

Food, Beverage & Agriculture Industry Group

Finance In The New Economy: ESG & Its Impacts on Financial Services

July 11, 2022

Materials

PowerPoint Presentation 2

Banks, Climate Risks, and the Emerging Regulatory Framework,

Lanier Saperstein and Marc Kushner, Dorsey & Whitney LLP 12

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<https://www.dorsey.com/-/media/files/newsresources/news/2022/lanier-saperstein-and-marc-kushner.pdf>



interactive dialogue

Finance In The New Economy: ESG & Its Impacts on Financial Services

**Thomas Halverson, President and Chief Executive Officer,
CoBank**

Mike Droke, Partner, Dorsey & Whitney LLP

July 11, 2022



interactive dialogue

The webinar regarding **Finance In The New Economy: ESG & Its Impacts on Financial Services** begins at 9:00 AM PT.

MATERIALS

Materials and sign-in were included in the reminder email sent Friday, July 8.

WEBINAR Q&A

If you have questions, please type the question into “Chat” and the presenters will address during Q&A, as time permits. If there isn’t an opportunity to address your question, you are welcome to follow-up directly with the presenters.



Speakers



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Officer
CoBank



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ESG & Financial Services

Tom Halverson
President & CEO, CoBank



Proud Member of the Farm Credit System 

Why Pick This Topic?

- **Climate change is creating new financial risks for banks**
- **Everyone is now requiring disclosures**
 - Banks
 - Customers
 - Legislators ... even regulators too.
- **Why?**
 - Because customers care
 - Because investors care
 - Because the media cares
- **What can we do to help?**
 - We can tackle increased uncertainty about the risks imposed
 - We can ease complexity by giving legal input and strategies to ensure compliance.



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What is the legal definition of “ESG”?

- **Environmental**
- **Social**
- **Governance**
- **It’s a movement to mitigate and regulate the financial risk involved with climate change.**
- **It’s important in weighing the legal implications of business decisions.**
- **To meet ESG, legal function is a critical player**
 - Investors expect risks to be addressed
 - Regulators expect compliance regarding risks



See, Saperstein & Kushner, 139 Banking Law Journal, No. 6, at 304 (with materials)

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*“There is no company whose business model won’t be profoundly affected by the transition to a net zero economy...
Companies that are not quickly preparing themselves will see their businesses and valuations suffer.”*

— Larry Fink
CEO, BlackRock

Source: Larry Fink's 2021 letter to CEOs BlackRock available at
<https://www.blackrock.com/corporate/investor-relations/2021-larry-fink-ceo-letter>

The Wall Street Journal

Financial System Makes Big Promises on Climate Change at COP26 Summit

Source: WSJ, <https://www.wsj.com/articles/financial-system-makes-big-promises-on-climate-change-at-cop26-summit-11635897675>

The global finance industry, its regulators and investors pledge trillions in funding to reduce carbon emissions

“Most of the world’s big banks, its major investors and insurers, and its financial regulators have for the first time signed up to a coordinated pledge that will incorporate carbon emissions into their most fundamental decisions.”

CLE Code for Attendees in States that Require a Code

(Tip: The CLE code is different than the event code assigned by states)



What is the legal process to regulate banks – and thereby the bank's customers?

- **Biden's executive order**
- **The House's proposed legislation – H. R. 1187**
- **The Office of Comptroller of the Currency's Draft Principles**
- **The FDIC's Statement of Principles**
- **The Federal Reserve's Financial Stability Climate Committee**
- **The SEC's proposed rules on climate-related disclosures**
- **New York's banking regulator – New York Department of Financial services**
- **LTSA, ACC & PRI Harmonized ESG Reporting Project**
- **Loan Principles**



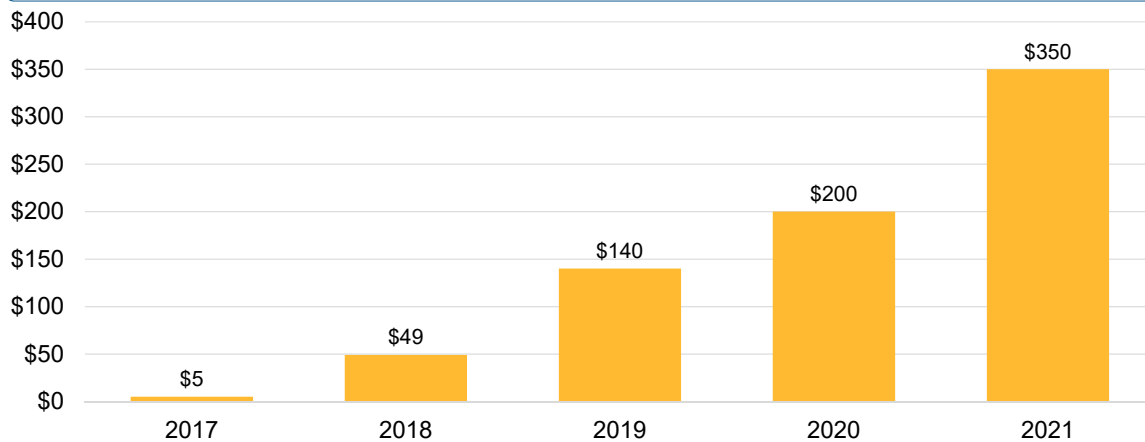
See, Saperstein & Kushner, 139 Banking Law Journal, No. 6, at 304 (with materials)

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Climate Change & Financial Services



Global ESG Loan Originations
(\$ billions)



ESG & Financial Services



BNP Paribas

No financing for new customers with >25% coal-related revenue.

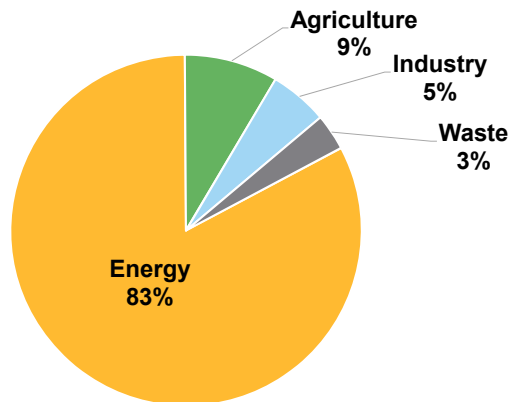
Deutsche Bank

Will end all lending to coal mining by 2025.

UBS

No financing for utilities using coal for >20% total energy.

U.S. Greenhouse Gas Emissions By Sector
(% Share)



Top Things You Can Do Today

1. **Attend Dorsey's Food Summit on July 13, at which ESG regulations will be discussed!**
2. **Contact your bankers to determine what information they will be gathering.**
3. **Consider your business and its carbon impact or mitigation, and ways to address and document the same.**
4. **Inform the Board about the rising importance of ESG in your industry.**

Questions



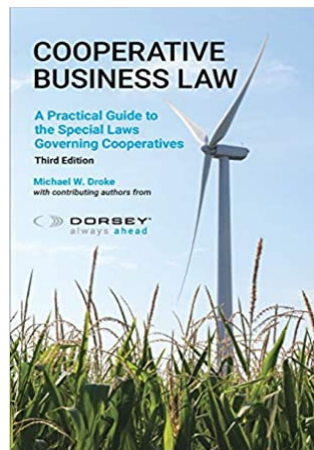
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https://www.amazon.com/dp/0991405544/ref=cm_sw_r_cp_api_i_E9SmFb5X99QXT



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Upcoming Webinars

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July 13: 2022 Food Summit



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Michael W. Droke

Partner

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Mike started his career as a client, not a lawyer. He represented the same company where he worked in management, thus “walking both sides of the street.” As a lawyer, Mike had devoted his practice to practical, results-oriented advice and litigation representation in situations where the law, facts or business risks are ambiguous.

Mike’s practice is devoted to the areas of employment law, agriculture and cooperative law, and in the food and agriculture industries. He has litigated employment and labor issues across Washington and California and advised across the United States. Throughout his career, a substantial part of Mike’s practice has been representing agriculture and food-based companies. He acts as outside general counsel in that industry, handles corporate governance, and manages complicated domestic and international transactions.

On the business side, Mike developed Dorsey’s LegalMine Document Review Solution from concept to operation. He has also held leadership roles as Office Head for Seattle (where he negotiated a large office move, and the office was named one of Washington’s Best Workplaces) and as co-head of the Labor & Employment and other practice groups.



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Thomas Halverson
President and Chief
Executive Officer
CoBank

As CoBank's president and chief executive officer, Thomas Halverson is responsible for implementing the bank's strategic and business direction as set by the board of directors. Previously, he served as CoBank's chief banking officer where he was responsible for the bank's Agribusiness and Rural Infrastructure Banking Groups as well as the Banking Services Group and corporate communications. Mr. Halverson is the chair of CoBank's Management Executive Committee.

Prior to joining CoBank in 2013, Mr. Halverson spent more than 15 years with Goldman Sachs, where he was most recently managing director and chief of staff for Goldman Sachs Bank USA, a \$120 billion commercial bank subsidiary of the Goldman Sachs Group, Inc. Prior to that he served in a variety of executive positions at the firm, including head of credit risk management for Goldman Sachs in Asia (ex-Japan) and executive director of credit risk management and advisory in London. Before joining Goldman Sachs, Mr. Halverson served as principal credit officer for country risk at the European Bank for Reconstruction and Development in London.

Mr. Halverson is a summa cum laude graduate of Wabash College in Crawfordsville, Indiana. He earned a British Marshall Scholarship and completed a doctorate in war studies at King's College, University of London.



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JUNE 2022

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Lanier Saperstein and Marc Kushner

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Deborah Low

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Banks, Climate Risks, and the Emerging Regulatory Framework

*By Lanier Saperstein and Marc Kushner**

This article discusses the increasing focus within the industry and by regulators on the financial impact of climate change, especially regarding the safety and soundness of financial institutions.

Nellie Liang, a senior U.S. Treasury official, recently told a large group of assembled bankers that climate change is “an existential threat to our environment and ecosystems” and that it “is creating increasing and significant economic costs.”¹ Michael Hsu, the Acting Comptroller of the Currency, amplified the point, noting its impact on the financial system: “Climate change is generating risk exposures for banks.”² This article discusses the increasing focus within the industry and by regulators on the financial impact of climate change, especially regarding the safety and soundness of financial institutions.

THE FINANCIAL RISKS

Climate change is creating new financial risks for banks. New York’s banking regulator, for example, issued an open letter in late 2020, observing the “aggregate cost of billion-dollar natural disasters in the United States more than quadrupled from the 1980s to the 2010s.”³ The financial risks to New York’s residential housing stock, alone, is staggering. New York’s bank regulator estimates that “single- and multi-family residential homes in New York City

* Lanier Saperstein and Marc Kushner are partners at Dorsey & Whitney LLP. Mr. Saperstein advises banks on cross-border litigation and regulatory matters, including those relating to environmental, social, and governance (“ESG”). Mr. Kushner is the head of the firm’s U.S. M&A practice and focuses on complex U.S. and cross-border transactions, which increasingly touch upon ESG considerations. The authors received invaluable input on this article from their colleagues, including Martha Coultrap, Andrew G. Herr, Cam Hoang, Megan Houdeshel, Helen Jiang, Josh Kornfield, Joseph Lynyak and Peter Nelson.

¹ Remarks by Under Secretary for Domestic Finance Nellie Liang at the Institute of International Bankers’ Annual Washington Conference, March 7, 2022, <https://home.treasury.gov/news/press-releases/jy0635>.

² Remarks by Acting Comptroller of the Currency Michael J. Hsu, Institute of International Bankers, Annual Washington Conference, March 7, 2022, <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-22.pdf>.

³ New York State Department of Financial Services, Climate Change and Financial Risks, October 29, 2020, https://www.dfs.ny.gov/industry_guidance/industry_letters/il20201029_climate_change_financial_risks.

with \$334 billion of reconstruction value are at high risk of storm surges.” That means banks providing mortgages to those homeowners run the risk of having their collateral significantly impaired, quite literally overnight.

Bank regulators in the United States, however, do not have the power to set or impose carbon targets or other environmental requirements. Instead, the mandate of banking regulators, whether at the federal or state level, is to ensure the “safety and soundness” of their regulated entities. Bank regulators in the United States therefore view climate change through that lens. Acting Comptroller Hsu emphasized that the OCC is now “laser-focused” on the safety and soundness aspects of climate change risks, and in particular whether banks are “identifying, measuring, monitoring, and mitigating climate-related exposures and risk.”

We are in the early days of climate risk quantification, so the full panoply of potential costs remains unknown. But bank regulators are starting to expect their regulated entities to identify their climate-related exposure and the potential impact of that exposure on their balance sheets. On a recent panel, for example, the OCC’s Climate Change Risk Officer said the OCC will start asking its regulated banks, “What is your exposure? What are your risks?” Even if banks believe they have imperfect data, they ought to start collecting and analyzing it in order to answer these questions.

It might be tempting to some to view the current regulatory focus on climate change-related financial risk as a political trend, driven by a Democratic president and a Democratically controlled Congress. The issue, however, is not going away. The financial risks are real. Investors care. The media remains interested and is keen to report on alleged “greenwashing.” Even if the federal banking regulators shift their focus under a Republican administration, the state regulators will remain focused on climate risk and marshal the enforcement mechanisms available to them. Indeed, New York’s influential banking regulator, which oversees approximately 1,500 banking and other financial institutions with assets totaling more than \$2.6 trillion, took an active role on climate change starting in 2019 because it felt the “Trump administration has actively undermined progress on climate change. . . .”⁴

There are geopolitical considerations at play too. Russia’s invasion of Ukraine has sparked a renewed urgency to diversify energy sources, including transiting to sustainable and renewable options. The invasion has highlighted Europe’s

⁴ DFS Press Release (Jan. 15, 2021), Superintendent Linda A. Lacewell’s op-ed in Law360: 6 ways financial regulators should prioritize climate risk. https://dfs.ny.gov/reports_and_publications/press_releases/pr2021152.

heavy reliance on Russian fuel, impacting Europe's energy security and constraining its response to the crisis. The transition to sustainable and renewable energy sources, however, will impose physical and transition costs. For banks operating in the United States with customers concentrated in carbon-heavy sectors, the regulators will expect those banks to safely and soundly manage the resulting financial risks with a laser-like focus.

MAJOR ESG REGULATION AND INITIATIVES

Legislators and financial regulators—both at the federal and state levels—have advanced multiple legislative or regulatory proposals regarding climate change and financial risk. While the details still are being debated or finalized, the regulatory direction and the growing appetite for action is clear.

Executive Orders

On January 27, 2021, President Biden issued an executive order⁵ requiring the federal government to “drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy.”

Later, on May 20, 2021, President Biden signed the Executive Order on Climate-Related Financial Risk⁶ (the “May 2021 Executive Order”) to:

advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk . . . including both physical and transition risks; act to mitigate that risk and its drivers, while accounting for and addressing disparate impacts on disadvantaged communities and communities of color . . . and spurring the creation of well-paying jobs; and achieve our target of a net-zero emissions economy by no later than 2050.

The May 2021 Executive Order sets in motion the first steps toward the development of a government-wide strategy regarding climate-related financial risk, and deputizes federal agencies and financial regulators to embed climate risk considerations into virtually all aspects of government spending and oversight. Specifically, the May 2021 Executive Order requires various steps be taken to achieve the Administration's policy objectives, including information gathering and assessment, reviews of existing rules, and the issuance of reports regarding the impact of climate change on different aspects of U.S. financial stability.

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/>.

While the May 2021 Executive Order does not require financial services providers to change anything about how they conduct business, Section 3 of the Order, “Assessment of Climate-Related Financial Risk by Financial Regulators,” may result in future changes in how financial services providers are regulated with respect to climate-related financial risks. Section 3 requires the secretary of the treasury to engage with members of the Financial Stability Oversight Council (“FSOC”) to consider a number of actions by the FSOC, including comprehensively assessing the climate-related risk to the financial stability of the federal government and stability of the U.S. financial system, facilitating sharing of climate-related financial risk data and information with FSOC members and other departments/agencies as appropriate, and issuing a report to the president within 180 days on efforts by FSOC members to integrate consideration of climate-related financial risk into their policies and programs.

On October 21, 2021, in response to the directive in the May 2021 Executive Order, the FSOC issued a report,⁷ running 129-pages, on climate-related financial risk. The report, among other things, calls for new disclosures, endorses building on the core concepts of the Task Force on Climate-Related Financial Disclosures (“TCFD”) and recommends a variety of actions regarding climate risk across the federal financial regulatory agencies.

Proposed Federal Legislation

On June 16, 2021, the House, in a close vote (215-214), passed the Environmental, Social and Governance Disclosure Simplification Act of 2021 (H. R. 1187). The legislation would build on the Biden Administration’s push for major corporations to be more transparent in disclosing economic and social risks to investors, including climate-related risks. Perhaps not surprisingly, the bill passed largely along party lines—not a single Republican voted in favor of H. R. 1187 and four Democratic members voted against it. Facing a Senate split along similar lines, the prospect of the bill becoming law remains unclear.

If signed into law, H. R. 1187 would require the SEC for the first time to define “ESG metrics,” for the purpose of guiding required corporate disclosures under the Securities Act of 1933 and the Securities Exchange Act of 1934, each as amended. Specifically, based upon the defined metrics, the bill would require the following:

- In consent solicitation or proxy statements, issuers would be required to include “(a) a clear description of the views of the issuer about the link between ESG metrics and the long-term business strategy of the issuer; and (b) a description of any process the issuer uses to determine the

⁷ <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>.

impact of ESG metrics on the long-term business strategy of the issuer.”⁸

- In audited financial statements, issuers would be required to disclose ESG metrics.⁹

The bill also calls for the Securities and Exchange Commission (“SEC”) to establish a Sustainable Finance Advisory Committee, which would be required to submit to the SEC, within 180 days after its first meeting, a report with recommendations on what ESG metrics issuers should be required to disclose. The report should “(i) identif[y] the challenges and opportunities for investors associated with sustainable finance; and (ii) recommend[] policy changes to facilitate the flow of capital towards sustainable investments, in particular environmentally sustainable investments.”

The Office of Comptroller of the Currency

On December 16, 2021, the OCC released Principles for Climate-Related Financial Risk Management for Large Banks¹⁰ (the “OCC Draft Principles”) designed to provide large OCC-regulated institutions with a high-level framework for the safe and sound management of exposures to climate-related financial risks consistent with existing OCC rules and guidance.

In particular, the OCC identified the physical effects of climate change and the transition to a low-carbon economy as emerging risks to banks’ safety and soundness, as well as that of the overall financial system, with potentially disproportionate impacts on the financially vulnerable, such as low and moderate-income and otherwise disadvantaged communities and individuals.

The OCC Draft Principles outline six key aspects of climate-related financial risk management: governance; policies, procedures and limits; strategic planning; risk management; data, risk measurement and reporting; and scenario analysis. In addition, the OCC Draft Principles offer risk assessment principles for incorporating climate-related financial risks in various traditional risk categories. The OCC sought public feedback on the Principles to inform its anticipated additional guidance on climate-related financial risks.

The Federal Deposit Insurance Corporation

On March 30, 2022, the FDIC issued its Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions

⁸ Section 103(a)(1).

⁹ Section 103(b)(1).

¹⁰ <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62a.pdf>.

(the “FDIC’s Statement”), which are substantially similar to the OCC’s Principles. The public comment period on the FDIC’s Statement closes on June 3, 2022.¹¹

The Federal Reserve

The Federal Reserve is active too. It recently joined the Network of Central Banks and Supervisors for Greening the Financial System in December 2020 and created the Financial Stability Climate Committee in March 2021. The Financial Stability Climate Committee will consider the potential for complex interactions across the financial system at a “macroprudential” level. It complements the work of the Federal Reserve’s Supervision Climate Committee, which is tasked with ensuring the resilience of the Federal Reserve’s supervised firms to climate risks. The Fed has started privately pressing¹² big banks to detail the measures they are taking to mitigate climate change-related risks to their balance sheets, including testing the geographical exposure of bank assets to physical risks as well as testing exposures to different sectors.

The Securities and Exchange Commission

On March 21, 2022, the SEC released its long-awaited proposed rules¹³ on climate-related disclosure, its most extensive rulemaking in recent history. Under the SEC’s proposed rules, companies publicly listed in the United States would have to include certain climate-related information in their registration statements and periodic reports, including:

- Climate-related risks and their actual or likely material impacts on the registrant’s business, strategy, and outlook;
- Their governance of climate-related risks and relevant risk management processes;
- Their greenhouse gas emissions;
- Certain climate-related financial statement metrics and related disclosures; and
- Climate-related targets and goals, and any transition plan(s).

While banks have relatively small carbon footprints, the physical and macroeconomic risks posed by climate change may profoundly impact the businesses they finance and do business with. As noted above, the OCC has

¹¹ <https://www.fdic.gov/news/board-matters/2022/2022-03-29-notational-fr.pdf>.

¹² <https://www.reuters.com/article/us-usa-fed-climate-exclusive/exclusive-fed-privately-presses-big-banks-on-risks-from-climate-change-idUSKBN2CT2R7>.

¹³ <https://www.sec.gov/news/press-release/2022-46>.

identified the effects of climate change and the transition to a low carbon economy as presenting risks to banks and the financial system more broadly. As part of sound risk management, banks therefore should develop processes to measure and monitor material climate-related financial risks and to inform management about the materiality of those risks.

The New York Department of Financial Services

The focus on the financial risks of climate change is not just the province of the federal government. New York's banking regulator—New York's Department of Financial Services (“DFS”)—has taken a leading role in providing guidance on climate change and financial risks. DFS was the first financial regulator in the United States to join the Network of Central Banks and Supervisors for Greening the Financial System.

On October 29, 2020, the DFS issued an Industry Letter outlining its expectations related to addressing the financial risks from climate change to all New York-regulated banking organizations, branches and agencies of foreign banking organizations, mortgage bankers and servicers, and limited purpose trust companies, as well as New York-regulated non-depositories, including New York regulated money transmitters, licensed lenders, sales finance companies, premium finance agencies, and virtual currency companies.

On February 9, 2021, DFS issued an industry letter alerting banking institutions subject to the New York Community Reinvestment Act that they may receive credit for financing activities that support the climate resiliency of low- and moderate-income, and underserved communities.

Most recently, on November 3, 2021, Acting Superintendent Adrienne Harris announced the establishment of a new Climate Division at the DFS, as well as the appointment of the new division's leader. Dr. Nina Chen, who is DFS's inaugural Director of Sustainability and Climate Initiatives, will lead the new division as Executive Deputy Superintendent.

COUNTER-ESG LEGISLATION

In contrast to the various regulations focused on enhanced ESG disclosures and carbon reduction metrics, legislators from energy-producing states such as Texas, North Dakota, Oklahoma, and Alaska understandably have adopted or proposed counter-ESG legislation. Specifically, laws or policies limiting transactions with companies that have called for divestment from the fossil fuel industry.

Texas Governor Abbott signed into law Senate Bill 13,¹⁴ which, effective in September 2021, prohibits the state from contracting with or investing in companies that divest from oil, natural gas and coal companies. Specifically, it requires Texas' public pension funds to "sell, redeem, divest, or withdraw all publicly traded securities of [any] financial company . . ." that "boycott[s] energy companies." The law defines "boycott energy companies" as "refusing to deal with, terminating business activities with, or otherwise taking any action that is, solely or primarily, intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or does business with a company described [above]."

North Dakota Governor Burgum signed into law S.B. 2291¹⁵ in March 2021. The law prohibits the consideration of ESG when making investments in North Dakota's state pension and legacy fund investments. It requires the state's department of commerce to undertake a study of ESG's impact on government and private industry in North Dakota and must include an evaluation of investment policy as it relates to ESG and the level of involvement the state has with companies that use ESG when making business decisions or investments. The study will also include the implications to the state as it relates to the boycott of energy or production agriculture commodities, with a report to legislative management by June of 2022.

In Oklahoma, H.B. 2034¹⁶ was sent to committee in March 2021. While the legislation remains pending, if ever enacted, it would prohibit state contracts with a company unless the company submits a written certification that the company is not currently engaged in a boycott of the oil and gas industry.

INDUSTRY DEVELOPMENTS

Reaction of Financial Institutions

The growing focus on climate risk has spurred banks to more closely examine their environmental exposures, for example how rising sea levels and changing weather patterns might impact their existing business lines.

Some banks are reconsidering their support of companies and projects that generate substantial carbon emissions, while others have made disclosures about

¹⁴ <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00013F.pdf#navpanes=0>.

¹⁵ <https://www.ndlegis.gov/assembly/67-2021/documents/21-0717-02000.pdf>.

¹⁶ http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENGR/hB/HB2034%20ENGR.PDF.

prioritizing energy transition, exiting from thermal coal industry investments within a certain timeframe, among others. However, banks ought to be careful about their disclosures, as they do not want to turn aspirational statements into alleged actionable misstatements garnering the interest of the plaintiffs' bar.

ESG-related provisions are also being incorporated in loan documentation, such as interest rate adjustments based on borrowers' performance against certain ESG targets. For example, Blackrock's amendment of its loan revolver¹⁷ added a Section 4.17 "Sustainability Adjustments," whereby Blackrock's interest rate can go up/down by .05 percent and its commitment fee can go up/down by .01 percent if it attains certain sustainability and diversity metrics.

The Institute of International Bankers

In response to the request for public feedback on the OCC Draft Principles noted above, the Institute of International Bankers ("IIB") submitted a letter,¹⁸ offering additional considerations and requesting some clarifications in relation to the issuance of any Final Guidance. In particular, the IIB urged:

- Recognition that methodologies, models, and data for analyzing climate-related financial risk remain a work in progress;
- Coordination of efforts among U.S. and international regulators, as well as its dialog with industry participants, to foster clarity and efficiency and ensure that the OCC's final guidance reflects the aggregate views of the U.S. prudential regulators and consistency with state-level regulators; and
- Consideration of the unique structure and governance of internationally headquartered financial institutions.

The American Bar Association

The American Bar Association (the "ABA") also submitted a letter¹⁹ in response to the request for public feedback on the OCC Draft Principles. The ABA urges the OCC to continue to take a principles-based approach that is flexible and iterative—and that allows banks to assess the risks they identify as the most material to their unique circumstances.

Moreover, it urges the OCC not to expand the scope of the guidance to mid-size and community banks until more robust data is available, and the climate-related financial risks and opportunities are better understood.

¹⁷ <https://www.wsj.com/articles/blackrock-must-hit-esg-targets-or-pay-more-to-borrow-money-11617769833>.

¹⁸ https://cdn.ymaws.com/www.iib.org/resource/resmgr/iib_comment_letters/20220214IIB.Comm.Ltr.pdf.

¹⁹ <https://www.aba.com/advocacy/policy-analysis/clclimateocc20220214>.

LTSA, ACC & PRI Harmonized ESG Reporting Project

On March 30, 2022, the Loan Syndications and Trading Association (“LSTA”),²⁰ the leading trade group for the U.S. loan market, announced a joint project with Alternative Credit Council (“ACC”)²¹ and Principles for Responsible Investment (“PRI”),²² to harmonize ESG reporting for borrowers across credit markets. As the LSTA has noted,²³ “[t]his project builds on the success of the LSTA’s ESG Diligence Questionnaire (DDQ) for Borrowers which has been broadly adopted in loan transactions,” and is reflective of the fact that “asset owners and asset managers are becoming more sophisticated and more insistent when it comes to ESG demands.”

Loan Principles

Last month, the Asia Pacific Loan Market Association (“APLMA”), Loan Market Association (“LMA”) and LSTA jointly published their Sustainability-Linked Loan Principles²⁴ and related Guidance.²⁵

The APLMA, LMA and LSTA have also jointly published Green Loan Principles (February 2021)²⁶ and related Guidance (February 2021);²⁷ and Social Loan Principles (April 2021)²⁸ and related Guidance (March 2022).²⁹

Together, these joint APLMA, LMA and LSTA publications represent significant moves forward toward high-level frameworks for ESG market standards and guidelines in loan markets across the E.U., United States and Asia-Pacific region, and are a testament to the increasing importance stakeholders attach to ESG in the loan space.

CONCLUSION

The issue of climate-related financial risks and their impact on the safety and soundness of banks is not going away. While we are in the early stages of

²⁰ <https://www.lsta.org/>.

²¹ <https://acc.aima.org/>.

²² <https://www.unpri.org/>.

²³ <https://www.lsta.org/news-resources/lsta-announces-esg-harmonization-project/>.

²⁴ <https://www.lsta.org/content/sustainability-linked-loan-principles-sllp/>.

²⁵ <https://www.lsta.org/content/guidance-on-sustainability-linked-loan-principles-sllp/>.

²⁶ <https://www.lsta.org/content/green-loan-principles/>.

²⁷ <https://www.lsta.org/content/guidance-on-green-loan-principles-glp/>.

²⁸ <https://www.lsta.org/content/social-loan-principles-slp/>.

²⁹ <https://www.lsta.org/content/guidance-on-social-loan-principles-slp/>.

understanding and measuring the risks to the financial system and banks, to quote Acting Comptroller Hsu, the time to work on “identifying, measuring, monitoring, and mitigating climate related exposures and risk,” in response to market and regulatory pressure is quickly diminishing. While there is time, banks that are too slow to adapt will bear reputational and perhaps other costs as consumers and the “laser focused” regulators continue to pivot toward sustainability. Moreover, banks have a growing financial imperative to assess the climate-related risks faced by their customers and counterparties. It is likely the market will drive the need for banks to more closely evaluate ESG, including climate-related risks, even in the absence of further regulatory requirements.