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Sustainability Transition: Is the Grass Always Greener?

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Introduction

Sustainable investment is an increasing area of focus for stakeholders and participants in the asset management industry, be they governments, regulators, investors or asset managers themselves. As an approach, sustainable investment is differentiated by a direct recognition of the importance to the investing entity of environmental, social and governance (ESG) factors and the role these play in value creation and mitigation of downside risk. Coupled with this is a focus on the long-term stability of economic and environmental systems, driven by the priorities and expectations of the societies in which such systems operate. In addition, a genuine determination on the part of asset managers to "do the right thing" in the context of extensive and accelerating environmental and social challenges should not be underplayed.

The response of the asset management industry to the challenges of effective ESG integration into investment processes is something that is scrutinised in real time by consumers, the media and non-governmental organisations (NGOs); the rapid advance of social media has exponentially increased the number of platforms in which these issues can be raised by an interested party and whilst certain trends in public opinion are clearly identifiable, the divergence of views on how these issues can be addressed and the priority that should be allocated to them present a number of challenges to businesses in terms of effective messaging to a more discerning customer base. Increased activism in respect of these issues provides stark evidence of how reputational and compliance risk factors can have a direct impact on business value, investment performance and the analysis of risk. Asset managers of course have a dual risk in this regard; not only do they need to assess the impact of ESG factors on their own business, but they also need to analyse the effect that such issues may have on the performance of the underlying investment portfolio they are responsible for managing.

Opportunities that Effective ESG Engagement may Provide for Alternative Asset Managers

It is clear that ESG performance management and reporting structures are appearing higher on the agenda of the business community; driven partly by a response to international and domestic legislation and regulatory scrutiny, but also by a clear acknowledgment that the implementation of a successful investment strategy and the creation of investment returns is dependent on an inherently sustainable ESG ecosystem. Whilst it is perhaps true that a significant bias has, to date, been focused on the environmental element given the concerns over accelerating climate change and the implications this will have on the planet and its population, there is an increasing recognition that this cannot be the end of the story and that sustainability requires holistic solutions that need to take into account the wider context of investment activity and its impact on society.

Unsurprisingly, the alternative asset management industry has not been immune to these trends; the increased importance assigned to ESG issues by institutional investors (LPs) and general partners (GPs) alike demonstrates the acknowledgment by the industry of the relevance of ESG issues to the long-term stability of the industry as a whole.

Nature of alternative strategies

In many respects, private equity and other alternative strategies are asset classes that are particularly suited to the prioritisation of ESG considerations given the longer-term investment horizon (when compared to the public markets or open-ended vehicles) and the stewardship style of ownership. Controlling stakes typically acquired by GPs provide an opportunity to drive behavioural change within businesses, and ESG issues should be considered a component part of operational improvements initiated at the level of the portfolio company. Effective integration of ESG into business practices will take time and may well need to be supported by cultural change within the business; an ownership model that spans years provides an opportunity to make the requisite strategic and operational changes to fully entrench the prioritisation of ESG factors in the context of the evolution of the business.

Historically, it was perhaps the case that the challenges faced by asset managers in adapting policies to the impact of certain ESG priorities, such as climate change, were seen to be so long term as to be beyond the horizon of LPs and the typical fund lifecycle. Additionally, it was questionable how much importance was placed on low probability events in the context of effective risk mitigation. Increasingly though, the investor universe has become concerned about short-termism and now expect to see portfolios managed in a way that assesses risk and return over longer timeframes and contextualises them in a different manner. LPs are challenging their GPs to take into account ESG in the same way as they do other basic considerations in the investment process, such as economic and market trends, competitive advantages and operational efficiencies.

Alternative asset managers, in developing their initial investment thesis and during the course of the hold period of the relevant portfolio company, are incredibly well placed to understand what is financially material to a business today and, more importantly, to anticipate what issues (ESG or otherwise) will be relevant to a buyer of the business at the end of the anticipated hold period. They can therefore increase exit valuations (and indeed the likelihood of an exit, as sustainability criteria is likely to be a critical part of acquisition due diligence) during their period of ownership by making changes in the business that focus on the material ESG issues – a focus on the right ESG issues early in their period of ownership can have a significant effect on investment returns as the impact of these changes compounds during the remainder of the hold period.

However, GPs should take the time to fully consider and understand the materiality of certain ESG factors before adopting an ESG management framework and imposing policies on their portfolio companies. It is all too easy to invest significant time and money developing a detailed ESG strategy only to find that it is not sufficiently focused, or worse, gold-plated and only achievable through the application of disproportionate resources (whether at the level of the GP or by management of a portfolio company). Any ESG strategy should be linked to the GP's overall objectives: this allows a consistent message to be conveyed and for the strategy to be reflected in the firm's overall investment philosophy. Once a strategy has been identified, the impact of the strategy will be dependent on the degree to which it can be effectively implemented; robust and considered policies and procedures will need to be developed and implemented to effect the strategy, and responsibility should be assigned (to relevant members of senior management) for their monitoring during the lifecycle of an investment.

Financial considerations

ESG factors can be financially material, and increasingly are. In an investment environment where GPs may find it difficult to rely on general macroeconomic growth trends to generate positive investment performance, it becomes increasingly important for GPs to identify all of the factors that might drive value creation within their portfolios. Operational improvements in ESG management may offer additive opportunities to generate efficiencies and drive growth, but there is also the key driver of effective management of downside risk; negative market perceptions around not only ESG incidents, but also increasingly greenwashing, might most immediately impact consumer behaviour if customers switch to alternative suppliers (particularly if there is a concerted social media campaign to this effect), but they also pose additional risks such as undermining support in local communities and encouraging increasing levels of government intervention to manage behaviour.

Investor demand

It is likely that any LP participating in the private markets will have identified return objectives and will therefore be interested in the issues set out above; however, an increasing number of LPs are interested in impactful, or at least less harmful, investments and are searching for opportunities to invest with alternative asset managers who can demonstrate that they are focused on ESG issues and whose approach to sustainability is consistent with that of the relevant LP. The approach that GPs have had to take to ESG has therefore evolved and inevitably a more sophisticated approach adopted; when ESG factors first started to come to prominence as an area of interest for LPs, it could be argued that GPs treated ESG as a box-ticking exercise to mollify investors, but it is clear that there is now a universal recognition amongst the GP and LP communities (notwithstanding some recent retrenchment from certain US investors) that effective research, analysis and evaluation of ESG is a key component of assessing the value and performance of a particular investment and, more generally, of the viability and risk-adjusted return profile of a particular investment strategy. Accordingly, a GP's ESG framework and sustainability objectives should inform investment selection, portfolio construction and GP/LP engagement.

A more attractive asset class

In addition, and a factor that is relevant for both LPs (in the context of their own risk management) and GPs (in terms of evidencing differentiation and therefore brand enhancement), an active approach to ESG management demonstrates investment discipline on the part of the GPs. As GPs recognise the performance advantages that good ESG management can generate and the negative impact that mismanagement can have on valuations, the role of ESG moves from being one that is primarily an investor relations exercise to one that is embedded in the investment process and culturally entrenched at all levels within the GPs' business. This cultural entrenchment will likely mirror what is happening within the LPs' own business and therefore, communication becomes easier as both sides are using the same language and adopting the same broad terms of reference in their approach to sustainability. Alternative asset managers can show their LPs that, through their control positions and longer-term investment horizons, they have the power to drive behavioural change within portfolio companies (and, potentially, within entities within the supply chains of portfolio companies) in a way that will accelerate ESG improvements or facilitate impact investments and initiatives; they can directly evidence this by ensuring that they are able to access the data points to support the thesis through the imposition of appropriate reporting frameworks on portfolio companies. Not only will this make alternative strategies a more attractive asset class for ESG-conscious investors generally, but it will ensure that GPs have an additional lever within their toolkit to demonstrate differentiation from their peers.

ESG Regulation and the Basis on which it can Provide a Competitive Advantage to GPs

Greenwashing

A recent focus of regulators has been the risk of "greenwashing"; the public censure of a number of high-profile participants in the financial markets, as well as the wider business community, clearly demonstrates that a clampdown is well under way. The rationale for regulatory scrutiny is clear; fundamentally, if the manner in which an asset manager is presenting its ESG credentials does not chime with the reality of the situation on the ground, then investors who have elected to invest based on those ESG credentials are at risk of having been mis-sold. In addition, investors could find themselves in breach of their own fiduciary duties, for example, if they fail to comply with their own identified investment policies due to the actions of their underlying GPs, and of course there is the risk of losses generated through the implementation of a flawed investment philosophy. Widespread greenwashing would clearly be indicative of general market failures and it is primarily the desire to preserve the integrity of the market, which provides the impetus for regulatory intervention.

However, the regulatory clampdown on greenwashing clearly provides both risks and opportunities for asset managers. The opportunity lies in the possibility of managers who are genuinely committed to sustainability differentiating themselves from others who are happy to present a commitment to ESG without properly implementing the measures that are ultimately required to meet the identified ESG priorities. The risk is to those managers who acknowledge the importance of ESG to their underlying investors but who lack the sophistication, expertise and determination to make sustainability a central element of their investment proposition and therefore fall foul of anti-greenwashing measures.

Whether the focus on enhanced disclosure methodologies and other transparency measures is the correct antidote to the risk of greenwashing will become clear over time; it is certainly possible that a more interventionist approach becomes appropriate if the risk is not perceived as having been effectively mitigated.

Reporting and data collection

As mentioned above, disclosure and transparency is a central tenet of the regulatory approach to ESG. It seems obvious that for market participants to understand the impact of their approach to ESG, they must be able to collect, analyse and report appropriate measurements of their ESG performance – at a fundamental level, access to relevant data is vital for any decisionmaker, whether they sit within a GP, an LP or a regulatory body. However, data will only be an effective tool if it facilitates the measurement of the correct metrics, and it is certainly possible that in setting data collection objectives, policymakers could lose sight of the behaviour patterns that they are ultimately looking to encourage; a classic example of not being able to see the wood for the trees. There is no use in requiring the collection of data points that lack accuracy or are ultimately nondeterminative to relevant decisions; even worse is the risk that data collected could mislead the decisionmaker and lead to negative outcomes. Ultimately there is also a cost element to the imposition of disclosure requirements – the benefits of collecting and verifying data need to outweigh the costs of developing and implementing the required data capture frameworks.

Regulatory initiatives can clearly help to streamline reporting by standardising the metrics being collected and the reporting structure being implemented by asset managers, which should ultimately generate efficiencies and remove or reduce costs (assuming that regulators can correctly identify the correct standards and disincentivise investors from looking to impose alternative reporting frameworks). Voluntary initiatives such as the ESG Data Convergence Initiative (EDCI) and Invest Europe's ESG Reporting Guidelines are helpful in this regard as well. The former is an open partnership of private equity stakeholders seeking to streamline the collection and reporting of ESG data through the creation of a critical mass of comparable ESG data – to date, over 325 GPs and LPs, representing approximately $27 trillion in assets under management, have signed up. The sharing of standardised data allowing for effective benchmarking should bring clearly identifiable benefits to participating asset managers. Similarly, the Invest Europe initiative is intended to facilitate the development of industry-wide standards and practices through the use of the template reporting frameworks; the alignment with the ESG metrics and definitions used in EDCI, as well as other existing initiatives and regulations, should impose standardisation on those using the templates. Adoption of these voluntary standards by GPs can be painful and require material changes to the administration processes utilised by them, but it can be a powerful indicator to LPs that sustainability is a priority for GPs and that ESG measurement and performance is being taken seriously.

SFDR

Legislation and legislative proposals under consideration have also focused heavily on disclosure and transparency. In the EU, the stated aim of the Sustainable Finance Disclosure Regulation (SFDR) is to improve the scope of ESG disclosures made to investors in order to ensure that they can make informed decisions in relation to the sustainability credentials of financial products. SFDR applies to both EU managed funds and those registered for marketing into the EU under available national private placement regimes. The obligations set out in SFDR are applicable to the GP (rather than to its underlying funds) and require public disclosures around its approach to sustainability risks, principal adverse impacts (PAIs), including at product level, and ESG impacts on remuneration structures as well as product-level disclosures. However, although the intent was to create a disclosure regime, SFDR is being treated by some as a *de facto* labelling regime and therefore has impacted behaviour patterns in a way that the legislators had perhaps not fully anticipated. Under SFDR, funds must be classified according to the relevant Articles of SFDR that apply to them: Article 6 captures funds that do not fall within the higher standards set out in Articles 8 and 9; Article 8 funds are effectively further subdivided into light green (being those that "promote" environmental and/or social characteristics) and mid green/Article 8+ (which both promote environmental and/or social characteristics and commit to making, at least some, "sustainable investments"); and Article 9 (or dark green) funds are those whose purpose is to invest in sustainable investments and who commit to only invest in such investments. Additional disclosure requirements and investment restrictions apply to those funds classified as falling within Article 8 or Article 9.

The classification of funds therefore provides an immediately visible way for prospective investors to gain a preliminary snapshot as to the ESG priorities of managers; therefore, a *de facto* labelling regime has been created with GPs aiming to utilise the higher classifications to burnish their sustainability credentials and at least certain LPs indicating a clear preference (and, in some cases, policy requirements) for investment into funds that are categorised as either Article 8 or Article 9. GPs who initially assumed that the default Article 6 categorisation would be the one that would apply to their product range are now carefully examining this assumption and in many cases seeking to amend their investment processes in a manner that would allow one of the higher categorisations to be applied to their funds. This desire to apply higher classifications has put pressure on the legislative framework and quickly identified deficiencies (or, at the very least, uncertainties). Perhaps the area where it is easiest to challenge the framework is in the concept of a "sustainable investment"; whilst certain fundamental principles are articulated, such as a requirement for there to be a contribution to an environmental or social objective, SFDR provides only a non-exhaustive list of examples and accordingly, it is open to firms to subjectively determine the nature of the contribution and whether it is meaningful enough to qualify. The absence of prescriptive rules undermines standardisation and the harmonisation intended in the classification system and instead places the onus on reporting and investor scrutiny to generate comparability between GPs. Equally, the "do no significant harm" test and good governance requirements, despite the application of prescribed indicators (i.e., the PAI indicators mentioned below) and minimum social safeguards, allow scope for subjective interpretation.

SFDR, in addition to introducing the classification outlined above, also introduces a methodology pursuant to which the PAIs of investment decisions on sustainability factors can be measured and disclosed. All firms need to disclose whether or not they "consider" PAIs, both at firm and product level; but the regime is only mandatory for large asset managers with over 500 staff. Whilst the consideration of PAIs could be a route to achieving beneficial sustainability, there is significant regulatory complexity in the regime and, again, uncertainty over the implications of certain elements of it. At a high level, it is unclear whether PAIs need to be analysed at the time of the initial investment decision or whether firms could collect the relevant indicators post-investment and then take steps to mitigate any PAIs during the hold period of the investment – the European Supervisory Authorities (ESAs) have not fully addressed the issue and therefore, there is potentially subjectivity in the interpretation of giving "consideration" to PAIs. However, if a firm does consider PAIs, it has to report on a long list of prescribed indicators set out in the SFDR Regulatory Technical Standards (RTS) – examples of the data points identified include a number of environmental impacts such as greenhouse gas emissions, energy performance, biodiversity impacts, water usage and waste generation, and social impacts such as labour and working conditions, gender diversity and inclusion, human rights and the risk of modern slavery. All of these are matters that are likely to be analysed by managers adopting sustainability objectives; however, the challenge for managers is that there are significant obstacles to putting in place the systems that would facilitate the required data capture from portfolio companies according to the RTS metrics; accordingly, despite many GPs supporting the principles behind, and policy goals of, the PAI regime, a very significant number are indicating to their LPs that they do not at this time consider PAIs (albeit that this is generally accompanied by positive commentary as to how they are analysing and mitigating sustainability risks). Clearly though, if a manager's strategy does allow for an analysis of PAIs and consequential reporting to be undertaken, this may be something of a differentiating factor compared to the position of its peers; however, there is continuing scrutiny by the ESAs over the scope and nature of the regime. Although a firm may not "consider" PAIs, if a fund has classified as Article 8+ or Article 9 because it is making or investing in "sustainable investments", the firm will have to use the PAI indicators when applying the "do no significant harm" test.

EU Taxonomy

EU Taxonomy is a complex classification scheme that seeks to classify economic activities that are environmentally sustainable. It is critical in reaching the EU's ambition of net-zero emissions by 2050 and, in its simplest terms, analyses an economic activity to determine whether it is environmentally sustainable according to EU "technical screening criteria". If the activity meets these criteria, it is environmentally sustainable and if it doesn't, it is not.

EU Taxonomy aims to provide managers, investors, and policymakers with appropriate definitions for which activities can be considered "green" in financial disclosures and reporting. In this way, it should create clarity for investors and companies about which activities are sustainable, prevent greenwashing, and help shift investments to where they are most needed. However, EU Taxonomy has faced resistance from market participants as the data collection and analysis process is highly labour-intensive and the rules contentious and, in places, ambiguous.

Taxonomy-alignment is expressed as a percentage, i.e., you would say a company's overall activities are, or a fund's portfolio is, [x]% EU Taxonomy-aligned. A fund that has classified as Article 8 or Article 9 under SFDR is likely to have to report the extent to which its portfolio is Taxonomy-aligned. However, managers do not currently have sufficient data or resources to accurately determine alignment and consequently, many funds in the market are having to report 0% alignment. Whilst low levels of alignment are expected for a number of years, it is unlikely that funds will be able to rely on this approach indefinitely (particularly as underlying businesses start to routinely report on EU Taxonomy metrics), and managers are accordingly preparing as best they can for greater EU Taxonomy reporting in the coming years. This will inevitably involve increased costs and administrative complexity; however, this needs to be balanced against the anticipated benefits that engagement with EU Taxonomy will bring to the wider economy.

UK Regulation

Following Brexit, the UK's divergence from the EU was inevitable and accordingly, the UK has not implemented SFDR or EU Taxonomy. Instead, the UK has opted to chart its own course on sustainability by implementing its own wide-ranging, domestic disclosure regime, albeit one based on international standards that shares similarities with the EU regime. Although the UK regime is still evolving, the cornerstone has been laid and the rules governing the mandatory TCFD-aligned disclosure requirements, as discussed below, are now in force for asset managers.

TCFD

The recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) have been used as the basis for UK rules requiring firms to make mandatory climate-related disclosures. Among other significant actors in the economy, including large companies, pension funds and insurance companies, a requirement to report according to TCFD standards applies to UK-authorised asset managers (for example, UK MiFID portfolio managers and UK alternative investment fund managers (AIFMs)) and private market advisory firms. These rules were first announced in 2020 in line with the government's 2019 Green Finance Strategy. The TCFD reporting framework establishes four core pillars, Governance, Strategy, Risk Management, and Metrics and Targets, under which a total of 11 recommended disclosures are set out.

Whilst the UK's TCFD reporting regime aims for market transparency, its success depends on widespread international adoption. It is hoped that as the regime becomes embedded within the business community, financial risks and opportunities related to climate change will become a natural part of risk management and strategic planning processes. As this occurs, GPs' and LPs' understanding of the potential financial implications associated with transitioning to a lower-carbon economy and climate-related physical risks will grow, information will become more decision-useful, and risks and opportunities will be more accurately priced, allowing for the more efficient allocation of capital.

UK SDR

To bolster the specifically climate-related disclosures under the TCFD rules, the Financial Conduct Authority (FCA) is also consulting on a UK Sustainable Disclosure Requirements regime (UK SDR) and the introduction of a set of ESG-related investment labels. The rules will essentially "overlay" the TCFD-derived rules in the ESG sourcebook. To an extent, this represents the UK's answer to the EU SFDR, though the introduction of three distinct investment classifications is quite different (and indeed UK SDR was always contemplated as a labelling regime, whereas the EU regime has evolved into one). The first disclosures would come into force in Q3 2024 at the earliest – though a more general anti-greenwashing rule that will apply to all firms is expected to come into force in Q3 2023. At the moment, the FCA says, "overseas products" are out of scope of the requirements, although it is not clear that this is quite the effect of the draft rules as regards unauthorised alternative investment funds that are non-UK funds managed by UK AIFMs. In any event, it will be a question of "watching this space" to see how and to what extent the requirements will be extended to institutional non-UK funds. Lagging behind is the UK Green Taxonomy and the development of the associated technical screening criteria – there is no clear indication of when the UK Green Taxonomy is likely to come into force.

The challenge for managers and investors alike is understanding how divergent the EU and UK regimes in fact are in practice (at the point when they are finalised) and what this will mean for firms and groups having to comply with either one or both of the regimes in different scenarios. It is, however, hoped that UK legislators and regulators will be able to learn lessons from the adoption of the EU regimes; that being said, getting the framework right is not straightforward and there are likely to be teething problems as the rules are developed and implemented. Ultimately though, the approach to both TCFD and the labels accessed under UK SDR may provide a route for asset managers to differentiate themselves from their peers.

US proposals

Whilst Europe and particularly the EU have been driving regulatory change in this area, the US is catching up and looking to implement its own regime for registered funds and investment advisers. The proposed rules in the US are not completely dissimilar to Europe, but are less onerous, and would require registered funds that consider ESG factors in their investment process to disclose additional information on their strategy. Three categories of registered funds are proposed – integration funds, ESG-focused funds and impact funds, based on the extent to which they consider ESG factors. Disclosure requirements would increase as you go up the categories, with impact funds being at the top in terms of how central ESG factors are to their strategy. Registered investment advisers who consider ESG factors as part of significant investment strategies or methods of analysis in the advisory services they provide, including in managing private funds, would be required to make similar additional disclosures and say whether they use an integration, ESG-focused or ESG impact strategy (which have a similar definition to the three categorisations for registered funds) as well as reporting certain ESG information in their annual filings to the US Securities and Exchange Commission. However, the political environment in the US is more complex than that in the EU as regards climate change and the environmental impact of business activities; this may well mean that, at least for the medium term, Europe will effectively be providing leadership in the development of ESG-related regulatory standards.

How Asset Managers can Drive a Positive ESG Culture within their own Businesses and those of their Portfolio Companies

Ultimately, the challenge for asset managers is to develop an approach that ensures that ESG is not merely seen as an adjunct to the investment process but is fully embedded within it. The end goal has to be for GPs to look at ESG-related matters in exactly the same way as any other fundamental metric in measuring business performance. Accordingly, sustainability will need to be a core part of the thematic analysis of investment opportunities and to achieve this, a consistent approach is required at all levels of the business; it cannot simply be a final overlay to the investment process. Culture and tone at the top, however, clearly matters; senior executive management need to ensure that a focus on ESG issues is entrenched within the culture of the business and that there is a genuine determination across investment teams to recognise the positive benefits that effective ESG management will bring to the growth of portfolio companies, and, therefore, to effect behavioural change within those portfolio companies. Whilst many firms have dedicated teams of ESG professionals, asset managers without equivalent resources will also have to ensure that their business model prioritises sustainability as a core objective. The tools used by asset managers will vary in this regard, but will range from an integration of ESG criteria within their annual review and assessment processes to remuneration models (including through the structure of carried interest and performance fees) that specifically prioritise and reward superior performance against identified ESG metrics. All of this needs to be contextualised by the implementation of accurate and appropriate key performance indicators and for these to be accepted as a fundamental component of the measurement of business performance by executive management.

Conclusion

There is no doubt that the issue of sustainability and ESG performance is now becoming central to the investment activities of many asset managers in the market and that this trend will only accelerate in light of anticipated regulatory change and the increased sense of urgency to address these issues within the industry. Ultimately though, whilst imposing administrative complexity on asset managers (with consequential cost implications), a robust and thorough engagement with ESG issues is likely to drive superior investment performance, allow for differentiation from peers and allow for the industry to have a significant and lasting impact on the very real environmental and social challenges humanity is currently grappling with.

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