ESG: 2021 Trends and Expectations for 2022

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02 / 11 / 2022

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Throughout 2021, the importance of environmental, social and governance (ESG) matters proved to be even greater than many had expected, with ESG becoming a key area of focus for a range of stakeholders, particularly in the boardroom. The rise and rise of ESG that we have seen over the past few years is likely to continue in 2022, as ESG remains a priority in the corporate sphere. In our 1 September 2021 client alert "ESG in 2021 So Far: An Update," we discussed the trends we had predicted for the year as well as the emerging developments in ESG. In this article, we look back at our predictions for 2021 and assess factors that will likely shape 2022.

Looking Back: What We Saw in 2021

Continued Inflows Into ESG Funds[1]

Inflows into ESG funds continued to grow in 2021, surpassing 2020's total inflows of $51.1 billion before the end of Q3 in 2021. Current assessments estimate that there are more than $330 billion in assets under management in ESG funds, with the creation of more ESG funds expected in 2022. However, some funds have experienced difficulty adapting to comply with ESG standards. Passive funds such as ETFs have struggled to respond to new "green regulations," such as the introduction of the EU's Sustainable Finance Disclosure Regulation (SFDR). Without mandates to effect short-term changes to their fund's strategies, conforming to rapidly evolving green standards will be a key challenge faced by passive managers.

Additionally, "greenwashing" became a priority concern to regulators in 2021. Regulatory scrutiny intensified in September 2021 when BaFin, the German financial regulator, and the U.S. Securities and Exchange Commission (SEC) initiated an investigation into allegations that Deutsche Bank's asset management arm had been misstating the environmental credentials of some of its green-labelled products.

A recent study by a shareholder advocacy group found that 60 of 94 ESG funds failed to adhere closely to the principles of ESG investing. This trend has led both ESG investors and regulators to exert pressure on companies to substantiate their claims with metrics of environmental impact. Currently, there is no regulatory green taxonomy for ESG products in the U.K., as the EU's taxonomy regulation (Taxonomy Regulation) was not onshored following Brexit. We await the developments of the Green Technical Advisory Group, a multistakeholder organisation comprising the public and private sector, which is currently advising the U.K. government on the development of a green taxonomy that will build on existing systems, including the Taxonomy Regulation.

To combat greenwashing, the U.K.'s Financial Conduct Authority (FCA) released a policy statement in December 2021 on enhancing climate-related disclosures by managers. In response to a number of concerns about the scope of products and green certifications covered by new regulations, the FCA issued guidance that firms would not have to disclose information if data gaps or methodological challenges could not be addressed through proxies and assumptions, or if doing so would lead to misleading disclosures. Firms are required to explain where and why they have not been able to disclose, as well as steps they will take to improve the completeness and quality of disclosure.

[1] *CityWireUSA*, "ESG Fund Flows top $54bn as passives pick up popularity" (3 November 2021); *Financial Times*, "ETFs struggle to adapt to EU's new SFCR sustainable fund rules" (9 September 2021); Bloomberg, "Regulatory scrutiny of ESG greenwashing is intensifying" (1 September 2021); Bloomberg, "ESG Study Shared With SEC Reveals Fund Labels Are Often Useless" (11 January 2022).

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ESG: 2021 Trends and Expectations for 2022

Despite continued inflows throughout 2021, ESG funds may face challenges in 2022. The expansion of the ESG sector may stall if funds start to underperform benchmarks, as figures released near 2021 year-end began to suggest. ESG funds typically benefited throughout 2021 by taking disproportionate positions on high-performing tech stocks, but this option is not guaranteed to continue into 2022. In addition, ESG funds typically underweight energy and mining stocks in their portfolios, if those are included in their portfolio at all. Energy stocks have represented the top-performing sector in the S&P 500 in 2021, with a 50% increase compared to their value in 2020. Conversely, a return to strong profitability of renewable projects — which suffered throughout 2021 from higher manufacturing costs and low renewable generation — may determine whether ESG funds hit key benchmarks in 2022.

Growth in the Sustainable Debt Market[2]

Despite the predicted boom in sustainable debt, projections proved considerably lower than the actual issuance figures for 2021. In our 1 February 2021 client alert "ESG: Key Trends in 2020 and Expectations for 2021," we reported that most estimates ranged from $350 billion to $500 billion. In fact, green debt issuance (including green loans and green, sustainable and sustainability-linked bonds) exceeded $1.5 trillion in 2021, over double the total for 2020, unabated by the global pandemic.

The world's leading underwriters have been among those at the front of the queue to capitalise on the growth of green finance. Data compiled by Bloomberg suggests that banks earned fees worth over $3.4 billion in green-labelled debt deals, compared to $1.9 billion in 2020. Considering that tally alongside the $3.3 billion in fees generated from fossil fuel producers in the same time period highlights a considerable shift in the debt industry.

However, issues with greenwashed debt occupied regulators in 2021, and their main focus was to clarify and standardise. One discussion document circulated in November 2021 by the FCA stated that green debt products labelled as sustainable should include "concise and accessible" language, with more detailed underlying disclosures aimed at institutional investors. Regulators across Europe have implemented similar measures. In Switzerland, for example, the Swiss Financial Market Supervisory Authority published guidance including descriptions of various scenarios perceived by the authority as greenwashing or posing a potential greenwashing risk resulting from a lack of transparency.

Unprecedented growth in the sustainable debt market could continue throughout 2022. Organisations such as the Climate Bonds Initiative have mobilised the bond markets for climate solutions, and new certifications, such as the Climate Bonds Standard and the Green Bond Principles endorsed by International Capital Market Association, should help distinguish greenwashing institutions from truly climate-friendly opportunities and promote investor confidence. Estimates by Bloomberg suggest that $2.5 trillion of debt advertised as green or ESG-oriented, including both green, social and sustainable or sustainability-linked bonds and loans, could be issued in 2022.

Remuneration

Guidance for the 2022 voting season published by investor organizations such as the Investment Association, Glass Lewis and the Institutional Shareholder Services remains largely aligned with the guidance previously issued to remuneration committees in light of the COVID-19 pandemic.

In the context of executive remuneration, the expectation of pay restraint remains, as the impact of the COVID-19 pandemic continues to affect businesses and the pay and conditions of the wider workforce. The investor bodies are clear in their guidance that companies must factor stakeholder experience and wider market conditions into any remuneration decisions. Remuneration committees must clearly communicate the rationale for any significant increase to any elements of remuneration. Where a company has relied on government or shareholder support, the expectation continues to be that bonuses should not be awarded. In respect of long-term incentive plans (LTIPs), companies are urged to be mindful of "windfall gains" (essentially a gain due to market movement only) and grant size where awards are granted at a time of share price volatility. Where a company's share price has fallen, the remuneration committee should scale back LTIP award levels at grant rather than using discretion at vesting.

With investors increasingly focusing on companies' accountability for ESG matters, companies are encouraged to incorporate the management of ESG risks into their remuneration structures and performance metrics. ESG metrics should be quantifiable and clearly linked to value creation and the company's long-term strategy, and companies should disclose the rationale for choosing them to investors.

[2] Bloomberg, "Sustainable Debt Issuance Breezed Past $1.6 Trillion in 2021" (12 January 2022); U.K. Treasury, "Greening Finance: A Roadmap to Sustainable Investing" (October 2021); *Financial Times*, "Regulators step up scrutiny over investment industry 'greenwashing'" (8 November 2021); Climate Bonds Initiative, "Certified Green Issuance Reaches $200bn — Expansion of Climate Bonds Standard in 2022 — Basic Chemicals, Cement, Steel in pipeline" (11 January 2022); FINMA, "FINMA publishes guidance on preventing and combating greenwashing" (3 November 2021).

ESG: 2021 Trends and Expectations for 2022

Flexible Working[3]

Flexible working remains a key topic as progress towards a post-pandemic "new normal" continues. The number of employment tribunal decisions relating to flexible working increased by 52% in 2021, reaching a record high of 193. Concurrently, academics at the University of Oxford and the University of Cambridge announced a six-month trial of a four-day working week, scheduled to begin in June 2022. Six companies have joined the pilot program so far, and the researchers hope to attract between 20 and 30 businesses in total.

There has been growing interest globally in the potential benefits that could result from adjusting the traditional work schedule to include an additional day off. Canon Medical Research Europe is one of the companies that has joined the trial; the company's president said he recognized that working patterns and work-life balance have changed substantially during the pandemic. Surveys have reported that shifting from a five-day to a four-day working week without a reduction in salary has benefitted companies by increasing productivity and improving staff retention. Those benefits may become an even more important consideration for many businesses given the increasingly competitive hiring environment, as discussed in greater detail below. Employees have made clear the pivotal importance to them of work-life balance, so it may be an obvious area for employers to focus on, particularly if the U.K. trial demonstrates additional business benefits, such as productivity and efficiency.

ESG Activism[4]

Over the past 12 months, ESG activism has increased, with record levels of support for ESG-related proposals tabled at listed company annual general meetings. Such proposals included calls for reductions of Scope 3 greenhouse gas emissions and a push for greater gender, racial and ethnic diversity on boards.

Overall, ESG activism may have resulted in better governance fundamentals at target companies, with gender balance, tenure and skill set diversity in the boardroom appearing to have improved. This success, coupled with the substantial capital accumulated by ESG-focused funds, means that issuers should prepare for courting from activist investors to push ESG agendas during proxy fights. The assets under management of investment firms that have signed the United National Principles for Responsible Investment increased to $103 trillion in 2021.

Activist pressure was particularly strong against "Big Oil" as shareholders of Exxon Mobil and Shell advocated for more aggressive cuts to emissions. Following these campaigns, the companies implemented a number of changes impacting gender parity (Shell's board now has an equal number of male and female directors), a reduction in average director tenure and age at both companies and an increase in the number of ESG metrics taken into consideration in CEO compensation plans. Despite this investor activism, U.S. oil production is expected to rise to an all-time high in 2022. President Joe Biden has asked OPEC+ to raise oil production to counter the rise in oil prices, and Exxon has announced significant increases in its oil production in the Permian Basin. Additionally, other small, family-owned or private equity-backed producers continue to operate with little shareholder accountability. The considerable rise in demand and soaring energy prices in 2021 also resulted in hedge funds continuing to buy oil and gas stocks — which are typically not aligned with ESG goals — and subsequently reaping rich financial rewards.

Many investment industry participants expect ESG activism to next target large tech companies (known as "Big Tech") in 2022. The tech sector has a complex relationship with fossil fuels and ESG concerns. Although many of the biggest tech groups have long embraced progressive causes such as LGBTQ+ rights and "green headquarters," concerns around data privacy and surveillance loom large, as discussed further below.

Biden Administration ESG Policies

In its first year, the Biden administration developed "green shoots" — with much of the work to develop ESG initiatives taking place behind the scenes and the resulting policy updates likely to be implemented and visible in 2022.

For example, in October 2021, the U.S. Department of Labor proposed rules that would explicitly permit retirement plan fiduciaries to consider ESG matters in their investment decision-making and voting decisions as shareholders. The public comment period closed in December 2021, reportedly with approximately 83% of the comment letters submitted by institutions favouring the proposals, and final rules may be adopted as early as the first half of 2022.

Also, in August 2021, the SEC approved Nasdaq listing standards that encourage greater board diversity and require board diversity disclosures for Nasdaq-listed companies. In addition,

[3] *Practical Law*, "Employment tribunals saw 52% increase in flexible working claims" (17 January 2022); *The Guardian*, "Canon's UK arm to become latest company to trial four-day week" (16 January 2022).

[4] Diligent Institute, "Activist Investors: Setting the Pace on ESG" (25 October 2021); *Financial Times*, "US oil production set to eclipse previous record despite climate push" (11 January 2022); *Financial Times*, "Hedge funds cash in as green investors dump energy stocks" (7 October 2021); *Yahoo Finance*, "Exxon and Chevron Plan Permian Oil Surge as Peers Preach Caution" (2 February 2022).

the SEC staff issued a series of comment letters to public companies seeking to better understand, among other things, differences between the companies' ESG disclosures in the reports they filed with the SEC and the ESG or sustainability reports the companies' voluntarily distributed.

The SEC's semiannual regulatory agendas, published in June 2021 and December 2021, reflect SEC Chair Gary Gensler's focus on ESG matters, including disclosures regarding climate change, human capital management, cybersecurity risk governance and corporate board diversity. Press reports, speeches by Chair Gensler and other public comments reflect that work on various rule proposals is ongoing. For example, in a January 2022 speech on cybersecurity and the federal securities laws, Chair Gensler stated that he had asked the SEC staff to make recommendations on rule proposals concerning public companies' cybersecurity governance, strategy and risk management. With respect to human capital management, Chair Gensler has indicated publicly that proposed disclosure requirements could include metrics on workforce turnover, training, compensation and benefits, workforce demographics, and health and safety. Regarding climate change, press reports reflect that the SEC staff is determining whether to require companies to report on scope 3 emissions, which are emissions generated in a company's value chain by customers and suppliers.

We expect to see these efforts culminate in SEC rule proposals over the first half of 2022. The proposals will then undergo a public comment period, with the adoption of final rules likely occurring over the second half of 2022 at the earliest. As a result, in the near term, including the upcoming 2022 U.S. proxy season, investors and other stakeholders are more likely than regulators to drive enhanced corporate disclosures.

COP26 and COP27

In November 2021, the U.K. hosted the 26th UN Climate Change Conference in Glasgow (known as COP26), where nations discussed the progress made since the 2015 Paris Agreement and what further actions could be taken to limit climate change in the future. The summit resulted in the first formal statement on fossil fuels and a renewed focus on transitioning the private sector to net-zero carbon emissions (although critics argued that this shift is insufficient to prevent global warming from raising the earth's base temperature more than 1.5 degrees Celsius above preindustrial levels). Countries participating in the conference completed the Paris Rulebook — the guidelines for implementing the Paris Agreement — and announced the creation of the International Sustainability Standards Board (ISSB), which will develop a new global baseline of sustainability disclosure standards. The Financial Reporting Standards Foundation will oversee the ISSB, and the ISSB should help provide a better framework for reporting companies. Because of these developments, COP26 may prove to have been a watershed event for the private business sector.

Nations will convene again in Egypt in November 2022 for COP27 to continue discussing the most pressing climate change issues and to report the actions they have taken to mitigate climate change since COP26. Participating countries expect to complete more robust accounting and reporting frameworks for the corporate sector before the next summit.

Predictions That Did Not Come True

Although many of our predictions for 2021 regarding developments in ESG matters proved to be accurate, some trends did not rise to the level of popularity that we expected.

Despite the continuing growth in the sustainable debt market, **transition finance** remained rarely used. This form of financing, which is intended to help companies in polluting industries access sustainable finance sources in order to fund environmental improvements, has not proven as popular as green or sustainability-linked debt.

Similarly, although a number of **supply chain issues**[5] occurred in 2021, supply chain sustainability did not attract the same level of focus in ESG developments as some other areas did. However, this is likely to change in 2022 given the difficulties the pandemic has caused to global supply chains. Companies are assessing whether globalization remains the most pragmatic approach to sourcing given such difficulties and the increasing pressure to reduce company emissions, including those generated by supply chains.

Looking Forward: Our Expectations for 2022

Incoming Legislation[6]

As of 1 January 2022, a number of new ESG-related rules and regulations came into force in the U.K. Although companies listed on the premium segment of the London Stock Exchange were already required to include climate-related disclosures on

[5] *Financial Times*, "Supply chain crisis causes rethink at multinationals" (13 September 2021).

[6] FCA, "Enhancing climate-related disclosures by standard listed companies" (December 2021); The Companies (Strategic Report) (Climate-Related Financial Disclosure) Regulations 2021; CP21/24: Diversity and inclusion on company boards and executive committee; PS21/24: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers; *Financial Times*, "Brussels proposes green label for nuclear and natural gas" (1 January 2022); European Commission, "EU taxonomy for sustainable activities"; European Commission, "EU Taxonomy: Commission begins expert consultations on Complementary Delegated Act covering certain nuclear and gas activities" (1 January 2022); *Financial Times*, "Brussels faces threat of legal challenge over sustainable finance rules" (23 January 2021); European Commission, "Corporate sustainability reporting".

a "comply or explain" basis in their reporting, standard-listed companies must now also do so. The disclosure must address the four core areas recommended by the Taskforce for Climate-Related Financial Disclosure (TCFD): (i) Governance; (ii) Strategy; (iii) Risk Management; and (iv) Metrics and Targets, and the Listing Rules have been updated accordingly. New regulations have also come into force for the largest asset managers and certain FCA-regulated asset owners. Under these new rules, asset managers with more than £50 billion in assets under management (or £25 billion in assets under administration for asset owners) are now subject to mandatory TCFD-aligned disclosure obligations. The FCA will expand the regulations to cover firms with assets greater than £5 billion starting 1 January 2023 and believes that these rules, once fully implemented, will apply to over 95% of the U.K. asset management market.

One of the most wide-ranging updates is the amendment coming into force in April 2022 to the Companies Act 2006, which was approved by the U.K. Parliament on 5 January 2022 and will require mandatory climate-related disclosure in nonstrategic reports for certain companies. Once enacted, these regulations will make sustainability reporting in accordance with the TCFD compulsory for a number of U.K. companies as part of their reporting. Further information on this incoming legislation is available in our 18 November 2021 client alert "Q&A: New Climate-Related Disclosure Regulations Proposed for UK Companies."

There are also two ongoing FCA consultations which, if implemented, would come into force over the next 12 months. The first consultation closed at the end of 2021 and considers whether to change the Listing Rules to require certain companies to disclose whether they meet specific board diversity targets relating to gender and ethnicity on a "comply or explain" basis. The consultation and similar initiatives across the globe are discussed in more detail in our 19 January 2022 article "UK, US and Some Asian Jurisdictions Join in Pressing Companies To Diversify Their Boards."

The second consultation closed at the start of 2022 and considers new sustainability disclosure requirements for asset managers and FCA-regulated asset owners, as well as a new classification and labelling system for sustainable investment products. As discussed in our 19 January 2022 article "ESG Disclosure Requirements Put New Spotlight on Private Capital Managers," this consultation appears to be the U.K.'s response to the EU's SFDR, which came into force in March 2021. The input received is intended to inform the development of policy proposals in Q2 2022. Although this policy is intended to apply to U.K. asset managers and potentially to overseas asset managers, a knock-on effect could impact other U.K. companies that have owners who are subject to these requirements.

The U.K. is not the only jurisdiction with incoming legislation: The EU will also see a number of ESG-related regulations come into force in 2022. The EU Taxonomy Regulation, a classification system establishing a list of environmentally sustainable economic activities, was published in June 2020 and established six environmental objectives: climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems. Once fully implemented, the classification system will cover industries that generate about 80% of all greenhouse gas emissions in the EU.

The first delegated act on sustainable activities for climate change adaptation and mitigation came into force on 1 January 2022, and the European Commission (EC) began consultations on the second delegated act to address the remaining objectives. The Taxonomy Regulation and its delegated acts will provide an opportunity for a radical increase in sustainable finance, and the second delegated act has already proven incendiary.

In the current draft, the EC has proposed recognising nuclear power and forms of natural gas as a "green" activity provided that EU countries that house nuclear power stations can safely dispose of toxic waste. If this approach remains part of the delegated act and the rules are approved in their current form, Austria and Luxembourg have stated that they will take legal action. The outcome of this debate will be key in shaping future sustainability regulation.

Also in 2022, European authorities plan to draft a new Corporate Sustainability Reporting Directive (CSRD), which will require around 50,000 companies to file reports. This directive is expected to emphasise "double materiality" — meaning companies will need to detail both their impacts on the environment and the climate-related risks they face. The CSRD will amend the existing reporting requirements under the Non-Financial Reporting Directive, extend the law's scope to all large companies and companies listed on regulated markets, and introduce more detailed reporting requirements, including a requirement to report according to mandatory EU sustainability reporting standards. This update is intended to provide the transparency desired by investors and will require companies to digitally tag the reported information so that it is machine-readable and feeds into the European single access point envisaged by the Capital Markets Union action plan. The final form of the CSRD and ancillary legislation will also provide greater clarity on the direction in which the investment industry is heading with regard to ESG matters.

ESG: 2021 Trends and Expectations for 2022

War for Talent[7]

Job vacancies climbed to record-high levels at the end of 2021, and employers are still struggling to recruit. In December 2021, four vacancies existed for every 100 employee jobs in the U.K. economy. This tally means the number of vacancies nearly equals the number of unemployed people in the U.K., requiring employers to navigate one of the most competitive recruitment markets in recent history. At the same time, the U.K. Office for National Statistics has reported that average earnings are falling in real terms, with inflation outpacing pay gains. Though this environment would be expected to incentivize employers to increase salaries as a recruitment and retention tactic, this has not been the immediate response of most employers.

Phoenix provides an interesting example of new hiring techniques. The company is reportedly trying to target the large number of workers over the age of 50 who have not returned to work following the pandemic, in part by eliminating words such as "energetic" and "innovative" in job advertisements, as that language might appeal more to younger candidates. More generally, we are seeing evidence of employers focusing on health and well-being — such as offering health checks or access to online health services, in addition to more traditional employment benefits. Other businesses are focusing on work-life balance by continuing hybrid work models or experimenting with a four-day working week, as discussed above.

Employers appear to be recognizing that employees' priorities may have changed. Companies are both pursuing the business benefits that can come from focusing on diversity, work-life balance and employee health, and responding to an environment that has given employees the power to demand what they want from a workplace. Other employee benefits not previously considered to be essential may become increasingly ordinary over the course of 2022.

Mental Health[8]

Mental health has received increased attention in recent years, due partly to factors including expanded government funding to address mental health, for example, as part of the U.K. National Health Service's (NHS's) Long Term Plan; scientific initiatives and social media campaigns intended to normalize and promote mental well-being; activism in sports industries globally by popular professional athletes to spotlight mental well-being as a priority; and reports about the pandemic's widespread deleterious effects on mental health. Mental health is also likely to be a key focus for employers in 2022. Data from the U.K. Centre for Mental Health showed that mental health issues are costing U.K. businesses £34.9 billion a year.

Employers should recognize two key areas of responsibility regarding mental health. First, employers have a duty of care towards employees to ensure the workplace or work environment is not causing or exacerbating mental health issues. In serious cases, a working environment that negatively impacts mental health could amount to a breach of an employer's duty of care, and employees could claim for personal injury or constructive dismissal. This risk has become more obvious in the past two years. For example, more than 2.3 million people have registered for the NHS' "Talking Therapies" treatment since the start of the pandemic, reflecting the increase in mental health issues, largely reported to be a result of isolation and the blurring of home and work life.

Second, an employer has a responsibility to acknowledge mental health as a disability. Some studies show major depression to be the second leading cause of disability worldwide, and many individuals must manage mental health issues that may not be caused or changed by their work. Under the U.K.'s Equality Act 2010, employers have a duty to make reasonable adjustments for disabled employees. This means an employer has a duty to effectively offer individuals with a disability more favourable or flexible working conditions in an attempt to reduce or remove any disadvantage that their disability may cause. Employers that proactively recognize the potential for mental health to be a disability can reduce the risk of claims being brought against them and may benefit from encouraging open conversation about mental health and providing examples of reasonable adjustments for employees. Notably, any employee bringing a reasonable adjustment claim could also claim for discrimination, for which there is no cap on compensation.

Data, Tech and ESG[9]

The increased role of technology in our daily lives as a result of the pandemic means that our individual digital footprints, and accompanying concerns relating to data privacy and cyberattacks, have grown considerably over the two years spanning 2020-2021. Increased governmental scrutiny and proposed regulation have matched consumer concerns about data security. For example, the U.S. Federal Trade Commission's antitrust case

[7] *BBC News*, "Phoenix Group drops 'energetic' from job ads to woo older applicants" (18 January 2022); Aon, "2021 and beyond: Looking at the future of employee benefits in a post-COVID world".

[8] *Employer News*, "How employers will use employee benefits to attract and retain the best staff in 2020" (22 January 2020); NHS Long Term Plan; Mental Health, "Mental health statistics: UK and worldwide".

[9] *Financial Times*, "Crypto cannot be easily be painted green" (6 January 2022); *Forbes*, "Data Governance: The Next Big ESG Controversy" (4 February 2021); *TechCrunch*, "Tech leaders can be the secret weapon for supercharging ESG goals" (2 August 2021); *Financial Times*, "Sustainable funds face threat from tech sector turmoil" (18 January 2022); *Financial Times*, "Facebook loses second attempt to dismiss FTC antitrust case" (11 January 2022); *Financial Times*, "Big Tech rattled as US antitrust push finds rare bipartisan backing" (23 January 2022).

brought against Facebook (now Meta) in August 2021 in connection with the company's acquisition of WhatsApp and Instagram will proceed after a U.S. federal judge ruled in January 2022 to reject Meta's attempt to dismiss the case. Also, the U.S. Senate recently displayed bipartisan support for two new regulations that could not only enforce stricter content moderation and new privacy laws, but may also seek to restrict the market dominance of large tech companies.

In addition to these developing social concerns relating to the technology sector, the environmental implications of technology and cryptocurrency operations are now beginning to be more widely discussed. Although ESG funds once avoided these assets because of concerns about fraud and cybertheft, the assets are now a staple of nearly all ESG portfolios, raising issues about how the volume of electricity used to maintain those operations may violate the environmental aims of ESG funds. Data centres alone account for an estimated 1% of worldwide electricity usage, and the energy needed to mine cryptocurrencies is considerable. In 2021, a number of cryptocurrencies signed the Crypto Climate Accord, under which they agreed to cut carbon emissions from electricity use to net zero by 2030, partly by carbon offsets but also by using energy tracking tools and running all bitcoin technology on renewable energy sources by 2025.

The actions of tech and cryptocurrency companies in 2022 to address numerous challenges will determine the role of tech offerings in ESG funds and sustainable investment going forward.

Implementation of Standard Accounting Practices[10]

The standardisation of ESG accounting has been ongoing for a number of years; however, many hope that agreement on the principles can be reached in 2022. Both regulators and investment industry participants are increasingly considering a recognised accounting standard that incorporates ESG to be essential for companies seeking to quantify their ESG risks and include those risks in their reports and accounts. However, fragmentation among different regulators continues, meaning a company's in-house counsel and accounting teams will need to monitor this process in order to determine which accounting standard is the most appropriate for their business.

The newly announced ISSB is expected to respond to international investors' demands for transparent, reliable and comparable reporting on ESG matters and aims to deliver a comprehensive global baseline of sustainability-related disclosure standards to resolve information asymmetries between companies and investors. The ISSB's creation followed the Global Reporting Initiative's launch of revised Universal Standards in October 2021. The new Universal Standards are intended to be used by over 10,000 companies and to enable organisations to better manage their sustainability impacts, including on human rights. The revised standards should also allow companies to respond to emerging regulatory disclosure needs, such as the EU's CSRD and the International Financial Reporting Standards (IFRS) enterprise value standards.

[10] IFRS, "About the International Sustainability Standards Board"; Global Reporting Initiative, "GRI raises the global bar for due diligence and human rights reporting" (5 October 2021).

ESG: 2021 Trends and Expectations for 2022

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