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SM TREASURY INSIGHTS

SUSTAINABLE FINANCE RE-EXAMINED

During the course of 2023, scepticism within treasury teams about the benefits of ESG-labelled debt (otherwise known as "ESG fatigue") seemed to become quite widespread. Some corporates decided against ESG labelling their loans and/or bonds, and we are aware of a number which are weighing up whether to do so.

The reasons for this are business and context-specific, but there are some common themes. These include the costs involved in structuring and administering sustainable debt terms when balanced against the absence of any meaningful price savings. Businesses also may have concerns about risk exposure as the contractual commitments required to attract a sustainability label evolve and become more onerous.

Debt market conditions are also a factor for some. In a year punctuated by global election activity, refinancing and issuance windows are constrained. Companies looking to come to market in what is left of H2 24 may conclude that timetables simply do not allow for the negotiation of sustainability terms.

In this article, we re-examine in detail the role of ESG-labelled finance in corporate capital structures in light of these developments. What are the drivers for labelled issuance and how have they changed? What are the key challenges from the borrower/issuer perspective and what can be done to open up the market? And importantly, what does this mean for the future of sustainable finance?

What do we mean by "sustainable finance"?

One of the dominant symptoms of ESG fatigue is sheer exhaustion from getting to grips with the terms and concepts involved in any ESG-related project and the pace with which those terms and concepts proliferate. "Sustainable finance" is an umbrella term for a range of (predominantly) debt products that facilitate or promote the achievement of sustainability goals.

By way of reminder, the bedrock of sustainable finance are green, social and sustainability-linked (SL) loans and bonds that adhere to the requirements of the suite of "Principles" published by the debt market trade associations. The application of these labels to loans and bonds denotes adherence to the requirements of the relevant Principles, which aim to implement consistent global standards.

Principles and related guidance covering green, social and SL loans are published by the LMA and its sister organisations in the US and APAC. The ICMA publishes Principles and related guidance covering green, social and SL bonds.

Green and social loans and bonds are collectively referred to as the "use of proceeds products", because their proceeds may only be applied to eligible green or social projects.

Sustainability-linked products do not require the proceeds to be applied to any particular purpose or project, but the pricing of the instrument is linked to the attainment of certain targets (SPTs) set by reference to sustainability indicators or KPIs (so are ostensibly designed to incentivise the achievement of those SPTs).

The range of products and instruments able to bear green, social and SL labels is guided by the Principles but is also, to an extent, dependent on the approach and standards developed by individual finance providers. All of the major banks, for example, have their own

"Sustainability Framework", which will be available on their website.

The contents of these frameworks vary, but their function is to describe the parameters of the products that banks regard as "sustainable", broadly, in the sense of contributing towards that institution's sustainable finance targets. A key feature of these frameworks is a commitment to adhere to the Principles for green, social and SL loan and bond issuance. This will typically include an indication of how that institution applies the relevant Principles, as the Principles do not offer exhaustive guidance on all features of sustainable debt products and certain aspects are open to interpretation. An example is how the institution assesses the eligibility of green projects in green loans or bonds.

What are the drivers for labelled issuance?

Sustainability goals for most companies do not involve a single, dominant "why", but are the product of a combination of values (culture) plus various external levers in the form of both sticks and carrots (although mostly sticks).

For some businesses, the "why" is intrinsic; the owners and senior management have decided to prioritise sustainability as a core value of the business. The reasons for a business to decarbonise its operations, improve working conditions for its employees, eradicate human rights abuses from its supply chain and so on, are fundamentally rooted in human values. As such, sustainability can simply be a choice to take part in a social contract – a desire to "do the right thing". However, companies will naturally need to balance choices about how, and at what speed those values are pursued, against the reality of economic conditions. This is where external incentives come into play.

These external incentives include the views and demands of key stakeholders. If the values of the business do not accord with those of customers, employees and investors, those values have commercial implications for the success of the business. There is commercial upside in presenting a positive sustainability story - and a commercial downside in a negative one.

In the sustainability context, external stakeholders also include society at large. Litigation and reputational challenges play an increasing role in encouraging sustainable business practices, with pressure groups and NGOs employing ever more creative legal avenues to ensure companies are held to account.

Sustainable finance is marketed as a tool for supporting and developing these sustainable business goals. SL instruments, for example, are described in the Principles that govern their parameters as tools for transition. Sustainable finance can be viewed as an opportunity to illustrate and amplify the company's commitment to sustainable transition.

The early sustainable finance deals were done at a point when companies were focussing on sustainability and providing disclosures in accordance with the Task Force on Climate-Related Financial Disclosures (TCFD) and other frameworks on a voluntary basis. The reasons for doing those earlier deals were thus often based on a combination of the same reasons why that company had chosen to pursue sustainability as a priority more generally.

These reasons still hold true in many cases. However, since the early deals, external demands on businesses to commit to a sustainable future have strengthened exponentially.

How have the drivers for ESG-labelled issuance changed?

Since the early ESG-labelled deals, legislative and regulatory requirements relating to sustainability have developed significantly. It is only over the last 12-18 months that the end-game has started to come into sight. Preparing for the implementation of mandatory reporting and disclosure frameworks, designed to provide stakeholders and other interested parties with a clear picture of the company's sustainability profile, has forced companies to look at assessing and reporting their progress across a range of sustainability indicators. Measures such as the EU Corporate Sustainability Reporting Directive (CSRD) and the International Sustainability Standards Board (ISSB) reporting standards are designed to produce readily comparable and assurable public disclosures, that enable users of that information to make an informed choice about whether or not to engage with the business in question. The legislative requirements on the table have also evolved beyond reporting

requirements towards measures requiring action to be taken (the prospect of mandatory transition plans and the EU Corporate Sustainability Due Diligence Directive (CS3D) being key examples).

Corporates have been looking at how to comply with these requirements against a backdrop of an increasing incidence of greenwashing (or "sustainability-washing") challenges. Greenwashing risk, which can arise from a variety of sources, is a boardroom-level topic. Most corporates consider it imperative that the business is transparent and honest about its pace of progress. Businesses of all types are therefore diverting significant resources towards reporting and disclosure, trying at the same time to ensure that they are not thereby creating legal or reputational risk.

The financial sector has responded to these challenges (including its own compliance requirements and demands from regulators) by tightening up its approach to assessing the sustainability credentials of its customers. Sustainability is now an essential part of risk assessment in most cases, and this has impacted the structures and terms of the sustainable finance products. These more stringent demands have led a number of corporates, already heavily focussed on reporting and disclosure requirements and greenwashing risk, to pause and think more carefully about sustainable finance. In an environment where adverse publicity around sustainability issues can have serious reputational – and share price – consequences, there is nervousness amongst corporates about setting targets in financing documentation which the company is not absolutely certain it can meet, even if failure does not default the debt (as is typically the case).

The final factor that we believe is feeding into decisions to dispense with ESG-labelling is debt market conditions more generally. As noted in the introduction, the prospect of both UK and US regime changes in a single calendar year has prompted many borrowers to accelerate their refinancing/capital markets issuance plans. Compressed windows of opportunity (in particular for those who have waited until H2) can translate into less enthusiasm for negotiating sustainability terms that are not absolutely necessary to get the deal away.

The relationship between ESG and liquidity

There is a perception amongst corporates (potentially well-founded in some cases) that banks have been somewhat aggressive in their promotion of sustainable debt products. However, it is important not to forget that the financial sector is in the same position as the corporate sector in terms of trying to get to grips with sustainability reporting and disclosure requirements, with the added demands of sectoral regulation layered on top.

Banks and asset managers are under increasing pressure to apply their financial firepower to sustainable ends and if they fail to do that – or fail to do so with sufficient rigour and diligence - stakeholders and regulators will be quick to hold them to account. Sustainability may be a self-selected core value for financial institutions, but it is also a commercial– and a compliance - issue. A particular challenge for the financial sector is that its ability to decarbonise its activities and meet broader sustainability goals, and its ability to pass on accurate signals and metrics to its own stakeholders, depends predominantly on extracting robust sustainability data from its customers.

Finance providers must pick and choose to whom they provide finance according to their views on the importance of sustainability – and the views of their key stakeholders. In most cases (certainly in the EU and the UK), sustainability is now an important facet of the borrower or issuer's overall risk profile, meaning it can determine the availability of finance. The unique position of the financial sector means that sustainability and liquidity are inextricably linked.

Whether ESG-labelling is necessary to access liquidity (we would suggest) may depend on a number of factors. Chief among them is whether pre-contract due diligence and public reporting and disclosure provides sufficient data and comfort with regard to sustainability risks (meaning that sustainability can be addressed as part of overall due diligence processes). The structure of a labelled loan or bond may provide entities who are less far forward in terms of their sustainability data with the means to progress. In doing so, this may also provide an additional source of support (and may therefore be viewed as necessary by finance providers). For borrowers

and issuers who are more advanced in their journey, sustainability analysis and reporting may simply be absorbed into general credit analysis.

Accordingly, while the decisions of larger-cap companies to move away from labelled loans and bonds could be viewed as examples of "ESG fatigue", they could also be viewed as an illustration of their investment grade status and the maturity and transparency of their sustainability credentials. In those instances, our impression is that banks and investors have backed off somewhat and are not insisting that financing is ESG-labelled for the label's sake (the "league table" driver). The structure of the labelled product has become less important because the companies are doing the work themselves. However, we would add that this point should not be overplayed as universally relevant – it is notable that many of the companies which have been able to walk away from sustainability labels without impacting their financing are generally investment grade players, who in the current environment are not short of offers of liquidity.

"Sleeping" SL loans are vanilla loans which include a commitment to convert the loan into an SL loan in the future. The approach to drafting varies – the documentation may include full SL drafting save for KPIs and SPTs to be agreed at a later date. Alternatively, the "sleeping" provisions may take the form of a simpler commitment to agree provisions at the appropriate point.

The SL Loan Principles Guidance places parameters around the use of these structures (restricting the loan from being publicised as an SL loan until it "wakes up" and suggesting a longstop "alarm call" of no longer than 12 months from the facility being put in place).

For further information on sleeping structures and the LMA's SL Loan drafting, please refer to our ACT Borrower's Guide to Sustainability-Linked Loan Terms.

The prevalence of "sleeping" SL loan mechanics in leveraged lending illustrates the link between sustainability and liquidity. For companies which are not yet ready or able to commit to an SL structure in accordance with the Principles, the existence of "sleeping SL loan" language suggests that there is value in the borrower showing willingness to commit to SL terms at a later date.

Recently, the LMA has said publicly that template drafting for "sleeping" structures (aka "agreement to amend" language) will be added to its SL drafting template when it is next updated. This follows the lead of the LSTA, which already includes this language in its SL drafting and underlines the extent to which both equity and debt investors see sustainability as a priority.

How have sustainable finance products changed?

For borrowers, to engage with sustainable finance products of any type brings with it commitments to take action and to provide periodic proof to lenders that the relevant action has been taken. However, as noted above, in response to the changing risk environment, these requirements have become more onerous, which has had an impact on demand.

The Principles that govern labelled issuance are kept under review by the relevant trade associations, and over time, have become increasingly prescriptive. Individual banks' own requirements are also kept under close review. While there are differences in views among banks on specific terms and structural aspects, overall, we believe individual bank requirements have also become tighter and/or are applied more carefully.

This seems particularly apparent in the context of SL loans, which comprise the bulk of the sustainable loan market. As discussed in our ACT Borrower's Guide to Sustainability-Linked Loan Terms and more recently, our "Loan Financing in 2024" briefing, the 2023 updates to the SL Loan Principles and Guidance and the publication of the LMA's draft provisions for SL Loans represented a significant change in terms of the level of commitment required from borrowers using these instruments.

The nature and benchmarking of KPIs and SPTs is closely scrutinised and can add significant time to execution timetables, as well as costs. There is also pressure to be "ambitious" in setting targets in SL products (a requirement of the

Principles), which requires companies to think carefully about how failure might be perceived. Similar challenges arise in the context of potential green or social issuances, and around whether the green/social criteria for the use of proceeds can be met – either at the outset, or due to potentially changing lender criteria or science down the road.

Reporting obligations have ramped up, and according to the Principles, all of this information must usually be externally assured. Failure to comply with the sustainability provisions of the instrument – or indeed over-shooting specified targets – risks criticism, which can lead to risk of commercial and/or legal exposure. Collectively, these are the main factors which we would suggest have contributed to a pause (or at least, more careful consideration) of the benefits of the SL loan structure.

In the bond market, the picture is the same in the sense that the proportion of labelled issuance represented by SL bonds has shrunk, largely attributed to concerns about the credibility of KPIs. However, market statistics suggest that overall, labelled bond issuance has picked up in 2024, driven by increased issuance of the use of proceeds products – green, and to a lesser extent, social bonds (or “sustainability” bonds which combine green and social use of proceeds in one product).

It is, and remains the case, that the bulk of ESG-labelled bond issuance is driven by sovereigns, state-backed entities, supra-nationals and the financial sector. YTD figures suggest that corporate issuance of use of proceeds bond is broadly holding up as a proportion of the total. However, it will be interesting to see the picture as full year figures emerge. We are aware of some issuers who have decided to drop ESG labels from more recent transactions. Prompts for such decisions tend to be issuer specific. Common concerns include a lack of eligible green projects (in light of required criteria), alongside cost considerations and the need to execute with minimal fuss within tighter windows for issuance. Demand for green projects to be EU taxonomy-aligned is an ongoing challenge – and is a reason why the EU’s “gold standard” for green bonds, the EU Green Bond Standard, is not anticipated to attract widespread take-up from corporate issuers in the near future – see further our DCM team’s recent briefing on this topic.

The financial sector’s desire to raise standards in the sustainable finance market is difficult to argue with – but if the stringency of market or regulatory standards (or aspects of them) present a barrier to entry, policy makers and the financial sector must consider how to open up the market and incentivise demand. Economic factors are perhaps the key levers (whether improving the pricing of sustainable products in comparison to the vanilla equivalent or reducing the costs of issuance). Expanding the product range is also a possible answer.

Would improvements to the economics open up the market?

The price incentives for ESG-labelled debt are at best limited and at worst, non-existent. We have heard many corporates and advisers suggest that improving the economics of these products might be something the financial sector should look at if they wish to make sustainable finance more attractive.

This is perhaps most apparent in discussions about SL loans. The pricing of SL instruments is linked directly to sustainability outcomes, but the adjustments on offer amount to a handful of basis points. The maximum margin impact of meeting all specified sustainability targets in an investment grade SL loan is typically a 2.5bp margin discount (up to a maximum of around 5bps). This is de minimis in the current rate environment and is even less interesting in the context of an undrawn RCF. In leveraged SL loans, a borrower can generally expect a bigger margin discount of around 7.5bp-10bps for meeting all of its targets, sometimes more. In the context of leveraged margins currently in the region of 400bps, adjustments at the lower end of this range may be similarly unpersuasive if there is the option to proceed with or without SL terms.

The role of pricing as an incentive for sustainable issuance is a topic that we expect many treasurers have discussed with their lenders. In our experience, few have made much progress.

Although climate risks and other ESG factors are relevant to bank stress tests, and upcoming changes to prudential regimes may incentivise certain types of sustainable infrastructure investment, sustainable investments do not of themselves currently attract favourable capital

treatment. Accordingly, banks are not being directly incentivised by prudential regulators to prioritise sustainable finance (whether SL structures or more broadly).

In the context of SL loans specifically, we understand that if the maximum amount of SL margin ratchets were not limited to de minimis amounts, this could impact banks' accounting treatment of those assets (because the ratchet is viewed as not linked to credit). In that context therefore, technical factors may inhibit banks' abilities to offer more substantial discounts (or indeed apply more substantial uplifts for failure).

For those reasons (and potentially others), the prospect of a market-wide shift in pricing seems unlikely in the short to medium term. In fact, certain market participants believe that it is time for incentive pricing (such as it is) to fall away from SL loans entirely. The most positive glimmer currently is the thought that as sustainability filters into mainstream credit requirements for corporate lending, that should affect the pricing offered to particular borrowers and issuers, as well as liquidity. However, the extent to which margins on offer to high achievers in sustainability are impacted by sustainability credentials is obviously difficult to isolate, and in that sense, less tangible than a SL loan ratchet.

As already noted, SL bonds have always represented a limited part of overall ESG-labelled bond issuance, but issuance has dropped further more recently. This has been largely attributed to greenwashing concerns alongside the practical aspects of amending KPIs in the bond context.

SL bonds typically offer only a pricing penalty for failure to meet sustainability targets (of around 25-50bps). There is generally no coupon upside for success (as applies to SL loans). Nonetheless, similar dynamics are at play in the SL bond market, as in the SL loan market, in terms of the role of SL pricing as an incentive for issuance.

In use of proceeds loans and bonds, price is largely a function of demand. Some banks' websites suggest that more favourable pricing is on offer for green loans (for example), although the extent of any "greenium" (if indeed it exists) is difficult to assess in a private market. In the context of labelled bonds, 2024 reports suggest the "greenium" (the pricing benefit of issuing green) has virtually disappeared (in particular in the euro-denominated market) in light of increased issuance.

Whether to issue green or social bonds is often focussed on whether labelled issuance will affect the order book. What holds for any particular transaction seems likely to depend on the issuer in question as well as on market conditions at the point of issuance.

If pricing cannot improve, should the focus be on reducing costs?

The costs of embarking on sustainable issuance for the first time can be significant. Corporates may need to engage sustainability consultants to help with structuring and data collection, there is the possibility of bank fees for sustainability-related administrative roles, and most sustainability reporting to lenders and investors involves external review/assurance of some kind.

External review is central to the requirements of all of the loan and bond Principles. This is perhaps the cost factor that is most universally relevant to borrowers and issuers looking at sustainable finance.

Sustainable bond issuance typically involves the provision of second party opinions (including on the alignment of the bond with the appropriate Principles) as well as external assurances on reported data during the life of the instrument. Sustainable lending may, but does not typically, involve pre-contract second party opinions (putting the onus on bank sustainability teams to do their own due diligence). However, external assurance of annual performance against SPTs is required to trigger pricing adjustments and may apply to reporting on the use of proceeds and on the impact of the relevant green/social projects.

The costs of complying with these requirements can be prohibitive. We have certainly heard corporates express the view that these costs cancel out any pricing upside, to the extent any upside is on offer.

In the investment grade space, larger borrowers and issuers may have been seeking external review of their sustainability data or sustainable finance frameworks in the interests of robust and transparent reporting as a voluntary manner for some time. Cost concerns are therefore most

acute for borrowers in the crossover and leveraged sector of the market.

This is not a problem that can be swiftly fixed, but it is relevant to note that in time, assurance will no longer be a cost of sustainable finance specifically. Statutory regimes such as CSRD and the reporting requirements of the EU Taxonomy require in-scope entities to collate and disclose externally assured data. The ISSB standards do not of themselves require assured data, leaving this to local regulators to implement, but are designed to be capable of audit and assurance.

As more and more corporates become subject to statutory requirements to produced assured data, the natural trajectory would be for the financial sector to look at how to leverage this data for the purposes of both ESG-labelled issuance and sustainability credit assessment more generally.

This is a topic we expect to receive more attention in the coming months.

Is a broader range of labelled products the answer?

Our discussion of the pros and cons of "sustainable" and "ESG-labelled" finance so far have focussed on green, social or SL loans and bonds that adhere to the relevant Principles. We have outlined the reasons why sustainable finance has become more challenging from a finance and treasury perspective (and also that some corporates may have "outgrown" SL loans). Does this suggest that the range of sustainable finance products needs to adapt?

The good news is that banks are already working to extend the range of ways in which sustainability can be embedded in debt financing.

A number of more recent innovations in sustainable finance aim to home in on supporting specific weaknesses in sustainability credentials. Sustainable trade finance and supply chain finance products, for example, are angled towards improving efforts to supporting sustainability in supply chains. These may be helpful tools to support, for example, reductions in Scope 3 emissions, the most challenging aspect of all corporate decarbonisation strategies, even for those who are further forward in their thinking.

At the other end of the spectrum, there is a developing sub-strata of debt products which are designed to incentivise or facilitate climate transition or other sustainability targets of some kind, but which do not adhere to the requirements of the Principles so as to permit the application of the green, social or SL labels. Instruments of this type are likely to be aimed at those who are at an early stage in their sustainability journey or for whom transition presents particular challenges; companies in higher emitting or "hard to abate" sectors. Such products may also be designed to offer a lower cost solution where resource constraints do not permit the implementation of the governance and reporting structures required for labelled issuance. This may apply, for example to companies in emerging markets or SMEs who simply cannot implement a full-blown ESG-labelled loan structure.

The terminology applied to instruments in this category is not standardised. Some institutions, for example, use terms such as "ESG loans" or "KPI-linked loans" to describe loans which adopt the mechanical structure of an SL loan but which do not adhere to the Principles. Different models may be applied to different types of borrower. This category also encompasses "transition finance".

There is currently no globally applicable consensus on the meaning and scope of the term "transition finance", so finance providers must adopt their own standards and criteria by reference to local standards where available. Many banks have "Transition Finance Frameworks" for this purpose, that specify the types of structure and customers to whom transition finance applies, that sit alongside their Sustainable Finance Frameworks.

Promoting a more coherent and common understanding of how sustainable finance should be adapted for companies for whom the Principles (or aspects of them) are not practically achievable - as well as what constitutes "transition finance" and how to facilitate the flow of finance that facilitates the transition to net zero - is currently the subject of a range of initiatives. In relation to transition finance, this includes the UK Government's Call for Evidence, the results of which are anticipated in the coming weeks.

We plan to revisit these topics in a future briefing.

Concluding thoughts

It is true that sustainable finance adds an additional facet to structuring and documentation discussions, with limited or no pricing advantage. Over time, the cost and resource implications of sustainable finance have become increasingly demanding, throwing the lack of price incentives into greater focus. While misuse of proceeds or failure to hit SPTs may not default sustainable debt, there are nonetheless consequences (contractual and/or reputational) which may have commercial implications.

It is clear that these factors are affecting the universe of borrowers and issuers willing and able to access those products (at least, at this stage). However, it does not necessarily reflect that the market as a whole will fade away, at least in the near future.

The shift away from ESG-labelled issuance among some larger-cap companies (the prompt for this article) is in many cases reflective of those companies' significant and externally demonstrable progress towards sustainability goals that renders the scaffolding of sustainable debt terms unnecessary. Not all companies in this position are dispensing with the sustainability terms. So far, 2024 EMEA market volumes of ESG-labelled loans and bonds alike suggest that overall, activity remains steady.

It is also relevant that many companies' capacity to collect sustainability data and analyse and report on that data is work in a progress. All ESG energy and resources are focussed on getting to grips with upcoming regulatory requirements and risk management. Layering the demands of sustainable finance on top of the considerable demands of preparing for CRSD and the ISSB standards for example (as discussed in our Sustainability Team's "Getting Ready" series), might be viewed as laying the egg before raising the chicken. More cautious attitudes towards sustainable finance are, in part, a reflection of the ongoing development of sustainability regulation.

If more can be done to leverage companies' regulatory output for the purposes of sustainable finance, this may help address a number of the concerns from the borrower's perspective and lower the barriers to entry significantly. The reporting and assurance demands inherent in sustainable finance products should become more easily surmountable if banks are able to rely more heavily on information and data mandated by regulation. The availability of regulated, robust and reliable ESG ratings that banks and investors are able to look to will also be a factor here. We believe major banks are very alive to this (and keen to see how regulatory interventions can reduce their own workload).

Takeaways for treasurers

We would urge treasurers afflicted with ESG fatigue to keep an open mind about using sustainable finance terms in debt products. Sustainable finance could be accretive to the business in the future, even if the "Goldilocks moment" is not right now.

Whether the time is right for any particular company involves balancing a range of factors. Companies who have previously decided against sustainable finance products may revisit that decision as products evolve or their circumstances change, in particular as the product range widens. As the reduction of Scope 3 emissions is prioritised, could sustainable supply chain finance help support the company's efforts? As transition plans become more granular, is dedicated capex funding required to ensure those commitments can be met? The simple passage of time could also result in a change of perspective. One could argue that given the link between sustainability and liquidity, no company can be too hasty to dismiss sustainable finance entirely.

Finally, we would highlight that sustainability is a topic that will very often factor into credit decisions, whether the financing is ESG-labelled or not. Data on sustainability risks and action points is therefore becoming as relevant to treasury as financial data. This makes it important that the treasury team is engaged with internal views on non-financial sustainability risks and reporting, as well as the group's overall ESG strategy on an ongoing basis.

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FURTHER INFORMATION

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