

# ESG and Sustainable Investing

## Overview

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There is emerging global consensus that environmental and social risks are a potential source of financial instability and that the governance of public and private institutions is fundamental to the public and private sector response to these risks. Institutional investors and asset allocators are making investment decisions, managing risk and evaluating financial performance based on a broad range of environmental, social and governance (ESG) factors, including climate change and air and water pollution, energy consumption and recycling, executive compensation, inequality, workplace diversity and inclusion, labor relations, investment in human capital and communities, and human rights issues. Asset managers are offering strategies focused on sustainable and responsible investing that incorporate ESG criteria, causing regulators to more closely examine their product offerings. And sustainable finance-related legislation and regulation is proliferating. Katten is ready to assist clients with their ESG-related needs in this rapidly developing area.

### Diverse perspective with results-oriented focus

Katten's Financial Markets and Funds attorneys represent all manner of financial market participants — from global financial institutions and investment companies to investment managers, hedge funds, private equity and other alternative funds; from family offices to proprietary trading firms and trading platforms, pension and profit sharing plans, endowments and other institutional investors. We see the ESG environment from multiple perspectives, and with offices in the United States, London and Shanghai we bring a global perspective to the practice that enables our clients to navigate the multi-jurisdictional regulatory framework developing around ESG. While our clients are diverse, our focus is singular: providing customized, pragmatic counsel that helps businesses grow and prosper.

Katten's Corporate attorneys work together in a multidisciplinary cross-border practice, to advise clients in both the public and private sectors. From large public corporations with market leading ESG commitments to smaller private companies evaluating ESG factors for the first time, Katten helps clients at every stage of their ESG journey. We appreciate the nuances of our clients businesses and counsel our clients so that their ESG programs are the right fit for their business.

### Firsthand business and regulatory experience with global coverage

A long-established leader in the financial services industry, Katten has developed a deep knowledge and practical, real-world experience in securities, futures, derivatives, funds and alternative investment management. Our counsel is informed by the team's collective experience as former regulators, including attorneys who have held senior positions within the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), the

Commodity Futures Trading Commission (CFTC) and the Department of Justice (DoJ), as well as senior in-house counsel and business advisors at global investment banks.

We have decades-long relationships with many of the world's largest and most successful financial market participants, including global financial institutions, investment advisers, hedge fund and private equity fund managers, family offices, pension plans and other institutional investors. Our sell-side and buy-side knowledge allows our business-minded attorneys to use their market insight to provide practical solutions to ESG-related issues. Our London and Shanghai practices work seamlessly with our US team to counsel clients on identifying ESG-related trends and untangling the increasingly complex web of ESG regulation in the United States, UK, EU and Hong Kong, helping them navigate the rapidly evolving ESG landscape and supporting their socially responsible investment goals. Our ESG-related services include:

- integrating ESG considerations, criteria and standards into fund structures and strategies;
- advising investment managers launching ESG investing strategies on their reporting and disclosure obligations in fund offering documents, Form ADV, and marketing materials;
- drafting ESG disclosures and screening questionnaires and assisting clients responding to due diligence inquiries;
- negotiating side letters to address investors' ESG considerations;
- assisting investment managers and advisers in developing ESG policies and procedures and compliance programs, and integrating ESG-related considerations into Codes of Ethics and compliance manuals, including proxy voting policies;
- counseling investment advisers and ERISA investment managers on how ESG practices intersect with their fiduciary duties and how ESG factors are managed alongside their other responsibilities and statutory obligations as fiduciaries;
- responding to SEC and other ESG-related regulatory inquiries and examinations;
- counseling clients on the principles for green and sustainable lending promulgated by the Loan Market Association (LMA), Asia Pacific Loan Market Association (APLMA) and the US-focused Loan Syndication and Trading Association (LSTA);
- advising clients on EU/UK sustainable finance-related legislation, the Sustainable Finance Disclosure Regulation (SFDR), and the revised Markets in Financial Instruments Directive (MiFID II) product governance obligations; and
- advising investors on investments in clean energy and ESG-related entrepreneurial ventures at any stage of the business cycle.

For clients interested in impact investing, we work alongside them to develop strong strategies in support of their unique intentions and goals. This includes establishing a screening process for ESG factors, assessing how social impact will be measured beyond traditional financial returns and developing ESG reporting standards.

## **Integrated, interdisciplinary transactional and regulatory approach**

Our team was built to meet our clients' demands for a one-stop resource for navigating the full scope of issues facing their businesses. We advise our clients on all manner of corporate and transactional, regulatory and compliance, litigation and enforcement, tax, technology and intellectual property, and employment matters. Drawing on the combined experience of attorneys from our Corporate, Private Credit, Government and Public Finance, Structured Finance and Securitization, Real Estate, Transactional Tax Planning and Employee Benefits and Executive Compensation practices, we provide counsel on ESG matters related to project structures, sustainable finance and capital raising, including green bonds and sustainability-linked credit facilities, and tax-exempt bonds, renewable energy credits and other tax credit opportunities. We help clients form opportunity zone funds and assist them in managing the tax component of opportunity zone development projects. Our attorneys educate clients on ESG matters with guidance informed by multiple perspectives —corporate goals, investor goals, rating agency frameworks and the results of ESG litigation. Services we provide our corporate clients include:

- performing ESG-related due diligence;
- building ESG into transaction structuring;
- offering ESG policy guidance to the boards of public companies;
- informing companies of ESG-related disclosure requirements;
- preparing shareholder engagement and assisting with shareholder proposals;
- reviewing corporate sustainability reports and other public filings;
- drafting and reviewing supply chain questionnaires;
- tracking trends in ESG-related litigation;
- engaging with third-party ESG ratings agencies;
- advising on ESG third-party reporting standards and frameworks, including the SASB and GRI standards and the TCFD framework;
- structuring executive compensation aligned with ESG metrics;
- providing ESG training; and
- advising on public benefit entities.

## **Seamless cross-border counsel**

ESG-related developments are not progressing uniformly across financial markets and the regulatory obligations of market participants vary from jurisdiction to jurisdiction. Attorneys in London, Shanghai and the United States work closely to provide seamless cross-border counsel to domestic and international clients. We provide creative, strategic representation that responds to the different markets and regulatory regimes, and adapt as those markets and regimes change. As a result, we have become trusted legal advisors to financial market participants and exchanges around the world.

## Our Experience

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- Represented an asset manager in negotiating an investment advisory agreement with the investment manager/sponsor of a fund-of-funds that pursued a socially responsible investment strategy.
- Represented an advisory firm with respect to a fund-of-funds that pursued a socially responsible investment strategy that morphed into an ESG strategy.
- Represented an advisory firm in creating an ESG direct debt fund.
- Represented an advisory firm in creating an ESG long-short fund.
- Represented an advisory firm in creating an ESG direct bond fund.
- Represented a registered broker-dealer in creating an ESG fund-of-funds.
- Represented SRI hedge fund-of-funds in establishing a multi-strategy global ESG fund.
- Represented institutional asset manager with respect to an insurance-dedicated fund engaging in value creation through ESG initiatives.
- Established a socially responsible investments class in a fund sponsored by one of the largest quantitative asset managers in the world, allowing investors to "customize" their investments to exclude certain publicly traded securities that were otherwise part of the fund's portfolio.
- Represented global electronics manufacturer as borrower in a \$2 billion credit agreement where the various pricing components are subject to whether the company achieves certain specified sustainability targets.

## Key Contacts

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### Lance A. Zinman

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## Recognitions

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*Recognized or listed in the following:*

- *BTI Litigation Outlook*
  - Securities and Finance Litigation Honor Roll, 2018
- *Chambers Global*
  - Capital Markets: Derivatives
    - USA, 2015–2021
- *Chambers USA*
  - Capital Markets: Derivatives
    - Nationwide, 2014–2021
  - Investment Funds: Hedge Funds
    - Nationwide, 2016–2019, 2021
- HFM US Service Awards
  - Best Onshore Law Firm – Start Ups, 2020
- *IFLR1000*
  - Capital markets : Derivatives
    - United States, 2021
    - Hedge funds, 2021
- The Legal 500 United Kingdom
  - Corporate and Commercial
    - Financial Services (Non–Contentious/Regulatory), 2013–2022
  - Finance
    - Derivatives and Structured Products, 2016–2022
- The Legal 500 United States
  - Alternative/Hedge Funds
    - 2013–2021
  - Financial Services Litigation
    - 2016–2021

- Financial Services Regulation
  - 2019–2021
- *U.S. News Best Lawyers – "Best Law Firms"*
  - Derivatives and Futures Law
    - National, 2011–2022
    - Chicago, 2011–2022
    - New York, 2020–2021
  - Private Funds/Hedge Funds Law
    - National, 2012–2022
    - Chicago, 2011–2022
    - New York, 2019–2022
  - Securities Regulation
    - National, 2012–2022
    - Chicago, 2011–2022