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ESG EXPLORATIONS

A glowing lightbulb is positioned on the right side of the image, resting on a dark, rich soil. To its left, a white line graph with four circular nodes is superimposed over the scene. The background is a soft-focus green, suggesting a natural, outdoor setting with small plants growing from the soil.

Spotlight on ESG Disclosure, Due Diligence,
and Risk Assessment/Monitoring

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Speakers



GEORGIA M. QUENBY

+44.20.3201.5680
georgia.quenby@morganlewis.com



ANNA K. SNIDER

Head of Due Diligence
Merrill Lynch and
Bank of America
Private Bank



CARL A. VALENSTEIN

+1.617.341.7501
carl.valenstein@morganlewis.com



AYESHA K. WAHEED

+44.20.3201.5556
ayesha.waheed@morganlewis.com



WILLIAM YONGE

+44.20.3201.5646
william.yonge@morganlewis.com

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Poll #1

**Does your institution already
have an ESG strategy in place?**

Poll #2

Is your ESG strategy focused on your own institution or on other companies from an investment perspective?

EU Approach



European Commission 2018 Action Plan on Financing Sustainable Growth, describing EU strategy to connect finance to sustainability



EU regulation on sustainability-related disclosures in financial services, applicable from 10 March 2021

- Applies to financial market participants (FMPs) and their financial products
- Defines “sustainable investment”, “sustainability factors”, and “sustainability risk”
- Requires FMPs to
- implement and publicly disclose a policy on integration of sustainability risks in investment decisions
- decide whether to have a policy on principal adverse impacts of investment decisions on sustainability factors, and publicise either way
- classify their products as article 6, 8 (characteristics promoted include E or S), or 9 (objective is sustainable investment or reduction in carbon emissions)
- Disclosure requirements apply to each such category

EU Approach



EU taxonomy regulation applicable re climate change from January 2022 and other environmental objectives from January 2023

- Introduces a taxonomy of environmentally sustainable activities to establish the “green” credentials of any investment to inform investors and mitigate “greenwashing”



Series of EU regulations in pipeline on how FMPs should integrate sustainability considerations into their systems and controls

UK Approach

United Kingdom first major economy to legislate for net zero and early adopter in 2017 of the recommendations of the Task Force for Climate-related Financial Disclosures (TCFD) – aimed at ensuring that climate-related risks and opportunities are priced into financial decision-making

Government published its Green Finance Strategy in July 2019

In November 2020, Government announced its roadmap to make TCFD-aligned disclosures mandatory across the economy by 2025, with a significant portion of mandatory requirements in place by 2023, which will help ensure that the right information on climate-related risks and opportunities is available across the investment chain—from companies in the real economy to financial services firms to end-investors

In December 2020, FCA issued a Policy Statement promoting better climate-related financial disclosures for UK premium-listed commercial companies

United Kingdom decided not to onshore EU SFDR into UK law

Voluntary Frameworks and Standards

Carbon Disclosure Project (CDP)

Global Reporting Initiative (GRI)

Climate Disclosure Standards Board (CDSB)

**International Integrated Reporting Council
(IIRC)**

Climate Financial Risk Forum

Principles for Responsible Investment

**Sustainable Accounting Standards Board
(SASB)**

**TCFD recommendations on climate-related
disclosures**

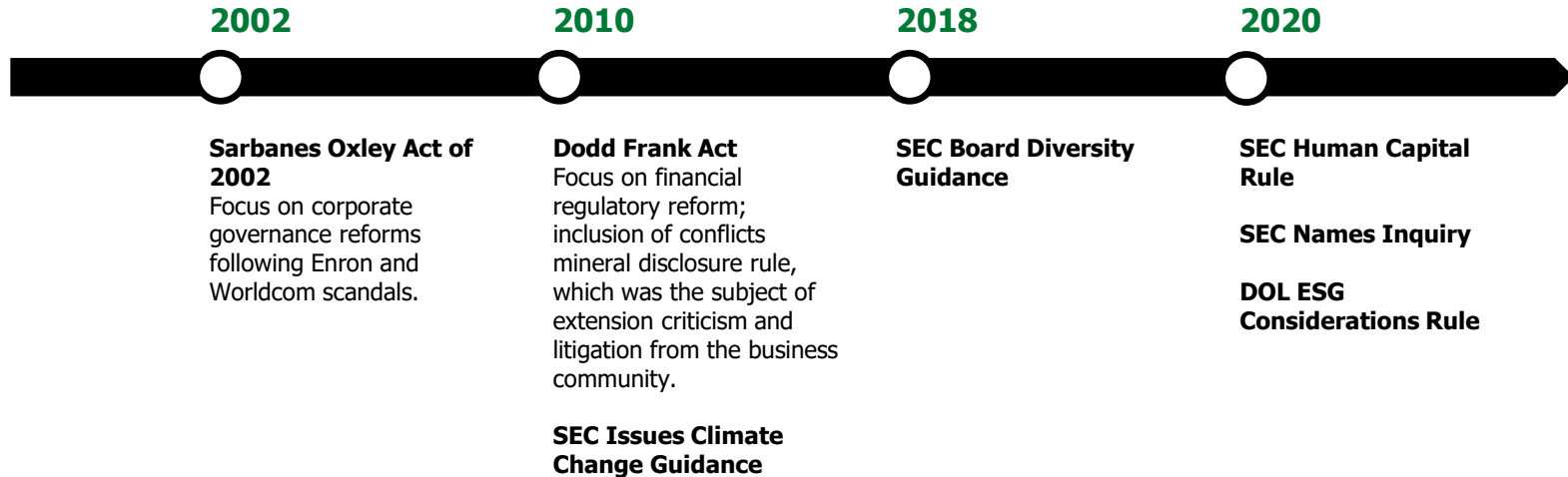
US Approach to ESG Reporting

The US approach to regulating ESG reporting is fundamentally different from the EU approach with an emphasis on what is “material” to the investors and less on prescribing specific disclosures. The push for ESG policies and disclosure in the United States is being led by investors, proxy advisory firms and other stakeholders, including customers and employees.

“Disclosure and materiality have been at the heart of the SEC’s regulatory approach for over eighty years. As my colleague, Commissioner Michael Piwowar, recently said, “Unlike merit-based regimes, our system of disclosure comports well with American traditions. . . .By arming investors with information, they can evaluate and make investment decisions that support more accurate valuations of securities and a more efficient allocation of capital.” The Commission, following the guidance of the Supreme Court, should continue to strive to ensure that investors have access to a well-crafted package of information that facilitates informed decision-making. In addition to disclosure-based rules, the SEC has placed heightened responsibilities on people and organizations that are central to, or actively participate in, our securities markets. The rules that apply to securities exchanges, clearing agencies, broker-dealers, and investment advisers (to name a few) protect markets and investors where information and market forces alone may not be enough. The third leg of the stool — the anti-fraud regime established by Congress and the Commission — acts as a back-stop to the aforementioned disclosure rules and oversight systems. The government can bring to bear its extensive enforcement capabilities on those who try to circumvent established investor protections or otherwise engage in deceptive or manipulative acts in the markets.”

(Remarks of Former SEC Chairman Jay Clayton to Economics Club of New York, July 12, 2017)

History of US Legislation/Regulation of ESG Issues



Biden Administration – Recent Developments

- **February 1: Appointment of ESG Advisor to the SEC**
(<https://www.sec.gov/news/press-release/2021-20>)
- **February 24: Statement of Acting Chair Allison Herren Lee on Updating Climate Guidance**
(<https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure>)
- **February 26: Issuance of ESG Investor Bulletin**
(<https://www.sec.gov/oia/investor-alerts-and-bulletins/environmental-social-and-governance-esg-funds-investor-bulletin>)
- **March 2: Testimony at Confirmation Hearing of Gary Gensler as SEC Chairman**
(<https://www.banking.senate.gov/imo/media/doc/Gensler%20Testimony%203-2-21.pdf>)
- **March 4: Announcement of ESG Enforcement Task Force**
(<https://www.sec.gov/news/press-release/2021-42>)

Biden Administration – Recent Developments

- **March 4: Statement of Commissioners Hester Peirce and Elad Roisman on Climate Change Guidance**
(<https://www.sec.gov/news/public-statement/roisman-peirce-sec-focus-climate-change>)
- **March 10: Announcement that DOL ESG Rule will no longer be enforced**
(<https://www.dol.gov/newsroom/releases/ebsa/ebsa20210310>)
- **March 11: Statement of John Coates, Acting Director of Corporate Finance**
(https://www.sec.gov/news/public-statement/coates-esg-disclosure-keeping-pace-031121?utm_medium=email&utm_source=govdelivery)

Anna K. Snider



**Head of Due Diligence
Merrill and Bank of America
Private Bank**

Anna Snider is a Managing Director and Head of Due Diligence within the Chief Investment Office (CIO) for Global Wealth & Investment Management (GWIM), a division of Bank of America Corporation. In this role, she leads the due diligence team and is responsible for manager research across all asset classes supporting Merrill Lynch Wealth Management and U.S. Trust, Bank of America Private Wealth Management. As a voting member of the GWIM Investment Strategy Committee (GWIM ISC), she defines and executes investment strategies and implementation, including Impact Investing focused strategy manager research. She also co-leads the impact investing initiative for GWIM.

Prior to this role, Anna was part of the alternative investments group where she advised clients on hedge fund and private assets portfolio construction and became head of research for externally managed alternative investment fund of funds. She was also a senior analyst in the risk management division at U.S. Trust. Anna offers many years of investment and risk analysis experience, having held positions at the Federal Reserve Bank of New York, JP Morgan, and UBS, focusing on market, credit, and operational risk management.

She graduated from Connecticut College. She holds the Chartered Alternative Investment AnalystSM (CAIASM) designation. Anna serves as chair of the board for High Water Women, a foundation based in New York City. She was cited within *Barron's* magazine as one of "The 20 Most Influential People in Environmental, Social and Corporate Governance (ESG) Investing". Anna is currently an Aspen Institute First Movers Fellow.

Georgia M. Quenby



London

+44.20.3201.5680

georgia.quenby@morganlewis.com

Georgia is a finance lawyer who advises clients globally on cross-border and international financing transactions, restructurings, and other special situations. Georgia works with clients structuring complex transactions on a solvent basis and in workouts. Georgia is also one of the co-leaders of Morgan Lewis's Banking Industry. In addition to being dually qualified in the United Kingdom and New York, and a licensed insolvency practitioner, Georgia received the *Financial Times* Non-Executive Director diploma in 2016 and is the chair of the corporate governance committee of a dual-listed mining company.

Georgia is the leader of the highly ranked asset-based lending team at Morgan Lewis in London, commended in the 2021 edition of *The Legal 500* as "a very well balanced, dynamic team which can adapt to circumstances—bringing a great mix of experience and market knowledge as well as responsiveness, client service and attention to detail." Client testimonials note that "Georgia Quenby has a superb command of her practice area and market developments and brings great clarity and reassurance to complex issues." In its 2020 edition, *The Legal 500* described Georgia's ability to "understand the nuances of both the UK and US markets" when handling deals involving complex intercreditor arrangements. Georgia is also appreciated for "her knowledge of the ABL product in a distressed context" and is ranked as a Leading Individual in *The Legal 500 2021*. This experience is invaluable in Georgia's work for private funds investing in businesses around the world.

Carl A. Valenstein



Boston

+1.617.341.7501

carl.valenstein@morganlewis.com

Carl is the leader of the Boston corporate and business transactions practice of Morgan Lewis. Carl's practice focuses on domestic and international corporate and securities matters, mergers and acquisitions, project development, and asset finance covering a wide range of industries and regions, including developed and emerging markets. He also counsels clients concerning international risk management issues and has been involved in internal investigations and enforcement cases in this area. For more than 20 years, Carl has provided legal assistance to microfinance institutions and assisted public charities, foundations, social enterprises and entrepreneurs, impact investment venture capital and private equity funds, and other impact investors. He is one of the co-chairs of the ESG and Sustainable Business Initiative of Morgan Lewis and counsels public and private clients concerning ESG due diligence, measurement, and reporting issues.

Ayesha K. Waheed



London

+44.20.3201.5556

ayasha.waheed@morganlewis.com

Ayesha practices principally in the project finance, infrastructure, and natural resources practice. Dual qualified in New York and England & Wales, she represents developers and lenders in oil and gas, power generation, and infrastructure projects, and has experience in all aspects of structuring, negotiating, and drafting finance and commercial documents in connection with international project financings and privatizations.

Ayesha is recognized as a “leading lawyer” for Project Development and Banking and Finance by *IFLR 1000*; a “thought leader” and “global leader” by *Who's Who Legal*, and a recognized practitioner by *Chambers UK*. She is a member of the Morgan Lewis ESG and Sustainable Business Initiative.

William Yonge



London

+44.20.3201.5646

william.yonge@morganlewis.com

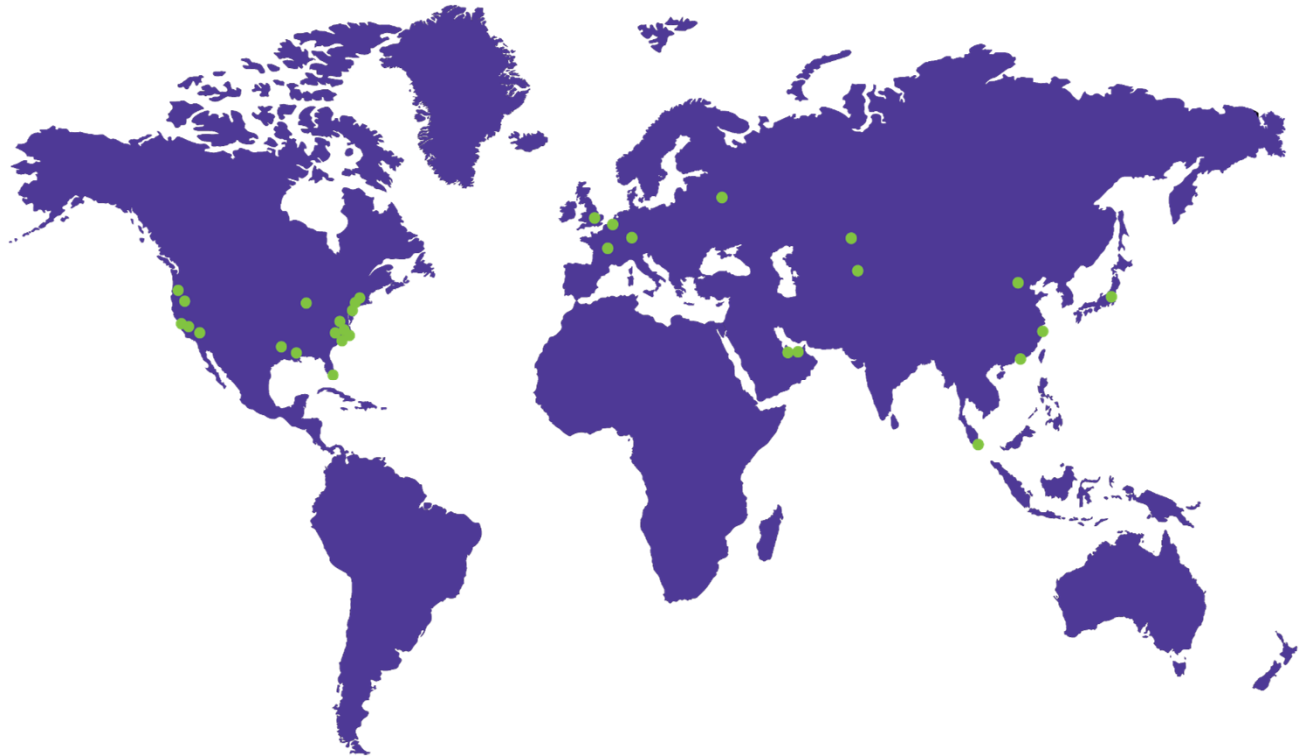
William is a partner in Morgan Lewis's investment management practice. William advises global clients on regulation and related commercial issues arising in the financial services, investment management, securities, and derivatives sectors and has particular expertise in the EU and UK legislative approaches to ESG and sustainability. William frequently helps clients navigate UK and European financial regulatory issues that arise during fund formations, mergers and acquisitions, and establishment of regulated investment management firms in the United Kingdom, and advises on customer and service provider documentation. Prior to entering private practice, he served as an in-house lawyer at the Securities and Investment Board (now the Financial Conduct Authority) and the Investment Management Regulatory Organisation.

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