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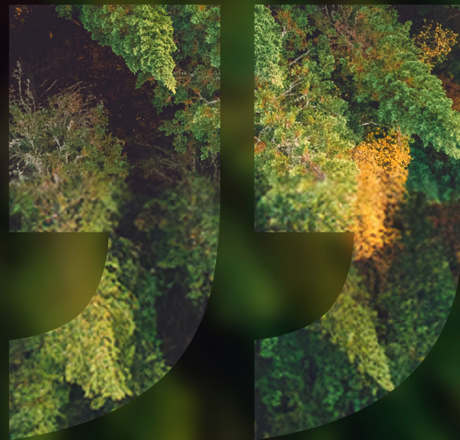
SUSTAINABILITY & ESG TRENDS 2025



– THOUGHT LEADERSHIP

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For investors seeking sustainable investments with revenue generating potential and global businesses seeking to mitigate legal and regulatory risk, 2025 promises a complex mix of opportunities and challenges.

One of the biggest hurdles will be the increasingly polarised perspectives on environmental, social, and governance (ESG) standards, as recent political shifts have accentuated the rift between ESG sceptics and proponents across the United States and Europe.

Potentially significant amendments to ESG legal and regulatory frameworks are on the horizon, as governments consider reducing bureaucratic hurdles to foster economic growth. How, then, can global businesses steer through these turbulent times?

As the landscape evolves, we look at what's around the corner for sustainable finance and private capital M&A, the direction of travel for sustainability due diligence and reporting and managing ESG litigation risks, as well as the ways in which businesses may practically navigate regulatory uncertainties and increasingly diverging views on ESG.

Between a rock and a hard place: managing diverging views of ESG

The coming year will be challenging for those who were hoping for global stability in approaches to ESG. Indeed, the opposite is occurring. The U.S. is undergoing a transfer of federal power to policymakers and enforcers who are far more sceptical of the social and environmental drivers behind these measures. While the U.S. is at the forefront of such change, similar patterns are emerging globally. The EU, which until recently has led the way in putting sustainability at the heart of its policy agenda, now appears to be taking a different path. On 29th January 2025, the EU Commission published a 'Competitiveness Compass', building on the Draghi Report, and aiming to boost European competitiveness and economic growth. This includes plans for an 'Omnibus proposal', expected to be published on 26 February 2025, which is intended to simplify laws relating to sustainability reporting, human rights and environmental due diligence, climate transition plans and the taxonomy. This will necessitate revisiting regulations that form cornerstones of the EU's sustainability agenda, including the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD) and the Taxonomy Regulation. Multinational companies will need to watch these developments closely, with headline issues to look for being changes to the scope of the requirements, implementation timelines and transition arrangements, as well as interoperability with global frameworks.

This fracturing of views is an acceleration of a trend that was already occurring. "Those in the anti-ESG camp in the U.S. have done a very effective job shaping the narrative on ESG in the last two years, resulting in legal battles against climate commitments and DE&I policies and a public pullback by some companies from these initiatives," says Steve Nickelsburg, a Clifford Chance Partner in the Litigation & Dispute Resolution practice.

Despite the challenges, it is unlikely to be desirable or practical for multinationals to walk back in a significant way from sustainability or social commitments, as global regulatory and disclosure requirements are already kicking in, for example under the CSRD, the CSDDD and the EU Pay Transparency Directive, even if there is now also a level of uncertainty in the EU. A wide array of stakeholders, including shareholders, investors, customers and employees, will, we believe, continue to pressure companies to conduct business consistent with their respective values. And actors such as NGOs stand ready to push companies to back up commitments, where they have made them, or to change their behaviour, where they have not, including through litigation. At the same time, it would not be wise for companies with U.S. interests to ignore the trends, as enforcers, litigants and pressure groups may well intensify their efforts through formal proceedings and consumer boycotts.

Indeed, a number of investors appear to have reduced their focus, or at least been noticeably less vocal in relation to the role of ESG factors in assessing a company's financial performance and its execution of the overall strategy to deliver shareholder value.

In response to these political and legal pressures, some companies are adopting risk mitigation strategies, taking a more cautious and rigorous approach to their public ESG commitments. "Greenhushing is a growing trend and that applies both to climate commitments and to DE&I – companies are doing the things that they think are important but are not being as vocal about it. But the failure to disclose material factors may also be a risk", Nickelsburg says. For companies whose core intrinsic values are closely aligned with their policies, or where risk management and value creation are derived from ESG frameworks, the question will be how to manage in a nuanced way any perceived pressure to change. Management and boards will need to devise and navigate a strategy for their specific companies in a defensible way. That will require developing a keen understanding of the boundaries of hard legal requirements, becoming attuned to different perspectives across audiences and jurisdictions – which may be strikingly at odds with one's individual assumptions – and conducting a considered review of the mission and obligation of the institution in which one sits. If anything is clear, it is that companies' statements and actions will be scrutinised from all sides. The best way to prepare for that crucible will be first to conduct that scrutiny oneself.

Sustainability due diligence and disclosures: navigating regulatory uncertainties

Countries worldwide have introduced laws aimed at promoting ambitious sustainability objectives. Often these have far-reaching effects, sometimes across borders.

The EU's CSRD and CSDDD are clear examples of this trend. The CSRD and the CSDDD are key, interconnected components of a broader EU legislative package which has been simultaneously lauded and denigrated. Rae Lindsay, a Partner in the Business and Human Rights practice, says: "The CSDDD that came into force in July 2024 could prove to be a gamechanger: requiring a major shake-up in business practices to identify, address and report on adverse human rights and environmental impacts of their operations and business relationships. Most would find it hard to argue against the proposition that businesses should take reasonable and effective steps to make sure they do no harm to people or planet, and for these reasons the CSDDD has garnered significant support from businesses in and outside the EU, as well as governments and civil society."

There is no doubt that the CSRD and the CSDDD will significantly influence business operations. Thomas Voland, a Partner in the Corporate-Energy Group and co-head of the European ESG team, says: "As disclosure and due diligence requirements come into effect, many companies face substantial challenges, particularly regarding the determination of their scope and their practical implementation. The complexity and perceived burden of these requirements have generated unease, from firms inside and

outside the EU. However, some more advanced companies use the required data strategically to adjust their business operations and distinguish themselves from their competitors."

The CSRD and the CSDDD have also provoked political criticism, with opponents arguing that excessive regulatory 'red tape' stifles competitiveness. The upcoming Omnibus proposal is expected to address such concerns.

However, reactions have been mixed. Some corporations are eager to maintain the status quo and have urged the Commission to ensure that the Omnibus does not lead to an 'opening of Pandora's box' with a wholesale renegotiation of the legislation. Others argue that CSDDD implementation should be paused pending consultation on its effects on competition. This view is also supported by some governments of EU member states, such as France and Poland. There have also been calls for a significant retrenchment on the CSRD, including from the German government, with the French government advocating for a two-year postponement.

Navigating these overlapping regulations was always going to be complex, especially for multinational corporations. This complexity is now exacerbated by geopolitical and economic challenges and diverging views on ESG. Michelle Williams, a Partner in the Litigation & Dispute Resolution practice, says: "The impact of extraterritorial pressure from the US is becoming increasingly more likely. The new Administration and the new leadership at the US Securities and Exchange Commission (SEC) will undoubtedly retract support for the Climate Disclosure Rule, which had already been stalled, given ongoing litigation."

Given these uncertainties, businesses might be tempted to ease their implementation efforts. However, this is not in our view a prudent strategy. The CSRD and the CSDDD are already in force, with stringent timelines for compliance. The extensive preparatory work required makes these deadlines formidable, and it is highly unlikely that the rules will be entirely scrapped. "We have seen this approach in relation to the EU Deforestation Regulation. Its application has been delayed by one year due to the lack of clarification regarding some of its requirements and the comprehensive measures, namely, to set up due diligence processes in the supply chain, necessary to implement the Regulation," says Thomas Voland. The sensible course of action is therefore to adhere to the established timelines. Even if regulatory amendments occur, recent statements from the European Commission, including from its president Ursula von der Leyen and executive vice president Stéphane Séjourné, suggest that the amendments are more likely to result in delays and simplification, rather than a complete overhaul of the requirements. Thus, businesses would do well to maintain momentum in their compliance efforts, ensuring that they are well-positioned to adapt to any regulatory shifts.

Sustainable finance: uncertainties, but can it scale?

The difficulties in managing diverging views on ESG are also evident in the sustainable finance markets, as has been shown recently in the numerous departures from various net-zero alliances. Firms will need to navigate these divergences, in response to changes in the U.S. administration and now, it seems, by a change of tone in the EU.

There is also a degree of legal and regulatory uncertainty across all sectors of the financial markets. Paul Ellison, Partner in the financial services regulatory practice, says: "Like other parts of the world, in the UK we are also seeing a degree of uncertainty in relation to ESG initiatives in the investment funds and financial services sector. For instance, HM Treasury is consulting on whether to take forward the Government's original proposal to have a standalone Green Taxonomy or whether its benefits could be achieved through other legislation or rulebooks. Over the next few months, the industry will be watching carefully to monitor where the UK's position ends up on this and other key regulatory developments."

In the energy sector, private capital providers have been targeting infrastructure and innovative transition technologies, with opportunities for investment across a broad range of assets including solar, wind, green and blue hydrogen, carbon capture and storage and associated transmission and distribution infrastructure. We have seen private capital finding investment opportunities in the decarbonisation of carbon intensive industries. Yet there are challenges for funds focused on these strategies. Charlotte Chopping, a Senior Associate in the financial services regulatory practice, says: “2024 was a year of continued uncertainty for fund managers grappling with rapidly evolving sustainable finance regulation. In 2025, we expect two significant regulatory developments to be unveiled: firstly, the Omnibus proposal, which is expected to streamline key EU sustainability legislation and, secondly, the potential legislative proposal for SFDR 2.0. These will allow firms to begin to see the shape that sustainability legislation will take over the next few years. In the short term, we expect the focus to be on assessing the impact of SFDR 2.0 on new and existing products when it arrives, as well as navigating an increasing divergence in attitudes to ESG within the investor base. In the medium term, it is hoped that SFDR 2.0 will bring clarity and enable the scaling up of the sustainable funds market.”

Elsewhere in the market, the consensus reached at COP29 regarding Article 6 of the Paris Agreement has effectively dismantled long-standing barriers to the growth of the new Article 6 carbon markets. Adam Hedley, an environment Partner, says: “The agreement on Article 6 signals to private finance that the international carbon markets under the Paris Agreement are now ‘open for business’. This is a pivotal advancement. If the Article 6 market mechanism scales up to its potential, it could become a substantial financing source for climate mitigation action by developing nations. However, it will take time for Article 6.4 to fully take off, so we anticipate relatively low volumes of Article 6 carbon credits in the near term.”

In the sustainable bonds market, the Green Bond Regulation, effective from 21 December 2024, is a significant development. There is clearly market enthusiasm for the product with two oversubscribed EuGB issuances launched in January. Kate Vyvyan, a capital markets Partner, says: “Initial expectations are for a gradual uptake of the new European Green Bond label, with market participants closely monitoring the reaction to early-adopter issuances. We are confident that the new EuGB label will prove attractive to issuers and investors providing an additional, but complementary, product to non-European Green Bonds, such as voluntarily labelled sustainable bonds in the ESG bond markets.”

In 2025, important aspects of the sustainable bonds market will become clearer. Auriane Bijon, counsel in our Capital Markets team, says: “In relation to green bonds, 2025 will reveal how regulators will implement the EuGB label. Also, this is the year where early adopters of the sustainability-linked bond format will assess whether they will be reaching their first ESG targets and whether they will need to face the payment of the financial incentives that were contractually provided. In that sense, 2025 is set to be a pivotal year for the sustainable bonds market.”

Whilst sustainability-linked loans are becoming more uniform, the product will continue evolving in 2025, particularly in relation to, for example, declassification and rendezvous provisions, says Angela McEwan, a finance Partner. “ESG-related KPIs are also expected to continue to expand beyond traditional metrics like carbon emissions to increasingly include biodiversity-related KPIs.”

In the derivatives market, trade associations and other bodies are actively promoting standards for ESG-related products. However, significant challenges remain, notably in relation to Verified Carbon Credits (VCCs). Paget Dare Bryan, a derivatives Partner, says: “Secondary market trading of VCCs faces issues such as inconsistent definitions, uncertainties around legal characterisation, and the need for a global regulatory framework for trading. Efforts in 2025 will focus on addressing these challenges, including the commissioning of UNIDROIT guidance to better understand the various

private law issues surrounding VCCs (such as transferability, collateralisation and treatment in the case of an insolvency) as well as promoting discussions to agree a global definition for a tonne of carbon."

COP29, dubbed the 'Finance COP', underscored the urgent need for international climate finance to combat climate change's adverse effects. We expect a focus on blended finance this year to use public and multilateral development bank finance effectively to de-risk transactions. Clare Burgess, an Energy & Infrastructure Partner, says: "The COP29 agreement must translate into scalable investment programmes, particularly through blended finance structures. Development finance institutions have a unique opportunity to create investable opportunities for the private sector through concessional financing, risk guarantees and currency protections." Elsewhere in the market, we are seeing similar investor collaborations to catalyse investment. Patrick Meniru, a Senior Associate in the private funds practice, says: "Certain sustainability-focused investors are providing cornerstone commitments to impact funds on a first-loss, concessional basis to attract non-concessional capital". In short, blended finance holds considerable promise for scaling sustainable finance. However, there is no standardised approach for a successful project, and transaction parties need to be flexible to get projects over the line. This will help to build precedents for well-structured solutions and provide opportunities for investors to create value.

Debt for nature swaps and other debt conversions are increasing and have shown their potential to be scalable. Partner Deborah Zandstra, head of the Clifford Chance sovereign debt advisory and restructuring practice, says: "2024 was a landmark year for debt for nature swaps. In the last few months, we have advised clients on debt for nature swaps for Barbados, Ecuador, El Salvador and The Bahamas. We have seen CAF and EIB participate for the first time in a transaction together with previous providers of credit support, IDB and DFC. Fitch rated the Ecuador transaction alongside Moody's, their first rating of a debt for nature swap. We have also seen the entry of commercial risk insurance in the credit support structure of a transaction. Some transactions have been funded by way of loans, others by way of bonds, illustrating the variety of funding instruments which can be used. Some have involved the establishment of a transaction-specific conservation trust fund, whilst others have built on existing in-country agencies. There has been very good demand from investors interested in participating in transactions that address both debt and climate challenges. There is also continued interest in monetising carbon credits and funding projects that can generate such credits. To date, this has largely been focused on partnering with the World Bank but there should be significant growth opportunities in the market." The market for these transactions looks positive, and we expect these innovative structures to feature heavily in discussions at COP30, which takes place in November in Brazil.

4

Integrating sustainability into private capital M&A transactions

In private capital mergers and acquisitions (M&A), 'sustainability' has emerged as an important consideration. Private capital investors, particularly those with funds disclosing under Article 9 of the EU's Sustainable Finance Disclosure Regulation (SFDR), are increasingly integrating ESG factors into their transaction processes. This shift is reshaping the M&A life cycle, from initial due diligence, where the acquirer may be keen to assess the target's general approach to ESG or its assessment and management of environmental risks, through to post-completion, where the portfolio company's own governance and compliance with sustainability-related requirements, its DE&I or data policies, for example, may come under scrutiny.

The impetus for this trend is largely regulatory. As Nadia Kalic, a Partner in the Corporate M&A Group, says: "Over the last few years we have witnessed an uptick in sustainability-related reporting and disclosure obligations globally. To properly assess the associated financial and reputational risks, buyers are increasingly conducting due diligence to assess whether the relevant target group falls within the scope of these

regulations and if so, whether these regulations have been complied with, or whether the relevant target group has the necessary systems in place to facilitate compliance once these regulations take effect."

Often this can be a complicated process, requiring an assessment of both domestic laws and laws from elsewhere which have extra-territorial effect, such as the EU's CSRD and CSDDD, which impose mandatory sustainability reporting and diligence obligations on companies above certain thresholds. "There is now an additional layer of regulatory uncertainty which investors must contend with, given the diverging views on ESG and the question marks over the future of the CSRD and the CSDDD, in the light of the upcoming Omnibus proposal in the EU," says Kalic.

Private capital investors are navigating this regulatory maze with bespoke solutions. Standardised clauses for sustainability in M&A documents remain elusive, with conditions precedent and material adverse change (MAC) triggers tailored to specific deals. Lily Marcel, a Partner in the Private Funds Group, emphasises the bespoke nature of these clauses, driven by diverse investor commitments and regulatory frameworks. She says: "In the context of an acquisition of an investment by a private fund, there isn't a 'one size fits all' approach as sustainability requirements may be driven by contractual commitments to investors, the fund's investment strategy and the regulatory framework applicable to the fund. For instance, an Article 9 SFDR fund will require regular reporting on certain prescribed indicators to assess whether the investment continues to satisfy the 'do no significant harm' test, but there are likely to be other metrics specific to the fund that need to be monitored depending on its environmental or social objectives."

However, some coherence is emerging for these types of acquirers around matters such as conditions precedent (for example, environmental and social action plans that need to be satisfied prior to completion and before funds are deployed, which often incorporate the outcomes of due diligence), MAC triggers, reserved matters and exit mechanisms for investors, if the investment no longer meets the defined 'sustainability' metrics for the investment criteria of the fund.

Corporate Partner Maren Stadler-Tjan highlights the importance of due diligence in identifying and rectifying sustainability issues before completion. This ensures that investments meet SFDR criteria from day one and continue to do so post-completion. "There is a toolbox of mechanisms that is used to ensure that an investment is a 'sustainable investment' on day one and to monitor this on an ongoing basis, as well as to provide options in case the investment ceases to be a 'sustainable investment'. But the nature of the information required and the matters that need to be rectified, for example, will naturally vary," she says.

Post-completion, there are ongoing sustainability-related requirements that may need to be addressed, including transition planning and enhanced policies and procedures to facilitate compliance with the increasingly complex sustainability-related regulatory framework. This is particularly the case given the increased scrutiny on decision-makers within companies, including directors.

Practically speaking, it will be important for investors to require the management team of their portfolio company to identify the company's climate and nature-related dependencies and impacts, so that decision-making frameworks can be tailored accordingly post-completion.

5

ESG litigation: managing ongoing risks

Managing ESG-related litigation remains critical in 2025, driven by NGOs and backed by litigation funders who are focusing on bringing cases relating to environmental harm, climate change, greenwashing and business and human rights.

Jeroen Ouwehand, a Clifford Chance Partner who leads the firm's ESG Board, says: "There is a litigation ecosystem emerging where NGOs, specific law firms and litigation funders are learning from each other. NGOs are willing to commence some speculative claims, sometimes to keep their cause on the front pages – and it's not necessarily the type of litigation you can settle. We also see an increase in the use of class actions or equivalent systems in Europe and the UK, while in France we have seen several cases being brought under the French Vigilance Law."

Cases brought in the EU are mainly focused on attempts to obtain court orders against companies to reduce GHG emissions in the future based on allegations of a duty of care, such as the case in the Netherlands of Friends of the Earth against Shell (which Shell recently won on appeal) or the similar announced action against ING. Many cases elsewhere – particularly in the U.S. – seek damages for past emissions and injunctions based on traditional tort theories such as nuisance, duty to warn, and misrepresentation of risks. There are numerous pending cases, to date largely against large fossil fuels and plastics producers. In Japan, more and more companies and financial institutions have found themselves the subject of ESG activist activity over the last few years. In August 2024, Japan's first climate lawsuit was launched by claimants seeking injunctive relief to limit CO2 emissions of ten utility companies. The legal arguments being made echo those in other cases elsewhere in the world, including by the claimants' invocation of human rights law.

Greenwashing claims – misrepresentation, misstatements and false or misleading practices – are prevalent across a wide range of sectors, including aviation, financial services and consumer goods. In April 2024, the European Commission and the EU consumer authorities began actions against 20 airlines on claims that CO2 emissions could be offset by climate projects or by using sustainable fuels, to which consumers could contribute by paying additional fees. In August 2024, in a landmark case, the Australian Securities & Investments Commission (ASIC) ordered Mercer Superannuation to pay AUD 11.3 million after it admitted making misleading statements about the sustainable natures of some of its investment options. Later in 2024, ASIC was successful in pursuing an investment management company for greenwashing allegations, which was ordered to pay a civil penalty of AUD 12.9 million after making similar admissions. And in the United States, private plaintiffs frequently use consumer protection legislation to bring class action claims, seeking to recover for purchases allegedly made in reliance on inaccurate or misleading green advertising claims.

Claims against consumer goods manufacturers include one brought by France Nature Environment – a federation of environmental protection associations – against a soft drink brand which, it alleges, failed to recycle 100% of its bottles collected during the Paris Olympics, as was promised by the company. In Germany, an NGO successfully sued a food manufacturer for labelling the products as 'climate neutral', while some GHG emissions were merely offset. Numerous other cases regarding similar 'green claims' are still ongoing. "We expect a further rise of greenwashing litigation in the EU, given tightened rules under the upcoming EU Green Claims Directive and the recently adopted Empowering Consumers Directive," states Partner Thomas Voland.

Naomi Griffin, a Clifford Chance Partner in the Litigation & Dispute Resolution Group, says: "Regulators will follow consumer trends and seek to protect consumers from misleading or unconscionable conduct. That conduct can include inaccurate statements about the environmental efficiency or characteristics of a product or service. Regulators may also take an interest in corporate transactions and compliance with due diligence disclosure requirements on corporate sustainability. Globally, we

expect climate litigation to continue to rise, both in jurisdictions where plaintiffs perceive a receptive audience and in jurisdictions such as the United States, where countervailing political trends lead plaintiffs to attempt to fill a perceived regulatory and enforcement vacuum."

It is not only companies that are facing litigation. In the UK, ClientEarth brought a derivative claim against the directors of Shell for breach of their directors' duties. The good news for directors is that this decision made it clear that the UK courts will not interfere with business decisions in relation to climate strategy made in good faith where the directors have considered all relevant factors, including climate risk. However, to limit director liability risks it will be important to demonstrate correct decision-making procedures and proper governance.

Finally, in the voluntary carbon markets, Adam Hedley highlights that as the carbon credit market continues to mature, there has been increased scrutiny over the integrity of the carbon standards underpinning these credits. High-profile cases such as the co-ordinated prosecutions brought against CQC Impact Investors LLC by the CFTC, DOJ and SEC in the United States, which allege that carbon credits were misrepresented in terms of their environmental impact, underscore the growing concerns. We expect that once the volume of Internationally Transferred Mitigation Outcomes (ITMOs) and Article 6.4 carbon credit transactions scale up, the Article 6 carbon market will increasingly converge with the traditional voluntary carbon market, as the regulatory framework under which Article 6 operates will be seen as providing the mark of quality and integrity that buyers are looking for in the voluntary market. However, as demand for carbon credits increases, we anticipate a corresponding rise in legal challenges targeting the validity of carbon credits and their role in corporate climate strategies.

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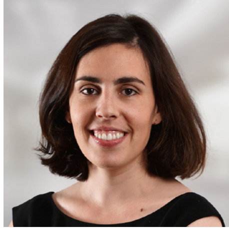

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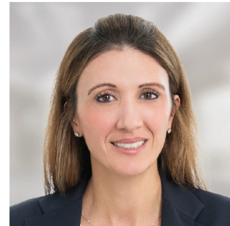

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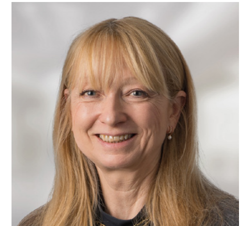

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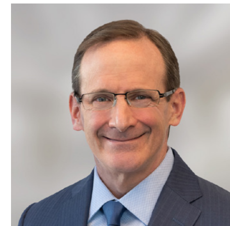

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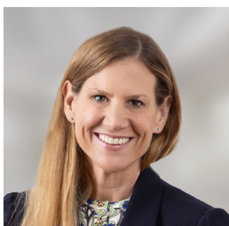

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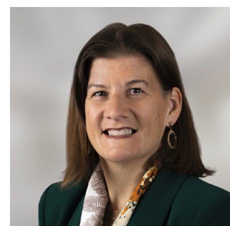

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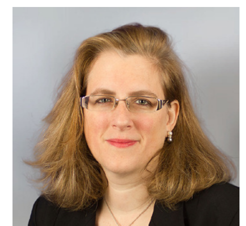

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