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INDUSTRY OUTLOOK

THE TRENDS—AND TRAPS—THAT WILL SHAPE 2023

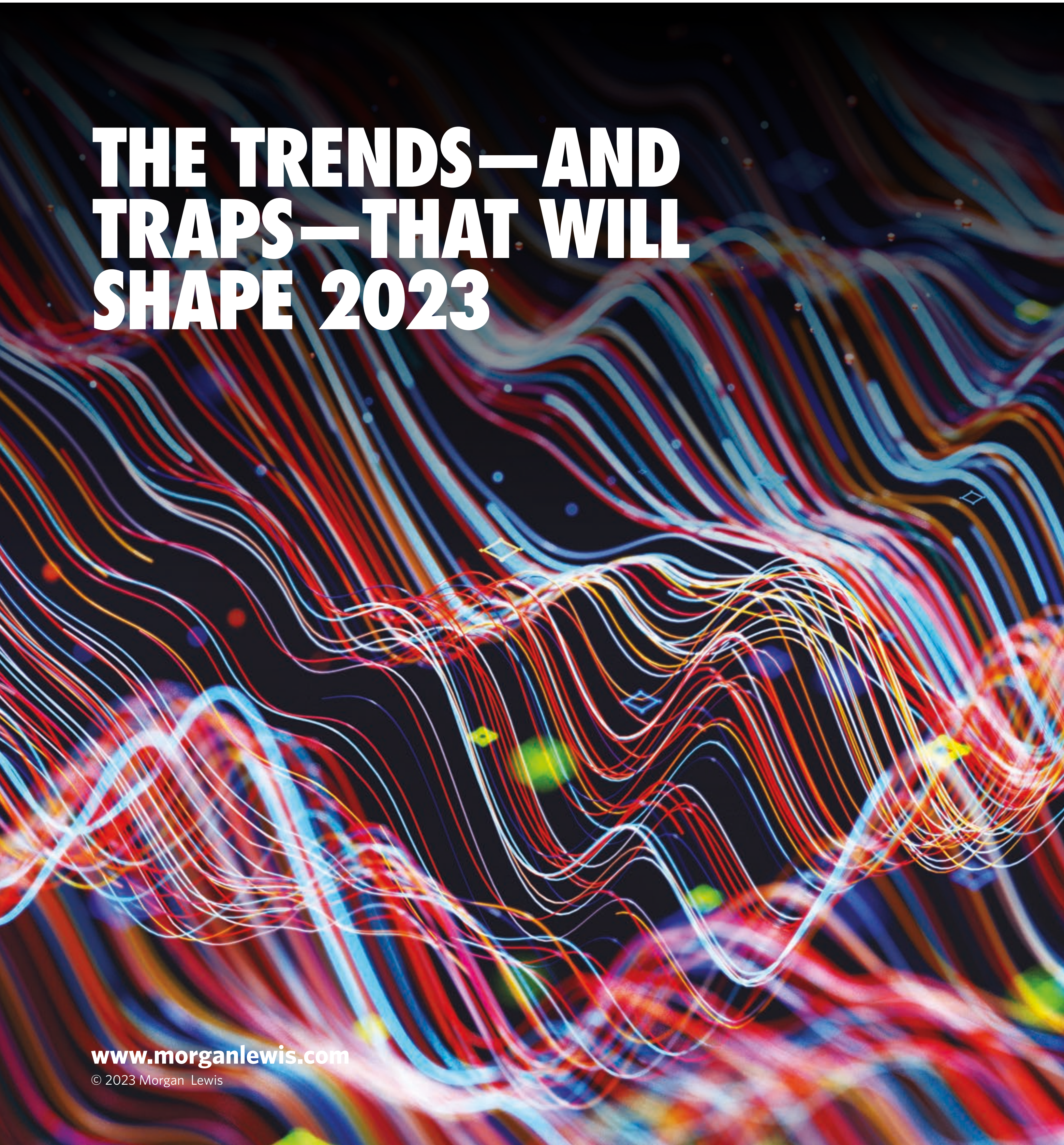

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TABLE OF CONTENTS

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The last few years have thrown many surprises at businesses. Organizations across all sectors have faced inflation, global conflicts, supply chain challenges, a pandemic, and continually changing government policies. In 2023, many companies are looking to get ahead of the issues that are expected to shape the next few years. In a high-level overview of what's in store for various global industry sectors, Morgan Lewis lawyers highlight some of the major trends they are tracking and what regulatory and legislative developments are on the horizon.

AUTOMOTIVE & MOBILITY

EV Tax Credits from IRA

Prior to the Inflation Reduction Act (IRA), there was a tax credit of up to $7,500 for purchasers of qualified electric vehicles (EVs). That tax credit included a unit phaseout so manufacturers that sold over a certain number of EV units would no longer be able to market those tax credits to their purchasers.

The IRA has been redesigned to remove that cap, allowing some of the most prolific EV manufacturers back into the game for EV credits. But there are new requirements in the IRA for consumers to be able to access those tax credits, including an income and retail price cap, and for manufacturers to qualify, including a final assembly provision that EVs must be finished in the United States.

"The efforts of the Biden-Harris administration—and specifically the IRA—have created new opportunities for tax credits, but there is still need for clarification and explanation on how these provisions will be implemented. Many companies are in a holding pattern until the end of the year when amendments are expected to be released. The need for domestic content guidance is especially acute for automakers that face state and federal mandates to decarbonize and electrify their vehicle fleets and must establish long-term supply chains. California, for example, has set a 2035 deadline to phase out sales of new gas-powered vehicles. Manufacturing adjustments need to be made now, for automakers to reassemble their assembly lines. You don't change for the 2035 model year in 2034. You do that now." – Levi McAllister

- For more information: 5 Considerations When Seeking Federal EV Funding, *Law360*

Green Power Credits for EVs

On December 1, 2022, the US Environmental Protection Agency published its proposed rule for the Renewable Fuel Standard (RFS) program, setting the volume and percentage standards for renewable fuels for 2023 through 2025. The proposed rule also includes several regulatory changes to the RFS program—the most notable of which is a proposal to create a new program to govern renewable electricity identification numbers (eRINs).

"While the EPA has long recognized the generation of electricity from biogas as a potential pathway for RFS credits, current RFS regulations do not provide a viable system for participants to generate those credits. The agency has struggled with how to implement such a program, citing concerns with double counting of credits, and the inherent impossibility of verifying the source of the electricity transmitted to and from and electric grid. To solve those difficulties, the EPA has proposed a credit system that is unique under its RFS regulations. Under the proposal, auto manufacturers would have the sole ability to generate eRINs. That system is a marked departure from how credits are generated for other fuels under the RFS program, program for which market participants are generally required to link credits to specific gallons of liquid fuels that are used for transportation purposes." – Doug Hastings

- For more information: EPA Innovates With Planned Green Power Credits for EVs, *Law360*

BANKING

US Regulatory and Legislative Perspective

As a result of the turbulence over the last year, there is heightened focus on whether specific regulation with respect to digital assets is necessary. While some feel as though this space is largely underregulated and the industry would greatly benefit from a comprehensive US regulatory framework, others believe that existing laws and regulations are adequate. We continue to see bipartisan policy work by legislators, but none have gained sufficient traction to be adopted in the near term.

"The federal banking agencies continue to take a careful and cautious approach to digital asset initiatives, recently highlighting crypto-asset risks to banking organizations. We are also likely to see continued enforcement in this space by a variety of US financial regulators, as each regulator's jurisdiction over the crypto industry remains uncertain. The 2023 US regulatory landscape will be exciting to watch!" – Kristin Lee

- For more information: Fintech in 2023: What to Expect from the Regulatory Landscape, *FTA*

FDIC's Official Signage Rule

"The FDIC Board of Directors issued a proposal on December 13 amending and updating the rules regarding the use of the official FDIC sign and advertising statements to better reflect the modern consumer banking landscape. As noted in a memorandum from the FDIC staff, the update is also meant to address the growth of the fintech sector and partnerships between banks and fintechs. The proposed rule also seeks to clarify instances when FDIC deposit insurance coverage is being misrepresented to consumers. . . . The proposal may be seen as the FDIC informing IDIs that if they don't adequately monitor and manage the risks and activities of their fintech/crypto partnerships appropriately, then the IDI will be in violation and the FDIC has clear authority to take an enforcement action against the IDI." – Chris Paridon, Kristin Lee, and Martin Hirschprung

- For more information: FDIC Proposes Updates on Its Official Signage Rule To Better Align With Changing Banking Landscape, *All Things FinReg*

EDUCATION

Affirmative Action

The US Supreme Court will assess the legality of race-conscious admission programs used by Harvard University and the University of North Carolina. The central question in both cases is whether the Supreme Court should overturn its prior rulings and find that institutions of higher education cannot use race as a factor in admissions programs. While that question is ostensibly limited to higher education, the manner in which the Supreme Court rules could affect a range of strategies used to advance diversity, equity, and inclusion (DEI) in employment, contracting, grantmaking, and more.

"While we are months away from a decision, if the Supreme Court concludes that Title VI [of the Civil Rights Act of 1964] or the US Constitution prohibits nearly all consideration of race, it could expose employer [DEI] programs to increased scrutiny and risk of litigation." – Larry Turner

- For more information: Supreme Court Hears Oral Argument in Challenge to Harvard and UNC Race-Conscious Admission Programs

ENERGY

IRA Green Energy Credits

The IRA proposed significant changes and expansions to the existing federal income tax benefits for renewable energy, fuel production, and other green technologies. Approximately $370 billion of the act's expenditures are devoted to energy and climate spending, much of which pertains to significant changes to the Internal Revenue Code, that would extend and expand tax benefits for "green" energy and other technologies.

"Although very welcome by the green technology industry, the Act's green technology tax benefits provisions are complicated, entangling the current tax credit framework with newer provisions that will take time for the industry to digest and for the IRS to develop the necessary compliance protocols. These new provisions will also require Treasury and the IRS to develop implementation guidance on an accelerated timeline for many of the provisions to be workable from a practical perspective for most taxpayers." – Casey August

- For more information: Inflation Reduction Act Would Significantly Expand Federal Income Tax benefits for Green Technology Industry

Hydrogen Strategy

Hydrogen is expected to play a key role in addressing the global climate crisis by supporting a reduction in the amount of greenhouse gas (GHG) emissions produced by human activity, thus allowing the achievement of net-zero goals and a sustainable clean energy future. Developers and investors should bear in mind several key factors when evaluating clean hydrogen projects, including the potential to qualify for new funding opportunities made available by the US Department of Energy (DOE) and tax benefits for the production of "qualified clean hydrogen" under the IRA, as well as considering how to mitigate the risks associated with developing a project that is reliant on new and developing technology.

"Industry experts predict that the funding opportunities and tax credits will revolutionize the burgeoning hydrogen economy by spurring the investment in and development of clean hydrogen projects at scale. However, developers and investors should also account for the early stage of development of clean hydrogen technologies and associated risks by building in appropriate contractual language in contracts associated with the development of hydrogen projects to ensure they adequately protect against or mitigate these risks." – Pamela Wu

- For more information: Clean Hydrogen Developers Should Track Incentives, *Law360*

EU Green Deal

The 2022 State of the Energy Union report published by the European Commission outlines what the European Union has done to tackle geopolitical challenges and the energy crisis in 2022, and how its current actions will reshape the future climate strategy for the old continent. To achieve clean energy transition and increase Europe's energy independence, the EU will require a mix of private investment and public funding. On the one hand, the EU has pledged the largest share of its current budget to helping build a greener and more resilient Europe. On the other hand, the EU state aid rules provide investors with a variety of tools to support industry investments in the green transition and the resilience of the EU economy.

"The European Union remains committed to its Green Deal. Despite all odds, geopolitical concerns and the energy crisis may actually accelerate the EU green transition and trigger a reduction of fossil fuel imports, with the additional objective of securing the European Union's energy independence. The share of renewables in the EU electricity mix is expected to grow from 37% in 2021 to 69% in 2030." – Christina Renner

- For more information: Cross-Border Energy Projects in Times of Crisis: Is EU State Aid a Solution for Green Transition?, *Empowered*

FINANCIAL SERVICES

Increased Regulatory Oversight

United States

On December 14, 2022, the US Securities and Exchange Commission (SEC) proposed a fundamental restructuring of the US equity markets in the form of two rule amendments and one new rule proposal. In addition, the SEC proposed new Regulation Best Execution under the Securities Exchange Act of 1934. The comment period for each rule proposal will remain open until the later of March 31, 2023, or 60 days after the applicable proposing release is published in the *Federal Register*.

"The SEC's proposal in some ways will go beyond what FINRA and the Municipal Securities Rulemaking Board already require. One big difference is that the SEC regulation would require broker-dealers to be more vigilant for conflicts of interest. Under particular scrutiny would be 'payments for order flow,' in which dealers send clients' buy or sell orders to particular stock wholesale companies in return for rebates." – Ignacio Sandoval

- For more information: Brokers Could Stagger Under Paperwork Burden From SEC Market Overhaul, *Financial Planning*

United Kingdom

Recently announced UK financial services reforms include proposals to make significant changes to the framework under which securitizations are regulated in the United Kingdom. An illustrative draft statutory instrument and explanatory guidance indicate that many requirements applicable to securitizations are expected be administered not through regulation, but through the rulebooks of the UK financial services regulators.

"It is likely that there will be further regulatory divergence between the EU and UK securitisation regimes, although the extent to which the content of some of the key requirements will change remains to be seen. Market participants are likely to welcome the increased flexibility and responsiveness that is expected to result from the revised approach to the UK securitisation rules." – Merryn Craske

- For more information: UK Treasury Proposes Changes to UK Securitisation Framework as Part of Financial Services Reforms

Middle East

The financial sector in the United Arab Emirates has seen some extensive legislative developments over the last 12 months, and is set to see more as the UAE government looks to improve business operations in the region, streamline many processes, and improve the overall oversight of financial services.

Regulations on markets, securities issuances, and the general capital markets oversight functions of the UAE Securities and Commodities Authority (SCA) will continue to be subject to separate legislation and SCA regulations. The UAE Central Bank has taken a number of proactive and positive steps addressing deficits in the anti-money laundering regime, with the UAE government improving oversight of financial services to ensure compliance with global anti-money laundering and data protection standards, particularly in view of geopolitical developments in other markets that result in the movement of people and capital to the UAE.

"Overall, the United Arab Emirates continues to expand its private investment funds ecosystem. This is not just by virtue of policy and legal reform, but also in the types of institutional investors involved. Most notably, we see an increase in sovereign wealth fund (SWF) anchor investments into regional funds and seed-and-stake arrangements in respect of new regional fund managers. This is in addition to a marked increase in venture-capital investment across the region, often driven by SWFs anchoring new investment funds and because of the success of several high-profile regional unicorns." – Rebecca Kelly and Ayman Khaleq

- For more information: Looking Ahead to 2023 & Beyond…, *The Oath*

Fintech

Fairer Credit Through Fintech

The rapid growth of nonbank financial services requires careful regulation to balance competition and access, transparency, and privacy protection. Fintech advances in buy-now-pay-later (BNPL) and artificial intelligence (AI) and machine learning (AI/ML) during the pandemic resulted in marked industry growth with particular implications and improved assistance for underserved communities. More broadly, bank partnerships with fintech companies have increased. Everyone wants to bank faster and, post-pandemic, digitally, despite the data security risks.

"For many borrowers, alternative credit options can mean the difference between financial well-being and financial hardship. Fintech advancements like BNPL and the combination of credit models driven by AI/ML may be paving the way for a fairer and more inclusive future of credit. However, lessons learned from the financial crisis ring clear: when only one part of the market is required to comply with regulations, the other will compete by offering disadvantageous and risky products. Heading toward 2023, regulators are faced with how to advance a regulatory framework that encourages innovation while protecting consumers." – Robin Nunn

- For more information: Fintech Industry Must Transform to Help Underserved Communities, *Bloomberg Law*

Cryptoasset Regulation

European Union

The European Parliament is expected to adopt a new regulation on markets in cryptoassets. The regulation would establish comprehensive rules for cryptoassets across the EU and fill in regulatory gaps for cryptoassets that are not covered by existing EU legislation. The regulation identifies and covers three types of cryptoassets: asset-referenced tokens (ART), electronic money tokens (EMT), and other cryptoassets not covered by existing EU law.

"This year saw the near-finalisation of the Markets in Crypto-Assets Regulation (MiCA), a sweeping set of EU rules that is the most expansive regulatory toolkit we have seen to-date for crypto-assets globally. We will likely see further regulatory development in 2023, as regulators around the world seek to keep pace with new technologies, particularly in light of the Financial Stability Board's proposed framework for crypto-asset regulation. Indeed, the UK government confirmed its intention to bring stablecoins used as a means of payment into the regulatory perimeter and plans to consult shortly on regulating a wider set of crypto-asset activities." – Steven Lightstone

- For more information: Legal Tech's Milestones for New(er) Technologies and Innovating for Good in 2022, *Legaltech News*

United States

Given the continuing evolution of the cryptoasset market, we can anticipate an uptick in regulatory scrutiny from US financial regulators. Some recent actions:

- "The SEC's Division of Corporation Finance published informal guidance on how public companies could be asked to address the possible impact of financial distress in the cryptoasset market. The guidance includes a "sample" crypto-specific comment letter focused on disclosure that public companies should consider providing in filings made under the Securities Act of 1933 (Securities Act) and Securities Exchange Act of 1934 (Exchange Act), as applicable." – Erin Martin and Sarah Riddell

  For more information: Public Companies: Consider Updating Disclosures to Reflect Risks Posed by Cryptoasset Markets, *All Things FinReg*

- "FINRA has announced that it is conducting a targeted examination of broker-dealer practices related to retail communications about 'crypto asset' products and services. As part of this sweep, FINRA is asking broker-dealers for all retail communications that were distributed or made available by a broker-dealer or its affiliates on behalf of the broker-dealer that refer or relate to crypto assets or services involving crypto transactions or the holding of cryptocurrency during the period of July 1, 2022, to September 30, 2022. FINRA clarifies that 'retail communications' means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-calendar-day period. Video, social media, mobile applications, and websites also generally fall into this communications category." – Ignacio Sandoval and Amy Kroll

  For more information: FINRA Targets Crypto-Related Communications, *All Things FinReg*

INVESTMENT FUNDS

ESG Investing

SEC

Environmental, social, and governance investing continues to be a focus of the SEC. Building on the SEC Division of Enforcement's Climate and ESG Task Force launched in early 2021, this year the SEC proposed new rules pertaining to ESG for registered investment advisers and funds. The proposals align with the Divisions of Examinations' and Enforcement's respective areas of focus on ESG investing. According to a report from the US Sustainable Investing Forum (cited in the SEC's proposed disclosure rule), in the United States, sustainable investments grew from $639 billion in assets under management in 1995 to $17.1 trillion by 2020. Due to this rise in ESG-related investments, the agency has picked up the pace on ESG-related examinations and investigations, homing in on whether firms accurately describe to investors how they assess ESG factors.

"Advisers and funds can take steps to prepare for a potential increase in examination and enforcement activity by proactively and continuously assessing risk areas, revisiting and updating policies and processes regarding disclosures and revising disclosures where warranted, ensuring consistency across all facets of the organization, documenting processes and due diligence, and collecting data to support their public ESG statements so they are on solid ground if regulators come knocking." – Lance Dial

- For more information: What Advisers and Funds Should Know About ESG, *ESG Clarity*

Japan

"The Japan Financial Services Agency has proposed a hard law amendment that will provide an additional [ESG] information source for asset managers investing in Japanese listed companies. Listed companies in Japan with a current fiscal year end of March 31, 2023, or later will need to prepare their annual public disclosure documents under the new regime." – Tomoko Fuminaga

- For more information: Japan Introduces Mandatory ESG Disclosures for Public Companies

United Kingdom

"The UK Financial Conduct Authority (FCA) recently published its consultation paper, CP22/20, on the use of Sustainability Disclosure Requirements (SDR) and investment labelling. The consultation paper proposes rules to help investors (particularly retail investors) navigate the investment product landscape and identify sustainable investment products, require additional sustainability disclosure, reduce greenwashing, and generally make the United Kingdom a trusted center for sustainable investment." – William Yonge, Simon Currie, and Steven Lightstone

- For more information: UK Asset Managers: FCA Proposes New Sustainability Disclosure and Labelling Requirements

FDA & HEALTHCARE

False Claims Act Litigation

The US Court of Appeals for the Seventh Circuit found that the way a grocery and pharmacy chain billed Medicare and Medicaid reflected an "objectively reasonable" interpretation of regulations so that False Claims Act liability is not permissible.

"The issue carries profound importance for companies that bill Medicare and Medicaid, because those programs are governed by a maze of duplicative and inconsistent federal and state regulations. This will be a closely watched legal issue this year and of potential seismic impact." – Kathleen McDermott

- For more information: Health Care & Life Sciences Litigation to Watch in 2023, *Law360*

Telehealth Funding Post-COVID

When the current public health emergency ends, so do many of the waivers put in place to help providers through the pandemic. Telehealth is the big exception, getting an additional 151 days before a loss of flexibilities such as the ability for patients to get virtual care from their home.

"Congressional action is needed, and lawmakers are expected to act before the telehealth cliff. Members may need all of that time to sort through what will be allowed. . . . The other issue with telehealth is one of integrity: whether it increases fraud and waste in the healthcare system. . . . As Congress debates, some providers wait to invest. The big issue is that it's stalling investment in this area. It makes it difficult for providers, investors to come up with a strategy." – Jake Harper

- For more information: Telehealth's Future After the End of the Public Health Emergency, *Healthcare Finance*

Reproductive Rights

Following the US Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, the federal government has issued various guidance to healthcare providers reinforcing federal legal protections or requirements related to abortion services. Healthcare providers must vigilantly follow developments at both the federal and state levels to evaluate their compliance strategies in this rapidly evolving regulatory landscape.

"The *Dobbs* decision led to a new regulatory focus on safeguarding the privacy of reproductive health information, and new guidance from the HHS Office for Civil Rights and the Federal Trade Commission. That guidance will be tested when law enforcement agencies seek to obtain reproductive health information in 2023 to enforce state abortion prohibitions." – Reece Hirsch

- For more information: Legal Tech's Milestones for Cybersecurity and Privacy in 2022, *LegaltechNews*

LIFE SCIENCES

FDA's Focus on Biotech

US President Joseph Biden issued an executive order on sustainability in biotechnology and biomanufacturing. According to the order, the president aims to "advance biotechnology and biomanufacturing towards innovative solutions in health, climate change, energy, food security, agriculture, supply chain resilience, and national and economic security" through a multipronged and collaborative approach. Looking ahead, we can anticipate seeing a number of new programs coming out of the FDA in 2023 as a result of this order.

"[T]he order is a hopeful first step in bolstering the U.S. biotechnology industry by providing more regulatory clarity and opportunities. Its exact impact, however, will depend on the details of the implementation. Notably, the order provides multiple avenues for industry involvement, potentially providing those that work in and interface with the life sciences industry opportunities to shape future policy. Accordingly, stakeholders should pay close attention to future actions taken under the order and opportunities for collaboration." – Kathy Sanzo and Jackie Berman

- For more information: Biden Order Renews Spotlight on Advancement of US Biotech, *Law360*

RETAIL

More CPSC Litigation, Regulation, Penalties

The US Consumer Product Safety Commission (CPSC) will take a hard and fast approach to product safety in fiscal year 2023, according to its recently passed operating plan—with enforcement being at the top of its priority list.

"Companies can prepare for this enforcement focus, and other CPSC objectives laid out in the plan, by ensuring internal compliance programs are comprehensive and comprehensively implemented, confirming standard operating procedures are current and closely followed, and proactively engaging with voluntary standards organizations and the CPSC to reach consensus on workable solutions." Dana Baiocco, Kathleen Sanzo, and Gregory Parks

- For more information: Expect More CPSC Litigation, Regulation, Penalties in 2023, *Law360*

Changes to State Labor Laws

As retailers look to 2023, they are facing uneven consumer demand, a rumored recession, and new federal and state regulations that could drastically alter the way they do business. Proactive retailers are reviewing the way they pay and classify employees and their safety priorities as identified recently by the CPSC.

"Retailers are awaiting the final rulemaking from the U.S. Department of Labor (DOL) on how to classify independent contractors, which could have a significant impact on the gig economy, as well as distribution and delivery channels and other vendor/contractor relationships.

"New York Labor Law (NYLL) § 191(1)(a) requires that manual workers be 'paid weekly and not later than seven calendar days after the end of the week in which wages are earned.' While that section of the law has been in place for decades, employees could not sue their employers for violations in pay schedule in a private action. That all changed with an appellate court decision in 2019 that allowed for private action by employees, which has led to a tidal wave of litigation against employers including, disproportionately, retailers.

"Following the November elections, Nebraska, Nevada and Washington, DC will increase minimum wage for both tipped and nontipped employees. While each dollar amount differs, these legislation changes will increase labor costs for retailers, especially those who employ a large number of hourly, low-wage workers, such as food service and hospitality." – Melissa Rodriguez

- For more information: Issues Impacting Retailers in 2023, *American Marketer*

International Trade Policies

The Biden administration made several moves related to international trade policies, without much input from Congress. These policies include the Indo-Pacific Economic Framework for Prosperity, which focuses on four pillars: trade; supply chains; clean energy, decarbonization and infrastructure; and tax and anti-corruption.

The United States and United Kingdom also reached a deal to eliminate steel and aluminum tariffs and the White House continued to engage with Brussels under the US-EU Trade and Technology Council. Trade officials continued negotiations under the US-Taiwan Initiative on 21st-Century Trade and launched a new Digital Transformation with Africa initiative.

"We'll see a lot more hearings, and an attempt to clarify that Congress plays a role, but honestly, I don't think the administration is going to be particularly responsive. That frustration, which I've seen in other administrations, is sometimes the impetus Congress needs to put legislation together. The administration should think carefully about whether they want legislation going up to the president that he might have to veto or may be forced to sign because of circumstances outside of his control." – Giovanna Cinelli

- For more information: Top International Trade Policies of 2022, *Law360*

SPORTS

College Athletes

When a National Labor Relations Board (NLRB) regional director in December apparently took the position that a university, the Pac-12 Conference, and the National Collegiate Athletic Association (NCAA) could be considered joint employers of college athletes, it created a new path for the potential unionization of those college athletes.

"Two overarching ramifications exist from this prosecution decision. First, although the General Counsel took a position on this issue in September 2021 in GC Memo 21-08, that analysis makes no distinction between the training and commitment in the service of an individual athlete's desire to compete and the control related to typical employer situations. The Board will have to confront that distinction in its adjudication, months or years from now. Second, the NCAA and the conferences will likely want to plan ahead strategically for either litigation outcome: athletes are NLRA employees or they aren't." – Harry Johnson

- For more information: NLRB USC Case Slouches Toward Employee Status for NCAA Athletes, *Sportico*

TECHNOLOGY

EU Unified Patent Court

The long-awaited EU Unified Patent Court is scheduled to launch in June, which will bring a new era of patent litigation to Europe by allowing disputes in nearly two dozen EU nations to be litigated in one proceeding.

"There's a lot of excitement because it just makes sense. There are European patents, so there should be a unified European court that is deciding what the claims mean and to provide cost savings to patent owners to litigate one case as opposed to several simultaneously. But, because people just feel a little bit uneasy with change, there may be a slow start to adoption as clients may be a little bit nervous to be case number one, just because you don't know what's going to happen." – Julie Goldemberg

- For more information: Patent Litigation Trends to Watch in 2023, *Law360*

FTC Enforcement Act

The Federal Trade Commission (FTC) in its enforcement work is getting more detailed about what they want from companies in the privacy and data security space. Recent examples have included employing multifactor authentication, destroying unnecessary personal data, and limiting the collection and retention of data moving forward.

"The FTC is including a level of specificity of what they expect that we haven't seen before, and that's only likely to continue." – Mark Krotoski

- For more information: Top Privacy Developments of 2022: Year in Review, *Law360*

Artificial Intelligence

AI tools have the power to transform how businesses operate and generate efficiencies that can improve an organization's ability to analyze data, resulting in increased profitability and reducing costs. AI promises to continue streamlining business processes and decision-making, thereby reducing overhead costs, time, and labor. This evolution, however, comes at a price if AI technologies are not deployed within a safe and fair regulatory framework.

"The public emergence of applications that use AI engines to create new inventions and new works of authorship and art has created the hottest topic in IP in 2022 as the question has become: Who owns the intellectual property rights that exist in these new creations? In the years to come, we will learn whether those rights belong to the person who created the AI engine, the person who trained the AI engine, the person who tasked the AI engine with making the creation, the AI itself, or perhaps no one. While the first decisions coming out of the courts suggest that only persons may own intellectual property rights, how those rights are divvied up among the various persons involved remains to be determined. And, the answer to these questions will, of course, impact the future of AI development, investments in AI and in creating intellectual property rights, and the types of inventions, texts, and art that will be created." – Andrew Gray

- For more information: What's in Store for IP in 2023?, *Law360*

Metaverse

"Metaverse" is used to generally describe any virtual world where users can interact using digital avatars. There are seven layers to any metaverse: infrastructure, human interface, decentralization, spatial computing, creator economy, discovery, and experience (such as games, social interactions, esports, theater, and shopping). Metaverse trends have experienced phenomenal growth, with the emergence of new immersive virtual reality and collaborative spaces for human interactions, transactions, and data exchanges on decentralized networks.

"The hottest topic this year in the trademarks space has been the expansion of the Metaverse and the race for brand owners to protect their valuable brands for use in connection with virtual replicas of their real-world goods. As companies look for ways to expand their presence in the Metaverse, they need to be mindful of the sufficiency of their trademark protection both to prevent hijackers from attempting to usurp their rights with unauthorized filings at the U.S. Patent and Trademark Office and to enforce their rights against infringers who use those brands, or confusingly similar brands, in connection with competing virtual goods and services." – Rachelle Dubow

- For more information: The IP News that Mattered Most in 2022, According to You, *IPWatchdog*

United Kingdom

The UK government announced that the UK Digital Markets, Competition and Consumer bill will be introduced to Parliament in 2023. First, the bill envisages a special merger control regime that will apply to firms designated as having Strategic Market Status (SMS) by the Digital Markets Unit (DMU) within the Competition and Markets Authority. Second, the bill is expected to introduce certain amendments to the general merger control regime under the Enterprise Act 2002.

"The bill is expected to close the gap between UK and other major regulators with regard to the ex-ante regulation of digital markets. The precise criteria for the designation of a firm as having SMS have not been established yet, and it will be particularly interesting to understand the extent to which the same firms will be designated as having SMS in the UK and as being 'gatekeepers' under the EU Digital Markets Act." – Leonidas Theodosiou

- For more information: UK to Take a Flexible Approach in Governing Big Tech, *IFLR*

Hong Kong

"The Hong Kong Stock Exchange (HKEx) issued its much-anticipated consultation paper on creating a listing regime for Specialist Technology Companies (STCs) under proposed Chapter 18C of the HKEx listing rules. The new listing regime, due to launch in the first half of 2023, eases the existing profit and trading record requirements under the listing rules for STCs, and is expected to facilitate a number of large, emerging, and innovative technology enterprises with high growth potential to list on the HKEx." – Edwin Luk and Billy Wong

- For more information: Hong Kong Stock Exchange Proposes New Listing Regime for Specialist Tech Companies

CONCLUSION

Global interest rates are on the rise, but dealmaking is anticipated to rebound after taking a hit in 2022. China's lifting of its Zero COVID policy is having rippling effects through the world's supply chain; and the Ukraine conflict continues to cause an energy crisis throughout Europe. In the United States, a divided Congress has started its 118th term and likely will face political roadblocks over the next two years.

2023 is expected to be anything but a smooth ride, but the most proactive of companies are preparing now to handle any bumps down the road.

ABOUT US

Morgan Lewis is recognized for exceptional client service, legal innovation, and commitment to its communities. Our global depth reaches across North America, Asia, Europe, and the Middle East with the collaboration of more than 2,200 lawyers and specialists who provide elite legal services across industry sectors for multinational corporations to startups around the world. For more information about us, please visit www.morganlewis.com.