human capital management disclosure
March 2021 ↓	New SEC Climate and ESG Task Force focused in part on ESG-related misconduct; then-Acting Chair solicits public input on need for climate change disclosure requirements
April 2021 ↓	Division of Examinations releases Risk Alert observing "deficiencies and internal control weaknesses from examinations of investment advisers and funds regarding ESG investing"
May 2021 ↓	SEC Chair Gary Gensler announces climate disclosure a top priority and early focus
Spring/Fall 2021 ↓	SEC Reg-Flex agendas include climate change disclosure
Fall 2021 ↓	Comment letters issued on 2020 10-Ks exclusively focused on absence of climate change disclosures
March 21, 2022 ↓	SEC approved rule proposal for new climate change disclosure requirements for both U.S. public companies and foreign private issuers
Around April 2024	Climate change disclosure rules on Reg Flex agenda for April 2024

Hot Topics in SEC Rulemaking – ESG Disclosures

Climate Change

- ***Background***: After increasing focus on climate change, including a round of comment letters in 2021, the SEC proposed rules for climate change disclosure in March 2022
- ***Focus areas***: Prescriptive rules to create a new climate change reporting framework (risks, governance, strategy, goals, GHG emissions) based in part on TCFD and the GHG Protocol. Includes amendments to both Reg S-K and Reg S-X
- ***Timing***: TBD. The final adoption has been delayed a couple of times; on Reg Flex agenda for April 2024

Human Capital

- ***Background***: SEC indicated that it plans to revise Human Capital Management disclosure requirements it adopted in August 2020 with a view towards making them more prescriptive
- ***Likely focus areas***: Per Chair Gensler, metrics such as workforce turnover, demographics such as diversity, info on skills and development training, compensation, benefits, health and safety
- ***Timing***: No proposal has been issued yet. At a meeting on September 21, 2023, the SEC Investor Advisory Committee ("IAC") made recommendations to the SEC to expand the existing human capital management disclosure rules adopted by the SEC in August 2020

Cybersecurity

- ***Background***: In July 2023, the SEC adopted new rules for cybersecurity disclosures
- ***Focus areas***: Incident reporting on Form 8-K for material cyber breaches, annual reporting of cyber risk management and strategy and board oversight (including director expertise)
- ***Timing***: Most public companies will be required to comply with the Form 8-K incident disclosure requirements beginning on December 18, 2023 (June 15, 2024, for smaller reporting companies). All public companies will be required to comply with the new annual disclosure requirements beginning with the annual report on Form 10-K or 20-F for the fiscal year ending on or after December 15, 2023

Current Trends and Challenges in ESG Financing

- Shift from green bonds/loans to sustainability-linked bonds/loans
  - Issuances in 2021 reflected over a 500% increase in SLBs/SLLs as compared to 2020, and issuances in 2022 comprised a substantially equal portion of global ESG offerings as green bonds/loans
  - Sustainability-linked products provide a broader umbrella for investment criteria beyond environmental issues
- ESG metrics will continue to be an increased focus for equity investors
  - Sustainable equity transactions in 2021 totaled over $25 billion as compared to nearly $23 billion in 2020
  - Companies seeking access to this capital will reflect greater transparency in ESG self-reporting
- Current market conditions (inflation, high-interest rates, as well as geopolitical conflicts) may impact 2023 volume and trading price for both debt and equity ESG financing
- Increased focus by regulators on ESG disclosure may impact timing on costs for companies accessing the capital markets, regardless of the type of financial product

Implications around ESG Disclosures in SEC Filings

- **Liability**: potential increased disclosure liability beyond Rule 10b-5 anti-fraud liability (which applies to ESG disclosures outside SEC filings), meaning potentially easier for shareholders to bring a claim
- **Controls**: need to evaluate existing disclosure controls and, for information included in the financial statements (e.g., proposed Reg S-X changes for climate change), internal controls to assess what enhancements are needed to ensure timely, accurate, complete & reliable information
- **Certifications**: ESG disclosures would be covered under CEO/CFO representations that the 10-K/10-Q doesn't contain a material misstatement or omission
- **Auditor comfort**: need to work with the company's auditor to make sure they are comfortable with any new disclosures as they could be subject to the comfort letter process in an offering or, for information included in the financial statements (e.g., proposed Reg S-X changes for climate change), included in the scope of the audit
- **Board oversight**: need to work with board/appropriate committees to get them comfortable with new disclosure requirements and processes being put in place to support the company's compliance

ESG IN EQUITY CAPITAL MARKETS

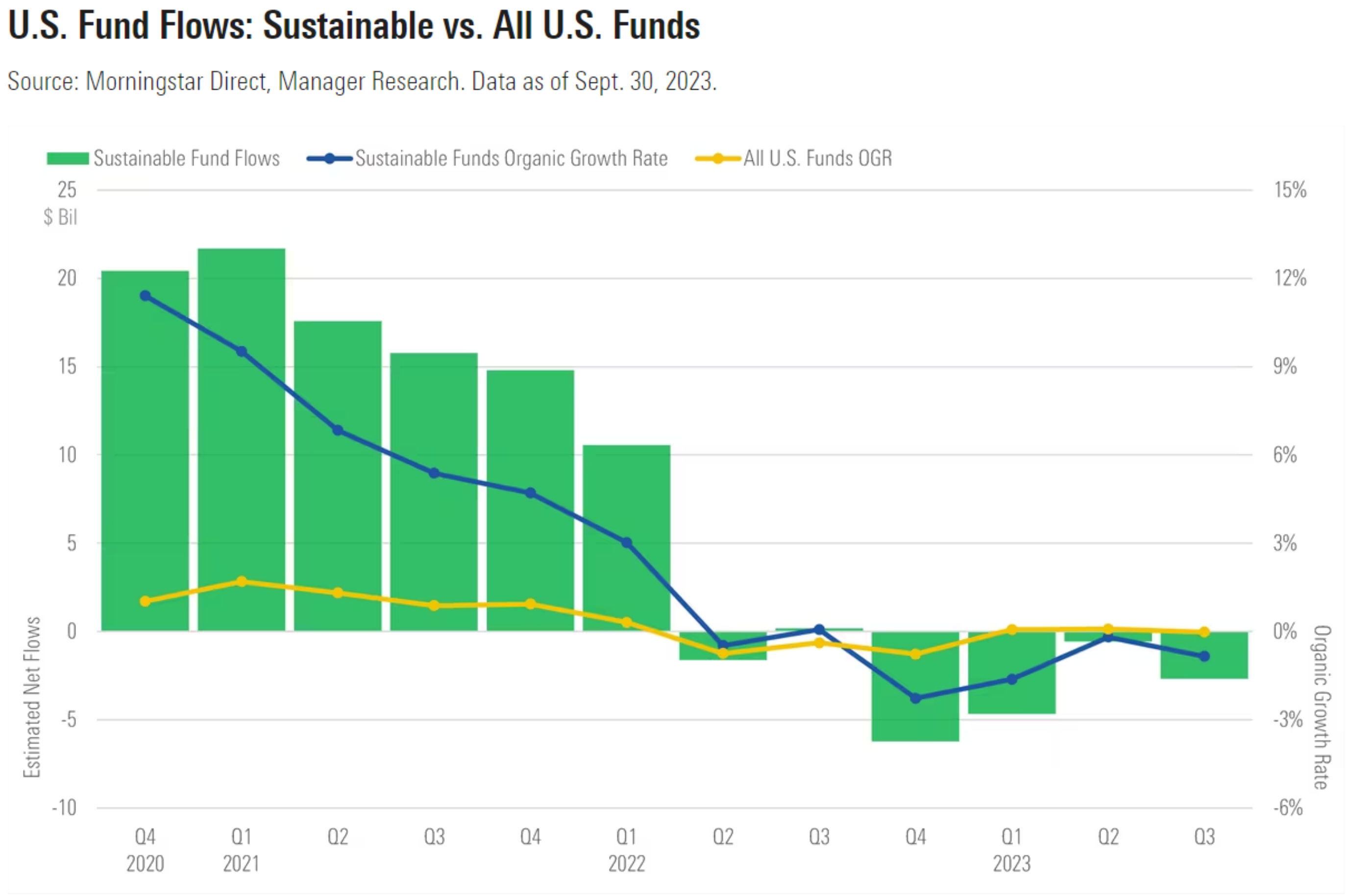
03

ESG Equity Investments

- ESG equity investing reflects a growing focus of investors on metrics beyond just financial performance
- Funds have been formed with investment frameworks tied to ESG metrics
  - Portfolios vary based on framework – some funds may focus on investing in companies focused on reducing climate change while others may focus on social or human rights issues
- Morningstar reported that investors pulled $2.7 billion out of ESG funds in Q3 2023, the fourth straight quarter of outflows from such funds – potential causes include rising energy prices, high-interest rates, concerns about greenwashing, and political backlash
- U.S. money managers closed more ESG funds than they opened after a three-year boom
- As of June 30, 2023, sustainable funds' AUM (assets under management) was $3.1 trillion - the majority (89%) of total sustainable funds are based in Europe, compared to 10% in North America and less than 2% in all other regions

U.S. Fund Flows: Sustainable vs. All U.S. Funds

The below graph shows growth of U.S. sustainable funds as compared to all U.S. funds for the periods presented



What are ESG Funds?

- An ESG Fund refers to any investment vehicle for which the fund manager(s) use ESG criteria to inform its composition and asset allocation strategy
- The three most common types of ESG Funds are ESG mutual funds, ESG ETFs, and ESG index funds
- ESG fund managers may use a variety of methods in order to construct their portfolios
  - *Negative Screening*: identifying undesirable characteristics (that don't meet certain sustainability criteria or expectations) and excluding investments that don't qualify (e.g., investments in tobacco, weapons, or fossil fuel industries)
  - *Positive Screening*: selecting top performers measured against important ESG criteria
  - *Thematic Investing*: ESG fund managers identify longer-term macroeconomic trends that they believe should collectively contribute to better E, S, or G outcomes and select investments that reflect such trends

ESG IN DEBT CAPITAL MARKETS

04

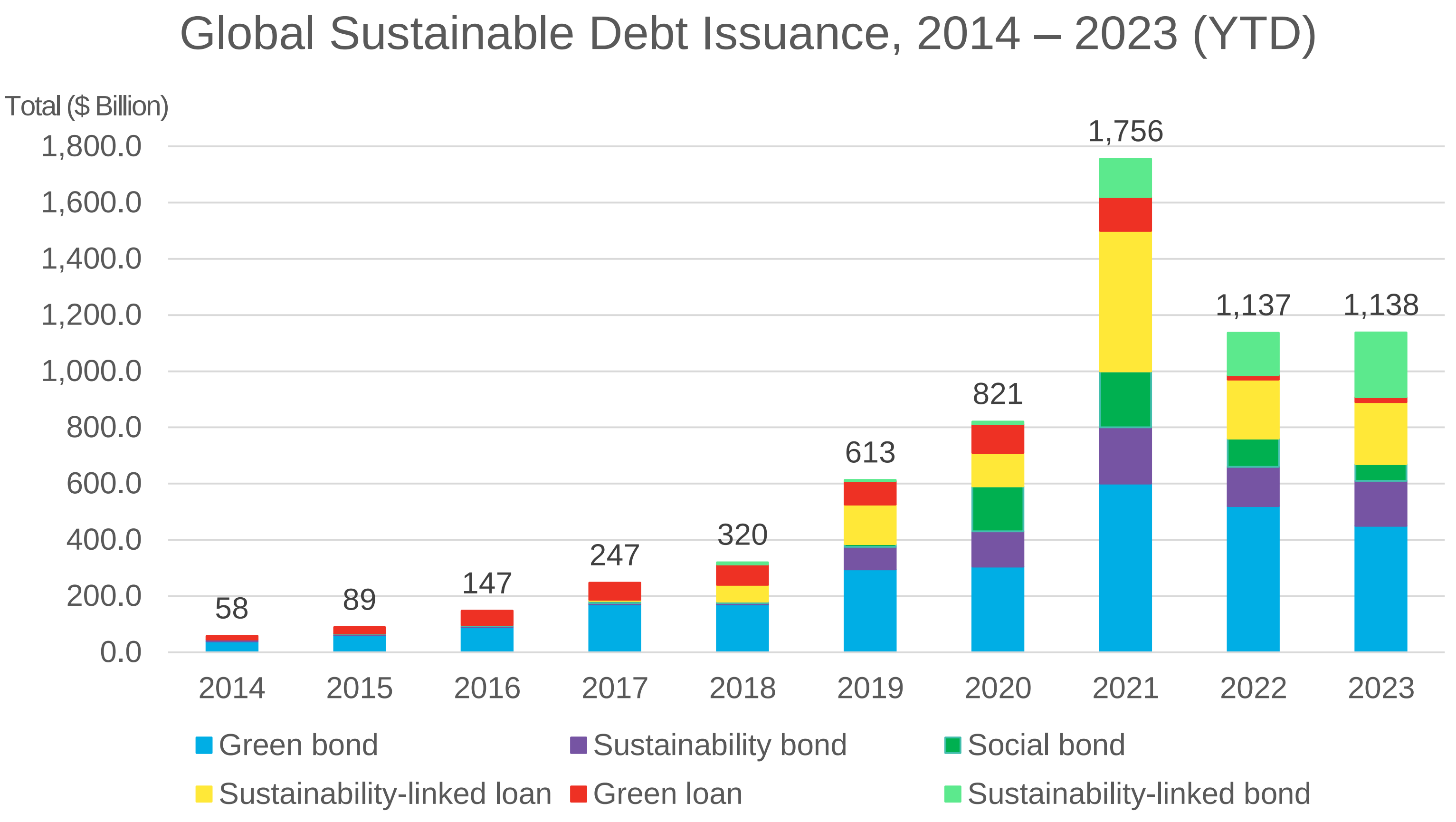
Types of ESG Debt Products

- **“Use of Proceeds” products**
  - Green bonds and loans – proceeds from issuance are earmarked for eligible projects, (e.g., a renewable energy project or a clean transportation project)
  - Blue bonds – proceeds are tied to the sustainable use of maritime resources (e.g., projects that manage, conserve, and restore the health of coastal and marine ecosystems)
  - Social bonds and loans – proceeds are tied to “eligible social projects” (e.g., affordable basic infrastructure, access to essential services and socioeconomic advancement)
  - Sustainability bonds – proceeds are a hybrid of green and social projects
- **“Incentive-Based” products**
  - Sustainability-linked loans (SLL) – while proceeds are typically made available for the company’s general use, the terms of the loan are linked to, and incentivize the achievement of, predetermined sustainability performance targets (SPTs) along predetermined, sustainability-relevant, key performance indicators (KPIs), such as reduction in greenhouse gas emissions
  - Sustainability-linked bonds (SLB) – similar to SLLs, SLBs are structured around the selection of relevant ESG KPIs and a pricing mechanism (e.g., step-down coupons) tied to the verified achievement of a KPI target

Development of ESG Debt Products

Green bonds/loans have historically been the most prominent ESG product, however, 2021 saw a surge in sustainability-linked offerings, which continued to be prominent in 2022

Between 2018 and 2022, transactions reportedly labeled as blue (not reflected in the chart below) reached a total value of $5 billion



ICMA Principles Framework

- The International Capital Markets Association (ICMA) promulgates voluntary guidelines for green, blue, social, sustainability and sustainability-linked bonds
- ICMA principles define basic features of offering documentation content, post-offering reporting and the scope of eligible ESG projects or KPIs underlying bonds
  - Green, blue and social bond principles include a detailed (but not exhaustive) list of eligible green, blue and social projects:
    - *Green projects* – renewable energy, energy efficiency, pollution prevention and control, clean transportation and climate change adaptation
    - *Blue projects* – coastal climate adaptation and resilience, marine ecosystem management, marine renewable energy and marine pollution
    - *Social projects* – affordable basic infrastructure, affordable housing, employment generation, food security and sustainable food systems and socioeconomic advancement/empowerment

Documents and Process

- Same suite of offering documents (as set forth below), other than a TPO and framework to reflect the Four Key Features (as more fully described on next page)
  - Prospectus supplement or offering memorandum
  - Underwriting agreement or purchase agreement
  - Comfort letters
  - Legal opinions
  - Diligence questions
- **Four Key Features** of ESG offering documents based on ICMA framework:
  - a designation and description of projects to be financed by offering proceeds;
  - a description of how such projects are evaluated and selected by the issuer;
  - a description of how offering proceeds will be managed and tracked to ensure they are used for qualifying projects; and
  - a description of any ongoing commitment to report publicly on the use of proceeds until full allocation

Documents and Process (Cont'd) - ESG Bond Third-Party Opinion Process

- ICMA Green (and Social) Bond Principles recommend the appointment of an external reviewer to opine on the adherence of an individual offering (or multi-offering framework) to the Four Key Features
- The use of such third-party opinions (TPOs) has become the standard market practice in green, social and sustainability bond and sustainability-linked bond offerings
  - TPOs provide comfort to ESG investors and also allow issuers to preview and address areas of potential investor concern
- The TPO process is one of the most time-consuming processes in an ESG product offering
  - Issuers are often asked to supply reviewers with detailed information regarding the company's sustainability practices, reporting and industry (particularly in the context of SLLs and SLBs)
  - Third-party reviews may often suggest revisions to ESG offering framework documents to better align with ICMA principles and market expectations

Green Bonds Example

- Company: a global chemical public company
- ESG Product: $500 million Green Bonds
- Use of Proceeds: “We intend to allocate an amount equal to the net proceeds from the sale of the notes to finance and/or refinance, in whole or in part, new or existing green projects that meet the eligibility criteria outlined below (the “Eligible Green Projects”), which is aligned with the 2021 Green Bond Principles and June 2022 Appendix administered by the ICMA and the 2023 Green Loan Principles administered by the LMA, APLMA and LSTA”
- Eligible Project Categories:
  - Circular economy adapted products, production technologies and processes,
  - Renewable energy,
  - Pollution prevention and control, and
  - Energy efficiency

Sustainability-Linked Bonds Example

- Company: environmental infrastructure and solutions company
- ESG Product: $400 million Senior Sustainability-Linked Notes
- Use of Proceeds: Repayment of outstanding credit facility and redemption of preferred equity
- Sustainability-Linked Bond Framework adopted in March 2021
  - KPI: Increase recycled produced water sold and reduce groundwater withdrawals sold (expressed as % of barrels of recycled water sold per year / total barrels of water sold per year)
  - Sustainability Performance Target (“SPT”): Increase barrels of recycled produced water sold to 60% by 2022 from a 2020 baseline of 42.1%
  - Redemption prices on Notes are subject to increase if issuer fails to satisfy the SPT

LITIGATION AND LIABILITY MANAGEMENT

05

ESG Disclosures are Increasingly a Focus of Litigation

- Litigation risks can come from several sources, including: (i) federal and state securities laws; and (ii) consumer protection laws
  - Private plaintiffs are alleging that ESG statements in Exchange Act reports, on websites, in sustainability reports, and in marketing materials are misleading to consumers
- SEC has also increased its focus on ESG
  - Proposed Rules on Climate Change Disclosure–(when adopted) expected to substantially increase climate disclosures in Exchange Act reports. Will draw scrutiny by regulators and plaintiffs' counsel
  - In 2021, the SEC also created a **Climate and ESG Task Force in the Division of Enforcement** to proactively identify ESG-related disclosure misconduct, consistent with increased investor attention to climate change and ESG-related disclosures

Managing Litigation Risk in ESG Capital Markets

- **Strict Liability for Offering Documents and Communications**
  - Securities Act Sections 11, 12—strict liability for any material misstatements or omissions in connection with securities offerings
- **Antifraud Liability for Other Disclosures**
  - Exchange Act Section 10(b) and SEC Rule 10b-5 create liability for fraudulent statements to investors, regardless of where they occur
  - Claims could be raised directly by the SEC or investors
  - Though the Framework and any Sustainability Report will only be published on websites and not filed with the SEC, issuers could be subject to 10b-5 liability, the same as any information disclosed outside of SEC filings that investors may rely on when buying/selling securities

Managing Litigation Risk in ESG Capital Markets (Cont'd)

- Issues likely to attract attention from private plaintiffs' counsel and the SEC's task force could include:
  - Offering an ESG product without a real or accurate plan for the use of proceeds on eligible projects;
  - Misstating achievement of an ESG metric or omitting disclosure regarding a material ESG-related event; or
  - Failure to meet any concrete commitments or guarantees to allocate capital to specific types of projects
    - Forward-looking statements accompanied by meaningful cautionary language are entitled to protection under the PSLRA

Managing Litigation Risk in ESG Capital Markets (Cont'd)

Steps to Mitigate Risks

1. Risk Factor disclosures on ESG bonds

   - ESG bond may not be suitable investment for criteria of any particular investor seeking exposure to green, social or sustainable assets/projects
   - No standardized criteria for what constitutes green, social or sustainable assets/projects
   - Issuer has significant flexibility in how proceeds are allocated; accordingly, funds may be allocated to projects that do not meet investment expectations or requirements
   - Forward-looking statement disclaimers, for example, addressing why the issuer may not be able to adhere to the green bond framework
   - Potential disclaimers in the Framework, Sustainability Report, and Third-Party Opinions stating that documents do not constitute part of the offering materials for current or future offerings

Managing Litigation Risk in ESG Capital Markets (Cont'd)

2. Post-offering reporting on Use of Proceeds

- Be mindful that expectations were set at the time of the offering
- Be cautious about overstating or misrepresenting
- Obtain post-issuance external reviews to confirm allocations and verify impact disclosure
- Disclose the funded projects, both at- and post-issuance
- Display information clearly with graphics, benchmarks, comments

Managing Litigation Risk in ESG Capital Markets (Cont'd)

3. Aspirational/Forward-Looking

- Keep ESG statements regarding initiatives and efforts aspirational and forward-looking, to the extent possible
- Include forward-looking statement disclaimers, specifying examples of language that signals forward-looking and aspirational statements
- Statements about ESG goals and targets should be appropriately cautioned and utilize aspirational language
- Courts typically dismiss litigation challenges to statements that are truly aspirational and include appropriate qualifications
- By contrast, courts may find more concrete statements actionable under securities and consumer protection laws

Managing Litigation Risk in ESG Capital Markets (Cont’d)

4. Great Care for Statements of Fact

- Understand that great care must be taken for concrete and historical statements of fact
- As with SEC filings, ESG disclosures should be subject to rigorous controls and procedures
- Consider using well-established metrics and describing the parameters of the metrics in sufficient detail
- Be mindful regarding positive impact reporting and not overstating or misrepresenting progress
- Educate responsible individuals about growing risk of lawsuits based on alleged misstatements

Managing Litigation Risk in ESG Capital Markets (Cont'd)

5. Organizational Practices

- Confirm adequate disclosure controls and procedures in place with respect to information about progress on ESG goals
- Implement and utilize consistent policies, procedures and practices related to ESG and use of ESG-related terminology
- Collaboration across business functions (e.g., financial reporting, marketing, ESG personnel) to confirm cohesion of ESG disclosure
- Involvement of compliance personnel knowledgeable about the company's ESG approaches and practices in information collection and dissemination

PREDICTIONS FOR FUTURE OF ESG IN CAPITAL MARKETS

06

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