Client Alert | Capital Markets

E&S Disclosure Trends in the UK

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In March 2020, the UK Financial Conduct Authority (the "FCA") published consultation paper CP 20/3 concerning proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations. The consultation period is currently set to close on 1 October 2020. Among the proposed changes is a new Listing Rule which would require commercial companies with a UK premium listing to state whether they comply with the Task Force on Climate-related Financial Disclosures ("TCFD") recommendations and to explain any non-compliance.

In light of the increasing focus on not only climate-related disclosures but also environmental and social ("E&S") disclosures generally, White & Case conducted a survey of E&S disclosures in the annual reports of the top 50 companies by revenue[1] (based on revenue for the financial years ended in 2018) in the FTSE 100. Our survey focused on 16 substantive and presentational categories[2] of common E&S related disclosures in annual reports published in respect of financial years ended in 2018 and 2019. In addition, we reviewed the prospectuses for the 20 largest announced premium-listed London IPOs by market capitalisation[3] over the last two years. This part of the survey focused on 10 substantive categories[4] of E&S disclosures.

Based on our survey, in 2019, 35 of the 50 companies surveyed (or 70%) included some form of disclosure on adherence or intended adherence to the TCFD recommendations, and 17 companies (or 34%) increased the scope of their TCFD disclosures from 2018 to 2019. Overall, if we were to extrapolate the findings from the survey to the wider set of all commercial companies with a premium listing, the new Listing Rule requirement proposed by the FCA would not seem a significant burden for most such companies given their existing disclosure regimes. What would be most important would be to highlight the specific ways in which they are non-compliant with the TCFD recommendations and how they are measuring compliance generally.

Below we discuss the other findings from our survey and key takeaways.

1. Annual Report Trends

1.1 Increase in E&S Disclosure from 2018 to 2019

Forty-three of the companies surveyed (or 86%) increased their E&S disclosures in their annual reports between 2018 and 2019 in terms of extent or type of disclosure in at least one category. The most significant increases in E&S disclosure from the 2018 financial year to the 2019 financial year came in the E&S categories described below.

1.2 The E&S Disclosures and Practices on the Rise in 2019

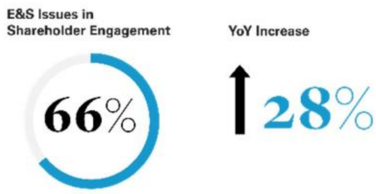
(a) Adherence to TCFD Recommendations

The largest increase in E&S disclosures came in disclosure regarding adherence to the Task Force on Climate-related Financial Disclosures ("TCFD") recommendations. Overall, 35 of the 50 companies surveyed (or 70%) included some form of disclosure on adherence or intended adherence to the TCFD recommendations, and 17 companies (or 34%) increased the scope of their TCFD disclosures from 2018 to 2019. In general, the longer a company has focused on the disclosures, the more concrete and quantitative their disclosure has become in the latest round. Examples of the disclosure for 2019 annual reports included the following:[5]

> "We welcome the development of the Task Force on Climate-related Financial Disclosures ('TCFD') recommendations and have updated our risk management process this year to strengthen our consideration of the potential business implications and impacts of climate change. In addition, we undertook an independent gap analysis of our reporting against the TCFD recommendations and are working to achieve full alignment."

> "In November 2017, SSE committed to meeting the Task Force on Climate-related Financial Disclosures (TCFD) recommendations in full by March 2021. These recommendations encourage businesses to increase disclosure of climate-related information, with an emphasis on financial disclosure. SSE has made progress towards meeting these recommendations by improving the quality of climate-related information in this Strategic Report and by responding to CDP's annual Climate Change Programme, which for the first time in 2018 addressed the TCFD recommendations. This enhanced disclosure reflects the additional steps taken in 2018/19 to assess and report on SSE's material climate-related risks and opportunities, along with the financial quantification of the impacts for a number of these. In 2018, SSE was awarded an "A-" for its response to the CDP Climate Change Programme. SSE will continue to respond to the CDP Climate Change Programme and aims to further improve its disclosure."

(b) E&S Issues in Shareholder Engagement



33 of the 50 companies surveyed (or 66%) included some form of disclosure on engagement with shareholders in relation to E&S issues, and 14 companies (or 28%) increased the scope of their disclosures from 2018 to 2019. Examples of the disclosure for 2019 annual reports included the following:

> "Our risk profile changed in 2019, mainly influenced by an evolving external environment in areas such as climate change, macroeconomics, geo-political stability, stakeholder expectations, cyber threats and social unrest. We have updated our risk profile to include one new principal risk, escalating environmental, social and governance (ESG) requirements of investors and other stakeholders, based on a revised assessment. We also have consistent and constructive engagement with investors with an interest in climate change, including with Climate Action 100+ initiative."

> "We conducted our biennial survey to understand what matters to different stakeholders: we asked investors, customers, employees, suppliers, and representatives from government and non-governmental organisations among others, to rank the issues they believe have the biggest impact on RELX. The top two issues were having the right people and data privacy and security. We also asked them to identify where we have the biggest impact on society and the environment – our unique contributions as a business came first, followed by access to information. We regularly survey key stakeholders including, in 2019, shareholders, employees, governments and the communities where we operate, to help us identify our material CR issues and to set and test our CR objectives. This included reviewing the company's approach to engaging with key stakeholders, assessing the company culture and aligning our purpose, values, strategy and

workforce policies. Our environmental targets reflect our environmental impacts and input from stakeholders and use science-based methodology."

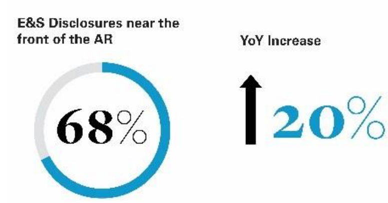
"As well as ongoing interest in our performance and growth, we've been having conversations with shareholders around our acquisitions and disposals strategy, our corporate structure, capital allocation and our use of plastic and palm oil – reflecting a growing interest in sustainability issues."

(c) Awards for E&S Matters

29 of the 50 companies surveyed (or 58%) included some form of disclosure highlighting awards received for E&S matters, and 11 companies (or 22%) increased the scope of their award disclosures from 2018 to 2019, although 5 companies (or 10%) decreased the scope of reporting on E&S awards and removed disclosure altogether.

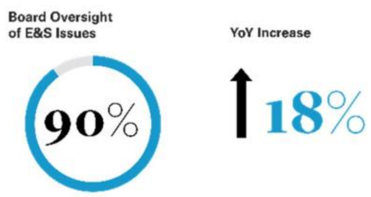
(d) Prominence of E&S Disclosures near the Front of the Annual Report

34 of the 50 companies surveyed (or 68%) included disclosure of E&S metrics near the front of the annual report, and 10 companies (or 20%) increased the extent or type of the disclosure in this prominent location from 2018 to 2019, including moving from qualitative statements to inclusion of quantitative metrics, or expanding the scope of quantitative metrics. The most common examples include greenhouse gas emissions and percentage of women in board or senior management roles.



(e) Board Oversight of E&S Issues

45 of the 50 companies surveyed (or 90%) included disclosure of board oversight of E&S issues, and 9 companies (or 18%) increased the extent or type of the disclosure from 2018 to 2019. Examples of the disclosure for 2019 annual reports included the following:

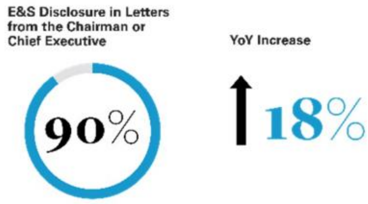


"The Board has sought to ensure corporate responsibility and sustainable business practices are relevant considerations in all Board decisions. Governance and championing a great culture are of the utmost importance to the Board. In 2019, the Board approved a new Low Carbon Policy, which guides our underwriting and investments and sets a new Science Based Target to reduce the environmental impact of our operations. As members of ClimateWise, we are collaborating with industry peers on these issues, including supporting the introduction of climate-related disclosures. Our new Confident Futures strategy seeks to ensure that we consider our environmental impact at every possible opportunity, and the Board took steps throughout 2019 to ensure that this is integrated into the business and our decision-making processes. During 2019, the Board took further steps to monitor and embed the Group's corporate culture and ensure that it is aligned with our purpose, values and strategy."

"As a Board, we take every opportunity to assess progress and impacts on culture and behaviour. This has included how we look at talent and succession, governance initiatives, diversity and inclusion, employee engagement and our career framework. We rolled out anti-bullying and harassment training across the Group in reaction to a trend that was beginning to emerge from feedback to our Ethics Line in 2018. The Board reviewed the speak-up cases reported through the Ethics Line twice during the year. These are the subject of prior review by the Safety, Ethics & Sustainability Committee, who support the Board in our deliberations in this area."

"The Board is responsible for good stewardship of the Company to protect Shareholders' long- term interests and ensure its social and environmental obligations are fulfilled. Through the Corporate Responsibility, Sustainability, Ethics and Compliance (CRSEC) Committee, it is working to integrate sound governance principles in business decision-making as it moves from a risk and safety-led approach to one that aligns environment and sustainability issues with performance and purpose."

(f) Appearance of E&S Disclosure in Letters from the Chairman or Chief Executive



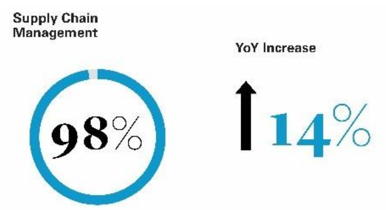
45 of the 50 companies surveyed (or 90%) included disclosure of board oversight of E&S issues, and 9 companies (or 18%) increased the extent or type of the disclosure from 2018 to 2019. Examples of the disclosure for 2019 annual reports included the following:

Human capital management: "Despite all the change, we have continued to develop and invest in our people, the core strength of our Company, developing new ways to help them to build their skills and improve the consistency with which we approach our work. We also continue to work on the three pillars of our diversity and inclusion agenda: a diverse workforce, an inclusive environment, and meritocratic processes. We have seen significant improvements since I joined the Company – the Board is now 23% female and 23% ethnic minority members. Five of my twelve direct executive reports are women and we have very active affinity groups including our LGBTQ+ community, Spectrum. I recognise there is more to do across all areas of diversity and inclusion. Only by having a diverse and inclusive workforce will we be successful and harness the full range of talent that we need."

Environmental: "In the Strategic report we describe how the Board takes into account the interests of all our stakeholders. As an insurance company, we also understand better than most the imperative to act with urgency and conviction to help combat climate change. Although our environmental credentials are well-established, we are committed to doing more, both on our own account and in alliance with others. We have invested £6 billion in green assets since 2015 alone, including £3.8 billion in low carbon infrastructure (predominantly solar and wind power) and £2.2 billion in green and sustainable bonds. We expect this to increase significantly in the future. In November 2019, Aviva signed up to the United Nations-convened Net Zero Asset Owners Alliance which brings together some of the world's biggest pension funds and insurers to commit to net zero greenhouse gas emissions in their investment portfolios by 2050. We are also committed to aligning our business to the target set out in the Paris Climate Agreement of limiting global warming to 1.5°C above pre-industrial levels."

General statement: "Long-term success requires good stewardship of our business and fulfilment of our obligations to society. The Board is committed to strengthening governance and extending our risk management capabilities. I'm pleased to report excellent progress in this area. The Corporate Responsibility, Sustainability, Ethics and Compliance (CRSEC) Committee is gaining real traction across the Group as it seeks to move from a risk and safety-led approach to a more holistic stance that aligns environment and sustainability issues with performance and purpose. RB's retention of its FTSE4 Good listing and readmission to the Dow Jones Sustainability Index provide external validation of the work we have been doing and the improvements we have made to put responsibility at the heart of the way we run our business. We will redouble our focus on environmental sustainability by, for example, reducing, recycling or reusing plastics, reducing our water footprint and meeting our science-based targets. At the same time, we will connect our brands even more closely with relevant social issues. Our priority is the safety of our

(g) <u>Supply Chain Management</u>



49 of the 50 companies surveyed (or 98%) included disclosure of supply chain management (in terms of E&S policies applied to suppliers with respect to sustainability, human rights, responsible sourcing and so on), and although only 7 companies (or 14%) increased the extent of their supply chain management disclosure from 2018 to 2019, 18 companies (or 36%) added quantitative disclosure metrics on their supply chain, such as number of jurisdictions in which human rights impact assessments have been undertaken, percentage of high-risk supplier sites audited and percentage of raw materials sourced locally. Examples of the disclosure for 2019 annual reports included the following:

> "Our priority is to ensure we partner with known suppliers who meet our high standards of food quality, animal welfare, sustainability and ethical trade. Our global supply chain integrity requirements ensure that we work only with suppliers who share our values. Our Code of Business Conduct, available on our website, outlines what we expect of all of our partners. All of our operations around the world are aiming to source 100% cage-free shell eggs and liquid egg products by 2025. In our US business over the last year, 40% of our total egg purchase (both shell and liquid) was certified cage free."

> "Respect for human rights also informs the core principles of our supplier code, Partnering with Suppliers. Our commitments apply throughout our entire value chain – we will not work with anyone who does not align with these standards. We have been signatories to the UN Guiding Principles on Business and Human Rights (UNGP) since 2014. We continue to embed human rights in line with the UNGP, using our comprehensive human rights impact assessment (HRIA) process, which considers our entire value chain. Based on localised risk assessments, we develop mitigation plans for addressing specific human rights risks in order to strengthen our processes and prevent risks arising. We have identified three external risks as particularly salient to our business: labour rights, including the risk of child labour, especially in agricultural supply networks; labour standards for contract workers; and sexual harassment in the hospitality sector. We have responded to these risks in a number of ways, such as awareness programmes focused on child protection. As part of this work, in 2018, we developed and rolled out training for a variety of internal and external stakeholders including, in some countries, selected suppliers and aggregators. This year, we commissioned an independent study into contracted labour, which we will use to develop key mitigation strategies for next year and beyond. We also developed new standards and training aimed at protecting

> "Our Third-Party Oversight programme strengthens our supply chain risk management by driving improvements in our global network of third parties. This includes suppliers, distributors and other organisations with which there is a transfer of value. We want to ensure that the third parties we work with share our values and ethical and business standards. Our third-party risk assessment and mitigation programme has been embedded globally and continues to be further simplified and refined to make it easier to engage third parties appropriately. During 2019, over 14,000 risk assessments were completed, and more than 800 third parties identified as high risk have undergone detailed independent assessments by EcoVadis. During 2019, we continued to work with our third-party suppliers to reduce Environment, Health and Safety (EHS) risks and conducted over 40 audits on EHS and ethics. We also expanded our third-party EHS team to include dedicated EHS professionals within the team based in the countries where our priority suppliers are located. Priority suppliers are those with whom we have significant spend, that support significant revenue and/or are medically or R&D critical to the business. This has enabled us to provide more proactive support through engagement visits designed to build capability in areas of improvement identified through EcoVadis assessments or audits."

1.3 Qualitative and Quantitative Disclosures in Annual Reports

In this survey of annual reports, we also reviewed whether the disclosure was only qualitative or both quantitative and qualitative in nature. We found that a majority of E&S disclosures in the annual reports we reviewed were qualitative and did not provide quantitative metrics; however, certain E&S categories had more quantitative disclosure than others (for example, disclosure on environmental matters, human capital management and social impact and community were more likely to contain quantitative metrics,[6] as compared to disclosure on corporate culture or ethical business practices). Our survey also found that an increasing number of companies have added some quantitative information to their E&S disclosures, particularly with respect to certain categories, such as supply chain management, adherence to the TCFD recommendations and E&S disclosure in letters from the chairman or chief executive.[7]

1.4 FCA Consultation Paper CP 20/3 on Climate-Related Disclosures

In March 2020, the FCA published CP 20/3 concerning proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations. The consultation period is currently set to close on 1 October 2020. Among the proposed changes is a new Listing Rule which would require commercial companies with a UK premium listing to state whether they comply with the TCFD recommendations and to explain any non-compliance. Based on our survey, in 2019, 35 of the 50 companies surveyed (or 70%) included some form of disclosure on adherence or intended adherence to the TCFD recommendations, and 17 companies (or 34%) increased the scope of their TCFD disclosures from 2018 to 2019. Overall, if we were to extrapolate the findings from the survey to the wider set of all commercial companies with a premium listing, the new Listing Rule requirement proposed by the FCA would not seem a significant burden for most such companies given their existing disclosure regimes. What would be most important would be to highlight the specific ways in which they are non-compliant with the TCFD recommendations and how they are measuring compliance generally.

2. IPO Prospectus Trends

2.1 Identifying the Gaps in E&S Disclosure

While the EU Non-Financial Reporting Directive (2014/95/EU), its local implementation and other legislative and stakeholder-driven initiatives in the UK and across Europe have led listed companies to provide extensive E&S disclosures in annual reports, the focus on E&S matters in IPO prospectuses has proved somewhat more varied in terms of approach and coverage. In addition, for certain categories of E&S, there is not yet a critical mass of precedents with any disclosure. We anticipate this area of disclosure will be changing rapidly given increased investor and regulatory focus on E&S matters.

Of the 20 IPO prospectuses surveyed, the table below summarises the categories considered and the prospectuses which contained some disclosure relevant to the category.[8]

Category	Prospectuses Containing Disclosure
Environmental (disclosure on environmental policy, conservation efforts, operating standards relevant to the environment, efficiency, climate change initiatives, etc.)	11 (55%)
Human capital management (disclosure on employee retention efforts, growth opportunities), training, diversity, well-being, etc.)	19 (98%)
Corporate culture (disclosure on the type of culture the company tries to foster)	17 (85%)
Social impact and community (disclosure on community welfare or impact programs, public partnerships, charitable activities, volunteering, etc.)	11 (55%)
Supply chain management (disclosure on E&S policies as applied to suppliers with respect to human rights, sustainability, responsible sourcing, etc.)	1 (2%)

Category	Prospectuses Containing Disclosure
Ethical business practices (disclosure on the nature of practices or policies relating to ethical behaviour, including but not limited to efforts around anti-corruption and bribery)	11 (55%)
E&S qualifications of directors (disclosure on whether E&S qualifications, such as experience/expertise in sustainability, experience in community development or corporate social responsibility, are taken into account in nominating directors)	0
E&S goals (disclosure of specific quantitative goals and metrics around E&S initiatives)	5 (30%)
E&S awards	3 (15%)
Adherence to TCFD recommendations	0

The largest gaps relate to supply chain management, E&S qualifications of directors and adherence to the TCFD recommendations. When compared to the annual reports, of these three, the largest divergences relate to supply chain management and adherence to the TCFD recommendations, in which 98% and 70%, respectively, of the 2019 annual reports reviewed in the survey included some disclosure on these topics.

2.2 Next Steps for E&S Disclosures in IPOs

We believe that disclosure of E&S matters in IPO prospectuses will continue to be driven by general concepts of materiality and investor expectation. However, as E&S matters become more prominent in overall disclosures and as investors come to expect increased disclosure on these topics, they will naturally become more material. In part, which categories of E&S disclosure will be more relevant or material will depend on the industry involved. The exercise of preparing IPO disclosure should be informed by annual report disclosures of comparable listed companies in order to have a clear idea of the qualitative and quantitative E&S disclosures listed companies are already disclosing and which the IPO company would need to disclose going forward as a listed company.

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[1] The companies considered in this survey in respect of annual reports were Anglo American plc, Associated British Foods plc, AstraZeneca plc, Aviva plc, BAE Systems plc, Barclays plc, BHP Group plc, BP plc, British American Tobacco plc, BT Group plc, Bunzl plc, Carnival plc, Centrica plc, Compass Group plc, CRH plc, DCC plc, Diageo plc, DS Smith plc, EVRAZ plc, Ferguson plc, GlaxoSmithKline plc, Glencore plc, HSBC Holdings plc, International Consolidated Airlines Group S.A., Imperial Brands plc, J. Sainsbury plc, Johnson Matthey plc, Kingfisher plc, Lloyds Banking Group plc, Marks & Spencer Group plc, Melrose Industries plc, Mondi plc, National Grid plc, Prudential plc, Reckitt Benckiser Group plc,

RELX plc, Rio Tinto plc, Rolls-Royce Holdings plc, Royal Dutch Shell plc, RSA Insurance Group plc, Smurfit Kappa Group plc, SSE plc, Standard Chartered plc, Tesco plc, The Royal Bank of Scotland Group plc, TUI AG, Unilever plc, Vodafone Group plc, WM Morrison Supermarkets plc and WPP plc. Of these 50 companies, at the time of publication of this report, two companies, DS Smith plc and Smurfit Kappa Group plc, also qualified for the Green Economy Mark from the London Stock Exchange, which was established in 2019 and indicates the issuer meets certain criteria for green revenues. To date, nearly 50 LSE Main Market issuers have qualified for this mark.

[2] The categories analysed for the annual reports comprised: (1) environmental matters; (2) human capital management; (3) corporate culture; (4) social impact and community; (5) supply chain management; (6) ethical business practices; (7) political contribution policies; (8) appearance of E&S disclosure in letters from the chairman or CEO; (9) prominence of E&S disclosures near the front of the annual report; (10) board oversight of E&S issues; (11) E&S qualifications of directors; (12) E&S issues in shareholder engagement; (13) E&S goals; (14) awards for E&S matters; (15) reference to a sustainability website or report; and (16) adherence to and disclosure around the recommendations promulgated by the Task Force on Climate-related Financial Disclosures ("TCFD").

[3] The prospectuses reviewed in this survey in respect of IPOs were Airtel Africa plc, AJ Bell plc, Amigo Holdings plc, ASA International Group plc, Aston Martin Lagonda Global Holdings plc, Avast plc, DNEG plc (postponed), DWF Group plc, Energean Oil & Gas plc, Finablr plc, Funding Circle Holdings Limited, Helios Towers plc, IntegraFin Holdings plc, Network International Holdings Limited, Quilter plc, Reassure Group plc (postponed), Resolute Mining Limited, Trainline plc, Vivo Energy plc and Watches of Switzerland Group plc.

[4] The categories analysed for the IPO prospectuses comprised: (1) environmental matters; (2) human capital management; (3) corporate culture; (4) social impact and community; (5) supply chain management; (6) ethical business practices; (7) E&S qualifications of directors; (8) E&S goals; (9) awards for E&S matters; and (10) adherence to and disclosure around the TCFD recommendations.

[5] Public company E&S disclosures vary significantly for a variety of reasons, and the disclosure examples included in this article are representative of the subjects covered within each applicable category. The examples of ESG disclosure in this article are from the 2019 annual reports of the following companies (listed in order of appearance): Vodafone Group plc, SSE plc, Anglo American plc, RELX plc, Unilever plc, RSA Insurance Group plc, Rolls-Royce Holdings plc, Centrica plc, AstraZeneca plc, Reckitt Benckiser Group plc, Compass Group plc, Diageo plc and GlaxoSmithKline plc.

[6] For example, in the 2019 annual reports surveyed, the following included quantitative disclosure on various topics: environmental matters – 50 annual reports; human capital management – 48 annual reports; social impact and community – 40 annual reports; supply chain management – 25 annual reports.

[7] For example, increased quantitative disclosure from 2018 to 2019 filings was found in the following categories: supply chain management – 18 annual reports; adherence to TCFD recommendations – 14 annual reports; E&S disclosure in letters from the chairman or chief executive – 11 annual reports; E&S highlights near the cover page – 10 annual reports; and E&S issues in shareholder engagements – 10 annual reports.

[8] In this case, disclosure is considered which goes beyond anything already required by the Prospectus Regulation or Listing Rules, such as "a description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets", numbers of employees and general corporate governance matters.