Vinson&Elkins

Sustainable Debt Finance:

Trends and Opportunities in an Area of Accelerated Growth

Spring 2022

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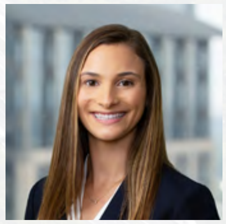

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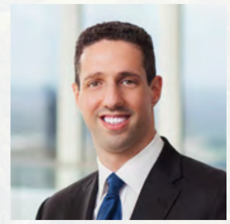

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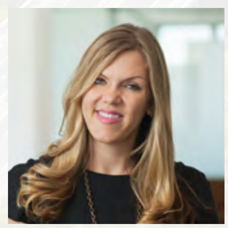

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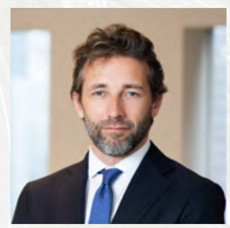

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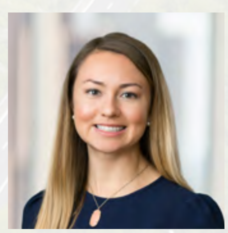

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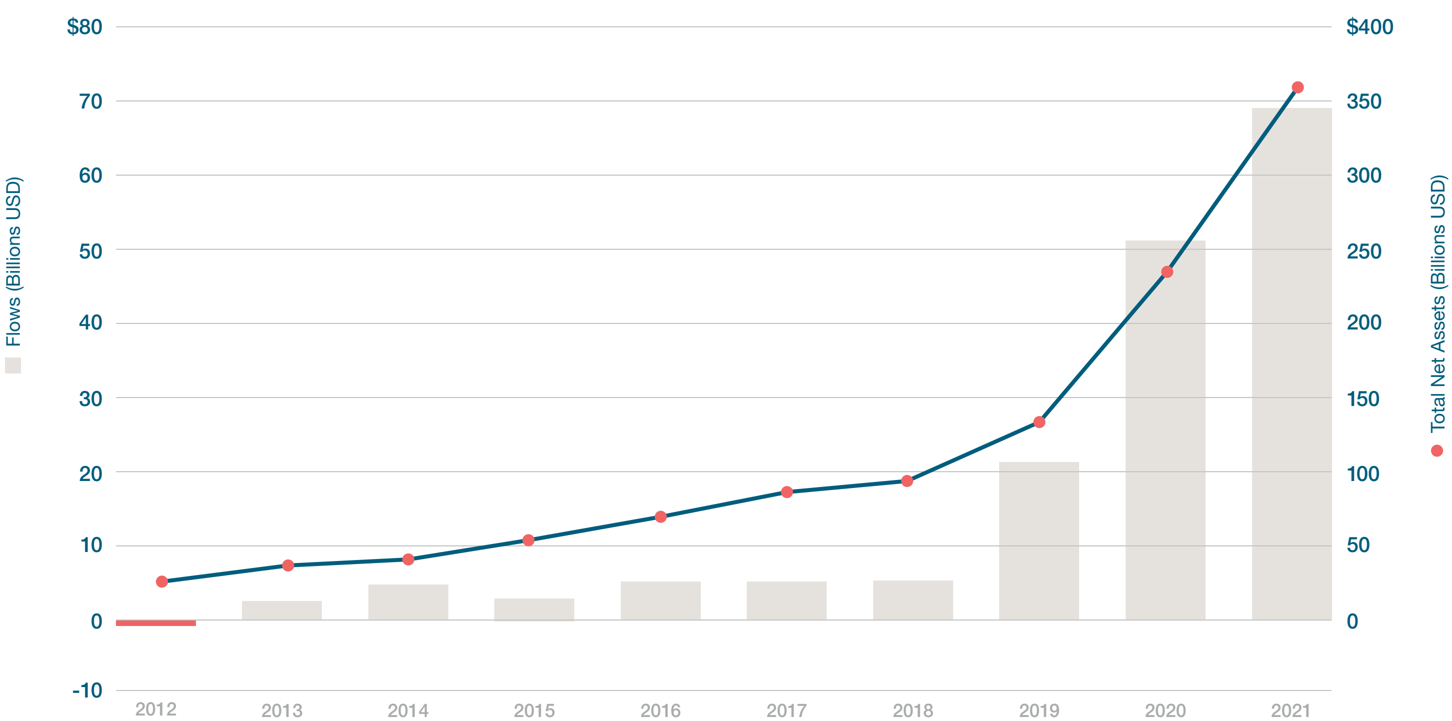
What the Sustainable Finance Landscape Means for Investors and Investments

Sustainable debt volumes exceeded $1.6 trillion for the 2021 calendar year, representing a doubling of volumes relative to 2020, just as occurred in 2020 relative to 2019.[1] As banks and investors increasingly turn their attention to environmental, social and governance (ESG) factors — both in response to changing societal expectations and evolving ideas regarding the ability of good ESG practices to create value — companies are also increasing their focus on ESG. This corporate focus on ESG is driven by the need to respond to investor pressures, manage nonfinancial risks, preserve social license to operate, and take advantage of new opportunities. As part of this trend, ESG criteria are appearing with increasing prevalence in bond and loan markets, and new opportunities within sustainable finance are arising as a result of major financial institutions making their own commitments with respect to ESG criteria. Companies increasing their focus on ESG issues have a unique opportunity to gain access to additional financing sources and/or financing on more favorable terms by using available sustainable finance tools. "Green Bonds," "Green Loans," and performance-specific sustainability linked debt instruments comprise only a portion of the instruments falling under the umbrella of sustainable finance.

Sustainable Funds Annual Flows and Assets



Source: Morningstar Direct. Data as of December 31, 2021. Includes Sustainable Funds as defined in Sustainable Funds U.S. Landscape Report, January 2022. Includes funds that have liquidated; excludes funds of funds.

In their most basic forms, sustainable bonds or their corollary in the loan market, sustainable loans ("sustainable" being the umbrella of "Green," "Social," and mixed use-of-proceeds instruments) are any type of financial instrument where the proceeds will be applied to eligible environmental and/or social projects. Unlike sustainable bonds and loans, the proceeds of sustainability linked bonds and loans are intended for general corporate purposes, but these sustainability linked debt instruments incentivize the issuer's achievement of material, quantitative, pre-determined, ambitious, regularly monitored, and externally verified sustainability (that is, ESG) objectives through key performance indicators (KPIs) and sustainability performance targets (SPTs).

These debt instruments benefit companies, investors, and lenders by impacting pricing, attracting capital providers, providing relational and reputational benefits, supplying increased demand for investment in environmental and social change, attracting and retaining talent, and improving relationships with stakeholder communities. Further, these debt instruments, and their benefits, are increasingly available to a variety of corporate issuers across an expanding universe of industries and may take the form of bonds, term loans, revolving loans, and other working capital facilities.

Growth and Future of Sustainable Finance: The Transformation of Capital Allocation

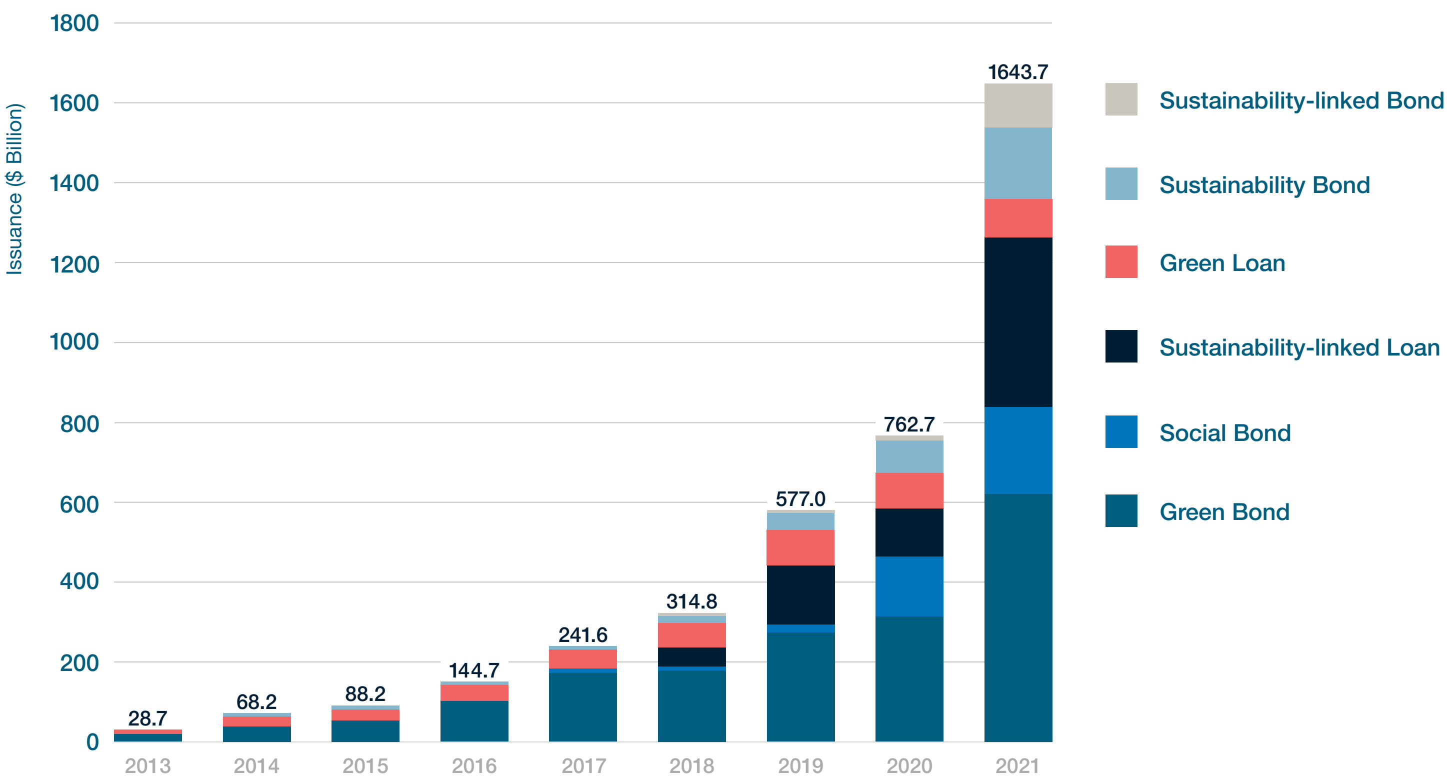
Issuances of sustainable debt broke records in 2021 and are expected to continue rising. To highlight a few metrics:

- total sustainable debt issuances exceeded $1.6 trillion in volumes in 2021, more than doubling 2020 volumes;[2]
- green bond issuance volumes in 2021 were twice the volumes in 2020;[3]
- more than $530 billion in sustainability linked loans and bonds were issued in 2021, whereas only a quarter of that value was issued in 2020;[4] and
- global issuance of green, social, sustainability and sustainability linked bonds are projected to hit a record $1.35 trillion of issuances in 2022, reflecting a 36% increase over 2021.[5]

Prior results do not guarantee a similar outcome.

Two of the driving forces behind the growth in issuances of sustainable debt are (1) the increasing focus of investors and policy makers on ESG criteria and (2) the proven performance of sustainable investments.[6] In recent years, an increased focus on sustainable investments has been seen across the general populace, and even more so in millennials, a generational group that is starting to invest more capital into the financial markets and is also more likely to align their investments with their individual values or *mores* relative to the general populace.[7] However, millennials are not the only investors driving increases in sustainable investments. Public policy adopted across the world relating to sustainability goals is resulting in the development of regulatory schemes and initiatives to increase investment in sustainable finance.[8] Further, banks, investment funds, and other institutional investors are making increased commitments to allocate capital to sustainable finance, which is driving demand for sustainable investments.[9] As sustainable finance continues to grow, the importance of, and need for, benchmarks and guidelines will grow alongside it.[10]

Annual Sustainable Debt Issuance, 2013-2021



Source: *BloombergNEF, Bloomberg L.P.*

“Green” Financing

Green bonds and green loans are debt securities issued to fund projects or other expenditures with positive environmental and/or climate benefits.[11] The documents for these green instruments highlight a “green” use of proceeds, for example, to finance specific green projects, or in furtherance of operations of issuers with defined environmental benefits.[12]

Green Bonds

Introduction to Green Bonds

Green bonds are the most prevalent type of debt instruments under the umbrella of sustainable finance, comprising 45% of the $4 trillion aggregate volumes of sustainable debt issuances through 2021.[13] While originally formulated as government debt securities, the first corporate green bond was issued by Vasakronan, a Swedish property company, in November 2013, to fund new energy-efficient buildings, retrofit existing buildings, and develop renewable energy projects, among other things.[14] Since then, many large corporate issuers have tapped into the green bond market, including Apple Inc.; Bank of America Corp.; Citigroup Inc.; the Goldman Sachs Group, Inc.; PepsiCo, Inc.; Visa Inc.; Verizon Communications Inc.; Volkswagen AG; and Toyota Financial Services.[15] The corporate green bond market is dominated by investment-grade issuers rather than issuers of high-yield bonds,[16] although this is starting to change.[17]

The Green Bond Principles: Core Components

The Green Bond Principles (GBP) are the leading framework globally for issuances of green bonds.[18] These voluntary best practice guidelines were established in 2014 by a consortium of investment banks, including BofA Securities, Inc., Citigroup Inc., Crédit Agricole CIB, JPMorgan Chase & Co., BNP Paribas S.A., Daiwa Securities Group Inc., Deutsche Bank AG, the Goldman Sachs Group, Inc., HSBC Holdings plc, Mizuho Securities Co., Ltd., Morgan Stanley, Coöperatieve Rabobank U.A., and Skandinaviska Enskilda Banken AB.[19] The International Capital Market Association (ICMA) provides guidance for the governance of the GBP and has assumed the continued monitoring and development of the GBP.[20] Following the annual general meeting of the GBP in June 2018, ICMA announced the publication of new and updated principles that represent an important additional step toward the gradual harmonization and expansion of the global green bond market. The GBP were further updated in June 2021 to, among other things, include recommendations regarding Green Bond Frameworks and external reviews.[21] While there is currently no universal standard for green bonds — and bonds without the green label may in fact be just as functionally “green” as bonds with a green label — the GBP are intended to help encourage transparency and disclosure in the green bond market, reduce “green washing,” and increase capital allocation to environmental projects.

The GBP have four core components:

1. Use of Proceeds;
2. Process for Project Evaluation and Selection;
3. Management of Proceeds; and
4. Reporting.[22]

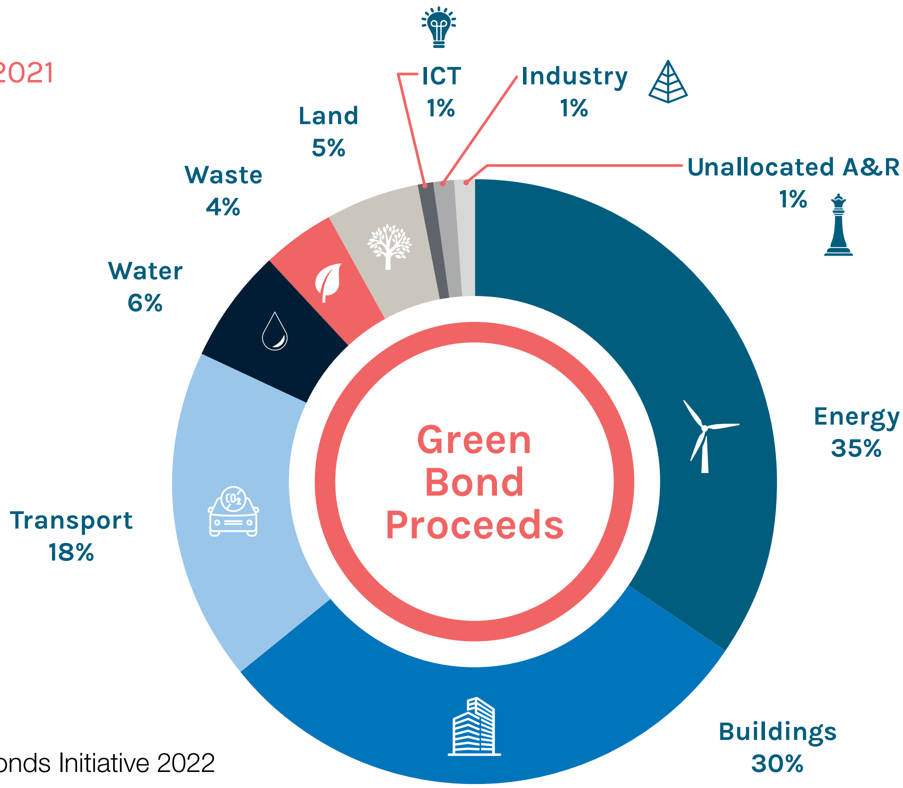
Use of Proceeds

The GBP describe the "use of proceeds" component as the "cornerstone" of the GBP.[23] The legal documentation should appropriately describe the intended use of the green bond proceeds, and all designated eligible green projects financed or refinanced by an issuance should provide clear environmental benefit, which the issuer should assess and, as feasible, quantify.[24] Green bonds generally do not include covenants that contractually obligate the issuer to use the proceeds for specific green projects, increasing the need for investors to conduct their own due diligence.[25]

Currently, there is no global consensus on how to classify projects qualifying for green bond financing.[26] However, the GBP provide a non-exhaustive list of eligible green categories and examples that can be selected for the use of proceeds:

- "**renewable energy** (including production, transmission, appliances and products);
- **energy efficiency** (such as in new and refurbished buildings, energy storage, district heating, smart grids, appliances and products);
- **pollution prevention and control** (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, waste reduction, waste recycling, and energy/emission-efficient waste to energy);
- **environmentally sustainable management of living natural resources and land use** (including environmentally sustainable agriculture; environmentally sustainable animal husbandry; climate smart farm inputs such as biological crop protection or drip-irrigation; environmentally sustainable fishery and aquaculture; environmentally sustainable forestry, including afforestation or reforestation, and preservation or restoration of natural landscapes);
- **terrestrial and aquatic biodiversity conservation** (including the protection of coastal, marine and watershed environments);
- **clean transportation** (such as electric, hybrid, public, rail, non-motorised, multi-modal transportation, infrastructure for clean energy vehicles and reduction of harmful emissions);

Use of Proceeds 2021



Source: © Climate Bonds Initiative 2022

- **sustainable water and wastewater management** (including sustainable infrastructure for clean and/or drinking water, wastewater treatment, sustainable urban drainage systems and river training and other forms of flooding mitigation);
- **climate change adaptation** (including efforts to make infrastructure more resilient to impacts of climate change, as well as information support systems, such as climate observation and early warning systems);
- **circular economy adapted products, production technologies, and processes** (such as the design and introduction of reusable, recyclable and refurbished materials, components and products; circular tools and services) **and/or certified eco-efficient products**; and
- **green buildings** that meet regional, national or internationally recognised standards or certifications for environmental performance."[27]

Green bond issuers may initially provide this information regarding use of proceeds in a "Green Bond Framework," which is a detailed publication by a potential green bond issuer that contains information describing how the requirements of the GBP will be met by the issuer for a future potential green bond.[28]

In 2021, investments in the energy sector made up roughly a third (35%) of all green uses of proceeds, followed by low carbon buildings (30%) and green transportation (18%).[29] Some examples of eligible green projects undertaken by green bond issuers include: (a) Apple Inc.'s funding of aluminum chip sorting improvements to maximize use of recycled aluminum in enclosure manufacturing;[30] (b) Bank of America's investment in numerous solar and wind farms;[31] (c) PepsiCo's purchase of more sustainable plastics and packaging;[32] (d) Verizon's conversion to using all LEDs in its facilities;[33] and (e) Volkswagen's contributions to e-charging infrastructure.[34]

Since determining whether a bond is "green" depends on the eligibility of the project to which it relates, not the eligibility of an issuer, even companies in industries that may not be universally considered to be green, including those with high greenhouse gas emissions, can participate in the green bond market if the use of proceeds meets certain eligibility criteria. A green bond can also be used to fund a portion of a larger project that would not meet the green criteria set forth above; provided that the green bonds are only used to fund the eligible portion.

A green bond issuer does not legally covenant to use proceeds strictly for green projects, however. It is common to find disclosure in the relevant offering document that highlights to investors that the issuer does not guarantee that the funds raised will be allocated to eligible green projects. The following risk factor excerpt from Apple Inc.'s green bond prospectus illustrates this point: "The examples of projects in 'Use of Proceeds' are for illustrative purposes only and no assurance can be provided that disbursements for projects with these specific characteristics will be made by us with the proceeds from the notes."[35] In practice, the lack of specifically "green" covenants and the fungibility of cash provide an issuer with broad discretion to use the proceeds of a green bond for general corporate purposes, albeit with implications for the issuer stemming from the external audit of the issuer's allocation of funds to eligible green projects.

The summary chart "Recent Sustainable Bonds and Loans," set forth on page 24 under "Recent Issuances," includes the use of proceeds of several recent green bond issuances.

Process for Project Evaluation and Selection

Companies issuing green bonds are expected to provide clear communication to investors about the objectives of any environmentally beneficial projects, the protocols used in determining the project's adherence to the green projects list above, and other eligibility criteria.[36]

Management of Proceeds

The GBP encourage issuers to ring-fence the net proceeds, or an amount equal to the net proceeds, of an issuance in an external or internal account, attested to by a formal allocation process.[37] The company will typically need to inform investors about the types of temporary investments in which any unallocated funds are being held, and auditors are often tasked with independently evaluating the allocation of funds.[38] Additionally, the GBP recommend that while a green bond is outstanding, the balance of the tracked net proceeds should be periodically adjusted to match allocations made to eligible green projects during that period.[39]

Consistent with their goal of transparency, the GBP recommend that an issuer's management of proceeds be reviewed by an outside auditor, or other third party, to ensure the internal tracking method and the allocation of funds from the green bond proceeds are accurate.[40] In light of the fungibility of cash, the funds raised from a green bond issuance could become interchangeable with the issuer's other funds if not properly maintained, which could result in an issuer using funds originally intended for eligible green projects for non-green projects — and vice versa.[41]

Reporting

Under the GBP, companies are expected to prepare and make readily available annual disclosures or a green bond impact report on the use of proceeds until the proceeds of the bond sale have been fully allocated.[42] Companies will also report new material developments in these reports.[43] A green bond impact report is an annual publication by a green bond issuer that provides quantitative and qualitative information regarding annual use of proceeds, progress allocating net proceeds, and selected impact metrics accompanied by management's discussion of the amount of the net proceeds that was allocated to eligible green projects, among other things.[44] The annual report will include a list of the projects to which green bond proceeds have been allocated, as well as a brief description of the projects and the amounts allocated, along with their expected impact.[45] The GBP also direct issuers to the Harmonised Framework for Impact Reporting for reporting templates made available by ICMA to issuers on a project-type specific basis.[46]

Green Bond Documentation and External Review

The preparation and content of green bond offering documentation (for example, the underwriting or purchase agreement, indenture, comfort letters, and opinions of counsel) are largely the same as for a traditional bond offering. Where green bonds differ are in the prospectus or offering memorandum — which include green bond–specific disclosures in the "use of proceeds" section and marketable green font — and in the preparation of related materials, such as Green Bond Frameworks (that is, a disclosure by a potential issuer detailing compliance with the GBP) or second-party opinions. The GBP recommends that issuers explain the alignment of their green bond with the four key components of the GBP in a Green Bond Framework and engage external reviewers pre- and post-issuance.[47]

Preparing a Green Bond Framework prior to issuance provides an issuer with time to arrange for external review, which often takes the form of a second-party opinion (although other forms include verification and certification),[48] with the Green Bond Framework later referenced or summarized in the eventual offering documents. It is notable, however, that Green Bond Frameworks are not incorporated by reference or included in the offering documents and these Green Bond Frameworks provide that any decision to purchase securities is to be based solely upon the offering documentation.[49] Similarly, a second-party opinion, if any, is typically not included in, or incorporated by reference into, the offering document, though issuers that receive second-party opinions may choose to disclose these opinions in their offering documents in order to attract purchasers to their bonds.

The GBP recommends that issuers seek external review pre- and post-issuance.[50] As the green bond market has expanded, an increasing number of consultants and institutions with recognized expertise in environmental sustainability have begun providing third-party reviews of Green Bond Frameworks. These environmental organizations and firms are now ubiquitous in the green bond industry, and nearly all Green Bond Frameworks first receive an external stamp of approval, most commonly in the form of a second-party opinion, before going to market. Green bond issuers also often support the characterization of their bonds as green by requesting a second-party opinion by an environmental consultant, like Sustainalytics[51] or S&P Global[52] as to the series debt securities themselves (as opposed to just the framework). The content of these opinions varies depending on the format of the second-party opinion provider, but they typically assess the procedural aspects of the green bond, such as whether the issuer has adequately disclosed the use of proceeds and overall alignment with the core components of the GBP.[53] While the GBP only recommend that issuers use some form of external review and do not include it as a core component, in 2020 it was reported that over 91% of green bonds by aggregate principal amount outstanding receive some form of external review.[54] Moreover, some green bond-specific stock exchanges, such as the Luxembourg Green Exchange, mandate a second-party opinion as a listing requirement.[55]

Due to the additional ESG documentation involved in a green bond offering, liability concerns arise regarding issuer ESG disclosure. Many offering documents include an express statement that corporate ESG materials on the issuer's website do not constitute a part of the offering materials. Attention to ESG disclosure is growing on a global scale, as can be seen, for example, in the European Union's taxonomy and disclosure initiatives described under "EU Regulations" below and the recent creation of a Climate and ESG Task Force in the Division of Enforcement by the Securities and Exchange Commission (SEC).[56] The SEC announced that the Climate and ESG Task Force's "initial focus will be to identify any material gaps or misstatements in issuers' disclosure of climate risks under existing rules,"[57] demonstrating one marker of increased attention to the veracity of ESG disclosure that is likely to grow right alongside growth of the market for sustainable finance.

Green Loans

Introduction to Green Loans

Green loans are the corollary to green bonds in the loan market, meaning they are also use-of-proceeds or project-specific instruments used to finance or refinance an eligible green project. A borrower in any industry may incur a green loan so long as the proceeds of the loan are used in connection with an eligible green project.[58]

The Green Loan Principles

The Loan Market Association (LMA), the Asian Pacific Loan Market Association (APLMA), and the Loan Syndications and Trading Association (LSTA) first promulgated a set of voluntary guidelines called the Green Loan Principles (GLP) in 2018,[59] with the most recent update of the GLP released in February 2021.[60] The Guidance on Green Loan Principles, which provides more details on the core GLP principles, was also updated in February 2021.[61] The GLP are the primary guidance existing in the green loan market today and are closely aligned with the GBP.[62] The primary differences between the GLP and GBP relate not to the core framework for the "green" nature of the instrument, but to the differences in the fundamental nature of a loan versus a bond. The GLP contain the same four core principles as the GBP: use of proceeds, process for project evaluation and selection, management of proceeds, and reporting.[63] Given the close alignment of these principles, the development of and considerations around green bonds and the application of the GBP to green bonds may be informative in discussions, developments, and issuances of green loans.

Use of Proceeds

Use of proceeds is the "fundamental determinant of a green loan," according to the GLP and, as such, should be clearly identified in the loan documents and related marketing materials for a green loan.[64] Proceeds of a green loan may be used in whole or in part to finance a new green project or to refinance an existing green project and may comprise an entire credit facility or one or more tranches within a multi-tranche credit facility, in each case, with the requirement that the proceeds apportioned to eligible green projects be delineated.[65] Further, while green loans lend themselves to term loan structures, they may also take the form of revolving loans where there is a sufficient framework in place for allocating borrowings to eligible green projects.[66] The GLP include the same non-exhaustive list of recognized "eligible green projects" as the GBP (detailed above under "Green Bonds – Green Bond Principles – Use of Proceeds"), but note that definitions of "green" and "green projects" are likely to vary across industries and geographical locations.[67]

The summary chart "Recent Sustainable Bonds and Loans," set forth on page 24 under "Recent Issuances," includes the use of proceeds of several recent issuances.

Process for Project Evaluation and Selection

Clear communication to lenders, as with the GBP and the sustainability linked loan principles outlined below, is of the utmost importance in the GLP. The second core component of the GBP provides that a borrower should clearly communicate its environmental sustainability objectives, its selection process for the one or more relevant green projects, and the related eligibility criteria, with disclosure of any applicable green standards and certifications further encouraged.[68] Nationally and internationally, organizations, both private and public, have undertaken to establish further guidance, regulations, definitions, and standards for defining "green."[69] ICMA maintains a compendium of international policy initiatives as a resource,[70] which includes, for example, a reference to the EU taxonomy regulation described below under "EU Regulations – EU Taxonomy."[71]

Management of Proceeds

The GLP, like the GBP, encourage crediting loan proceeds to a dedicated account and/or otherwise tracking allocation of the proceeds. Unlike most bonds, loans almost ubiquitously contain use of proceeds representations and warranties and covenants, which allow loans to provide a tighter check on ultimate use of proceeds than their bond corollaries.[72] Additional guardrails regarding management of proceeds may take the form of additional conditions precedent to a draw (for example, providing a funds flow or supplying invoices or other evidence to confirm use of proceeds, in each case, prior to each drawing) or third-party verification.[73]

Reporting

The GLP recommend that a borrower keep readily available and up-to-date information regarding the allocation of loan proceeds to eligible green projects, which information should (a) be reported annually at least until the loan proceeds have been fully drawn and should be updated thereafter in the case of any material developments and (b) at a minimum, include the eligible green projects to which proceeds have been allocated and a description of the projects, allocated amounts, and their expected impact.[74] The GLP further recommend that this information include qualitative and quantitative performance indicators, as applicable, with disclosure of the supporting methodologies to such indicators.[75] This reporting information need not be made publicly available but does need to be provided to lenders.[76]

Review

While not a core component of the GLP, external review is an important recommendation of the GLP, with the need for and scope of such external review to be determined by the borrower and its initial investors during negotiation of the loan documents. External review may take the form of: (a) consultant review or second-party opinions regarding the sustainability or administration of a green loan; (b) verification of a borrower's green loan framework or alignment with a borrower's internal standards; (c) certification of a borrower's green loan or associated green loan framework against an external assessment standard; or (d) rating of the green loan or associated green loan framework.[77]

The nature of a loan as traditionally relationship-driven and held by financial institutions, rather than held by and traded by the public, provides different considerations to external review than are applicable to a green bond.[78] For example, lenders are likely to have a better working knowledge of a borrower than the public would have of an issuer.[79] Therefore, lenders may be more comfortable relying upon a borrower's self-certification and internal review process.[80] Nonetheless, a borrower should still clearly document its internally developed expertise and the review process associated with evaluating compliance with the Green Loan Framework.[81] Where feasible and appropriate (taking into account confidentiality and competitive considerations), information regarding the review of a green loan and associated framework should be made publicly available.[82]

Green Loan Documentation

As noted in the introduction to this ""Green" Financing" section, the loan documents for a green loan do not fundamentally differ from those for traditional loan products — the key difference is that the proceeds must be used for an eligible green project. However, the Guidance on Green Loan Principles recommends that the "green" nature of the loan be taken into account in the relevant loan documents, not just in the use of proceeds provisions, but also in the information representations and warranties and covenants, including the accuracy of reporting on the proceeds allocation and use of proceeds described above.[83] Further, parties to a loan agreement will need to agree upon the consequence of a "green" breach, either in a failure to report (or accurately report) or to use the proceeds for their intended purposes.[84] Generally, a violation of these provisions would result in an event of default, with applicable grace or cure periods and effect on other outstanding indebtedness to be agreed.[85]

Supplemental Principles — Climate Bonds Standard and Certification Scheme[86]

While the GBP and GLP are the main principles guiding the green debt markets, other organizations have developed and are in the process of developing their own methods for evaluating the "greenness" of a debt instrument, including the Climate Bonds Initiative (CBI). Founded in 2010, the CBI is an international investor-focused non-profit organization whose stated purpose is to promote large-scale investments in a low-carbon and climate-resilient global economy. The CBI created its own set of guidelines, the Climate Bonds Standard and Certification Scheme (CBS), which can apply to green bonds and other green debt instruments, such as green loans. Similar to the GBP, the CBS includes four key components, which the CBI intentionally aligned with the GBP.

The CBS differs from GBP by bifurcating its principles and certification process into two distinct phases of issuing a bond (or closing a loan or other debt instrument):

Pre-Issuance Requirements

- use of proceeds;
- process for evaluation and selection of projects and assets;
- management of proceeds; and
- reporting prior to issuance.

Post-Issuance Requirements

- use of proceeds;
- process for evaluation and selection of projects and assets;
- management of proceeds; and
- reporting.

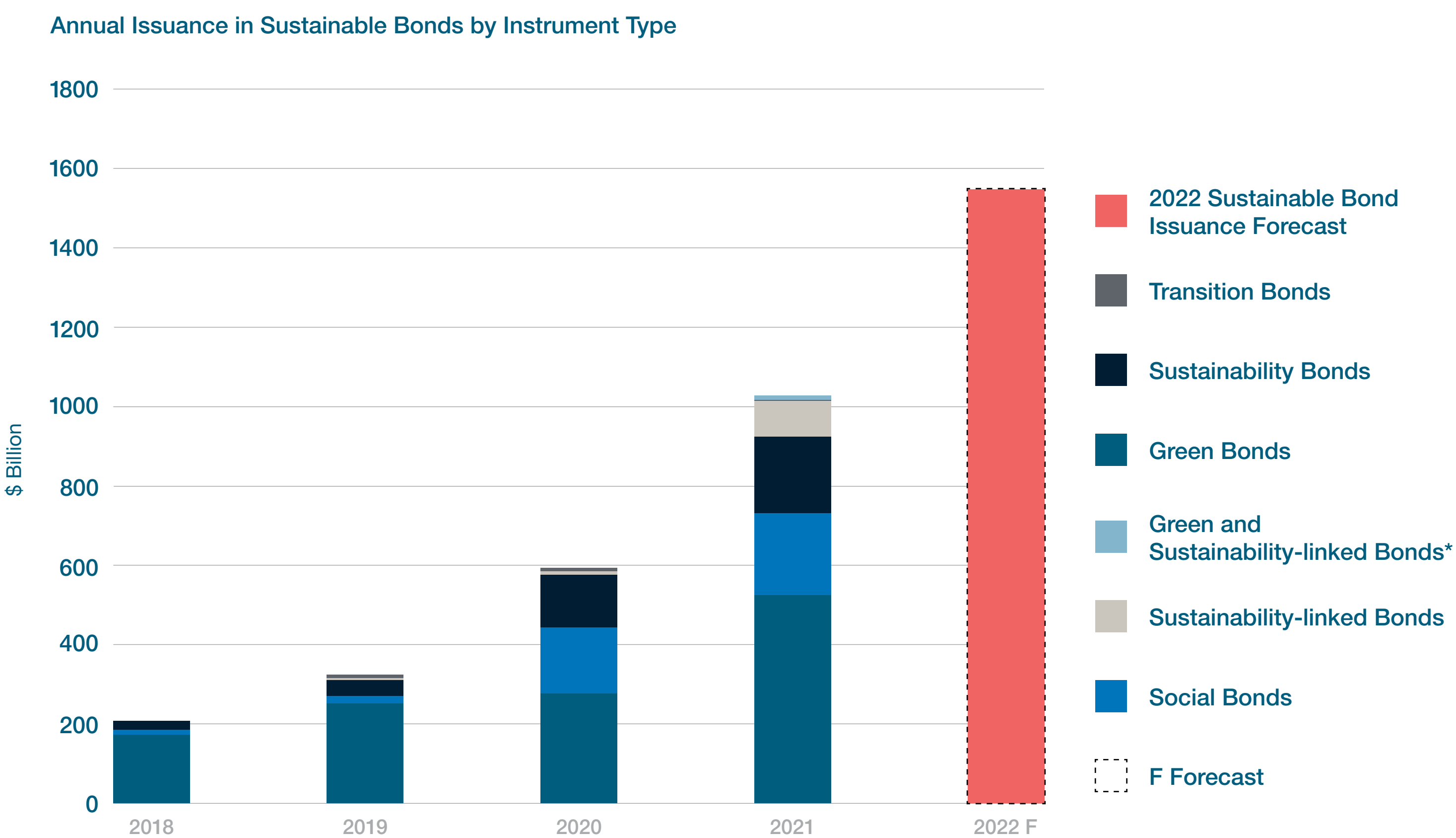
The CBI not only provides the above guidelines, but also offers CBS certification for issuers who satisfy all four requirements of the CBS. While the GBP encourage compliance verification by third-party review, the CBS mandates it, providing for even greater transparency. While there currently are not many alternative green bond-certification frameworks, it is likely that more market participants will introduce their own versions of the GBP as the green bond market continues to grow. As of the date of publication, the CBI has announced a major update to the CBS to be forthcoming in 2022.[87]

Financing the "Social" in ESG

ESG, of course, is not limited to environmental matters, and there are corollaries to green bonds and green loans that exist in the market to address the social aspects of ESG. These instruments are referred to as "social bonds" and "social loans." In fact, the growth of social bonds and social loans is a major contributor to the overall market growth of sustainable finance, with S&P Global reporting an 10x increase in social bond issuances in 2021 as compared to 2019.[88] 2020 issuances included bonds issued by Unedic, an unemployment insurance fund, to fund projects aimed at tackling unemployment[89] and a $3 billion "Fight Covid-19" social bond issued by the African Development Bank.[90] Citigroup's recent social bond issuance was aimed at expanding access to financial services, affordable housing, basic infrastructure, healthcare and education in underserved and unbanked communities.[91] Further recent issuances can be found in the summary chart "Recent Sustainable Bonds and Loans," set forth on page 24 under "Recent Issuances."

To provide voluntary guidelines for social bonds, ICMA has promulgated the Social Bond Principles (SBP). The SBP, which were updated in June 2021 at the same time as the GBP, track closely to the GBP following the same four core

Global Sustainable Bond Issuance Set to Surpass $1.5 Trillion in 2022



*Green and sustainability-linked bonds have both use of proceeds and sustainability-linked features.

Sources: Environmental Finance Bond Database, S&P Global Ratings.

principles of use of proceeds, process for project evaluation and selection, management of proceeds, and reporting.[92] The SBP, like the GBP, provide a non-exhaustive list of potential project categories: affordable basic infrastructure, access to essential services, affordable housing, food security and sustainable food systems, socioeconomic advancement, and empowerment.[93] The SBP also note that a social bond may use proceeds to improve the lives of a target population in addition to or in lieu of addressing or mitigating a specific social issue, for example, populations living below the poverty line, excluded and/or marginalized populations and/or communities, people with disabilities, migrants and/or displaced persons, undereducated persons, underserved populations, unemployed persons, women and/or sexual and gender minorities, aging populations, and vulnerable youth.[94] As with the GBP, transparency and clear communication are of the utmost importance in the SBP.

Issuers are not required to choose to address only environment or social issues, they may also issue bonds and loans with mixed use of proceeds as between "green" projects and "social" projects. These instruments take on a broader name of "sustainability bond" and "sustainability loan." ICMA has also promulgated Sustainability Bond Guidelines (SBG) to provide guidance on when a bond that is partially a green bond and partially a social bond should be labeled a sustainability bond.[95] While the LSTA, LMA, and APLMA have not provided corresponding guidelines to the SBP or SBG, those principles are likely to be formative in social and sustainable loan issuances given the close alignment of the GBP to the GLP.

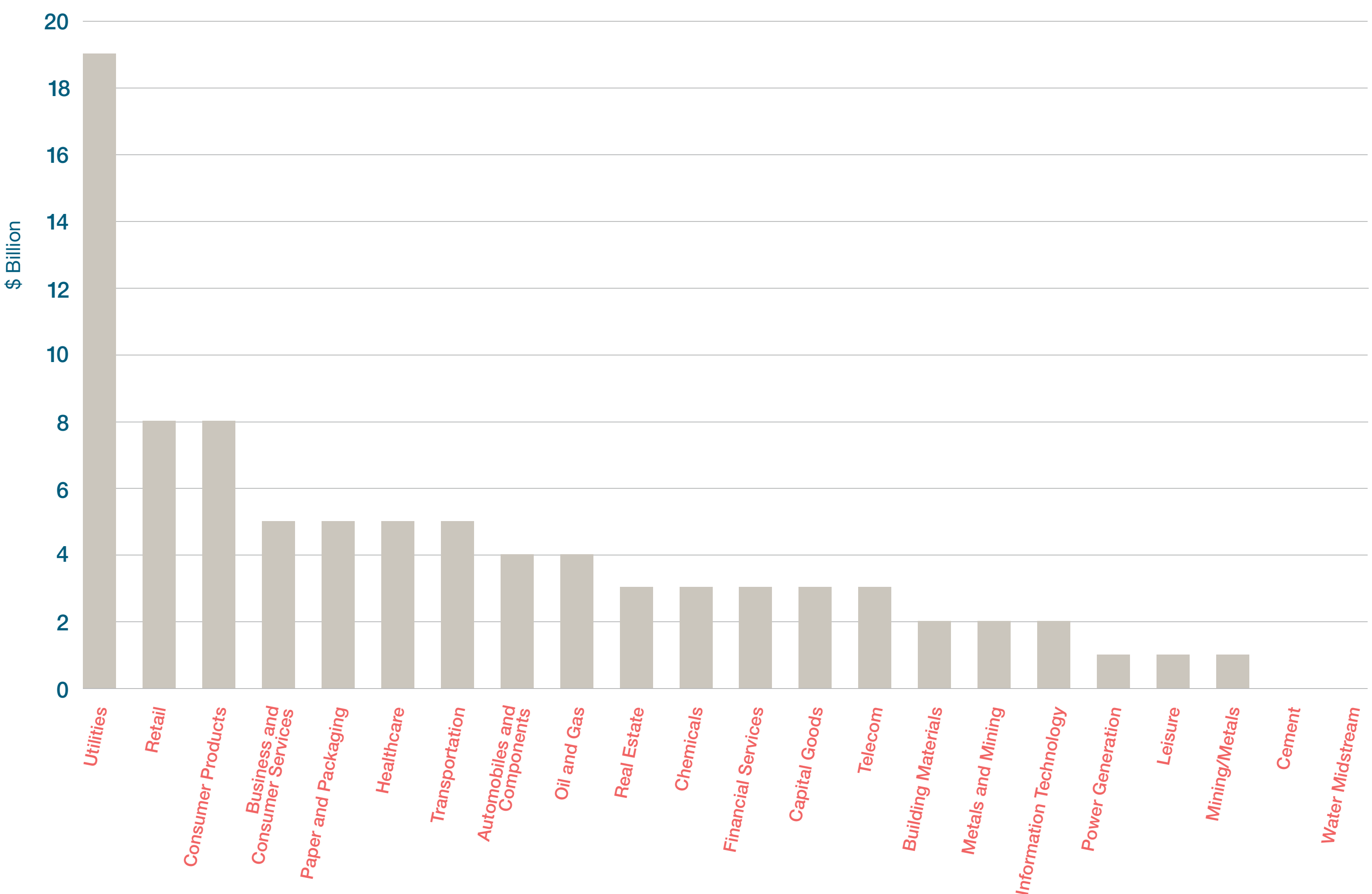
The summary chart "Recent Sustainable Bonds and Loans," set forth on page 24 under "Recent Issuances," highlights the key terms of several recent social bonds and loans.

Sustainability Linked Financing

Sustainability linked bonds (SLBs) and sustainability linked loans (SLLs)[96] differ primarily from “green” or “social” bonds and loans in that they are not use-of-proceeds-specific — meaning that any company, irrespective of industry or current sustainability practices, can incur debt under a sustainability linked instrument for any purpose. Instead, the SLB or SLL will include one or more terms, usually economic in nature, that tie to company-specific KPI hitting (or missing) pre-negotiated SPTs. These instruments provide companies with the ability to create new shareholder value and tap into the growing sustainable finance market while maintaining flexibility with respect to the application of proceeds and providing investors with opportunities to allocate capital in advancement of their commitments to invest in sustainability initiatives. The use-of-proceeds flexibility in these instruments opens them up to companies in a wider breadth of industries than are seen utilizing green finance.[97] Both investors and companies have the opportunity to demonstrate their ESG credentials through participation in SLBs and SLLs.

A Broad Range of Sectors Are Tapping the Global Sustainability-Linked Bond Market

Sustainability-linked Bond Issuance by Sector (2019-2021)



Sources: Environmental Finance Bond Database, S&P Global Ratings.

The summary chart "Recent Sustainability Linked Bonds and Loans," set forth on page 30 under "Recent Issuances," highlights the key terms of recent sustainability linked bonds and loans.

The Sustainability Linked Bond Principles

Currently, the principle set of guidelines for the SLB market are the Sustainability Linked Bond Principles (June 2020) (SLBP). The SLBP are a voluntary set of principles promulgated by ICMA that provide guidance for SLBs.[98] Subject to any applicable law or regulation, all types of issuers in the debt capital markets can issue SLBs, as long as the instrument is aligned with the five core components of the SLBP.[99] Those five components are:

- selection of credible KPI;
- calibration of ambitious SPTs;
- bond characteristics;
- reporting; and
- verification.[100]

Selection of KPI

An SLB issuer's sustainability performance is measured using external or internal sustainability KPI.[101] SLBs are more similar to traditional debt instruments than green and social bonds in the sense that ESG KPI are integrated into the bond rather than including an ESG-project-specific use of proceeds.[102] Because of this, net proceeds of SLBs can be used for any purpose (general corporate purposes, refinancing debt, etc.) and need not be related at all to the sustainability goals.[103]

Conducting a transparent KPI selection process is key to the SLBP and important for the dependability of the market for SLBs, with the SLBP stressing the importance of avoiding KPI that are not credible.[104] The SLBP provide that a credible KPI is:

- "relevant, core and material to the issuer's overall business, and of high strategic significance to the issuer's current and/or future operations;
- measurable or quantifiable on a consistent methodological basis;
- externally verifiable; and
- able to be benchmarked (as much as possible using an external reference or definitions to assess whether an SPT is meaningfully ambitious)."[105]

To the extent an issuer has previously included KPI in annual reports, sustainability reports or other non-financial reporting disclosures, the issuer is encouraged to select one or more of these previous KPI for its SLB issuance, allowing investors to evaluate historical performance of the KPI selected.[106] Further, the SLBP provide that, when the KPI have not been previously disclosed, issuers should aim to provide historical, externally verified KPI values covering at least the previous three years.[107]

Similar to the GBP, the SLBP suggest that issuers maintain transparency and provide clear communication to investors regarding the rationale and process according to which the KPI have been selected and how the KPI fit into the issuer's overall sustainability strategy.[108] Additionally, a clear definition of the KPI should be provided, including the applicable scope (for example, the percentage of the issuer's total emissions to which the target is applicable), as well as the calculation methodology.[109]

Calibration of SPTs

After going through the KPI selection process, an SLB issuer should calibrate one or more SPTs per KPI.[110] SPTs are sustainability goals outlined in the offering documents, which are measured against an issuer's KPI through reporting obligations and verified by external review.[111] The SPT calibration process is a crucial step in structuring SLBs because these targets represent the level of ambition to which the issuer is prepared to commit.[112]

Issuers must set SPTs in good faith and should communicate strategic information that may have a material impact on achieving the SPTs.[113] As mentioned above, SPTs should be ambitious. The SLBP define an ambitious SPT as one that:

- represents a material improvement in the related KPI;
- is beyond a "'Business as Usual' trajectory";
- is compared to a benchmark or external reference, when possible;
- is consistent with the issuer's overall sustainability or ESG strategy; and
- can "be determined on a predefined timeline, set before (or concurrently with) the issuance of the bond."[114]

Target-setting should involve a combination of benchmarking methods, including to the issuer's own performance over time *and* the issuers' peers/industry *or* references to the science, official country/regional/ international targets (for example, the Paris Agreement on Climate Change or the EU taxonomy[115] described below under "EU Regulations – EU Taxonomy") or other proxies to determine relevant targets across environmental and social themes.[116]

The issuer should also disclose certain aspects of their target-setting process. The SLBP provide that these disclosures should explicitly reference:

- "the timelines for the target achievement, including the target observation date(s)/period(s), the trigger event(s) and the frequency of SPTs;
- where relevant, the verified baseline or reference point selected for improvement of KPI as well as the rationale for that baseline or reference point to be used (including date/period);
- where relevant, in what situations recalculations or pro-forma adjustments of baselines will take place;
- where possible and taking competition and confidentiality considerations into account, how the issuers intend to reach such SPTs, e.g., by describing its ESG strategy, supporting ESG governance and investments, and its operating strategy, i.e., through highlighting the key levers / type of actions that are expected to drive the performance towards the SPTs as well as their expected respective contribution, in quantitative terms wherever possible; and
- any other key factors beyond the issuer's direct control that may affect the achievement of the SPTs."[117]

Bond Characteristics

The distinctive quality of an SLB is that the bond's financial and/or structural characteristics can change depending on whether the selected KPI do or do not reach the predefined SPTs.[118] "Structural changes" refer to any changes to the financial characteristics of the bond (coupon, maturity, repayment, interest payment date, amount, options, etc.) that would vary depending on whether the selected KPI reach (or do not reach) the predefined SPT.[119] For example, a missed SPT often triggers an increase in the interest rate paid to holders of the SLB.[120] Ensuring the impact of such changes is not toothless is a primary concern of the SLB.[121] The SLBP recommend avoiding illusory penalties by ensuring the variation of the bond's financial and/or structural characteristics is commensurate and meaningful relative to the issuer's original bond financial characteristics.[122]

For an SLB, since sustainability features can impact the bond's characteristics, these features need to be built into the bond's offering documents.[123] To that end, the KPI, SPTs, and the potential variation of the SLB's financial and/or structural characteristics are necessary elements of the bond offering documentation. Issuers may also consider including in their offering documents language that considers exceptional events (such as material mergers and acquisitions) or extreme events (including significant regulatory changes that could substantially impact KPI calculation, restatement of SPTs, and pro forma adjustments to the scope of a given KPI or baselines).[124]

Further non-operative information related to the SLB's structure and the issuer's sustainability strategy can be disclosed in a variety of ways, including an SLB framework, investor presentation, external review, or sustainability report.[125] While disclosure and transparency are important, the SLBP acknowledge that an issuance may involve confidential information and such information should be treated appropriately.[126]

Reporting

The SLBP recommend issuers publish and keep available and accessible the following information:

- "up-to-date information on the performance of the selected KPI(s), including baselines where relevant;
- a verification assurance report relative to the SPT outlining the performance against the SPTs and the related impact, and timing of such impact, on the bond's financial and/or structural characteristics; and
- any information enabling investors to monitor the level of ambition of the SPTs (for example, any update in the issuers sustainability strategy or on the related KPI/ESG governance, and more generally, any information relevant to the analysis of the KPI and SPTs)."[127]

Similar to the recommendations set forth in the GBP, these reports should be published annually — or more frequently — if relevant for assessing SPT performance that could lead to an adjustment of the SLB's financial and/or structural characteristics.[128]

Verification

The SLBP recommend that issuers appoint one or more external reviewers that provide second-party opinions to confirm that the issuer's SLB aligns with the five core components of the SLBP.[129] In a pre-issuance second-party opinion, "external reviewers are encouraged to assess the relevance, robustness and reliability of selected KPI, the rationale and level of ambition of the proposed SPTs, the relevance and reliability of selected benchmarks and baselines, and the credibility of the strategy outlined to achieve them, based on scenario analyses, where relevant."[130]

In the event of post-issuance material changes to KPI or SPTs, issuers are encouraged to ask external reviewers to assess any such changes.[131] Additionally, issuers should seek independent and external verification of their performance level against each SPT for each KPI by a qualified external reviewer with relevant expertise, such as an auditor or an environmental consultant, at least once a year, and in any case for any date/period relevant for assessing SPT performance leading to a potential adjustment of the SLB financial and/or structural characteristics, until after the last SPT trigger event of the bond has been reached.[132] The verification of the issuer's performance against the SPTs should be made publicly available.[133] As opposed to pre-issuance external review, which is recommended, post-issuance verification is a necessary element of the SLBP.[134]

The Sustainability Linked Loan Principles

Primary guidance for SLLs in the current market are the Sustainability Linked Loan Principles (March 2022) and the Guidance on Sustainability Linked Loan Principles (March 2022) (collectively referred to herein as the SLLP). The SLLP are a set of voluntary principles promulgated by the LMA, APLMA, and LSTA that set out a framework for SLLs.[135] The goal of the SLLP is to promote the development and preserve the integrity of SLLs.[136]

The SLLP framework is built around five key components:

- selection of credible KPI;
- calibration of ambitious SPTs;
- loan characteristics;
- reporting; and
- verification.[137]

Selection of KPI

An SLL borrower's sustainability performance is measured using external and/or internal sustainability KPI.[138] Conducting a transparent KPI selection process is key to the SLLP and important for the dependability of the market for SLLs, with the SLLP stressing the importance of avoiding KPI that are not credible.[139] The SLLP provide the following elements that make up a credible KPI:

- it is "relevant, core and material" to the overall business of the borrower and of high strategic significance to the current and/or future operations of the borrower;
- it can be measured or quantified on a consistent methodological basis; and
- it can be benchmarked (an external reference or definition should be used as much as possible in order to assess whether an SPT is meaningfully ambitious).[140]

The SLLP advise that a clear definition of each KPI should be provided that includes the applicable scope or parameters, the calculation methodology, a definition of a baseline and a benchmark against an industry standard where feasible.[141]

Calibration of SPTs

After going through the KPI selection process, an SLL borrower should calibrate one or more SPTs per KPI.[142] The SLLP describe the calibration of SPTs for each KPI as the expression of the level of ambition to which the borrower is ready to commit.[143] SLL borrowers should set SPTs in good faith that remain relevant (for so long as they apply) throughout the life of the SLL.[144] SPTs should be ambitious, meaning that they:

- represent a "material improvement" in the borrower's performance with respect to a KPI as compared to the borrower's "business as usual trajectory";
- are compared to a benchmark or external reference to the extent possible;
- are consistent with the SLL borrower's overall sustainability or ESG strategy; and
- can be determined on a pre-defined timeline.[145]

As highlighted above, SPTs should be based on recent performance and a combination of benchmarking approaches, including the borrower's historical performance (ideally over a period of a minimum of three years), the SPT's relative positioning versus the borrower's peers (where available) and/or systematic reference to science, absolute levels, official targets or recognized best-available technologies or other proxies.[146]

The SLLP contain recommendations on references to include in disclosures on target setting, which include:

- timelines for the target achievement, including target observation dates and/or periods, triggering events and frequency of review;
- verified baselines or reference points selected for improvements of KPIs and the rationale for the use of such baseline or reference point, where applicable;

- circumstances resulting in recalculations or pro forma adjustments of baselines, where applicable;
- how the SLL borrower intends to achieve its SPTs, where possible and taking into account competition and confidentiality considerations (for example, by describing the borrower's ESG and/or operating strategy and supporting ESG governance and investments); and
- any other factors beyond the borrower's control that may affect its achievement of its SPTs.[147]

The SLLP recommend involving multiple stakeholders in the development of KPIs and SPTs, including the borrower, the lender group, and, where appropriate, an external party. A borrower may elect to have one or more "Sustainability Coordinators" or "Sustainability Structuring Agents" to assist in negotiating KPIs and calibrating SPTs.[148] The SLLP also recommend potentially involving external parties through delivery of a second party opinion as to the appropriateness of KPIs and SPTs as a condition precedent to the closing of the SLL.[149] Such an opinion should assess "the relevance, robustness and reliability of the KPIs, the rationale and level of ambition represented by the proposed SPTs, the relevance and reliability of selected benchmarks and baselines, and the credibility of the strategy outlined to achieve them, based on scenario analyses, where relevant."[150] The SLLP also encourage borrowers to engage external reviewers to assess any post-closing material changes to parameters, KPI methodology or SPT calibration.[151] In SLLs in which no external input is sought, the SLLP strongly recommend that the SLL borrower demonstrate or develop internal expertise, which it should thoroughly document and share with lenders, to verify the methodologies adopted.[152]

While many SPT seen in the market to date relate to energy efficiency (for example, increasing energy efficiency, renewable energy generation, reducing water consumption, and reducing green-house gas emissions), SLLs are not limited to environmental sustainability. Other potential SPTs include increasing diversity in new hires and management, improving workplace safety and external ESG scores.[153] The summary chart "Recent Sustainability Linked Bonds and Loans," set forth on page 30 under "Recent Issuances," provides further examples of the types of SPTs in the market.

Loan Characteristics

Unlike activity-based sustainable loans, proceeds of a behavior-based SLL can be used for any general corporate purpose instead of being earmarked to a particular sustainable purpose.[154] As a result, the pricing benefit is not tied to use of proceeds but is instead linked to performance or non-performance of SPTs.[155]

A typical SPT ties KPI to an interest rate margin toggle, either a pricing discount as a result of meeting an SPT or an increase as a result of a failure to do so (or both) — functioning as a proverbial "carrot or stick" incentive for positive change. There is not a standard set forth in the SLLP (nor otherwise a market standard) for the amount of pricing impact tied to an SPT, but a range of 2 basis points to 15 basis points has been reported for investment grade borrowers.[156] For example, DCP Midstream Operating, LP and its parent company, DCP Midstream, LP, entered into a credit facility in which the relevant KPI are year-over-year change in greenhouse gas emissions intensity and the parent's total recordable incident rate as compared to the peer average.[157] This credit facility rewards DCP with an interest rate reduction of 2.00 basis points for each SPT achieved each year, for a total interest rate margin reduction of 4.00 basis points; however, if an SPT is not met, the interest rate margin is increased 2.00 basis points per KPI, for a total interest rate margin increase of 4.00 basis points.[158]

As another example, Lululemon Athletica Inc. and certain of its affiliates entered into a credit facility in which the relevant KPI are greenhouse gas emissions intensity reduction and gender pay equity.[159] The SPTs reward Lululemon with an interest rate margin reduction of up to 5.00 basis points for achievement of both the greenhouse gas emissions intensity reduction and gender pay equity SPTs (a 2.50-basis-point-reduction per KPI).[160] As in the DCP SLL, the inverse is also true — if the SPTs are not met in a calendar year, or if the company fails to deliver a pricing certificate setting forth the sustainability adjustments for the most recently ended reporting period,[161] then the interest rate margin will increase up to 5.00 basis points (a 2.50-basis-point-increase per KPI that is not achieved).[162]

Reporting

Reporting is another key component of the SLLP, particularly given that transparency is particularly valuable in the SLL market.[163] However, there is no globally accepted standard methodology for SPT reporting.[164] The SLLP recommend that borrowers, to the extent possible, provide lenders with up-to-date information sufficient for monitoring performance of the borrower against the SPTs and to determine that the SPTs remain both ambitious and relevant to the borrower's business.[165] The SLLP recommend that borrowers provide such information to lenders at least once a year.[166] In addition to providing information to lenders, the SLLP recommend that the borrower publicly report information relating to its SPTs and, as appropriate, details on any underlying methodologies or assumptions with respect to SPTs, which is often included in the borrower's annual report or sustainability report.[167]

Verification

The final core component of the SLLP is verification by an independent and external verifier of the borrower's performance against each SPT for each KPI.[168] While a second party opinion as a condition precedent to closing is recommended, post-closing verification is required by the SLLP.[169] This post-closing independent and external verification may take the form of a limited or reasonable assurance or audit and should be conducted by an auditor, environmental consultant, independent ratings agency or other qualified external reviewer with relevant expertise.[170] Like reporting, the SLLP recommend that such verification occurs at least once a year and be made publicly available if possible and appropriate.[171]

Where external review is included in a transaction, a SLL may provide lenders with some level of approval rights over the identity of the external reviewer. For example, in Johnson Controls PLC's SLL, the external auditor for its KPI related to greenhouse gas emissions reductions and "Total Recordable Incident Rates" (that is, recordable work injuries) is PricewaterhouseCoopers or a replacement thereof, that (1) is a nationally recognized "big four" auditing firm (or another auditing firm designated by the parent company as to which the required lenders do not object within five business days of posting to such lenders) and (2) applies standards consistent with those previously utilized except for changes consistent with generally accepted industry standards (or as to which the required lenders do not object within five business days of posting to such lenders).[172]

ESG Amendments

The second half of 2021 saw an uptick in the inclusion of ESG amendment provisions in loan instruments, which provide optionality to include sustainability linked financing features like KPIs in the loan documentation in the future. As a general rule, changes to pricing in loans is a "sacred right" requiring 100% lender approval.[173] The flexibility provided by an ESG amendment provision is to allow for a lower consent threshold, such as majority lender consent, to implement an amendment that affects sustainability linked features.[174] Typically, an ESG amendment provision places restrictions on what the future amendment can provide, for example, by capping the maximum margin and/or commitment fee adjustment and/or by requiring that the amendment align with the SLLP.[175]

In Oklahoma Gas and Electric Company's credit agreement, for example, the borrower, in consultation with a sustainability structuring agent, can amend the credit agreement to establish KPIs and external ESG ratings targets with the consent of a majority of the lenders.[176] Upon effectiveness of the ESG amendment, margin adjustments would take effect. The margin adjustment that may be provided for via an ESG amendment is capped at 1 basis point with respect to the undrawn commitment fee and 4 basis points with respect to the interest rate margin.[177]

Further examples of loans with ESG amendments are set forth in the summary chart "Recent Sustainability Linked Bonds and Loans" under "Recent Issuances."

EU Regulations: Demand Grows for More Credible Disclosures

The European Union has taken notable steps to create a cohesive path forward for sustainable financing, in large part through its establishment of the EU taxonomy and implementation of disclosure regulations. Although the EU taxonomy and disclosure regulations adopted by the European Union apply only to EU financial market participants, they may influence growing sustainable finance investments in other markets, including markets like the United States, where there is a limited or nonexistent regulatory regime, to reduce risks of "sustainability washing," and inadequate ESG disclosures.[178] The EU disclosure regulations may also have implications for U.S. companies if European market participants begin seeking corresponding reporting and disclosures from U.S. company investments and/or shift their investment dollars to companies that provide such disclosures.

EU Taxonomy

The EU taxonomy is a classification system, akin to a glossary, established by the European Commission to create a "common language" and "clear definition of what is 'sustainable'" in order to facilitate the European Union "[meeting] its climate and energy targets for 2030."[179] Among its various objectives are to direct stakeholders to investments and financial products that promote sustainability goals, to create security for investors and, as with the other guidance referred to in this chapter, mitigate "green-washing" or "sustainability-washing."[180]

The Taxonomy Regulation, published by the European Union in June 2020 and entered into force on July 12, 2020, sets out a framework establishing minimum criteria that must be satisfied by an investment to qualify as environmentally sustainable under the EU taxonomy. Under the EU taxonomy, environmentally sustainable activities must:

- contribute "substantially" to one or more of the following six environmental objections:
  - climate change mitigation;
  - climate change adaptation;
  - sustainable use and protection of water and marine resources;
  - transition to a "circular economy" (an economic system focused on eliminating waste and encourage reuse and recycling);
  - pollution prevention and control; and
  - protection and restoration of biodiversity and ecosystems;[181]
  - not significantly harm any of the six environmental objectives;[182]
  - be carried out in compliance with certain minimum safeguards, including OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights;[183] and
  - comply with certain performance thresholds (the "**technical screening criteria**").[184]

While the Taxonomy Regulation provided the general framework for the classification system, the Taxonomy Regulation also gave the European Commission the power to adopt secondary legislation (known as "delegated acts") which define the technical screening criteria for each of the six environmental objectives, describing in detail what it means for an economic activity to substantially contribute to an environmental objective.[185]

The first delegated act on sustainable activities for climate change adaptation and mitigation objectives went into effect in January 2022 and specifies the technical screening criteria under which economic activities qualify as contributing substantially to climate change mitigation and climate change adaptation and for determining whether those activities cause significant harm to any of the other environmental objectives.[186] A second delegated act for the remaining objectives is expected to be published in 2022.

EU Sustainability-Related Disclosure Regulations

The EU regulations on Sustainability-Related Disclosures in the Financial Services Sector (Disclosure Regulations) were designed to harmonize rules on transparency regarding sustainability risks and the consideration of adverse sustainability impacts on financial products, and took effect on March 10, 2021.[187] The Disclosure Regulations represent one key pillar of the EU's sustainable finance strategy, defined in its 2018 action plan on financing sustainable growth,[188] and is therefore closely linked to the EU taxonomy.

Key Requirements

Unlike the voluntary bond and loan principles discussed previously, the Disclosure Regulations require financial service institutions across the market (with certain, limited distinctions between financial market participants[189] and financial advisers[190]), to disclose their policies for integrating sustainability risk and consideration of principal adverse sustainability impacts into their decision-making and advice.

The Disclosure Regulations define a "sustainability risk" as an ESG-related event that, if it occurs, could cause a negative material impact on the value of an investment.[191]

Financial Market Participants

Financial market participants in the European Union are required to publish certain information on their websites, including: (i) information about their policies on the integration of sustainability risks in their investment decision-making processes; (ii) a statement on their due diligence policies for consideration of principal adverse sustainability impacts on their investment decisions or, for financial market participants with 500 or fewer employees that do not consider such impacts, a statement explaining why such impacts are not considered and whether/when they intend to consider them; and (iii) information on how remuneration policies are consistent with the integration of sustainability risks.[192]

Financial market participants are also required to provide pre-contractual disclosures (such as the investment management agreement relating to a separately managed account or bond offering documentation) on how sustainability risks are integrated into their investment decisions and to carry out and provide the results of an assessment of likely impacts of such risks on the returns of the financial products they offer (or an explanation of why such risks were deemed irrelevant).[193] Financial products that either promote environmental/social characteristics or that have sustainable investment as their objective must also disclose information on how those characteristics/objectives are measured and met.[194] This additional information is to be included not only in website-hosted and pre-contractual disclosures, but also in disclosures in the financial market participant's periodic reports.[195]

Financial Advisors

The obligations imposed by the Disclosure Regulations on financial advisers are less onerous. Financial advisors are required to provide information on their websites regarding policies for integrating sustainability risk into their investment advice and whether they consider principal adverse sustainability impacts in their advice, or, if not, an explanation of why not and whether and when they intend to consider such impacts.[196]

Financial advisors are also required to provide pre-contractual disclosures on how sustainability risks are integrated into their advice and the results of an assessment of the likely impacts of such risks on the returns of the financial products they advise on, or an explanation of why such risks were deemed irrelevant.[197]

Recent Issuances

The sustainable finance market has grown considerably in the last few years. The summary chart “Recent Sustainable Bonds and Loans” below highlights several recent sustainable bonds and loans, including green, social, and sustainable issuances. The summary chart “Recent Sustainability Linked Bonds and Loans” highlights several recent sustainability linked bonds and loans.

Recent Sustainable Bonds and Loans[198]

Date	Type and Size of Facility	Borrower/Issuer
Announced January 21, 2022	P1.1B Sustainable Loan and P1B Sustainable Loan	Matuno River Development Corp. and Taft Hydroenergy Corp. *Asia*
Announced November 8, 2021	$2.5B Unsecured Green Bond	Ford Motor Company *U.S.*
Announced October 28, 2021	$1B Social Finance Bond	Citigroup Inc. *U.S.*
September 24, 2021	$1.25B Credit Facility	The AES Corporation *U.S.*

- - - - Information Not Publicly Available

Administrative Agent/ Bookrunner and Sustainability Agent(s)	Use of Proceeds	Reporting Requirements	Review	Online Links
Development Bank of the Philippines	Proceeds earmarked for two hydro-energy projects to support power supply for the Luzon and Visayas grids.	- - - -	- - - -	https://www.bworldonline.com/dbp-grants-p2-1b-in-loans-for-hydro-energy-projects/
Barclays, BNP Paribas, BofA Securities, Credit Agricole, Mizuho, Morgan Stanley (B&D) and RBC Capital Markets, as active bookrunners	Proceeds earmarked for clean transportation projects, including battery-powered vehicles.	- - - -	- - - -	https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/ford-launches-drive-by-senior-green-bond-offering-67506877 https://www.wsj.com/articles/ford-motor-offers-2-5-billion-green-bond-to-investors-11636413890?mod=article_inline&mg=prod/com-wsj
- - - -	Proceeds earned for social-focused developments in emerging markets, including those that expand access to financial services, affordable housing, basic infrastructure, healthcare, and education in underserved and unbanked communities.	Annual	External	https://www.citigroup.com/citi/news/2021/211028a.htm
Citibank, N.A., as Administrative Agent	Proceeds of green loans and green letters of credit earmarked for solar, wind, hydro, storage battery and other renewable energy projects, installations, improvements and business and purposes reasonably related thereto or ancillary thereto.	- - - -	- - - -	https://www.sec.gov/Archives/edgar/data/000874761/000095010321014800/dp159621_ex1001.htm

Date	Type and Size of Facility	Borrower/Issuer	Administrative Agent/ Bookrunner and Sustainability Agent(s)	Use of Proceeds
September 15, 2021	$1.195B Term Loan Credit Facility	Avangrid Vineyard Wind, LLC *U.S.*	Banco Santander, S.A., New York Branch, as Administrative Agent and Green Loan Coordinator	Proceeds earmarked to repaying construction loans under an existing facility in order to finance development, construction, ownership, leasing, operation and maintenance of a wind generating facility.
Announced September 8, 2021	$2B Green Bond	Walmart *U.S.*	AmeriVet Securities, Inc., C.L. King & Associates, Inc., Samuel A. Ramirez & Company, Inc., Siebert Williams Shank & Co., LLC. BofA Securities, Inc., Citigroup Global Markets Inc. and Morgan Stanley & Co. LLC, as active bookrunners BofA Securities, Inc., as Green Structuring Agent Citigroup Global Markets Inc, as Diversity and Inclusion Coordinator	Proceeds earmarked to eligible green investments.
August 12, 2021	$200M Revolving Credit Facility, including a $50M Green Loan subfacility	Chesapeake Utilities Corporation *U.S.*	PNC Bank, National Association, as Administrative Agent and Green Loan Coordinator	Proceeds earmarked to fund capital investments related to renewable natural gas, compressed natural gas and the transportation thereof, solar energy, hydrogen energy and other general corporate green capital investments that are consistent with the LSTA's Green Loan Principles.
Announced June 15, 2021	$675M baht Green Loan	Asia Capital Real Estate (ACRE) *Asia*	United Overseas Bank (UOB) Thailand	Proceeds earmarked to develop HOMA Phuket Town, an environmentally friendly, affordable residential rental apartment complex in Phuket.
June 9, 2021	$900M Sustainability Revolving Credit Agreement	Dominion Energy, Inc. *U.S.*	Sumitomo Mitsui Banking Corporation, as Administrative Agent and Sustainability Coordinator	Proceeds earmarked to finance, among other things, renewable energy projects, and projects to support small/medium-sized and/or diversity-owned business, COVID-19 community response, and workplace diversity hiring and retention.

Reporting Requirements	Review	Online Links
Quarterly operating reports after substantial completion of the project.	—	https://www.sec.gov/Archives/edgar/data/1634997/000163499721000078/agr-ex102xq32021.htm
Annual	External	https://corporate.walmart.com/newsroom/2021/09/08/walmart-highlights-sustainability-commitments-with-inaugural-2-billion-green-bond-issuance-as-part-of-jumbo-transaction
At time of borrowing.	—	https://www.sec.gov/Archives/edgar/data/19745/000162828021021496/cpk09302021ex-101.htm
—	External	https://finance.yahoo.com/news/uob-thailand-extends-green-loan-130000626.html
Annual	Internal	https://www.sec.gov/Archives/edgar/data/715957/000119312521187869/d179382dex102.htm

Date	Type and Size of Facility	Borrower/Issuer	Administrative Agent/ Bookrunner and Sustainability Agent(s)
Announced June 7, 2021	$410M CAD Green Loans	Enwave Acquisition *Canada*	ING Capital LLC, as Green Structuring Coordinator

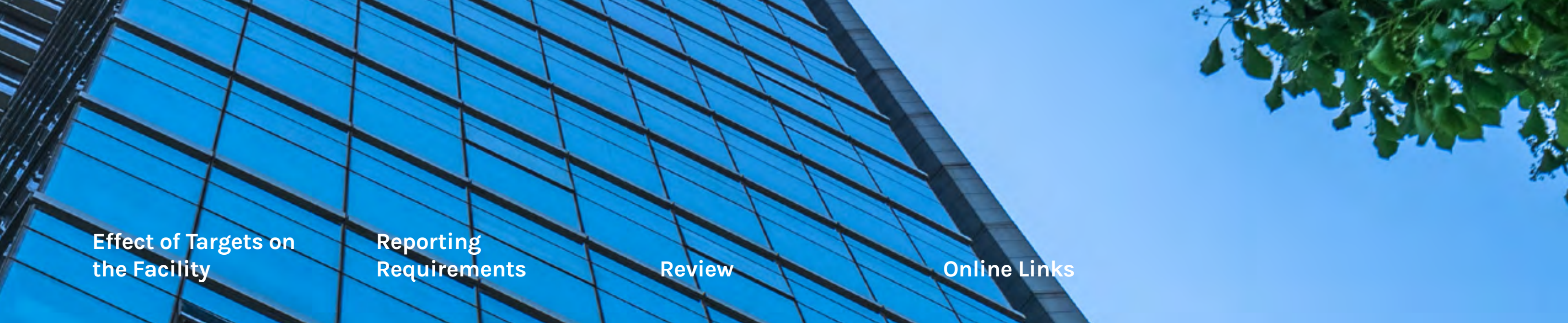
Use of Proceeds	Reporting Requirements	Review	Online Links
Proceeds will finance projects in the areas of energy efficiency, renewable energy, pollution prevention and control and sustainable water and wastewater management.	- - - - - - - - - -	External	https://www.ingwb.com/en/insights/news/ing-leads-landmark-green-loan-for-sustainability-focused-district-energy-company-enwave-acquisition

Recent Sustainability Linked Bonds and Loans[199]

Date	Type and Size of Facility	Borrower/Issuer	Administrative/ Bookrunner & Sustainability Agent(s)	KPIs: What is Being Measured?
March 25, 2022	$700M Senior Secured Revolving Credit Facility	Sprouts Farmers Markets Holdings, LLC *U.S.*	Bank of America, N.A., as Administrative Agent J.P. Morgan Securities LLC, as Sustainability Structuring Agent	KPIs include: Board of Director diversity and sales of socially and environmentally sustainable products
March 25, 2022	$350M Senior Secured Revolving Credit Facility	Green Plains Finance Company LLC, Green Plains Grain Company LLC and Green Plains Trade Group LLC (all wholly owned subsidiaries of Green Plains Inc.) *U.S.*	ING Capital LLC, as Agent and Sustainability Structuring Agent	KPIs include: reduction of greenhouse gas emissions, recordable incident rate reduction, increased corn oil production and implementation of technology to produce sustainable ingredient
March 18, 2022	$9B Senior Unsecured Revolving Credit Facility	Duke Energy Corporation *U.S.*	Wells Fargo Bank, National Association, as Administrative Agent Wells Fargo Securities, LLC, as Sustainability Structuring Agent	To be determined by future ESG amendment.
March 18, 2022	$1.4B Senior Unsecured Revolving Credit Facility	DCP Midstream Operating, LP *U.S.*	Mizuho Bank, Ltd., as Administrative Agent Mizuho Bank, Ltd., as Sustainability Structuring Agent	KPIs include: relative change in greenhouse gas emissions of the Partnership and its subsidiaries and the Partnership's total recordable incident rate compared to its peers
March 17, 2022	$135M Senior Secured Revolving Credit Facility	Select Energy Services, LLC *U.S.*	Wells Fargo Bank, National Association, as Administrative Agent Wells Fargo Capital Finance, LLC, as Sustainability Structuring Agent	KPIs include: total recordable incident rate and barrels of recycled produced water recycled at facilities of the Credit Parties
February 18, 2022	$1.85B Senior Unsecured Revolving Credit Facility	NiSource Inc. *U.S.*	Barclays Bank PLC, as Administrative Agent Barclays Bank PLC and MUFG Bank, Ltd., as Co-Sustainability Agents	To be determined by future ESG amendment.

Effect of Targets on the Facility	Reporting Requirements	Review	Online Links
Pricing adjusted based on SPT performance.	Annual	Internal	https://www.sec.gov/Archives/edgar/data/1575515/000095017022004681/sfm-ex10_1.htm https://www.sec.gov/Archives/edgar/data/1575515/000095017022004681/sfm-ex99_1.htm
Pricing adjusted based on SPT performance.	Annual	External	https://www.sec.gov/Archives/edgar/data/0001309402/000130940222000040/gpre-20220325xex10_1.htm https://www.sec.gov/Archives/edgar/data/0001309402/000130940222000040/gpre-20220325xex99_1.htm
Upon effectiveness of an ESG Amendment, pricing adjustment based on SPT performance.	Reporting to be in line with SLLP.	Validation of KPI measurements to be in line with SLLP.	https://www.sec.gov/Archives/edgar/data/17797/000110465922035700/tm229757d1_ex10-1.htm
Pricing adjusted based on SPT performance.	Annual	External	https://www.sec.gov/Archives/edgar/data/1338065/000119312522081655/d509196dex101.htm
Pricing adjusted based on SPT performance.	Annual	External	https://www.sec.gov/Archives/edgar/data/1693256/000110465922035557/tm229712d1_ex10-1.htm https://www.sec.gov/Archives/edgar/data/1693256/000110465922035557/tm229712d1_ex99-1.htm
Upon effectiveness of an ESG Amendment, pricing adjustment based on SPT performance.	Reporting to be in line with SLLP.	Validation of KPI measurements to be in line with SLLP.	https://www.sec.gov/Archives/edgar/data/1111711/000119312522046616/d211017dex101.htm

Date	Type and Size of Facility	Borrower/Issuer	Administrative/ Bookrunner & Sustainability Agent(s)	KPIs: What is Being Measured?
December 20, 2021	$1B 2.600% Sustainability Linked Senior Notes	Newmont Corporation *U.S.*	The Bank of New York Mellon Trust Company, N.A., as Trustee	KPIs include: greenhouse gas emissions reduction (scopes 1, 2 and 3) and women representation in senior leadership
December 17, 2021	$750M Senior Unsecured Revolving Credit Facility	Paramount Group Operating Partnership LP *U.S.*	Bank of America, N.A., as Administrative Agent BofA Securities, Inc., as Sustainability Structuring Agent	Greenhouse gas emissions (scope 1 and scope 2)
December 17, 2021	$550M Credit Facility	Oklahoma Gas and Electric Company *U.S.*	Wells Fargo Bank, National Association, as Agent Wells Fargo Securities, LLC, as Sustainability Structuring Agent	To be determined by future ESG amendment.
December 14, 2021	$400M Credit Facility	Lululemon Athletica Inc., Lululemon Athletica Canada Inc., Lulu Canadian Holding, Inc., Lululemon USA Inc. *U.S., Canada*	Bank of America, N.A., as Administrative Agent BofA Securities, Inc., as Sustainability Coordinator	KPIs include: greenhouse gas emissions intensity reduction and gender pay equity
November 30, 2021	$300M 4.875% Sustainability Linked Senior Notes	Covanta Holding Corporation *U.S.*	U.S. Bank National Association, as trustee	Sustainably processed waste and waste recycled or reused



Effect of Targets on the Facility	Reporting Requirements	Review	Online Links
Pricing increase if SPT not met.	One-time prior to the date at which the pricing increase is to take effect.	External	https://www.sec.gov/Archives/edgar/data/1164727/000110465921152155/tm2135846d1_ex4-2.htm
Pricing decrease if SPTs met.	Annual	External	https://www.sec.gov/Archives/edgar/data/1605607/000156459021060870/pgre-ex101_8.htm
Upon effectiveness of an ESG Amendment, pricing adjustment based on SPT performance.	Reporting to be in line with SLLP.	Validation of KPI measurements to be in line with SLLP.	https://www.sec.gov/Archives/edgar/data/1021635/000102163521000195/exhibit990212-17x21.htm
Pricing adjusted based on SPT performance.	Annual	External	https://www.sec.gov/Archives/edgar/data/1397187/000139718721000041/lulu-20211214xex101.htm
Pricing increase if SPTs not met.	One-time prior to the date at which the pricing increase is to take effect.	External	https://www.sec.gov/Archives/edgar/data/0000225648/000119312521343811/d151614dex41.htm

Date	Type and Size of Facility	Borrower/Issuer	Administrative/ Bookrunner & Sustainability Agent(s)	KPIs: What is Being Measured?
November 9, 2021	$1B 4.750% Sustainability Linked Senior Notes and $1.5B 5.125% Sustainability Linked Senior Notes	TEVA Pharmaceutical Finance Netherlands III B.V. *Israel*	The Bank of New York Mellon, as trustee	Product volume donated or tendered to low- and middle-income countries, cumulative number of new regulatory submissions of subsidiaries in low- and middle-income countries and CO2 emissions reduction (scope 1 and scope 2)
September 22, 2021	$600M Revolving Credit Facility	Big Lots Stores, Inc. and Big Lots, Inc *U.S.*	PNC Bank, National Association, as Administrative Agent PNC Capital Markets LLC, as Sustainability Coordinator	To be determined by future ESG amendment.
June 9, 2021	$6B Revolving Credit Facility	Dominion Energy, Inc., Virginia Electric and Power Company, Questar Gas Company and Dominion Energy South Carolina, Inc. *U.S.*	JPMorgan Chase Bank, N.A., as Administrative Agent J.P. Morgan Securities LLC and Mizuho Bank, Ltd., as Co-Sustainability Structuring Agents	KPIs include: percentage of new-hire women and minorities, diversity (excluding employees brought in via merger or acquisition) and renewable energy generation capacity

Effect of Targets on the Facility	Reporting Requirements	Review	Online Links
Pricing increase if SPTs not met.	One-time prior to the date at which the pricing increase is to take effect.	External	https://www.sec.gov/Archives/edgar/data/0000818686/000119312521326070/d249996dex46.htm
Upon effectiveness of an ESG Amendment, pricing adjustment based on SPT performance.	Reporting to be in line with SLLP.	Validation of KPI measurements to be in line with SLLP.	https://www.sec.gov/Archives/edgar/data/768835/000076883521000116/exhibit103-secondamendedan.htm
Pricing adjusted based on SPT performance	Annual	Internal	https://www.sec.gov/Archives/edgar/data/715957/000119312521187869/d179382dex101.htm

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177 *Id.*

[178] *See* Nadia Humphreys, *The EU Taxonomy for Sustainable Finance: FAQs for Financial Market Participants*, Bloomberg Prof. Serv. (Mar. 9, 2020), https://www.bloomberg.com/professional/blog/the-eu-taxonomy-for-sustainable-finance-faqs-for-financial-market-participants/. For example, the SEC's Division of Examinations (formerly the OCIE) has already begun conducting exams for reviewing ESG disclosures, and managers should expect this trend to continue. Press Release, SEC, SEC Office of Compliance Inspections and Examinations Announces 2020 Examination Priorities (Jan. 7, 2020), No. 2020-4, https://www.sec.gov/news/press-release/2020-4.

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[187] 2019 Disclosure Regulations, *supra* note 181, at art. 20.

[188] European Comm'n, Communication from the Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 Final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0097&from=EN.

[189] Financial market participant is defined in Article 2(1) of Regulation (EU) 2019/2088 as meaning: (a) an insurance undertaking which makes available an insurance-based investment product, (b) an investment firm which provides portfolio management, (c) an institution for occupational retirement provision, (d) a manufacturer of a pension product, (e) an alternative investment fund manager, (f) a pan-European pension product provider, (g) a management of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013, (h) a manager of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013, (i) a management company of an undertaking for collective investment in transferable securities, or (j) a credit institution which provides portfolio management.

[190] Financial adviser is defined in Article 2(11) of Regulation (EU) 2019/2088 as meaning: (a) an insurance intermediary which provides insurance advice with regard to insurance-based investment products, (b) an insurance undertaking which provides insurance advice with regard to insurance-based investment products, (c) a credit institution which provides investment advice, (d) an investment firm which provides investment advice, (e) an alternative investment fund manager which provides investment advice in accordance with point (b)(i) of Article 6(4) of Directive 2011/61/EU; or (f) undertakings for collective investment in transferable securities management company which provides investment advice in accordance with point (b)(i) of Article 6(3) of Directive 2009/65/EC.

[191] *Id.* at art. 1(21).

[192] 2019 Disclosure Regulations, *supra* note 181, at art. 5.

[193] *Id.* at art. 6.1.

[194] *Id.* at art. 9.

[195] *Id.* at art. 11.

[196] *Id.* at art. 4.2.

[197] *Id.* at art. 4.

[198] Where cells have been left blank, there is not sufficient information publicly available to appropriately assess.

[199] Where cells have been left blank, there is not sufficient information publicly available to appropriately assess. In addition, given that the SPTs are negotiated particular to each company and each agreement, even where publicly available, the amount of detail necessary to adequately describe the SPT is beyond the scope of a table summary.

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