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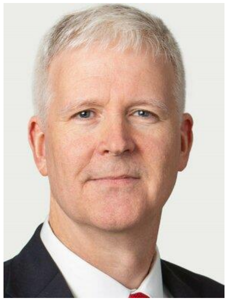
New Initiatives Will Advance Corporate Biodiversity Reporting

By **David Woodcock and Maria Banda** (October 25, 2023, 5:56 PM EDT)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International efforts to mainstream biodiversity disclosure and reporting accelerated with two new developments in September.

On Sept. 18, the Taskforce on Nature-related Financial Disclosures, or TNFD, launched its final framework on nature and biodiversity reporting, which is intended to harmonize corporate disclosures on nature-related risks, impacts and dependencies.

On Sept. 26, Nature Action 100, an alliance representing 190 institutional investors with $23.6 trillion in assets under management or advice, unveiled the first 100 focus companies it plans to engage on biodiversity issues.

One member of the Nature Action 100 Launching Investor Group noted that, between these two developments, investors "now have all ingredients to accelerate the performance of companies in terms of measuring, managing and mitigating their contribution to biodiversity loss."[1]

While we focus on these two developments in this article, we note that they should not be viewed in isolation. They are part of larger domestic and global trends to mainstream biodiversity targets, reporting and disclosure, in line with the Kunming-Montreal Global Biodiversity Framework, or GBF, adopted on Dec. 19, 2022, under the auspices of the U.N. Convention on Biological Diversity, through both voluntary initiatives and emerging regulations.[2]

The effort to mainstream biodiversity targets seeks to replicate the success many of the same investors and activists had with climate advocacy. For companies that engage with the groups behind these efforts — which would be most multinational companies in the U.S. and Europe, as well as a number of companies based in Asia and Latin America — now is the time to understand more about the coordinated and methodical efforts underway.

Nature Action 100 Engagement Phase Launch

Nature Action 100 is the latest and likely most significant of the global investor-led initiatives focused on "driving greater corporate ambition and action to reduce nature and biodiversity loss."[3] While investors have addressed biodiversity for years — often in the context of climate change — they had not previously placed it at the forefront of their activities.

Nature Action 100 is designed to fill that gap, by engaging with a broad range of companies in sectors that are deemed to be systemically important to reverse nature and biodiversity loss by 2030, and encouraging them to take nature-positive pathways.[4]

Nature Action 100 does not yet have the wide institutional support of Climate Action 100+, launched in 2017, on which it is modeled. As of September, 190 institutional investors representing $23.6 trillion in assets under management or advice are participating in Nature Action 100. That compares to 700-plus investors with $68 trillion in assets under management who had joined Climate Action 100+.[5]

Nature Action 100 also does not include several leading U.S. investors, likely as a result of the current political headwinds facing environmental, social and governance issues in the U.S. Nonetheless, its engagement activities — conducted in parallel with myriad other biodiversity-focused initiatives at all levels of governance — could have a significant impact on global organizations and financial firms, as discussed below.

Background

Nature Action 100 was formally announced in December 2015 at the Conference of the Parties to the U.N. Convention on Biological Diversity, which, as noted above, also saw the adoption of the Global Biodiversity Framework — a major new international legal framework intended to halt and reverse biodiversity loss by 2030.

In June of this year, Nature Action 100 published its first set of investor expectations for companies, with a focus on (1) public disclosure, (2) time-bound and measurable targets, and (3) a rights-based approach that would encompass the company's entire value chain:

- Ambition: Publicly commit to minimizing contributions to key drivers of nature loss and to conserve and restore ecosystems at the operational level and throughout value chains by 2030.

- Assessment: Assess and publicly disclose nature-related dependencies, impacts, risks, and opportunities at the operational level and throughout value chains.

- Targets: Set time-bound, context-specific, science-based targets informed by risk assessments on nature-related dependencies, impacts, risks and opportunities. Disclose annual progress against targets.

- Implementation: Develop a companywide plan on how to achieve targets. The design and implementation of the plan should prioritize rights-based approaches and be developed in collaboration with Indigenous peoples and local communities when they are affected. Disclose annual progress against the plan.

- Governance: Establish board oversight and disclose management's role in assessing and managing nature-related dependencies, impacts, risks and opportunities.

- Engagement: Engage with external parties including actors throughout value chains, trade associations, policymakers and other stakeholders to create an enabling environment for implementing the plan and achieving targets.[6]

At the same time, Nature Action 100 outlined eight key sectors that are deemed to be systemically important in reversing nature and biodiversity loss by 2030 due to their significant impacts on nature and their dependence on ecosystem services:[7]

- Biotechnology and pharmaceuticals;
- Chemicals, such as agricultural chemicals;
- Household and personal goods;
- Consumer goods retail, including e-commerce and specialty retailers and distributors;
- Food, ranging from meat and dairy producers to processed foods;
- Food and beverage retail;
- Forestry and paper, including forest management and pulp and paper products; and
- Metals and mining.

These sectors were identified based on the premise that they are the major drivers of nature loss due to their large impacts on habitat loss, overexploitation of resources, and soil, water, and solid waste pollution.[8]

Engagement Launch

On Sept. 26, investors participating in Nature Action 100 launched the engagement phase by sending letters to the first 100 focus companies, together valued at more than $9 trillion in market capital. According to Nature Action 100, a company's inclusion on the list is not a reflection of its current actions, or lack thereof, to mitigate its nature-based risks, and all 100 companies are expected to meet the Nature Action 100 Investor Expectations for Companies.

Nature Action 100 identified the first 100 companies based on their (1) belonging to high-priority sectors; (2) high potential impact on nature, according to an analysis conducted by the Finance for Biodiversity Foundation; (3) large market capitalization within the sector; and (4) geographic representation.

Nature Action 100 has sought a more geographically balanced approach to include companies from both developed and emerging economies, not only to reduce criticism of bias against U.S. and European companies, as with Climate Action 100+, but also to capture the reality that biodiversity impacts are often localized and disproportionately based in developing nations. Nonetheless, the list is dominated by U.S. and European companies, accounting for approximately 60% of the companies.

The initial wave of letters calls for urgent and necessary actions to protect and restore nature and ecosystems, and thereby mitigate financial risk and "help achieve the goals of the Global Biodiversity Framework." As a first step, focus companies are asked to provide an initial overview of how they are working to address these expectations.

Ceres, a U.S. nonprofit organization acting as the initiative's secretariat alongside Institutional Investors Group on Climate Change, a European-focused investor membership organization, will coordinate efforts for the larger groups by compiling the data and sending the responses and any queries to signatories to the letter as appropriate. Nature Action 100 will use third-party data sources to track company responses and progress to meet the expectations.

Once reviewed, one or more investors will carry out follow-up engagements during 2023 and 2024.

Individual investors and engagement teams will submit regular updates on their engagements, while Nature Action 100 will publish an annual benchmark in 2024 stating the progress made by the focus companies.

Launch of the TNFD Final Framework

In parallel, as noted above, on Sept. 19, the Taskforce on Nature-related Financial Disclosures launched its final framework on nature and biodiversity reporting at New York Climate Week.[9]

The TNFD's recommendations have been nearly two years in the making, and have followed extensive engagement by market participants, scientific and standards organizations, and other stakeholders.[10] They include 14 disclosures across four main areas: governance, strategy, risk and impact management, and metrics and targets.

Background

The TNFD emerged in response to the growing perception that global nature loss is an increasing source of risk to businesses and investors. It is described as a "market-led, science-based and government supported initiative to help respond to this imperative."[11]

The initiative to launch a task force was announced in July 2020.[12] The TNFD was formally launched in June 2021.

The TNFD, which was modeled on the Task Force on Climate-Related Financial Disclosures, was already on its way to becoming a common framework even while in beta mode, and has been endorsed by, among others, the G7 finance ministers and the G20 Sustainable Finance Roadmap.

With the launch of the final framework, a number of national securities regulators may decide to follow the TNFD model in eventually adopting disclosure requirements specifically focusing on nature-related risks.

TNFD Recommendations

The TNFD's recommendations are the leading contender to guide investors' — and eventually, regulators' — approaches to corporate disclosure of biodiversity impacts.

In addition to the recommendations, the TNFD published other guidance documents, including guidance for financial institutions, for businesses (to help them understand their impacts and dependencies in different types of biomes), for target-setting (developed with the Science Based Targets Network), and on engagement with Indigenous peoples, local communities and affected stakeholders.

The TNFD also released a discussion paper on sector-specific disclosure metrics, and is preparing sector guidance for a range of high nature impact and high-dependency sectors that will be released in time for the 2023 U.N. Climate Change Conference in Dubai, to be held from Nov. 30 through Dec. 12. The TNFD will track voluntary market adoption on an annual basis through a status update report, beginning in 2024.[13]

To facilitate harmonization and uptake, the TNFD has sought to align its framework with existing and emerging nature-related standards, including the global sustainability standards of the International

Sustainability Standards Board[14] and the impact-materiality approach used by the Global Reporting Initiative and incorporated into the new European Sustainability Reporting Standard, as well as the GBF.[15]

While TNFD disclosure is voluntary, the uptake of its reporting format by regulators and investors globally could make it the de facto, and eventually de jure, standard for disclosure under the GBF. Many countries are readying new regulations and standards on corporate nature-related disclosures, which they have committed to implement under the GBF by 2030.

Specifically, under Target 15, member states have committed to adopt a number of monitoring, disclosure and compliance obligations for their corporate sectors. That does not include the U.S., which is not a signatory. However, the U.S. federal government and individual U.S. states may pursue the same or similar goals through other means.

Implications for Companies and the Financial Sector

As noted above, these are not stand-alone initiatives. The biodiversity governance space is evolving rapidly, from voluntary initiatives to new regulatory frameworks, and we expect investor engagements on biodiversity to be significantly more complex and challenging than they had been on climate change.

The efforts here mirror those that participants and investors, especially European investors, have undertaken in the climate context. We set out below several key implications.

First, both Nature Action 100 and the TNFD recommendations will indirectly support the implementation of the GBF, which may have profound implications for the global regulatory regime.[16] GBF member states have already committed to conserve or protect at least 30% of global lands and oceans by 2030. Governments have also agreed to "[t]ake legal, administrative or policy measures" to ensure action by the private sector.[17]

Nature Action 100 expressly seeks to complement the GBF, by identifying private sector actions that need to be undertaken to protect and restore nature, and to catalyze these actions via investor-company engagements. Similarly, the TNFD is expressly aligned with the GBF Target 15 requirement to disclose dependencies, impacts and risks, and is expected to provide methodological guidance and consistency across jurisdictions for effectively implementing Target 15.

Second, both initiatives highlight the scale of the challenge for global organizations and the financial sector. Biodiversity reporting, and the quality of data it includes, lags far behind climate disclosure, and there is a widespread perception that businesses are not fully prepared for likely regulatory changes.

For example, in 2022, CDP, a nonprofit group that manages a voluntary global disclosure system for a variety of entities relating to their environmental impacts, revealed that 18,600 companies had disclosed data on climate — a 42% increase from 2021. But less than half of that number — around 8,000 — disclosed data on biodiversity, and only 1,000 disclosed information on forests.[18]

Moreover, companies will likely be expected to track a number of different indicators, since no single metric can capture biodiversity-related issues. This is a significant difference from climate engagements, which focused largely on greenhouse gas emissions.

In contrast, nature and biodiversity-related metrics are location-specific. Biodiversity engagements will therefore likely focus on specific biomes — i.e. terrestrial, freshwater and marine biomes.

To address some of these challenges, the TNFD, among others, is developing a global nature-related public data facility that aims to aid investors and companies that are struggling to access reliable nature-related data.[19] We also expect that, over time, investors will seek to align their corporate engagements with the monitoring, disclosure and compliance standards that are emerging under Target 15 of the GBF.

Third, the burden of the emerging reporting and disclosure requirements will not affect all economic sectors and companies equally. For example, food and agriculture, land use, forestry, and fisheries have often been identified as priority sectors for biodiversity engagement, since they collectively account for 60% of biodiversity loss — mostly from deforestation, resource exploitation (such as overfishing), pollution and water extraction — and 25% of all GHG emissions.[20]

Companies that operate in or have exposure to the key areas of high biodiversity importance, or biodiversity hotspots, especially in the Global South, may face particular reporting, disclosure and standard-setting challenges. Indeed, approximately 40% of the focus companies on the Nature Action 100 list relate to the food, forest and agriculture sectors.

Fourth, unlike climate engagements, biodiversity engagements will also focus on the notion of dependencies, in addition to impacts, risks and opportunities. This term refers to the idea that all businesses depend on biodiversity to some degree, and that a biodiversity loss constitutes a measurable impact on their operations and supply chains.

The complexity of assessment and reporting will resemble or exceed the requirements under the reporting of Scope 3 emissions — indirect emissions that occur across the value chain and outside of an organization's direct control — in the climate context. For example, the TNFD has indicated that disclosures should distinguish between nature impacts and dependencies from a company's direct, upstream and downstream operations, while analysis of downstream value chains for financial institutions should include financed, facilitated, investment, and insured activities and assets.

Fifth, there is a growing focus on the rights of Indigenous peoples and local communities in the context of biodiversity, which is reflected in the GBF, the TNFD recommendations and the Nature Action 100 Investor Expectations.

We expect that many biodiversity engagements, depending on the locality, will highlight human rights-based conservation approaches and, pursuant to the TNFD, require companies to describe their process for engaging local stakeholders about their concerns and priorities with respect to nature-related dependencies, impacts, risks, and opportunities in their direct operations and value chains.

Sixth, as noted above, these initiatives will also intersect with the growing number of regulatory developments — such as the developing mandatory disclosure framework in the European Union, as reflected in the Corporate Sustainability Reporting Directive, or CSRD, which came into force on Jan. 5, and the Corporate Sustainability Due Diligence Directive, which is currently under negotiation and is expected to be adopted in 2024.[21]

The CSRD extends the scope of nonfinancial reporting to include sustainability reporting from an expanded range of entities — including non-EU parent companies, in some cases — and will prescribe a wider disclosure of a variety of ESG impacts, risks and opportunities.

The Corporate Sustainability Due Diligence Directive complements the CSRD reporting obligations by establishing a broad corporate due diligence duty, which will require companies to, among other things, identify, prevent, and mitigate both negative human rights and environmental impacts not only in their own operations, but also in their subsidiaries and their value chains.[22]

Given the concerted efforts to harmonize the disclosure and reporting of nature risks and impacts, it is likely we will see demand grow for convergence of the differing standards.

Finally, we note that the implications of these developments go well beyond the 100 companies just identified on the Nature Action 100 list. While certain sectors, and certain companies within particular sectors, were not included in the first wave, they may be affected indirectly.

For example, companies could be affected via investor actions targeting other sectors or issues, such as pollution control measures relating to plastics and chemicals or water use. Under the GBF, governments agreed to eliminate plastic pollution and reduce the risk from pesticides by 50%.[23]

Companies may accordingly be expected to increase their efforts to curb air and water pollutants, as well as reduce plastic use and waste. A number of these measures are already part of existing investor engagements and benchmarking initiatives, and we expect to see further efforts to align biodiversity actions with pollution-related initiatives.

Nonlisted companies could also be affected indirectly, by being a part of a global value chain. In that regard, according to CDP data for 2022, while 7,000 companies had worked with their suppliers on climate issues to some extent, only 915 had engaged with water stewardship, and only 543 with forests — and only 30% of the companies reporting on biodiversity assessed the impact of their entire value chains.[24]

We expect that investor engagement will focus in particular on global supply networks, as this is seen as a potentially significant biodiversity blind spot. Indeed, a large share of the Nature Action 100 focus companies are multinational conglomerates or corporate groups with large global supply chains.

As biodiversity initiatives continue to gain momentum in the financial industry, the private sector is rightly taking note of the emerging operational complexities and costs — as well as economic opportunities — for market participants.

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Disclosure: Gibson Dunn represents a number of companies and institutional investors involved in the Nature Action 100 initiative and related biodiversity developments described in this article.

[1] See Nature Action 100, Nature Action 100 Announces Companies, Start of Investor Engagement Process to Catalyze Greater Action on Nature Loss (Sept. 26, 2023) (quoting Head of Engagement, Robeco).

[2] See Gibson Dunn, Adoption of a New Global Biodiversity Framework — Key Takeaways for Global Organizations and Financial Firms, Client Alert (Jan. 6, 2023) [hereinafter "GDC, Adoption of a New Global Biodiversity Framework"].

[3] See Nature Action 100, https://www.natureaction100.org/.

[4] See Nature Action 100, https://www.natureaction100.org/.

[5] See IFR, Investor-Led Coalition on Biodiversity Draws Smaller Crowd (Sept. 30, 2023).

[6] See Nature Action 100, Investor Expectations for Companies. See also Gibson Dunn, Gibson Dunn Environmental, Social and Governance Update, June 2023 (July 11, 2023).

[7] See Nature Action 100, Investor Expectations for Companies.

[8] See Nature Action 100, Nature Action 100 Releases Investor Expectations To Support Urgent Corporate Action on Nature Loss (June 26, 2023).

[9] See TNFD, Recommendations of the Taskforce on Nature-related Financial Disclosures (Sept. 2023).

[10] TNFD received input from 1,200 institutions in the TNFD Forum from almost 60 countries; conducted pilot testing with over 200 companies and financial institutions across sectors, biomes and geographies; and received over 3,000 pieces of feedback through the release of four successive releases of a prototype framework.

[11] See TNFD, Executive Summary - v. 0.4 of the TNFD beta framework.

[12] See TNFD, About.

[13] See TNFD, Final TNFD Recommendations On Nature Related Issues Published And Corporates And Financial Institutions Begin Adopting, Full Press Release (Sept. 19, 2023).

[14] On June 26, 2023, the ISSB released the final versions of its General Requirements for Disclosure of Sustainability-related Financial Information Standard ("S1") and Climate-related Disclosures Standard ("S2").

[15] See TNFD, Final TNFD Recommendations on Nature Related Issues Published and Corporates and Financial Institutions Begin Adopting (Sept. 19, 2023).

[16] See GDC, Adoption of a New Global Biodiversity Framework.

[17] See Conference of the Parties to the Convention on Biological Diversity, U.N. Doc. CBD/COP/15/L.25, Kunming-Montreal Global Biodiversity Framework, Draft Decision Submitted by the President (Dec. 18, 2022), Target 15 [hereinafter "GBF"]. See also infra Appendix II, Sec. D, 22–23 (discussing Target 15).

[18] See S. George, CDP: Business Nature Disclosures Still Majorly Lagging Behind Climate, EDIE (March 15, 2023).

[19] See TNFD, TNFD Publishes Scoping Study Exploring Global Nature-Related Public Data Facility (Aug. 11, 2023).

[20] See, e.g., World Bank Group, Mobilizing Private Finance for Nature 59 (2020).

[21] See, e.g., Gibson Dunn, European Corporate Sustainability Reporting Directive (CSRD): Key Takeaways from Adoption of the European Sustainability Reporting Standards, Client Alert (Aug. 23, 2023).

[22] European Commission, Corporate Sustainability Due Diligence. https://www.gibsondunn.com/european-corporate-sustainability-reporting-directive-key-takeaways-from-adoption-of-european-sustainability-reporting-standards/.

[23] See GBF, Target 7 ("Reduce pollution risks and the negative impact of pollution from all sources by 2030, to levels that are not harmful to biodiversity and ecosystem functions and services, considering cumulative effects, including: (a) by reducing excess nutrients lost to the environment by at least half, including through more efficient nutrient cycling and use; (b) by reducing the overall risk from pesticides and highly hazardous chemicals by at least half, including through integrated pest management, based on science, taking into account food security and livelihoods; and (c) by preventing, reducing, and working towards eliminating plastic pollution").

[24] See S. George, CDP: Business Nature Disclosures Still Majorly Lagging Behind Climate, EDIE (March 15, 2023).