C L I F F O R D
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TURNING UP THE HEAT: PREPARING FOR US REGULATORY SCRUTINY OF INVESTMENT ADVISER ESG PRACTICES

Over the past few months, senior officials at the **US Securities and Exchange Commission (SEC)** have issued numerous statements emphasizing the importance of Environmental, Social, and Governance (ESG) issues and **cautioning against "greenwashing" and incomplete ESG disclosures** in fund marketing materials and public communications.

In March, the Division of Enforcement formed a new Climate and ESG Task Force to "identify any material gaps or misstatements" in climate risk disclosures by issuers, and to review "disclosure and compliance issues relating to investment advisers' and funds' ESG strategies." Senior SEC Officials have also indicated that annual adviser examinations will include ESG-related questions and the SEC recently issued a Risk Alert on deficiencies and internal control weaknesses at advisers from ESG investing examinations. We strongly recommend that clients prepare now for SEC scrutiny of their ESG practices.

Clifford Chance has developed an ESG Toolkit to help our clients better understand, adapt to and capitalize on the evolving ESG landscape. This set of training and mock examination options is designed to help US and Non-US advisers stay abreast of new developments and prepare for ESG-related questions from SEC examiners.

#### **ADVISER PRESENTATIONS & EDUCATION**

- The Evolving State of ESG Regulation for US Advisers. This program provides a highlevel introduction to key ESG concepts, discusses the Biden administration's most recent ESG priorities and key actions, and explores recent SEC statements, enforcement actions, and ESG rulemaking developments. This presentation is designed for clients who want to increase their awareness of the US regulatory and enforcement landscape and become more conversant on key ESG topics.
- Beyond the SEC: EU SFDR and Taxonomy Considerations for Fund Managers. The EU's recently adopted ESG-focused SFDR and Taxonomy have broad extra-territorial applications and require mandatory disclosures at both the manager and product levels. These disclosure requirements may even apply to products without an ESG focus. This presentation is designed for clients with EU investors or who want to better understand the EU regulatory regime to predict what future US regulations could look like.
- Global ESG Perspectives Roundtable. A roundtable discussion with Clifford Chance attorneys from across our global network focused on recent ESG developments in the United States, EU, and APAC. This presentation is designed for clients with global asset management portfolios or who want to be brought up-to-date on the latest international ESG regulatory developments.
- Introduction to ESG Fund Formation and Regulation. A presentation by Clifford Chance attorneys on key legal and regulatory considerations around the formation and management of ESG-focused investment funds. This presentation is designed for clients interested in either forming their first ESG-focused investment funds or those interested in incorporating ESG factors into existing mandates.



#### **MOCK SEC ESG EXAM**

Our mock ESG exam begins in the same way as an actual SEC Division of Examinations ("DE") examination, with a request that the investment adviser provide documents and information based on a hypothetical SEC initial request. The request will focus primarily on ESGrelated issues and be based on our review of the firm's Form ADV and other publicly available information. We seek to replicate as much as possible the SEC DE examination experience at this initial stage.

Stage 2 of the mock ESG exam involves our remote or on-site examination of the firm and its controls. Our team will request and review additional records and other information not requested prior to the visit or requested and not already provided. We will also conduct interviews with key employees responsible for each aspect of an adviser's ESG program.

- Primary ESG exam topic areas will include:
  - ESG Advertising and Marketing (Disclosures/Greenwashing)
  - ESG Descriptions/Risk Factors (Offering Materials/DDQs)
  - ESG-Related Ratings & Submissions (UNPRI, Equator Principles, etc.)
  - Portfolio Management Processes (Screening/Valuation/Monitoring)
  - Proxy Voting & Investor Communications
  - Overall Control Environment (Supervision/Compliance Function, Policies and Procedures)

In conducting the mock ESG exam, we attempt to create a realistic simulation of the atmosphere around an actual examination. However, the process is also collaborative and efficient, with our exam team providing real-time feedback and ultimately a final exit report that identifies opportunities for the adviser to enhance its ESG compliance.

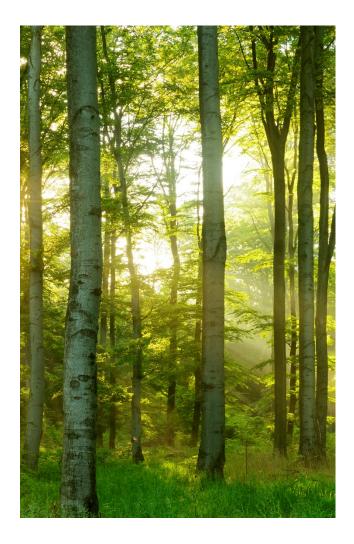
#### **MOCK SEC ESG EXAM PRICING & MODULES**

#### **Different Exam Options Tailored to** Your Business.

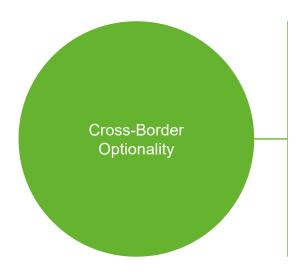
 No two investment management businesses are exactly the same. Some SEC-registered advisers have ESGfocused investment funds. Others include ESG-related statements in their marketing materials and may consider ESG issues when making investment decisions, but do not have funds specifically designed to invest in companies that promote ESG objectives. The modular nature of our mock ESG exam allows us to tailor (and price) the exam according to each client's specific needs. We price our exams at a highly competitive capped rate and tailor each exam to the client's business.

#### Mock ESG Exam Modules Include:

- ESG Advertising and Marketing (Disclosures/Greenwashing)
- ESG Descriptions/Risk Factors (Offering) Materials/DDQs)
- ESG-Related Ratings & Submissions (UNPRI, Equator Principles, etc.)
- Portfolio Management Processes
  - Screening/Initial Due Diligence/ESG Questionnaires
  - Investment Decision/Valuation
  - Investment Monitoring (ESG Metrics) & Data Collection)
  - Interactions/Agreements with Property Managers, Tenants, Portfolio Companies, etc.
- Proxy Voting & Investor Communications
- Overall Control Environment (Supervision/Compliance Function, Policies and Procedures)



#### **CROSS-BORDER COVERAGE**



Clifford Chance's international network of offices and regulatory and enforcement professionals allows us to tailor our approach to the unique needs of global asset managers. We can, for example, conduct a mock ESG examination for managers with a presence outside the United States (e.g., in the EU) that focuses on US regulatory requirements while also factoring in the manager's local regulatory obligations (e.g., under the EU's SFDR and Taxonomy frameworks). We can also address requirements that apply to US managers that have brought themselves in scope of other local regimes, by marketing into the EU for example. Our mock ESG exam exit report and enhancement recommendations in these scenarios take both US and EU regulatory frameworks into consideration and focus on optimal regulatory alignment across jurisdictions.

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### WHY CLIFFORD CHANCE

**OUR INTERNATIONAL NETWORK** 

# 32 OFFICES 22 COUNTRIES

ABU DHABI	CASABLANCA	ISTANBUL	MUNICH	ROME	WARSAW
AMSTERDAM	DELHI	LONDON	NEWCASTLE	SÃO PAULO	WASHINGTON, D.C.
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BEIJING	DÜSSELDORF	MADRID	PARIS	SINGAPORE	
BRUSSELS	FRANKFURT	MILAN	PERTH	SYDNEY	KYIV <sup>1</sup>
BUCHAREST	HONG KONG	MOSCOW	PRAGUE	TOKYO	RIYADH <sup>2</sup>

<sup>1.</sup> Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

<sup>2.</sup> Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh. TURNING UP THE HEAT: PREPARING FOR SEC SCRUTINY OF ADVISER GREENWASHING AND ESG PRACTICES

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