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Sustainable Debt Finance

# 2024 Trends & Opportunities in an Area of Accelerated Growth

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# Table of Contents

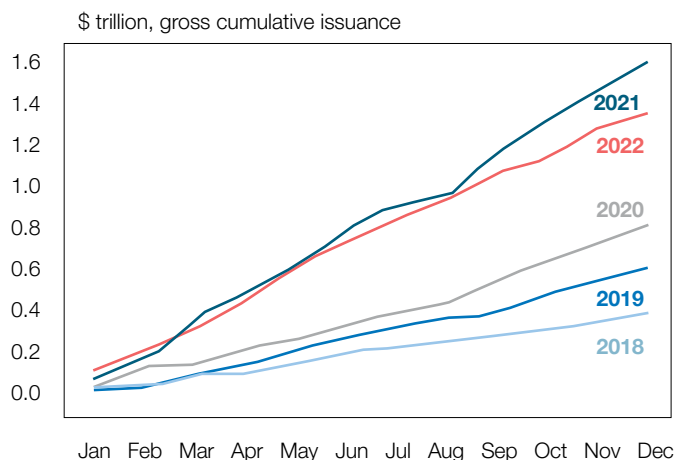
Key Contacts .....	Inside Front Cover
Introduction: What is Sustainable Finance? .....	1
Growth and Future of Sustainable Finance .....	3
“Green” Financing .....	5
Green Bonds .....	5
Green Loans .....	9
Supplemental Principles – Climate Bonds Standard and Certification Scheme .....	11
Social Financing .....	12
Sustainability-Linked Financing .....	13
The Sustainability-Linked Bond Principles .....	13
The sustainability-Linked Loan Principles .....	16
ESG Amendments .....	19
Sustainability-Linked Loan Documentation Guidance .....	20
EU Regulations .....	21
EU Sustainability-Related Disclosure Regulations for Financial Market Participants and Financial Advisers .....	22
EU Corporate Sustainability Reporting Directive .....	24
European Green Bond Standard .....	24
Recent Issuances .....	25
Recent Sustainable Bonds and Loans .....	26
Recent Sustainability-Linked Bonds and Loans .....	28
Recent Loans with ESG Amendment Provisions .....	32
Endnotes .....	36

# Introduction

## What Is Sustainable Finance?

By the end of 2022, the cumulative sustainable debt market reached \$4.8 trillion, despite a greater than 15% year-over-year decline in volumes as compared to 2021, a year in which sustainable debt volumes hit a record high.<sup>1</sup> While 2022 showed that the sustainable debt market is not impervious to overall economic slow-down (particularly in the capital markets), 2023 demonstrated its resiliency, even in a high-interest rate market, with sustainable bonds expected to demonstrate at least a 4% year-over-year growth by the end of the year.<sup>2</sup> Further, banks, investors and companies continue to turn their attention to environmental, social and governance (ESG) factors in response to changing societal expectations and evolving ideas regarding the ability of good ESG practices to create value or mitigate the erosion of value. In fact, private sector issuers, including financial and non-financial corporates, were responsible for the majority of green bond volumes in 2022 and non-financial corporates were the largest issuers of green bonds in the first half of 2023.<sup>3</sup> This corporate focus on ESG is driven by the need to respond to pressures from investors and other critical stakeholders, manage risks that are nonfinancial (or difficult to quantify in a pecuniary manner), preserve social license to operate, be seen as an employer aligned with the values of its workforce and take advantage of new opportunities. Sustainable debt instruments are the debt market's answer to the increased focus on ESG criteria, used either to fund ESG initiatives or to align with and incentivize corporate initiatives to perform against ESG key performance indicators. 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.

Global ESG debt issuance amounted to some \$1.3 trillion in 2022, down over 15% from 2021



Source: [https://www.iif.com/portals/0/Files/content/SDM\\_January2023\\_yf.pdf?\\_cldee=U3U34YjS8kPKQt04kiYVzU3Qx29VKjnZq0yDHxCG4MTN0V5BifN-4m2M7a8lJH&recipientid=contact-11bbb2260339ed119db0002248226dcd-b64f15c04fca41c499383-46b099e720e&utm\\_source=ClickDimensions&utm\\_medium=email&utm\\_campaign=Press%20Emails&esid=1f4419be-a09d-ed11-aad1-0022482d3cc4](https://www.iif.com/portals/0/Files/content/SDM_January2023_yf.pdf?_cldee=U3U34YjS8kPKQt04kiYVzU3Qx29VKjnZq0yDHxCG4MTN0V5BifN-4m2M7a8lJH&recipientid=contact-11bbb2260339ed119db0002248226dcd-b64f15c04fca41c499383-46b099e720e&utm_source=ClickDimensions&utm_medium=email&utm_campaign=Press%20Emails&esid=1f4419be-a09d-ed11-aad1-0022482d3cc4)

In their most basic forms, sustainable bonds and their corollary in the loan market, sustainable loans ("sustainable" being the umbrella of "green," "social," and mixed use instruments), are financial instruments in which 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; however, these sustainability-linked debt instruments are intended to incentivize the issuer's achievement of quantitative, predetermined, ambitious, regularly monitored and externally verified sustainability (that is, ESG) objectives through key performance indicators (KPIs) and sustainability performance targets (SPTs).

Sustainable and sustainability-linked 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, improving relationships with stakeholder communities and contributing to ESG commitments. Further, these debt instruments, and their benefits, are increasingly available to a variety of issuers (corporate, sovereign, municipal, etc.) across an expanding universe of industries and may take the form of bonds, term loans, revolving loans and other working capital facilities.

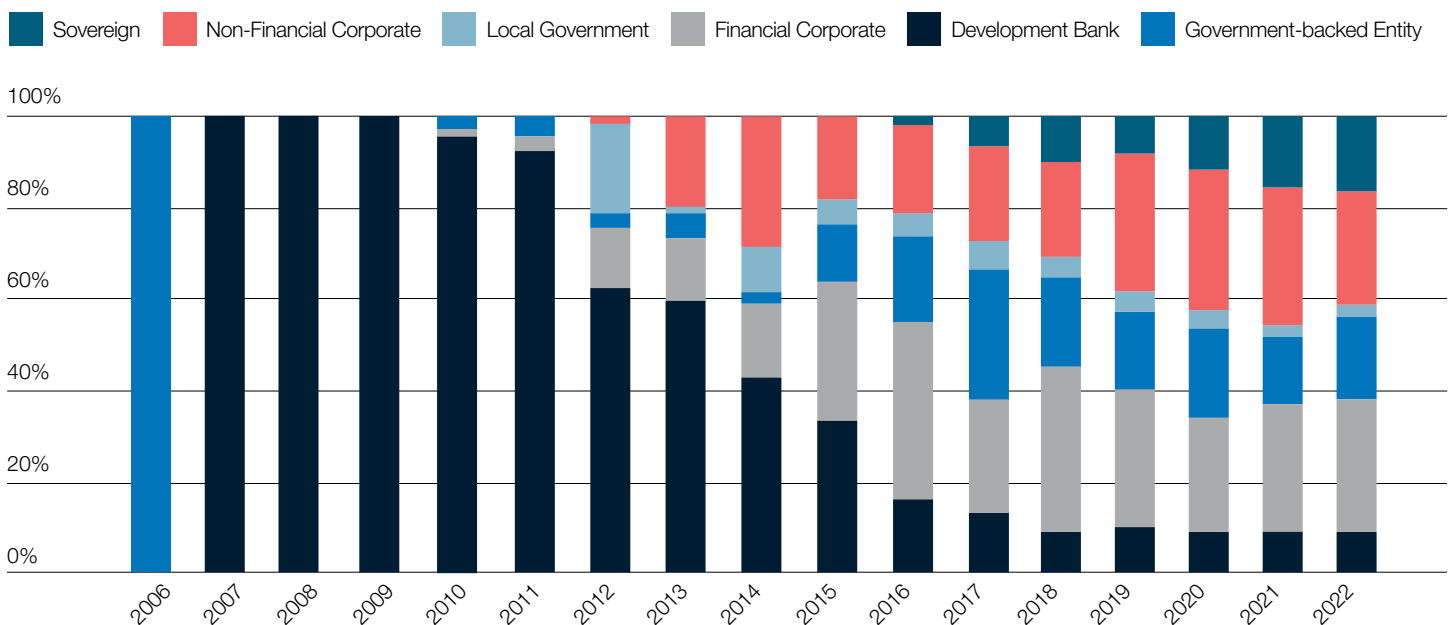
## Growth and Future of Sustainable Finance

Issuances of sustainable debt broke records in 2021 and were expected to continue rising in 2022.<sup>4</sup> Geopolitical crises and challenging market conditions, including higher interest rates,<sup>5</sup> that hurt the conventional bond markets in 2022 also affected the sustainable debt markets, with sustainable bond issuances reportedly down by 20% compared to 2021.<sup>6</sup> ESG backlash in the United States,<sup>7</sup> together with increased scrutiny and oversight of sustainable debt issuances from regulators and investors in Europe and the United States, may have also delayed or deterred sustainable debt issuances.<sup>8</sup> Despite registering its first

year-over-year decline in 2022, the sustainable debt market still showed markers of growth, and as of Q3 2023, was still expected to demonstrate year-over-year growth after a strong first half of the year.<sup>9</sup> To highlight a few metrics:

- ESG-labeled loan issuances, unlike issuances of their bond counterparts, increased by 10%, with sustainability-linked loan issuances totaling \$330 billion in 2022, more than \$15 billion more than in 2021;<sup>10</sup>
- sustainable bonds represented a 14% share of the global bond market in the first nine months of 2023, an increase over the same period in 2022;<sup>11</sup>
- green bonds saw their highest half-year total of \$310 billion in the first half of 2023, driven in large part by an increase in sovereign issuances;<sup>12</sup>
- developing countries and emerging markets, led by China, Turkey and Mexico, issued a record amount of sustainable debt in 2022 — in fact, China was the second largest sustainable debt issuer in 2022 behind only the United States;<sup>13</sup> and
- social bond issuances had a 16.7% increase in volumes during the first half of 2023 when compared to the same period in 2022.<sup>14</sup>

### Corporates contributed 54% of green volumes



Source: [https://www.climatebonds.net/files/reports/cbi\\_sotm\\_2022\\_03e.pdf](https://www.climatebonds.net/files/reports/cbi_sotm_2022_03e.pdf)

Driving forces of continued and increasing sustainable debt issuances include (1) public policy adopted across the world relating to sustainability goals resulting in the development of regulatory schemes and initiatives to increase investment in sustainable finance,<sup>15</sup> (2) increased commitments from banks, investment funds and other institutional investors to allocate capital to sustainable finance, driving demand for sustainable investments, (3) issuers making their own sustainability commitments,<sup>16</sup> (4) increased focus on sustainable investments across the general populace, and “millennials” in particular, 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,<sup>17</sup> (5) the proven performance of sustainable investments<sup>18</sup> and (6) increasing “quality assurance” of sustainable debt products.<sup>19</sup>

As sustainable finance has grown, the importance of, and need for, benchmarks and guidelines has grown alongside it.<sup>20</sup> Increased scrutiny of the efficacy and performance of sustainable finance instruments and ESG commitments has led to the development of updated (and sometimes competing)<sup>21</sup> guidance, disclosure regulations and stricter investing criteria.<sup>22</sup> New issuances to generate rebounds and growth in the sustainable debt markets will have to face these hurdles in addition to broader economic conditions and, in the United States at least, political, social and economic backlash against ESG initiatives.



# "Green" Financing

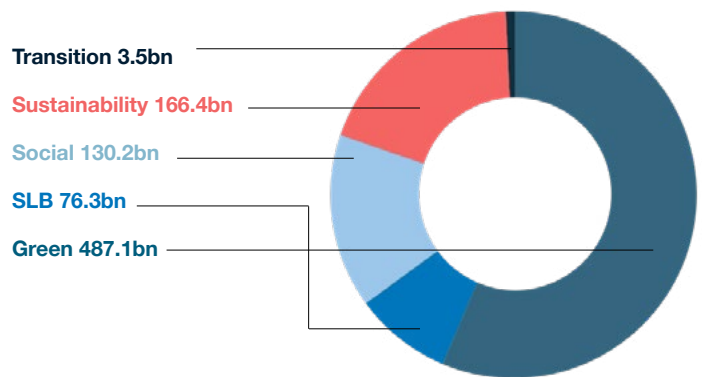
Green bonds and green loans are debt securities issued to fund projects or other expenditures with positive environmental benefits.<sup>23</sup> The documents for these green instruments highlight a “green” use of proceeds, for example, to finance specific green projects.<sup>24</sup> In the first half of 2023, for the first time, green bond sales and loan arrangements surpassed oil, gas and coal-related financings in the same period.<sup>25</sup>

## Green Bonds

### Introduction to Green Bonds

Green bonds are the most prevalent type of debt instrument under the umbrella of sustainable finance, comprising just over half of aggregate volumes of sustainable debt issuances in 2022<sup>26</sup> and 59% of sustainable bond volumes in the first half of 2023.<sup>27</sup> While originally formulated as government and supranational debt securities, the first corporate green bond was issued by Vasakronan, a Swedish property company, in November 2013, to fund new energy-efficient buildings and retrofit existing buildings, among other things.<sup>28</sup> Since then, many large corporate issuers from many different sectors have tapped into the green bond market, including Xylem Inc., Prudential Financial Inc., JPMorgan Chase & Co., KIMCO Realty Corp., Wal-Mart Stores Inc., Comcast Corp., Nippon Steel Corp. and General Motors Co.<sup>29</sup> The largest group of green bond issuers is nonfinancial corporates,<sup>30</sup> and most bonds in the corporate green bond market are investment grade rather than high-yield.<sup>31</sup> A green bond may have reduced borrowing costs for a green bond issuer as compared to their traditional counterparts with similar bond characteristics (referred to as a “greenium”), even where there are additional execution and reporting costs.<sup>32</sup>

### Green Dominated Sustainable Debt Issuance in 2022



Source: <https://www.climatebonds.net/2023/01/2022-market-snapshot-and-5-big-directions-sustainable-finance-2023>

### Green Bond Principles

The Green Bond Principles (GBP) are the leading framework globally for issuances of green bonds.<sup>33</sup> These voluntary best practice guidelines were established in 2014 by a consortium of investment banks.<sup>34</sup> The International Capital Market Association (ICMA) oversees governance, monitoring and development of the GBP.<sup>35</sup> The GBP were updated in June 2021 to, among other things, include recommendations regarding Green Bond Frameworks and external reviews.<sup>36</sup> In June 2022, the ICMA published an appendix to the GBP, which clarifies the four types of green bonds: (i) Standard Green Use of Proceed Bond (unsecured debt obligations where investors have full recourse to the issuer), (ii) Green Revenue Bond (under which investors do not have recourse to the issuer, their exposure is to the cash flows of the revenue streams of the project), (iii) Green Project Bonds (under which investors are exposed to the risk of the project), and (iv) Secured Green Bonds (secured bonds where the net proceeds are applied to one or more green projects).<sup>37</sup> The appendix also encourages

organizations that are mainly or entirely involved in environmentally sustainable activities to adopt the GBP and not to imply GBP features by referring to their instruments as green bonds.<sup>38</sup> 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 “greenwashing” and increase capital allocation to environmental projects.

The GBP have four core components:

- Use of Proceeds;
- Process for Project Evaluation and Selection;
- Management of Proceeds; and
- Reporting.<sup>39</sup>

### Use of Proceeds

The GBP describe the “use of proceeds” component as the “cornerstone” of the GBP.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

Currently, no global consensus exists regarding how to classify projects that qualify for financing via a green bond issuance.<sup>43</sup> 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);
- **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;**
- **Green buildings** that meet regional, national or internationally recognised standards or certifications for environmental performance.”<sup>44</sup>

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.<sup>45</sup>

Renewable energy, energy storage, electrified transport, electrified heat, carbon capture and storage, hydrogen and sustainable materials all reached record levels of



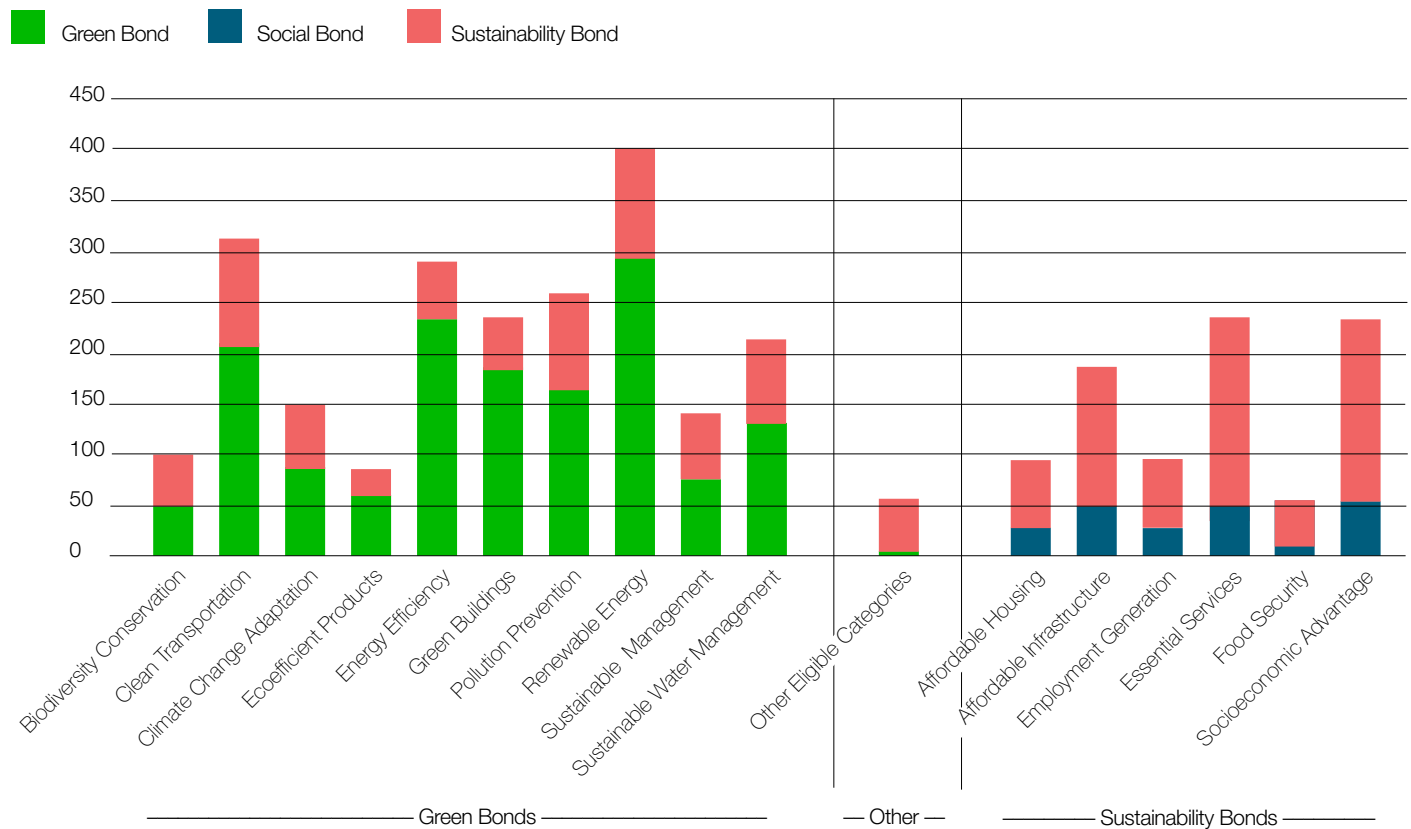
investment in 2022;<sup>46</sup> and the most common use of proceeds for green bond issuers in the first half of 2023 was renewable energy projects, followed by energy efficiency and clean transportation projects.<sup>47</sup> Some examples of eligible green projects undertaken by green bond issuers include: (i) Apple Inc.'s funding of aluminum chip sorting improvements to maximize use of recycled aluminum in enclosure manufacturing;<sup>48</sup> (ii) Visa's \$54.7 million investment in LEED certified green buildings;<sup>49</sup> (iii) Amazon.com, Inc.'s investment in electric vehicle manufacturing, research and infrastructure;<sup>50</sup> and (iv) Verizon's conversion to using all Light Emitting Diodes (LEDs) in its facilities.<sup>51</sup>

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. 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.<sup>52</sup> The following risk factor excerpt from an Apple Inc. 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."<sup>53</sup> 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 Recent Sustainable Bonds and Loans table on page 26 includes the use of proceeds of recent green bond issuances.

### Use of Proceeds of GSS Bonds



Source: <https://www.ice.com/insights/impact-bond-report-q2-2023>

## 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 on page 5 and information on how the issuer identifies and manages perceived social and environmental risks of the project.<sup>54</sup>

## 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.<sup>55</sup> The company should 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.<sup>56</sup> Additionally, the GBP recommend that while a green bond is outstanding, the issuer should periodically adjust the balance of the tracked net proceeds to match allocations made to eligible green projects during that period.<sup>57</sup>

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 issuer's tracking method and the allocation of funds are accurate.<sup>58</sup> 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.<sup>59</sup>

## 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.<sup>60</sup> Companies should also report new material developments on a timely basis.<sup>61</sup> A green bond issuer's annual disclosure should provide quantitative and qualitative information, including a list and brief description of each of the projects to which proceeds have been allocated (and the amount so allocated) and their expected impact.<sup>62</sup> 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.<sup>63</sup>

## 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 a Green Bond Framework (that is, a disclosure by a potential issuer detailing compliance with the GBP) or second-party opinions. The GBP recommend 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.<sup>64</sup>

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),<sup>65</sup> 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, rather the offering documents will direct potential investors to where the related Green Bond Framework can be found to provide additional context.<sup>66</sup> Non-compliance with the Green Bond Framework is not typically a legal default of the issuer under the offering documentation.<sup>67</sup> Further, these Green Bond Frameworks generally provide that any decision to purchase securities is to be based solely upon the offering documentation.<sup>68</sup> Similarly, a second-party opinion, if any, is typically not included in, or incorporated by reference into, the offering documents,<sup>69</sup> 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.

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<sup>70</sup> or S&P Global<sup>71</sup> as to the series of debt securities itself (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.<sup>72</sup> While the GBP only recommend that issuers use some form of external review and do not include it as a core component, some green bond-specific stock exchanges, such as the Luxembourg Green Exchange, mandate external review as a listing requirement.<sup>73</sup>

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 in sections EU Taxonomy and EU Sustainability-Related Disclosure Regulations for Financial Market Participants and Financial Advisors below, the Corporate Sustainability Reporting Directive described in section EU Corporate Sustainability Reporting Directive below and the creation of a Climate and ESG Task Force in the Division of Enforcement by the Securities and Exchange Commission (SEC) in 2021.<sup>74</sup> In forming the Climate and ESG Task Force, the SEC announced that the task force's "initial focus will be to identify any material gaps or misstatements in issuers' disclosure of climate risks under existing rules,"<sup>75</sup> demonstrating another marker of increased attention to the veracity of ESG disclosure. The SEC proposed rule changes on climate-related disclosures in March 2022, but has since delayed finalizing the proposal from December 2022 to the spring of 2024 at the earliest.<sup>76</sup> While rule-making has dragged, since the creation of the ESG Task Force in 2021, there have been several enforcement actions demonstrating the SEC's increased attention to disclosure in the ESG space.<sup>77</sup> For example, in May 2022, the SEC charged BNY Mellon Investment Adviser, Inc. for misstatements and omissions about ESG considerations in making investment decisions in the management of certain mutual funds.<sup>78</sup> BNY Mellon Investment Adviser, Inc. settled the charges by agreeing to pay a \$1.5 million fine without admitting or denying the charges.<sup>79</sup> On March 6, 2024, the SEC adopted rules to enhance and standardize climate-related disclosures.<sup>80</sup>

## 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.<sup>81</sup>

### 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,<sup>82</sup> with the most recent update of the GLP released in February 2023.<sup>83</sup> The Guidance on Green Loan Principles, which provides more details on the core GLPs, was also updated in February 2023 and amended in April 2023.<sup>84</sup> The GLP are the primary guidance existing in the green loan market today. 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.<sup>85</sup> 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.<sup>86</sup> 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.<sup>87</sup> Further, green loans may be structured as term loans or revolving loans, with the GLP setting forth specific considerations for identifying use of proceeds for revolving credit borrowings in Appendix 1 thereto.<sup>88</sup> The GLP include the same non-exhaustive list of recognized "eligible green projects" as the GBP (detailed above in section Use of Proceeds), though definitions of "green" and "green projects" are likely to vary across industries and geographical locations.<sup>89</sup>

The Recent Sustainable Bonds and Loans table on page 26 includes the use of proceeds of recent green loan 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 GLP provides that a borrower should clearly communicate its environmental sustainability objectives, its selection process for the one or more relevant green projects, and risk identification and management processes, with disclosure of relevant eligibility criteria and applicable green standards and certifications further encouraged.<sup>90</sup> Nationally and internationally, organizations, both private and public, have undertaken to establish further guidance, catalogues, definitions and standards for green loans.<sup>91</sup> ICMA maintains a compendium of international policy initiatives,<sup>92</sup> which includes, for example, a reference to the EU taxonomy regulation described on page 21.<sup>93</sup>

### Management of Proceeds

The GLP, like the GBP, encourage crediting loan proceeds to a dedicated account and/or otherwise tracking allocation of the proceeds.<sup>94</sup> Unlike most bonds,<sup>95</sup> loans almost ubiquitously contain use of proceeds representations and warranties<sup>96</sup> and affirmative covenants,<sup>97</sup> which allow loans to provide a tighter check on ultimate use of proceeds than their bond corollaries.

### 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 (i) be reported annually at least until the loan proceeds have been fully drawn (or until maturity in the case of a revolving credit facility) and be updated in the case of any material developments, and (ii) at a minimum, include the eligible green projects to which proceeds have been allocated and a description of such projects, allocated amounts, their expected impact and, if possible, achieved impact.<sup>98</sup> The GLP further recommend that this information include qualitative and quantitative performance indicators, as applicable, with disclosure of the supporting methodologies to such indicators.<sup>99</sup> This reporting information need not be made publicly available, but does need to be provided to lenders.<sup>100</sup>

### Review

While not a core component of the GLP, external review is an important recommendation of the GLP.<sup>101</sup> The frequency and scope of such external review are generally determined by the borrower and its initial investors during negotiation of

the loan documents. External review may take the form of: (i) consultant review or second-party opinions; (ii) verification against designated criteria; (iii) certification of a borrower's green loan, associated green loan framework and/or use of proceeds against an external assessment standard; or (iv) rating of the green loan or associated green loan framework.<sup>102</sup>

The nature of a loan as traditionally relationship-driven and held by financial institutions,<sup>103</sup> rather than held by and traded by the public, provides different considerations for external reviewers than those applicable to a green bond. For example, lenders are likely to have a better working knowledge of a borrower's business and practices than the public would have of an issuer. Therefore, lenders may be comfortable relying upon a borrower's self-certification and internal review process, and the GLP recognizes that such self-certification and internal review may be sufficient.<sup>104</sup> In the latter case, a borrower should still clearly document its internally developed expertise and the review process associated with evaluating compliance with the associated green loan framework and/or GLP.<sup>105</sup> 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.<sup>106</sup>

## Green Loan Documentation

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, as discussed in greater detail above. 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.<sup>107</sup> The parties to the 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. 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; for example, these, or other circumstances, could lead to “declassification” as a green loan and the parties to a loan agreement will need to agree upon the circumstances that give rise to such declassification.<sup>108</sup>

## Supplemental Principles – Climate Bonds Standard and Certification Scheme

While the GBP and GLP are the main principles guiding the green debt markets, other organizations have developed and/or are in the process of developing their own methods for evaluating the “greenness” of a debt instrument. One such organization is the Climate Bonds Initiative (CBI). The CBI is an international investor-focused not-for-profit organization whose stated purpose is to promote large-scale investments in a low-carbon and climate-resilient global economy.<sup>109</sup> The CBI created its own set of guidelines, the Climate Bonds Standard and Certification Scheme (CBS), originally launched in 2012, which can apply to green bonds and other green debt instruments, such as green loans.<sup>110</sup> CBI’s screening criteria narrows the field of deemed green issuances, noting in its Q1 2023 report that \$142 billion in green labelled bonds and similar instruments failed to meet their screening criteria and were excluded from inclusion in its database in 2022.<sup>111</sup> With respect to a use of proceeds debt instrument certification under the CBS, the four key components are aligned with the GBP and GLP; however, the CBS differs from GBP and GLP by bifurcating its guidance 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 post-issuance.<sup>112</sup>

While the GBP and GLP encourage compliance verification by third-party review, the CBS mandates it, making independent assessment an active requirement.<sup>113</sup> Further, the CBS not only provides detailed guidelines within the components enumerated above; it also offers CBS certification for issuers that satisfy all four requirements of the CBS.<sup>114</sup>



# Social Financing

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 that social bonds were the second largest group of sustainable bond issuances in 2022, only behind green bonds.<sup>115</sup> While some predicted that social bond issuance growth would be slowest among the sustainable bond types in 2023, with less government and supranational entities looking to finance pandemic relief,<sup>116</sup> social bonds were the only segment of sustainable debt to record a quarter-over-quarter increase in the second quarter of 2023.<sup>117</sup> S&P Global predicts that affordable housing and finance, as well as combination social and green bonds, could drive social bond issuances in the future.<sup>118</sup> Recent social debt issuances can be found in the Recent Sustainable Bonds and Loans table set forth on page 26.

To provide voluntary guidelines for social bonds, ICMA has published the Social Bond Principles (SBP). The SBP were updated in June 2023 to, among other things, include references to “just transition” considerations, clarify requirements with respect to target populations and provide guidance on processes with respect to mitigation of known material risks.<sup>119</sup> The SBP closely track the GBP, following the same four core principles of use of proceeds, process for project evaluation and selection, management of proceeds, and reporting.<sup>120</sup> The SBP, like the GBP, provide a non-exhaustive list of potential project categories, which includes affordable basic infrastructure, access to essential services, affordable housing, employment generation and programs designed to address unemployment stemming from several sources, food security and sustainable food systems and socioeconomic advancement and

empowerment.<sup>121</sup> 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, workers affected by climate transition, women and/or sexual and gender minorities, aging populations and vulnerable youth.<sup>122</sup> As with the GBP, transparency and clear communication are of the utmost importance in the SBP.<sup>123</sup>

To provide voluntary guidelines for social loans, LSTA has published the Social Loan Principles (SLP) and associated guidance.<sup>124</sup> The SLP contain the same four core components as the SBP: use of proceeds, process for project evaluation and selection, management of proceeds, and reporting.<sup>125</sup> The SLP also provide a non-exhaustive list of potential social project categories and target populations with respect to use of proceeds, which generally track those in the SBP.<sup>126</sup> As with the SBP, the SLP seek to emphasize transparency, accuracy and integrity.<sup>127</sup>

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 published 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.<sup>128</sup> While the LSTA, LMA and APLMA have not provided corresponding guidelines to the SBG for sustainability loans, SBG principles are likely to be formative in sustainability loan issuances given the close alignment of the GLP to the GBP and the SLP to the SBP.

# Sustainability-Linked Financing

Sustainability-linked bonds (SLBs) and sustainability-linked loans (SLLs) 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 KPIs and whether the company hits (or misses) pre-negotiated SPTs. The use-of-proceeds flexibility in SLBs and SLLs opens them up to companies in a wider breadth of industries than are seen utilizing green finance.<sup>129</sup> 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 provide investors with opportunities to allocate capital in advancement of their commitments to invest in sustainability initiatives. Both investors and companies have the opportunity to demonstrate their ESG credentials through participation in SLBs and SLLs.

Recent Sustainability-Linked Bonds and Loans table found on page 28 highlights the key terms of recent SLB and SLL issuances.

## Top five sectors and their respective shares split by sustainable debt format

Sustainability-linked loans		Green loans	
Utilities	14%	Renewable Energy	47%
Transportation & Logistics	9%	Power Generation	23%
Chemicals	7%	Utilities	8%
Industrial Other	6%	Real Estate	6%
Food & Beverage	5%	Financial Services	3%

Source: Bloomberg and Nordex

## The Sustainability-Linked Bond Principles

Currently, the principal set of guidelines for the SLB market are the Sustainability-Linked Bond Principles (June 2023) (SLBP). The SLBP are a voluntary set of principles published by ICMA that provide guidance for SLBs.<sup>130</sup> 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 key principles of the SLBP — selection of core, material and relevant KPIs and associated ambitious targets.<sup>131</sup> There are five key components to the SLBP, which are:

- selection of credible KPIs;
- calibration of ambitious SPTs;
- bond characteristics;
- reporting; and
- verification.<sup>132</sup>

## Selection of KPIs

An SLB issuer’s sustainability performance is measured using external or internal sustainability KPIs.<sup>133</sup> SLBs are more similar to traditional debt instruments than green and social bonds in the sense that ESG KPIs are integrated into the bond, rather than earmarking proceeds for an ESG-project-specific use.<sup>134</sup> Because of this, net proceeds of SLBs can be used for any purpose (including general corporate purposes or refinancing existing debt) and need not be related to sustainability goals.<sup>135</sup>

Conducting a transparent KPI selection process is important for the dependability of the market for SLBs, with the SLBP stressing the importance of avoiding KPIs that are not credible.<sup>136</sup> The SLBP provide that a credible KPI is:

- relevant, core and material to the issuer's overall business and of high strategic significance to its operations;
- measurable or quantifiable based on application of a consistent methodology;
- externally verifiable; and
- able to be benchmarked (using external references or definitions to the extent possible).<sup>137</sup>

To the extent an issuer has previously included KPIs in annual reports, sustainability reports or other non-financial reporting disclosures, the issuer is encouraged to select one or more of these previous KPIs for its SLB issuance, allowing investors to evaluate the issuer's historical performance with respect to the KPIs selected.<sup>138</sup> Further, the SLBP provide that, when the KPIs have not been previously disclosed, issuers should aim to provide historical, externally verified KPI values that cover, at a minimum, the previous three years.<sup>139</sup>

Similar to the GBP, the SLBP suggest that issuers maintain transparency and provide clear communication to investors regarding the rationale and process for selecting KPIs and explain how the KPIs fit into the issuer's overall sustainability strategy.<sup>140</sup> Additionally, a clear definition of each KPI should be provided, including the applicable scope (for example, the percentage of the issuer's total emissions to which the target is applicable), calculation methodology, defined baseline and science-based or industry standard benchmarks, where available.<sup>141</sup>

## Calibration of SPTs

After selecting KPIs, an SLB issuer should calibrate one or more SPTs per KPI.<sup>142</sup> SPTs are improvements in the selected KPI that are measurable and to which an issuer commits to on a predetermined timeline.<sup>143</sup> 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.<sup>144</sup>

Issuers must set SPTs in good faith and should communicate strategic information that may have an impact on achieving the SPTs.<sup>145</sup> As mentioned above, SPTs should be ambitious. The SLBP describe 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 and business strategies; and
- can "be determined on a predefined timeline, set before (or concurrently with) the issuance of the bond."<sup>146</sup>

Target-setting should involve a combination of benchmarking methods, including to the issuer's performance over time, the issuers' peers/industry and/or with reference to science, or to official country/regional/international targets (for example, the Paris Agreement on Climate Change<sup>147</sup> or the EU taxonomy described below in section or to other proxies to determine relevant targets.<sup>148</sup>

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

- timelines for target achievement, including observation date(s) or period(s), trigger event(s) and frequency;
- to the extent relevant, the verified baseline or reference point against which KPI improvement will be measured, as well as the rationale for use of such baseline or reference point;
- to the extent relevant, the situations in which recalculation or pro forma adjustment of the above referenced baselines will occur;
- to the extent possible and taking into consideration competition and confidentiality issues, how the issuer intends to achieve its SPTs; and
- any other key factors that may affect the issuer's achievement of its SPTs that are outside the issuer's direct control.<sup>149</sup>



Issuers may establish and publish sustainability-linked financing frameworks, which, similarly to green financing frameworks, are not incorporated by reference into the offering documentation but provide further context to potential investors on their KPIs and SPTs and how those fit within their overall business strategies.<sup>150</sup> Additionally, while not required by the SLBP, second-party opinions are recommended as part of the pre-issuance documentation and may speak to alignment of a proposed financing or financing framework with the SLBP.<sup>151</sup>

## Bond Characteristics

A distinctive quality of an SLB is that the bond's financial and/or structural characteristics (such as tenor and call features<sup>152</sup>) can change depending on whether the issuer does or does not achieve the predefined SPTs with respect to the selected KPI.<sup>153</sup> The most common structure involves an increase in the interest rate paid to bondholders if the issuer misses an SPT.<sup>154</sup> Ensuring the impact of such changes is not toothless is a primary concern of the SLBP.<sup>155</sup> The SLBP recommend avoiding illusory penalties by ensuring the variation of the bond's characteristics is commensurate and meaningful relative to the bond's original characteristics.<sup>156</sup>

For an SLB, since sustainability features can impact the bond's characteristics, these features need to be built into the bond offering documentation.<sup>157</sup> To that end, the KPIs, 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).<sup>158</sup>

## Reporting

Under the SLBP, SLB issuers should publish and keep available and accessible to investors the following:

- information on the issuer's performance of the selected KPI, including, to the extent relevant, information with respect to baselines, which should be up-to-date;

- a verification assurance report that outlines performance against the SPTs and the related impact and timing thereof on the SLB's characteristics; and
- information that enables investor monitoring of the ambitiousness of the SPTs, including updates to the issuer's overall sustainability strategy or ESG governance and any other information relevant to analyzing KPIs and SPTs.<sup>159</sup>

Similar to the recommendations set forth in the GBP, such information should be published annually, and in any event, as needed for SPT performance assessment and adjustment to the SLB's characteristics.<sup>160</sup>

## Verification

The SLBP provide that an SLB issuer should appoint one or more external reviewers to verify its performance against each SPT for the selected KPIs.<sup>161</sup> Such external verification should occur once a year and, in any event, on any date that is relevant for assessing performance against each SPT for the selected KPIs and potentially adjusting the SLB's characteristics depending on such performance.<sup>162</sup> The issuer should also make such verification publicly available.<sup>163</sup> Post-issuance external verification is necessary under the SLBP, whereas pre-issuance external review (such as through a second-party opinion) is only recommended.<sup>164</sup>



# The Sustainability-Linked Loan Principles

Primary guidance for SLLs in the current market are the Sustainability-Linked Loan Principles (February 2023) and the Guidance on Sustainability-Linked Loan Principles (February 2023) (collectively referred to herein as the SLLP). The SLLP are a set of voluntary principles published by the LMA, APLMA and LSTA that set out a framework for SLLs.<sup>165</sup> The goal of the SLLP is to promote the development and preserve the integrity of SLLs.<sup>166</sup> The SLLP framework is built around the same five key components as the SLBP: selection of credible KPIs, calibration of ambitious SPTs, loan characteristics, reporting and verification.<sup>167</sup>

## Selection of KPIs

As with SLBs, an SLL borrower's sustainability performance is measured using external and/or internal sustainability KPIs.<sup>168</sup> The SLLP stress the importance of avoiding KPIs that are not credible.<sup>169</sup> The following elements make up a credible KPI:

- it is relevant, core and material to the overall business of the borrower and of high strategic significance to its operations;
- it is measurable or quantifiable based on application of a consistent methodology; and
- it is able to be benchmarked (using external references or definitions to the extent possible).<sup>170</sup>

The SLLP advise that the borrower should provide a clear definition of each KPI that includes the applicable scope or parameters, the calculation methodology, a definition of a baseline and a benchmark against an industry standard to the extent feasible.<sup>171</sup>

Publicly-available social KPI themes (2019-2022)



Source: <https://www.nordea.com/en/news/beyond-climate-sustainability-linked-loans-embrace-diverse-targets>

## Calibration of SPTs

After going through the KPI selection process, an SLL borrower should calibrate one or more SPTs per KPI.<sup>172</sup> The SLLP describe the calibration of SPTs for each KPI as the expression of the level of ambition to which the SLL borrower is ready to commit.<sup>173</sup> SLL borrowers should, in good faith, set SPTs that remain relevant (for so long as applicable) throughout the life of the SLL,<sup>174</sup> although, where appropriate, the SPTs may be updated at a later date through a rendezvous clause in the loan agreement, which seeks to set forth parameters for KPI/SPT changes necessitated by modifications in methodology and scope.<sup>175</sup> SPTs should be ambitious, meaning that they:

- represent a “material improvement” in the borrower’s performance with respect to a KPI as compared to both the borrower’s “business as usual trajectory” and regulatory targets;
- are compared to a benchmark or external reference to the extent possible;
- are consistent with the SLL borrower’s overall sustainability strategy; and
- can be determined on a predefined timeline.<sup>176</sup>

As highlighted above, SPTs should be based on recent performance and a combination of benchmarking approaches, including by reference to the borrower’s historical performance (ideally over a period of a minimum of three years), to the borrower’s peers (where such information is available) and/or to science, absolute levels, official targets, or recognized best-available technologies.<sup>177</sup>

The SLLP provide that disclosures to lenders with respect to target-setting should reference:

- timelines for the target achievement, including relevant observation dates and/or periods, triggering events and frequency of review;
- to the extent relevant, verified baselines or reference points selected for assessing KPI improvements and the rationale for the use of such baselines or reference points;
- to the extent relevant, circumstances resulting in recalculations or pro forma adjustments of baselines and/or KPIs;
- to the extent possible and taking into consideration competition and confidentiality issues, how the SLL borrower intends to achieve its SPTs; and
- any other factors that may affect the SLL borrower’s achievement of its SPTs that are beyond its direct control.<sup>178</sup>

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.<sup>179</sup> A borrower may elect to have one or more “Sustainability Coordinators” assist in negotiating KPIs and calibrating SPTs.<sup>180</sup> The SLLP also recommend involving external parties through delivery of a second-party opinion.<sup>181</sup> Such an opinion should assess “the relevance, robustness and reliability of selected KPIs, the rationale and level of ambition of the proposed SPTs, the relevance and reliability of

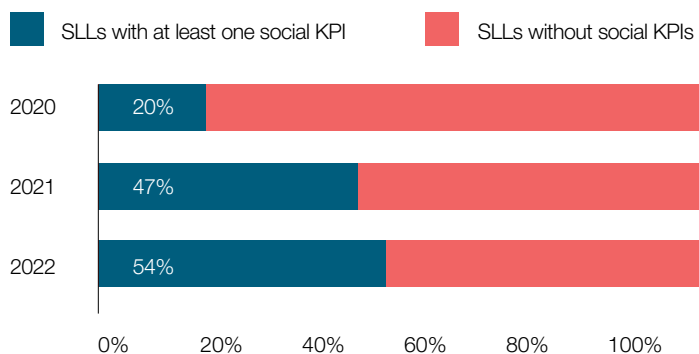
selected benchmarks and baselines, and the credibility of the strategy outlined to achieve them, based on scenario analyses, where relevant.”<sup>182</sup> The SLLP also encourage borrowers to engage external reviewers to assess any post-closing material changes to parameters, KPI methodology or SPT calibration.<sup>183</sup> 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.<sup>184</sup>

While many KPIs 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 — in fact, 54% of publicly available SLLs in 2022 were reported to contain at least one social KPI.<sup>185</sup> Social SPTs seen in the market include increasing diversity in staff and management, improving workplace safety and external ESG scores.<sup>186</sup>

The Recent Sustainability-Linked Bonds and Loans table on page 28 provides further examples of the types of KPIs present in the market.

For credit facilities with longer maturities and credit facilities subject to extension, it may be the case that the SLL borrower’s business changes over time or that the SPTs set at the origination of the SLL may otherwise cease to be relevant over the life of the loan, or that all SPTs cannot be accurately set at origination.<sup>187</sup> In these cases, the parties may consider building into the SLL documentation the ability to amend such documentation to reflect KPI and/or SPT changes that may be required by virtue of certain specified conditions<sup>188</sup> such as radical changes in the regulatory environment, extraordinary events and substantial M&A activity, including changes in ownership.<sup>189</sup>

### Share of SLLs with publicly-available KPIs that include at least one KPI with a social theme (2020-2022)



Source: <https://www.nordea.com/en/news/beyond-climate-sustainability-linked-loans-embrace-diverse-targets>

## 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.<sup>190</sup> As a result, the pricing benefit is not tied to use of proceeds, but is instead linked to performance or non-performance of SPTs.<sup>191</sup>

A typical SPT ties a 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 no 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 to 15 basis points has been reported for investment grade borrowers<sup>192</sup> and in 2022, the cumulative margin adjustment in the European SLL market was in the range of +/- 7.50 basis points to +/- 10.00 basis points.<sup>193</sup> As an example, Xylem Inc. entered into a credit facility in which the relevant KPIs relate to greenhouse gas emissions, CO2 equivalent emissions and supplier sustainability disclosure.<sup>194</sup> The interest rate under this credit facility may be adjusted (whether positive, negative, or zero) up to 4 basis points (1.33 basis points per KPI) depending on whether Xylem Inc. achieves its SPTs.<sup>195</sup>

## ESG Margin Adjustments in the European SLL Market

The applicable cumulative ESG margin ratchet step-downs/step-ups among 2022 SLLs leveled off within the range of -/+ 7.5 bps to -/+ 10 bps. The distribution of margin adjustments, compared with 2021, suggests that the market is moving towards a standardized ESG margin ratchet adjustment.

Cumulative Margin Adjustments	2021	2022
2 bps	3%	0%
5 bps	11%	0%
7.5 bps	47%	15%
10 bps	32%	39%
12.5 bps	3%	0%
15 bps	8%	8%

Source: <https://reorg.com/2022-european-sustainability-linked-loans-wrap/>

As another example, Casella Waste Systems, Inc. entered into a credit facility in which the relevant KPIs are tons of solid waste material reduced, reused or recycled and the total recordable incident rate (safety).<sup>196</sup> The interest rate margin may be increased or decreased (or remain the same) up to 4 basis points (2 basis points per KPI) based on Casella Waste Systems, Inc.’s performance against its SPTs.<sup>197</sup>

## Reporting

Reporting is another key component of the SLLP, particularly given that transparency is a large factor in the SLL market.<sup>198</sup> However, there is no globally accepted standard methodology for SPT reporting.<sup>199</sup> Pursuant to the SLLP, SLL borrowers should provide their lenders with up-to-date information sufficient for monitoring performance of the borrower against the SPTs and for determining whether the SPTs continue to be ambitious and relevant to the SLL borrower’s business.<sup>200</sup> These borrowers should also provide their lenders with sustainability and verification reports outlining their performance against the SPTs for the relevant period and any related impact on the loan economics.<sup>201</sup> SLL borrowers should provide such information to their lenders at least once a year.<sup>202</sup> In addition to providing information to lenders, the SLLP encourage SLL borrowers, where appropriate, to publicly report information relating to their SPTs and, as appropriate, details on any underlying methodologies or assumptions with respect to SPTs, which will often be included in a borrower’s annual or sustainability report.<sup>203</sup>

## Verification

The final core component of the SLLP is verification by an independent and external verifier of the SLL borrower’s performance against each SPT for each KPI.<sup>204</sup> Pre-signing external review is recommended by the SLLP and post-closing external verification is required.<sup>205</sup> The SLLP provide that a verification report should describe the level and type of verification, the procedures conducted by the verifier and the subject matter and criteria used to assess conformance, as well as confirm the verifier’s independence and quality.<sup>206</sup> As with sustainability-related reporting, the SLLP require that such verification be shared with the SLL borrower’s lenders and be made publicly available if possible and appropriate.<sup>207</sup>

SLLs may provide lenders with some level of approval rights over the identity of the external reviewer. For example, under Pinnacle West Capital Corp.’s recent SLL, any sustainability metric verifier designated by the borrower must be a qualified external reviewer with relevant expertise or another firm designated by the borrower and approved by the administrative agent and a majority of the lenders.<sup>208</sup>

## ESG Amendments

ESG amendment provisions in loan instruments, sometimes called a “rendezvous clause,” provide optionality to include sustainability-linked financing features like KPIs in the loan documentation in the future and have been a feature of many loan documents.<sup>209</sup> As a general rule, changes to pricing in loans is a “sacred right” requiring 100% lender approval.<sup>210</sup> 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 effects sustainability-linked features.<sup>211</sup> Typically, an ESG amendment provision places restrictions on what the future amendment can provide, for example, by creating a time limit within which sustainability-linked features can be implemented, capping the maximum margin and/or commitment fee adjustment (for example, 0.04 to 0.05% maximum margin adjustment and 0.01% maximum commitment fee adjustment<sup>212</sup>) and/or by requiring that the amendment align with the SLLP.<sup>213</sup>

In The Children’s Place, Inc.’s credit agreement, the lead borrower, in consultation with a sustainability structuring agent, can establish KPIs with respect to certain ESG targets or establish external ESG ratings targets.<sup>214</sup> The lead borrower, the sustainability structuring agent and a majority of the lenders may amend the credit agreement to incorporate the KPIs or ESG ratings and other related provisions into the credit agreement.<sup>215</sup> Upon effectiveness of the ESG amendment, certain margin adjustments would take effect. The margin adjustments that may be provided for via such ESG amendment are capped at a 1-basis point decrease with respect to the undrawn commitment fee and a 5-basis points decrease with respect to the interest rate margin.<sup>216</sup>

The SLLP make clear that when no SPTs are set when the parties enter into the loan agreement, the loan is not a sustainability-linked loan and should not be communicated as one — it is only after the KPIs and SPTs are agreed and all other core components of the SLLP are met that a loan should be referred to as a sustainability-linked loan.<sup>217</sup> The SLLP also state that the parties to the loan must make sure that the SPTs undergo the same level of scrutiny that they would have had they been proposed at the outset of the loan arrangement and, to this end, recommend that setting SPTs be done with the affirmative consent of all lenders, thus maintaining the lender’s “sacred right” with respect to pricing in the ESG amendment context.<sup>218</sup> Despite this recommendation for 100% affirmative lender consent, the SLLP recognize that this may not be practicable depending on the size of a syndicate and concede that the parties

## Sustainability-Linked Loan vs. Loan with Rendezvous Clause

	Sustainability-linked loan	Loan with rendezvous clause
Specific definition of ESG-related KPIs	✓	✗ only name of KPIs
Number of ESG-related KPIs	✓	✓
Definition of ESG Targets	✓	✗
Level of ESG margin adjustment	✓	✓
Mechanism for ESG margin adjustment	✓	✗
Reporting requirements	✓	✓
Type and scope of KPI verification by third party	✓	✓
Special provisions (M&A, force majeure, etc.)	✓	✓
Deadline for Sustainability Supplement	n.a.	✓

Source: <https://www.helaba.com/media/docs/int/sustainability/focus-sustainable-finance-rendezvous-clause.pdf>



may agree to a lower threshold for lender consent.<sup>219</sup> The further clarification and tightening around what constitutes a sustainability-linked loan provided for in the latest version of the SLLP may have an impact on the prevalence and/or structure of ESG amendments going forward.

Further examples of loans with ESG amendment provisions are set forth in the Recent Loans with ESG Amendment Provisions table on page 32.

## Sustainability-Linked Loan Documentation Guidance

While the SLLP provide general guidance for structuring SLLs, they do not provide SLL borrowers and lenders with specific examples of how to structure the SLL documentation. The organizations that work to produce the SLLP, however, have introduced their own guidance with respect to SLL documentation. In September 2022, the APLMA published a term sheet with a sustainability-linked loan appendix.<sup>220</sup> In February 2023, the LSTA published its drafting guidance for SLLs.<sup>221</sup> In May 2023, the LMA published its draft provisions for sustainability-linked loans.<sup>222</sup> Such form language can serve as a resource to parties as they draft SLL documentation.

Notwithstanding the joint publication of the SLLP by the LSTA, LMA and APLMA, the publication of separate SLL drafting guidance is illustrative of differences in regional market preferences and approaches as to which principles and concepts are included in SLLs and how they are drafted. For example, one difference between the U.S. markets (which generally follow LSTA guidance) and European markets (which generally follow LMA guidance) is the inclusion of a declassification provision. Under the LMA draft provisions, if the parties fail to agree to any suitable amendments to the loan document following a “sustainability amendment event” (an event, such as an asset sale, acquisition, merger or restructuring, which could reasonably be expected to affect any KPI or SPT), the agent can declassify the facilities from being “sustainability-linked.”<sup>223</sup> Once the declassification has occurred, the sustainability provisions will no longer apply, no sustainability-linked margin adjustment will be made and the borrower will not reference any part of the loan as “sustainability-linked” in any disclosure.<sup>224</sup> There are no equivalent consequences in the LSTA drafting guidance.

# EU Regulations

The European Union (EU) 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 sustainability-related disclosure regulations adopted by the European Union apply only to EU market participants, they may influence growing sustainable finance investments in other markets.<sup>225</sup> The EU sustainability-related disclosure regulations may have implications for U.S.-based companies if (i) European market participants begin seeking corresponding reporting and disclosure from U.S.-based company investments and/or shift their investment dollars to companies that provide such reporting and/or disclosure, or (ii) the European Union implements more regulations which reach outside of the European Union. As an example, the EU Corporate Sustainability Reporting Directive, which is discussed on page 24, incorporates reporting requirements which apply to non-EU parent companies of EU subsidiaries/branches and to non-EU subsidiaries of EU parent companies, subject to applicable threshold requirements.

## EU Taxonomy

The EU taxonomy is a classification system, akin to a glossary, established by the European Commission to create a “common language” and provide a “clear definition of what is ‘sustainable’” in order to facilitate the European Union “meet[ing] [its] climate and energy targets for 2030.”<sup>226</sup> 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 greenwashing or sustainability-washing.<sup>227</sup>

The Taxonomy Regulation, which entered into force on July 12, 2020, sets out a framework establishing minimum criteria that must be satisfied by an investment for it to qualify as environmentally sustainable under the EU taxonomy.<sup>228</sup> Under the EU taxonomy, environmentally sustainable activities must:

- contribute “substantially” to one or more of the following six environmental objectives:
  - 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 encouraging reuse and recycling);
  - pollution prevention and control; and
  - protection and restoration of biodiversity and ecosystems;
- not significantly harm any of the above-mentioned environmental objectives;
- be carried out in compliance with certain minimum safeguards, including OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights; and
- comply with certain performance thresholds (the “technical screening criteria”).<sup>229</sup>

While the Taxonomy Regulation provides the general framework for the classification system, it also gives the European Commission the power to adopt secondary legislation (known as “delegated acts”) that 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.<sup>230</sup>

As of July 2023, the following delegated acts have been adopted:

- The delegated act on sustainable activities for climate change adaptation and mitigation objectives (the “Climate Delegated Act”), which came 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 EU taxonomy environmental objectives.<sup>231</sup>
- The delegated act on information to be disclosed concerning sustainable activities (the “Disclosure Delegated Act”), which came into effect in January 2022, specifies the content, methodology and presentation of information that will have to be disclosed by financial and non-financial undertakings to indicate the share of their businesses, investments and lending activities that are aligned with the EU taxonomy.<sup>232</sup>
- The Climate Delegated Act was bolstered by a “complementary” delegated act (the “Complementary Climate Delegated Act”), which came into effect in January 2023 and allows certain transition-supporting nuclear and fossil gas activities to qualify as contributing substantially to climate change mitigation and climate change adaptation under strict nuclear and environmental safety conditions.<sup>233</sup> The Complementary Climate Delegated Act also amended the Disclosure Delegated Act such that non-financial undertakings and financial undertakings are also subject to specific disclosure requirements relating to their activities in the fossil gas and nuclear sectors.<sup>234</sup> These amendments may assist investors in identifying which investment opportunities include fossil gas or nuclear activities and make informed choices accordingly.

- The delegated act on criteria for economic activities making a substantial contribution to one or more of the non-climate environmental objectives (the “Environmental Delegated Act”), which came into effect in January 2024, includes a new set of criteria for economic activities (including, amongst others, manufacturing, water supply, sewerage, waste management and civil engineering) making a substantial contribution to one or more of the non-climate environmental objectives of the EU taxonomy.<sup>235</sup>

It is anticipated that other delegated acts related to the EU taxonomy will follow.

## EU Sustainability-Related Disclosure Regulations for Financial Market Participants and Financial Advisers

The EU regulations on Sustainability-Related Disclosures in the Financial Services Sector (being the Sustainability Related Financial Disclosure Regulation, commonly referred to as the “SFDR”), which took effect on March 10, 2021, were designed to harmonize rules on transparency with respect to sustainability risk integration and adverse sustainability impact considerations.<sup>236</sup>

### Key Requirements

Unlike the voluntary bond and loan principles discussed previously, the SFDR requires financial service institutions across the market (with certain, limited distinctions between financial market participants<sup>237</sup> and financial advisers<sup>238</sup>) to disclose their policies for integrating sustainability risk and consideration of principal adverse sustainability impacts into their decision-making and advice.<sup>239</sup> The SFDR defines a “sustainability risk” as an ESG-related event that, if it occurs, could cause a negative material impact on the value of an investment.<sup>240</sup>



## Requirements for 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 for identifying and prioritizing principal adverse sustainability impacts and indicators; (ii) a statement on their due diligence policies for consideration of principal adverse sustainability impacts on their investment decisions; and (iii) information on how remuneration policies are consistent with the integration of sustainability risks.<sup>241</sup>

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).<sup>242</sup> With respect to financial products that either promote environmental/social characteristics or have sustainable investment as their objective, disclosure must also cover how those characteristics/objectives are measured and met.<sup>243</sup>

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.<sup>244</sup>

## Requirements for Financial Advisors

The obligations imposed by the SFDR on financial advisers are less onerous. Financial advisers are required to provide information on their websites regarding 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.<sup>245</sup> Financial advisers 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 returns of the financial products on which they advise, or an explanation of why such risks were deemed irrelevant.<sup>246</sup>

## Delegated Regulations

As with the EU taxonomy, the SFDR provides that the European Commission should have the power to adopt delegated acts that amend or further specify the information that must be disclosed by market participants.<sup>247</sup> The first delegated act, which covers regulatory technical standards to be used by financial market participants under the SFDR (the "Regulatory Technical Standards"), came into effect on January 1, 2023.<sup>248</sup> The Regulatory Technical Standards specify the content, methodologies and presentation of information that must be included on the websites of financial market participants and in the pre-contractual documents and periodic reports of financial products relating to: (i) sustainability indicators and adverse sustainability impacts; (ii) the principle of 'do no significant harm'; and (iii) the promotion of environmental or social characteristics and sustainable investment objectives.<sup>249</sup> The Regulatory Technical Standards also require financial market participants to publish their mandatory website disclosures relating to financial products in a separate section of their website, which they are required to title "Sustainability-related disclosures."<sup>250</sup>

A second delegated act came into effect on February 20, 2023, amending the SFDR to ensure consistency with the EU taxonomy's position on fossil gas and nuclear-related activities.<sup>251</sup> The amendments require financial market participants to disclose the extent of their portfolio exposure to fossil gas and nuclear-related activities that comply with the requirements of the EU taxonomy, as set out under the Complementary Climate Delegated Act.<sup>252</sup> Both of these delegated acts may increase market transparency and allow investors to make informed decisions about their investments.

## EU Corporate Sustainability Reporting Directive

The EU Corporate Sustainability Reporting Directive (“CSRD”) came into force in January 2023<sup>253</sup> and requires large undertakings, small and medium-sized undertakings that are public-interest entities and parent undertakings of a large group to publicly file certain prescribed information deemed necessary to understand the impact of those undertakings (and the impact of their upstream and downstream value chains) on sustainability matters.<sup>254</sup> Of particular note is the breadth of entities that may become subject to such requirements, since once fully enacted, under certain conditions, the CSRD’s reporting requirements will also require EU-established subsidiaries and EU-located branches of non-EU member parent undertakings to make CSRD-compliant disclosures at the group level of the ultimate third-country parent undertaking.<sup>255</sup>

## European Green Bond Standard

Following extensive consultation with interested stakeholders, in July 2021, the European Commission proposed an EU green bond standard (EUGBS) in order to establish a common framework of rules on the use of European green bonds that pursue the environmentally sustainable objectives set out within the EU taxonomy and to facilitate development of the market for “high quality” green bonds.<sup>256</sup> The EUGBS is seen as an important means through which the European Union can further its climate and environmental objectives under the 2016 Paris Agreement on climate change and the European Green Deal.<sup>257</sup>

In May 2023, following negotiations between the European Commission, the European Council and the European Parliament over the intervening years, an agreement was reached in principle on the draft text of the EUGBS (Draft EUGBS), subject to its adoption by the European Parliament at first reading without further amendments.<sup>258</sup> However, as of August 10, 2023, the EUGBS is neither final nor effective. If adopted, the Draft EUGBS will institute uniform requirements for bond issuers that wish to classify any bond as a “European green bond” or “EuGB.”<sup>259</sup>



# Recent Issuances



As discussed above, the sustainable finance market has grown considerably in the last few years. The Recent Sustainable Bonds and Loans table highlights several recent sustainable bonds and loans, including green, social and sustainable issuances. The Recent Sustainability-Linked Bonds and Loans table highlights several recent sustainability-linked bonds and loans.



# Recent Sustainable Bonds and Loans <sup>260</sup>

Date	Type and Size of Facility	Borrower / Issuer	Administrative Agent / Lender / Bookrunner / Lead Manager / Sustainability Agent(s)
November 3, 2023	\$1.309B Revolving Credit Facility	Sunnova TEP Holdings, LLC	Atlas Securitized Products Holdings, LP, as administrative agent  ING Capital LLC, as green loan structuring agent
Issued July 20, 2023	GBP 300M 5.5% Social Bonds	African Development Bank	NatWest Markets, RBC Capital Markets and TD Securities, as joint lead managers
July 19, 2023	\$800M Intra-Group Unsecured Subordinated Green Loan	Avangrid, Inc.	Iberdrola Financiación, S.A.U., as lender
June 12, 2023	\$340M Term Loan	Trinity Rail Leasing 2023 LLC	Wells Fargo Bank, National Association, as administrative agent  Credit Agricole Corporate & Investment Bank, as green advisor
Announced June 7, 2023	EUR 750M Green Senior Non-Preferred Bond	Banco BPM S.p.A.	Banca Akros, BNP Paribas, BofA Securities, Citi, HSBC, Santander and UBS, as joint bookrunners
Issued June 2, 2023	A \$450M 4.550% Sustainability Awareness Bonds	European Investment Bank	Australia and New Zealand Banking Group Limited, as lead manager and dealer
Announced March 6, 2023	\$150M Green Bond	Meridian Energy Limited	ANZ Bank New Zealand Limited and Craigs Investment Limited Partners, as joint arrangers  ANZ Bank New Zealand Limited, Bank of New Zealand, Craigs Investment Partners Limited and Forsyth Barr Limited, as joint lead managers
Reported January 24, 2023	\$160M Social Bonds	Sales Tax Securitization Corp.	--
December 19, 2022	\$200M Revolving Credit Facility	APA Generation, LLC	Citibank, N.A., as the revolver administrative agent and green structuring agent

## Use of Proceeds

## Reporting Requirements

## Review

## Online Links

To finance or refinance solar assets, including solar assets that do not include fossil fuel generators as part of Ancillary PV System Components.

Annual

Internal

<https://www.sec.gov/Archives/edgar/data/1772695/000119312523273527/d579286dex101.htm>

To finance eligible social projects in accordance with the Issuer's Social Bond Program.

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<https://www.afdb.org/en/news-and-events/press-releases/african-development-bank-launches-inaugural-gbp-300-million-55-social-global-benchmark-due-august-2025-63345>

To finance and/or refinance eligible green projects that comply with the eligibility criteria set forth in the Iberdrola Framework for Green Financing and the Avangrid Framework for Green Financing.

Annual

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<https://www.sec.gov/Archives/edgar/data/1634997/000119312523191391/d532022dex102.htm>

To fund the acquisition of the railcars being utilized for low-carbon transportation of goods and related eligible leases and to pay fees and expenses incurred in connection therewith.

Annual

External

<https://www.sec.gov/Archives/edgar/data/99780/000009978023000098/exhibit101-termloanagreeme.htm>

Net proceeds to be used to finance and/or refinance eligible green loans.

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[https://gruppo.bancobpm.it/media/dlm\\_uploads/230607\\_Green-SNP-5NC4\\_PR\\_ENG.pdf](https://gruppo.bancobpm.it/media/dlm_uploads/230607_Green-SNP-5NC4_PR_ENG.pdf)

To fund the Issuer's lending activities contributing to sustainability objectives in line with evolving EU sustainable finance legislation, including the EU taxonomy.

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<https://www.luxse.com/pdf-viewer/103626984>

An amount equal to the proceeds will be used to finance or refinance renewable energy and energy efficiency projects and assets that meet the eligibility criteria as set out in the Green Finance Framework.

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External

<https://www.nzx.com/announcements/407833>; [https://www.meridianenergy.co.nz/public/Investors/Reports-and-presentations/Green-Finance/MEL60/Retail-bond-investor-presentation\\_MEL60.pdf](https://www.meridianenergy.co.nz/public/Investors/Reports-and-presentations/Green-Finance/MEL60/Retail-bond-investor-presentation_MEL60.pdf); <http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/MEL/407833/390110.pdf>

To fund sundry work, including construction of affordable housing, vacant lot cleanup and tree planting, and programs related to Chicago's purchase of electric vehicles and grants to rehabilitate vacant buildings.

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<https://chicago.suntimes.com/city-hall/2023/1/24/23570157/city-social-bond-issue-deemed-a-success-with-big-and-small-investors>

For working capital and general corporate purposes, acquisitions of new subsidiaries and distributions; provided that the use of proceeds shall either directly or indirectly align with the Green Loan Principles.

Annual

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<https://www.sec.gov/Archives/edgar/data/1828723/000182872322000156/altus-creditagreementexecu.htm>

# Recent Sustainability-Linked Bonds and Loans<sup>261</sup>

Date	Type and Size of Facility	Borrower / Issuer	Administrative Agent / Trustee / Sustainability Agent(s)
January 2, 2024	\$310M Term Loan Facility	Kimco Realty OP, LLC	JPMorgan Chase Bank, N.A., as administrative agent J.P. Morgan Securities LLC, as sustainability structuring agent
December 11, 2023	\$2.5B Credit Facility	Johnson Controls International plc	JPMorgan Chase Bank, N.A., as administrative agent ING Capital LLC, as sustainability structuring agent
December 8, 2023	\$500M 6.625% Senior Notes	Kinetik Holdings LP	U.S. Bank Trust Company, National Association, as trustee
Amended: October 6, 2023	€300,000,000 Revolving		Goldman Sachs Bank USA, as administrative agent
July 25, 2014	Credit Facility	Orion Engineered Carbons GmbH	UniCredit Bank AG, as sustainability coordinator
Amended: September 29, 2023	\$1.255B Credit Facility*	Ansys, Inc.	PNC Bank, National Association, as administrative agent
June 30, 2022			PNC Capital Markets LLC, as sustainability structuring agent

\* This facility includes current sustainability-linked features which are highlighted in the Recent Sustainability-Linked Bonds and Loans table, and also provides the parties with the ability to enact additional ESG pricing provisions via an ESG amendment. See Section 10.23 of the Credit Agreement, dated as of June 30, 2022, by and among Ansys, Inc., PNC Bank, National Association and the lenders from time to time party thereto, as amended by Amendment No. 1 to Credit Agreement, dated as of September 29, 2023, which can be found at the link provided in this row of the Recent Sustainability-Linked Bonds and Loans table.

**KPIs: What Is Being Measured**

**Effect of Targets on the Facility**

**Reporting Requirements**

**Review**

**Online Links**

Greenhouse gas emissions, reduced by qualified emissions offsets (such as renewable energy certificates)

Pricing adjustment depending on whether SPTs are met

Annual

External

[https://www.sec.gov/Archives/edgar/data/879101/000114036124000247/ny20017682x2\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/879101/000114036124000247/ny20017682x2_ex10-1.htm)

Greenhouse gas emissions  
Total water withdrawals in water-stressed locations  
Total diverse supplier spend with minority-owned, woman-owned, veteran-owned, LGBTQAI+ owned and disability-owned businesses

Pricing adjustment depending on whether SPTs are met

Annual

External

[https://www.sec.gov/Archives/edgar/data/1609804/000095014223002581/eh230409779\\_ex1001.htm](https://www.sec.gov/Archives/edgar/data/1609804/000095014223002581/eh230409779_ex1001.htm)

Greenhouse gas emissions intensity  
Methane emissions intensity  
Representation of women in corporate officer positions

Pricing increase if SPTs not met

One-time prior to the date at which the pricing increase is to take effect, with delivery of subsequent notification in certain circumstances

External

<https://www.sec.gov/Archives/edgar/data/1692787/000119312523289910/d610406dex41.htm>

[Redacted]

Pricing adjustment depending on whether SPTs are met

Annual

External

[https://www.sec.gov/Archives/edgar/data/1609804/000095014223002581/eh230409779\\_ex1001.htm](https://www.sec.gov/Archives/edgar/data/1609804/000095014223002581/eh230409779_ex1001.htm)

Greenhouse gas emissions  
Inclusion training participation by employees

Pricing adjustment depending on whether SPTs are met

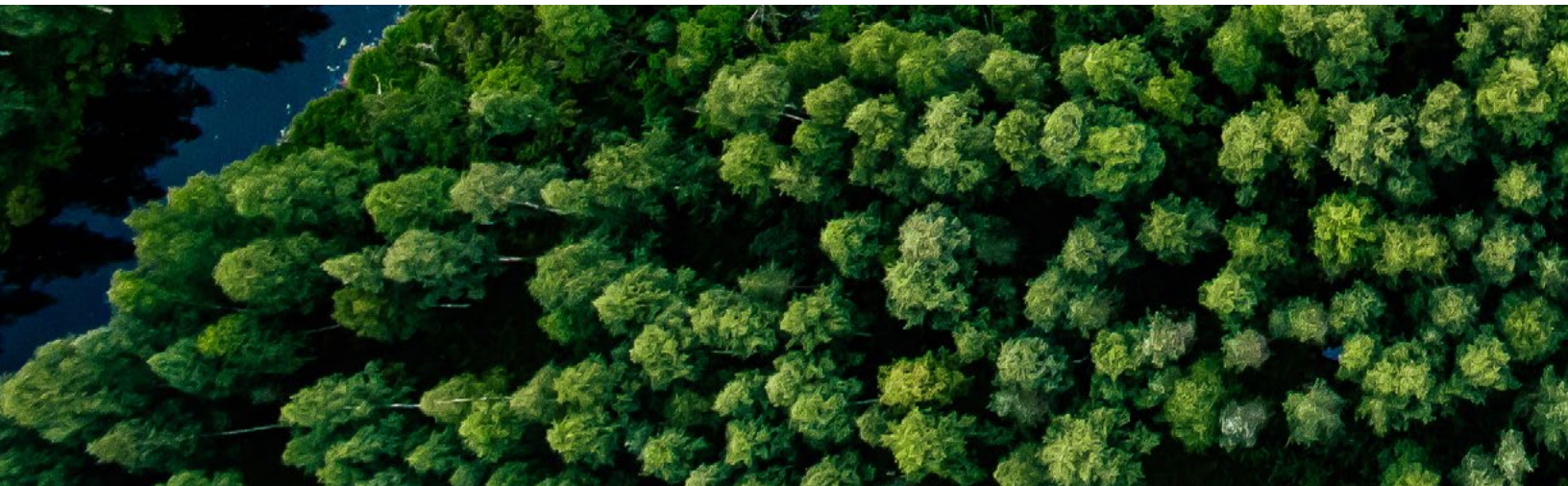
Annual

External

<https://www.sec.gov/Archives/edgar/data/1013462/000101346223000055/anssex101-amendmentno1tocr.htm>



Date	Type and Size of Facility	Borrower / Issuer	Administrative Agent / Trustee / Sustainability Agent(s)
September 27, 2023	\$160M Revolving Credit Facility	International Seaways Operating Corporation	Nordea Bank Abp, New York Branch, as administrative agent  ING BANK N.V., LONDON BRANCH, as sustainability coordinator
Amended: April 28, 2023  November 15, 2022	\$600M Revolving Credit Facility	Huron Consulting Group Inc.	Bank of America, N.A., as administrative agent  PNC Capital Markets LLC, as sustainability structuring agent
April 10, 2023	\$200M Revolving Credit Facility	Pinnacle West Capital Corporation	Barclays Bank PLC, as agent  Barclays Bank PLC and Mizuho Bank, LTD, as co-sustainability structuring agents
March 1, 2023	\$300M Revolving Credit Facility	Xylem Inc.	Citibank, N.A., as administrative agent  ING Capital LLC, as sustainability structuring agent







**KPIs: What Is Being Measured**

**Effect of Targets on the Facility**

**Reporting Requirements**

**Review**

**Online Links**

Fleet sustainability score

Amount invested on vessels in sustainability-linked investment categories, including energy efficiency improvements and decarbonization

Lost time incident frequency

Pricing adjustment depending on whether SPTs are met

Annual

Internal

<https://www.sec.gov/Archives/edgar/data/1679049/000155837023017873/insw-20230930xex10d1.htm>

Racial and ethnic diversity

Women in leadership

Pricing adjustment depending on whether SPTs are met

Annual

External

<https://www.sec.gov/Archives/edgar/data/1289848/000128984823000045/exhibit-101creditfacilityam.htm>; <https://www.sec.gov/Archives/edgar/data/1289848/000128984822000059/exh101-thirdamendandrestat.htm>

Carbon intensity

OSHA incidents

Pricing adjustment depending on whether SPTs are met

Annual

External

<https://www.sec.gov/Archives/edgar/data/764622/000076462223000053/pnwsecondamendedandrestate.htm>

Greenhouse gas emissions

Customer's CO2e footprint

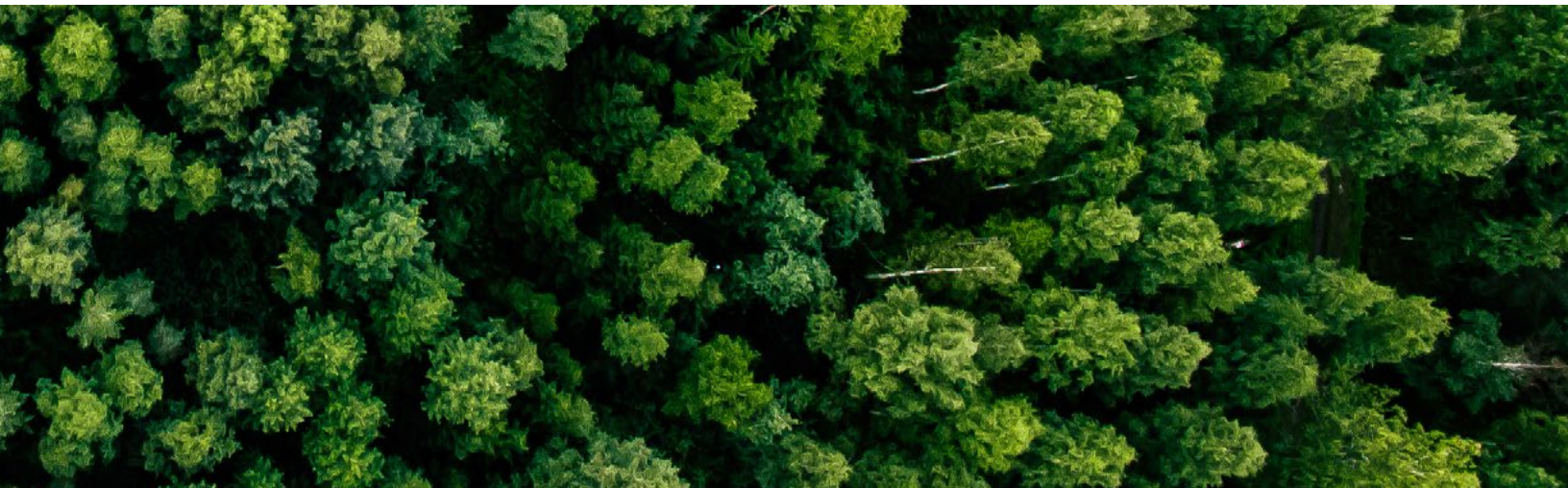
Percent of global supply chain spend by the Company, from suppliers to the Company or its Subsidiaries that have disclosure of sustainability information available via EcoVadis (or equivalent)

Pricing adjustment depending on whether SPTs are met

Annual

External

<https://www.sec.gov/Archives/edgar/data/1524472/000152447223000012/exhibit101five-yearrevolvi.htm>



# Recent Loans with ESG Amendment Provisions<sup>262</sup>

Date	Type and Size of Facility	Borrower / Issuer	Administrative Agent / Sustainability Agent(s)
December 15, 2023	\$4.325B Revolving Credit Facility	Blackstone Holdings Finance Co. L.L.C.	Citibank, N.A., as administrative agent Citibank, N.A. and Bank of America, N.A., as sustainability agents
November 29, 2023	\$425M Revolving Credit Facility	Northwestern Corporation	Bank of America, N.A., as administrative agent Bank of America, N.A. and U.S. Bank National Association, as sustainability agents
September 1, 2023	\$2B Revolving Credit Facility	Lowe's Companies, Inc.	Bank of America, N.A., as administrative agent BofA Securities, Inc., as sustainability coordinator
May 26, 2023	\$225M Revolving Credit Facility	Diodes Incorporated and Diodes Holdings UK Limited	Bank of America, N.A., as administrative agent
May 10, 2023	\$600M Revolving Credit Facility, \$225M Tranche A-1 Term Loan Facility, \$400M Tranche A-2 Term Loan Facility	RLJ Lodging Trust, L.P.	Wells Fargo Bank, National Association, as administrative agent Wells Fargo Securities, LLC, as sustainability structuring agent



**KPIs: What Is Being Measured**

**Effect of Targets on the Facility**

**Reporting Requirements**

**Review**

**Online Links**

To be determined by future ESG side letter

Pricing adjustment depending on whether SPTs are met, not to exceed a commitment fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.05\%$

Reporting to be in line with Sustainability-Linked Loan Principles (SLLPs)

External

<https://www.sec.gov/Archives/edgar/data/1393818/000119312523299933/d669280dex101.htm>

To be determined by future ESG amendment

Pricing adjustment based on borrower's performance against the KPIs, not to exceed a commitment fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.05\%$

Reporting to be in line with SLLPs

An ESG amendment will not impose any requirement on the sustainability agent to assess, monitor, report and/or validate the KPIs

<https://www.sec.gov/Archives/edgar/data/73088/000007308823000156/exhibit101nwcrcpcreditfaci.htm>

To be determined by future ESG amendment

Pricing adjustment based on borrower's performance against the KPIs, not to exceed a facility fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.04\%$

Reporting to be in line with SLLPs

External

<https://www.sec.gov/Archives/edgar/data/60667/000119312523230647/d503024dex101.htm>

To be determined by future ESG amendment

Pricing adjustment depending on whether SPTs are met, not to exceed a commitment fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.05\%$

Reporting to be in line with SLLPs

External

[https://www.sec.gov/Archives/edgar/data/29002/000095017023026074/diod-ex10\\_1.htm](https://www.sec.gov/Archives/edgar/data/29002/000095017023026074/diod-ex10_1.htm)

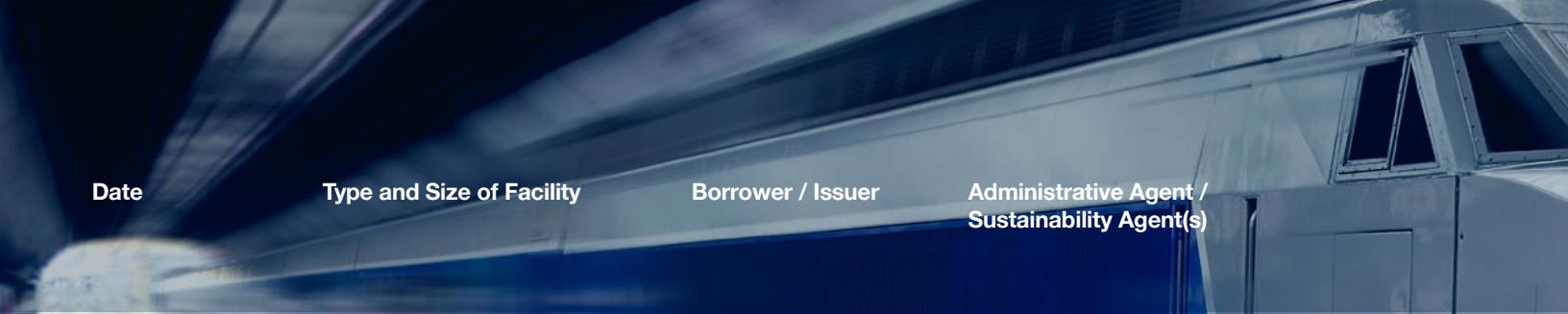
To be determined by future ESG amendment

Pricing adjustment depending on whether SPTs are met, not to exceed an interest rate adjustment greater than  $\pm 0.04\%$

Reporting to be in line with customary market practice for companies in similar businesses implementing Sustainability-Linked Loan

External

[https://www.sec.gov/Archives/edgar/data/1511337/000110465923061205/tm2315672d1\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1511337/000110465923061205/tm2315672d1_ex10-1.htm)



Date	Type and Size of Facility	Borrower / Issuer	Administrative Agent / Sustainability Agent(s)
May 8, 2023	\$3B Credit Facility	MetLife, Inc. and MetLife Funding, Inc.	Bank of America, N.A., as administrative agent BofA Securities, as sustainability coordinator
Amended: April 28, 2023	\$1B Revolving Credit Facility	DaVita Inc.	Wells Fargo, National Association, as administrative agent
August 12, 2019	\$1.25B Term Loan Facility		
April 6, 2023	\$1B Revolving Credit Facility	Raymond James Financial, Inc. and Raymond James & Associates, Inc.	Bank of America, N.A., as administrative agent BofA Securities, Inc, as sustainability coordinator
March 31, 2023	\$400M Revolving Credit Facility	California Water Service Company	Bank of America, N.A., as administrative agent BofA Securities, Inc., as sustainability coordinator
February 27, 2023	\$2B Revolving Credit Facility	Cardinal Health, Inc.	JPMorgan Chase Bank, N.A., as administrative agent J.P. Morgan Securities LLC, as sustainability structuring agent





**KPIs: What Is Being Measured**

**Effect of Targets on the Facility**

**Reporting Requirements**

**Review**

**Online Links**

To be determined by future ESG amendment

Pricing decrease if SPTs met, not to exceed a commitment fee adjustment greater than 0.01% and an interest rate adjustment greater than 0.05%

Reporting to be in line with SLLPs

External

<https://www.sec.gov/Archives/edgar/data/1099219/000119312523139500/d351755dex101.htm>

To be determined by future ESG amendment

Pricing adjustment depending on whether SPTs are met, not to exceed a commitment fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.05\%$

Reporting to be in line with SLLPs

External

<https://www.sec.gov/Archives/edgar/data/927066/000092706623000096/ex101-thirdamendmenttocred.htm>

To be determined by future ESG amendment

Pricing adjustment depending on whether SPTs are met, not to exceed a commitment fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.04\%$

Reporting to be in line with SLLPs

External

<https://www.sec.gov/Archives/edgar/data/720005/000072000523000037/ex101rjamendedandrestate.htm>

To be determined by future ESG amendment

Pricing adjustment depending on whether SPTs are met, not to exceed a commitment fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.05\%$  (and not to exceed  $\pm 0.025\%$  per KPI)

Reporting to be in line with SLLPs

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[https://www.sec.gov/Archives/edgar/data/1035201/000110465923041667/tm2311464d1\\_ex10-1.htm](https://www.sec.gov/Archives/edgar/data/1035201/000110465923041667/tm2311464d1_ex10-1.htm)

To be determined by future ESG amendment

Pricing adjustment depending on whether SPTs are met, not to exceed a facility fee adjustment greater than  $\pm 0.01\%$  and an interest rate adjustment greater than  $\pm 0.04\%$

Reporting to be in line with SLLPs

External

<https://www.sec.gov/Archives/edgar/data/721371/000072137123000014/a20230200-exhibit101.htm>



# Endnotes

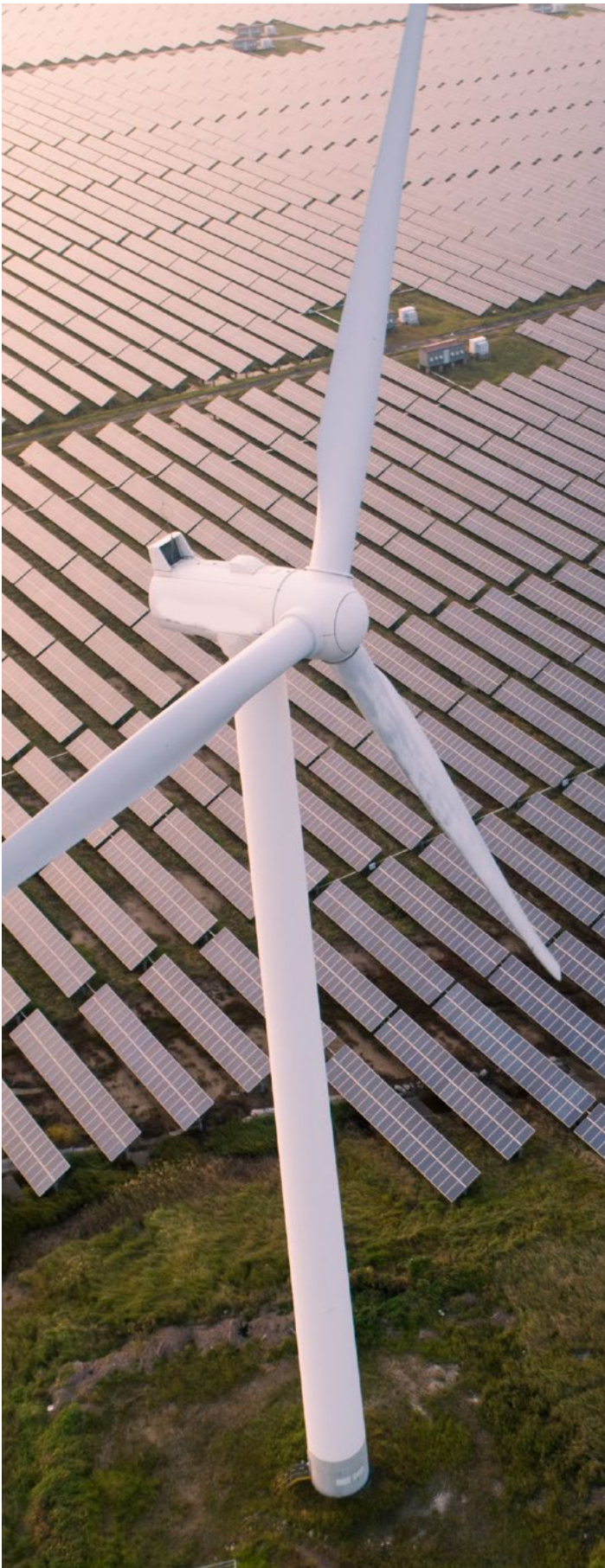
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- 238 Financial adviser means: “(a) an insurance intermediary which provides insurance advice with regard to IBIPs; (b) an insurance undertaking which provides insurance advice with regard to IBIPs; (c) a credit institution which provides investment advice; (d) an investment firm which provides investment advice; (e) an AIFM which provides investment advice in accordance with point (b)(i) of Article 6(4) of Directive 2011/61/EU; or (f) a UCITS management company which provides investment advice in accordance with point (b)(i) of Article 6(3) of Directive 2009/65/EC.” *Id.* at art. 2(11).
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- 253 *Corporate Sustainability Reporting*, EUR. COMM’N, [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en) (last visited Feb. 1, 2024). Although the CSRD sets out detailed reporting requirements, these will be subject to a staggered roll out over a period of several years. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, 2022 O.J. (L322/15), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464> [hereinafter CSRD], at art. 5.
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