

SUSTAINABILITY AS A LEGAL STANDARD IN EUROPEAN INVESTMENT LAW

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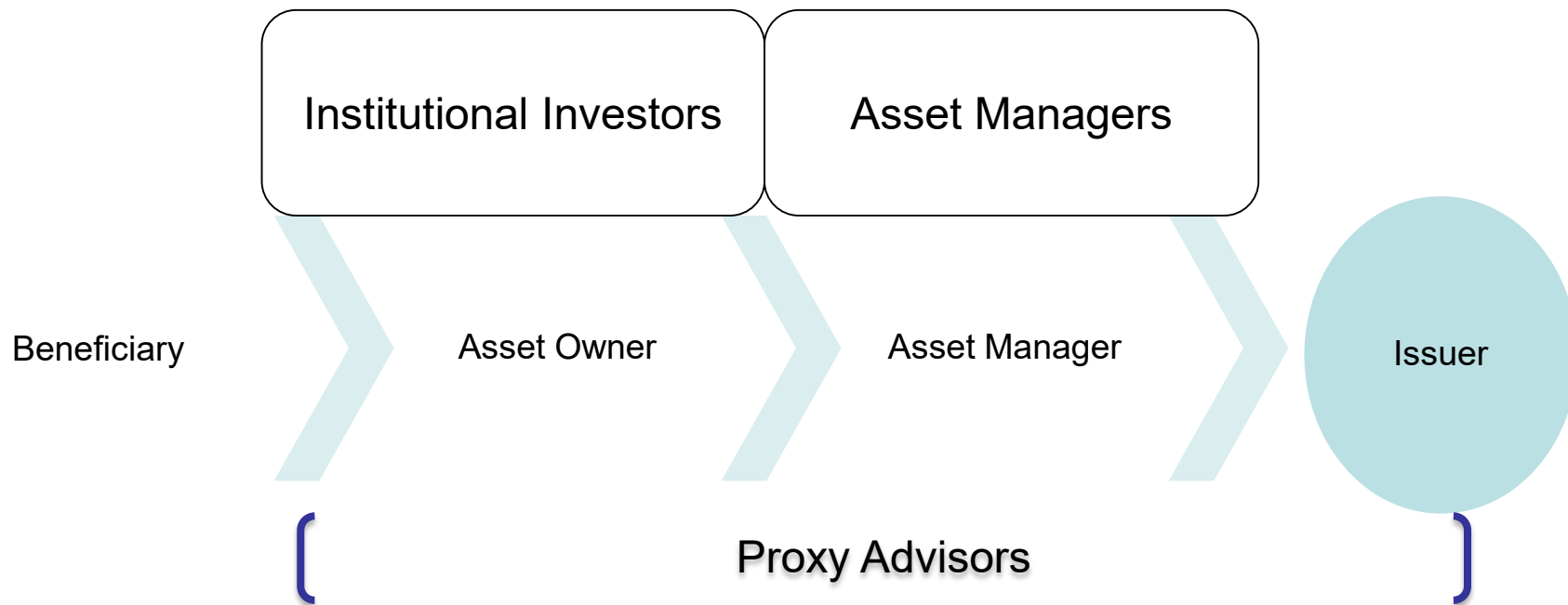
AGENDA

- § 1 – Scope (« investment law »)
- § 2 – EC SF Action Plan
- § 3 – Policy Actions with a view to Investment Law
- § 4 – Remaining Challenges
- § 5 – Conclusions & Take Aways

§ 1

Scope

§ 1 - Scope



§ 2

EC's Sustainable Finance Action Plan

EU Objectives for Sustainable Finance



More private capital for environmentally sustainable investment



Foster transparency and long-termism in financial and economic activities



Sustainable Finance

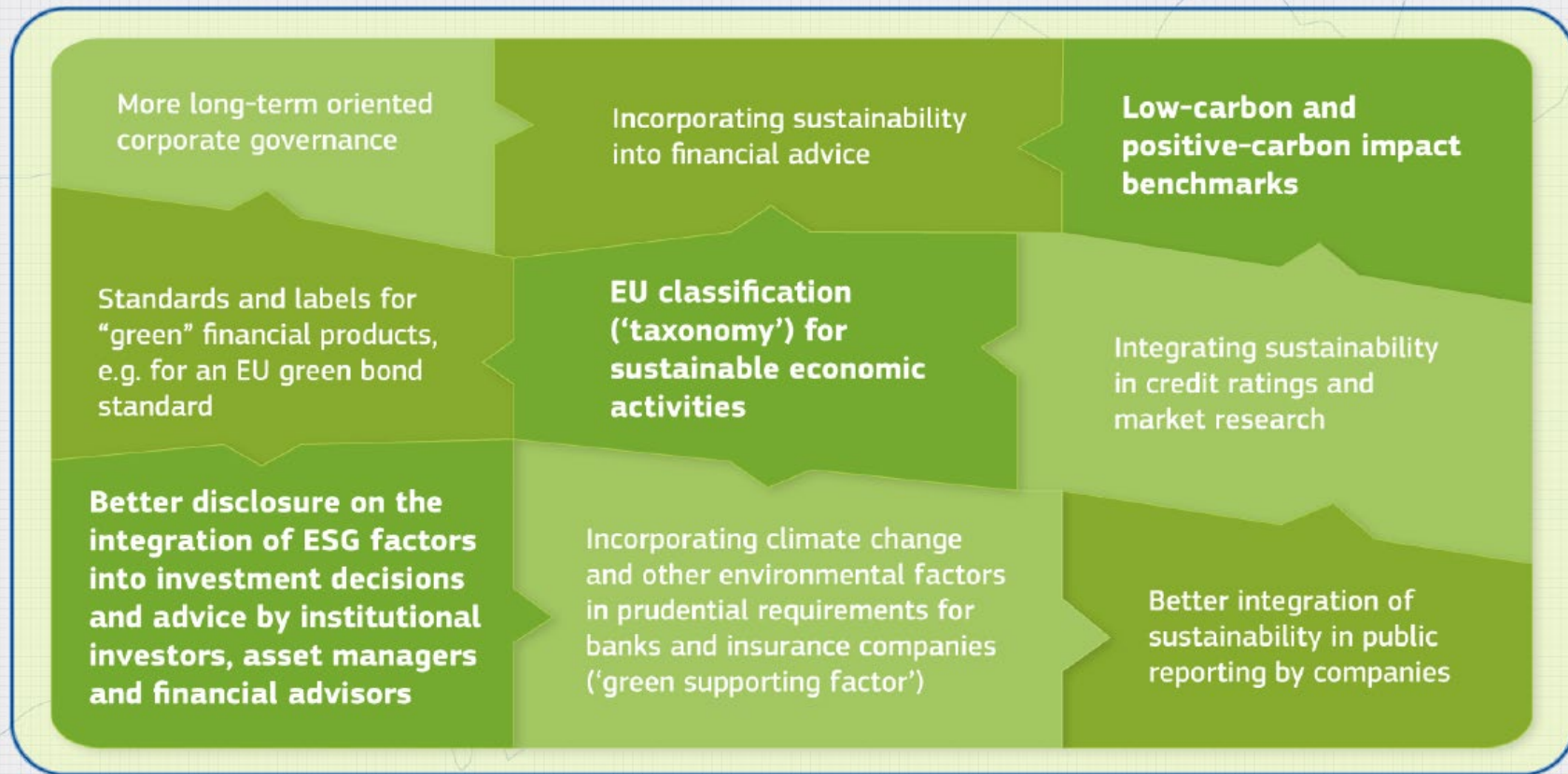


Manage financial risks from climate change, resource depletion and environmental degradation

While taking account of social and governance objectives.

as part of the EU's plan for Capital Markets Union

Strategy



Core Policy Measures

- Unified Taxonomy
- Sustainability-Related Disclosures
- Climate Benchmarks and Benchmarks' ESG Disclosures

Accompanying Policy Measures



STRENGTHENING INTERNATIONAL COOPERATION

On-going discussions with third countries to scale up sustainable finance globally.



EU STANDARDS AND LABELS

Creating EU standards and labels for green financial products. The Technical Expert Group on Sustainable finance published a report on an EU Green Bond Standard in June 2019. The European Commission is currently developing EU Ecolabel criteria for financial products.



PREFERENCES ON SUSTAINABILITY

Requiring financial firms to take into account their clients' preferences on sustainability when giving investment advice or managing their assets.



ENHANCED TRANSPARENCY IN CORPORATE REPORTING

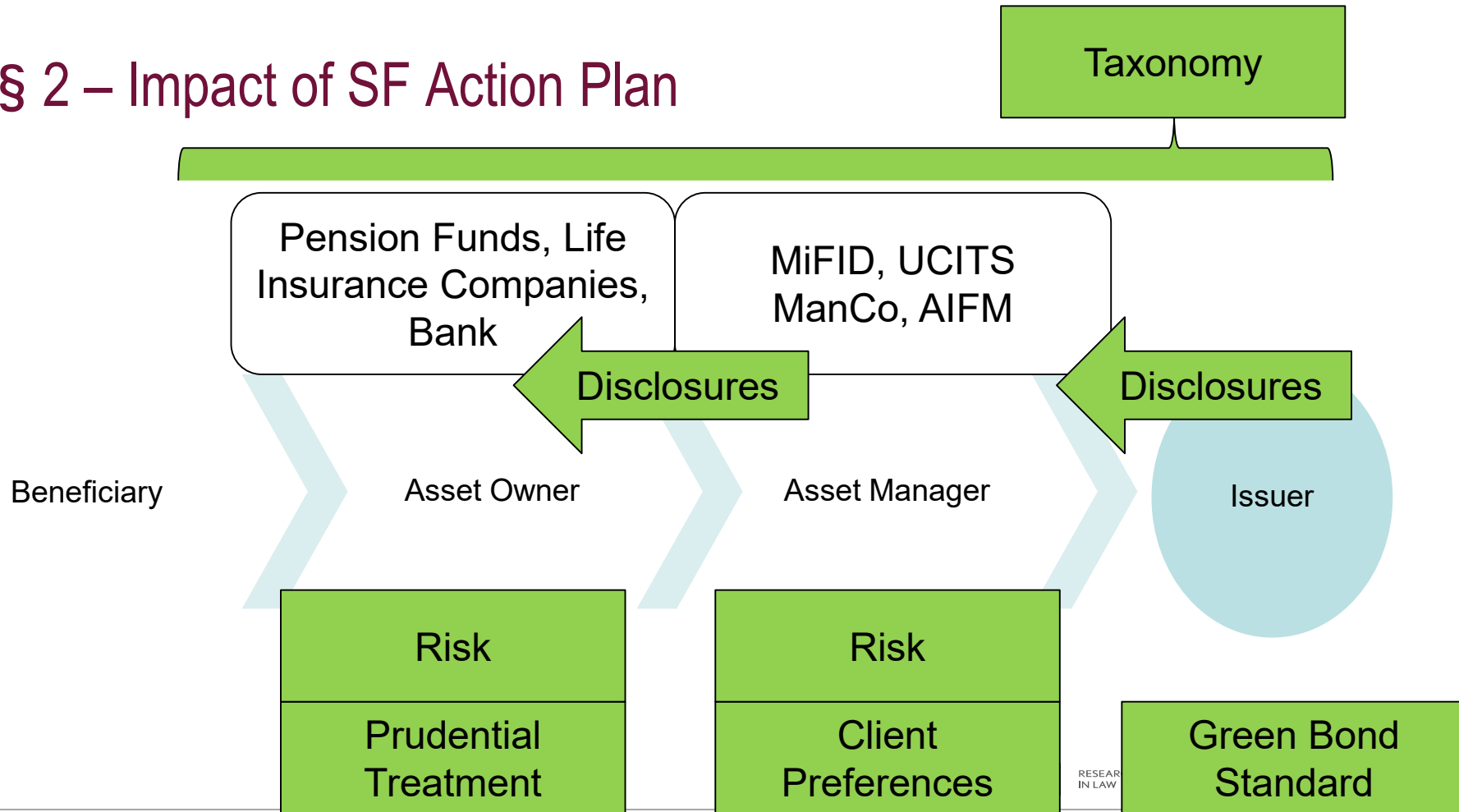
In June 2019 the European Commission adopted new guidelines for companies on how to report climate-related information, consistent with the Non-Financial Reporting Directive and integrating the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosure.



INTEGRATING SUSTAINABILITY

The European Securities and Markets Authority, the European Banking Authority, the European Insurance and Occupational Pensions Authority have already delivered their advice to the Commission on sustainability risk integration in financial decision-making, and on the need for a change in banks and insurers' prudential treatment of assets with a favourable environmental and social impact (in addition to sustainability-related actions on their own initiative).

§ 2 – Impact of SF Action Plan



„Sustainability“: Taxonomy EC proposal



Contribute substantively to at least one of the six environmental objectives laid out in the proposal



Climate change mitigation



Climate change adaptation



Sustainable use and protection of water and marine resources



Transition to a circular economy, waste prevention and recycling

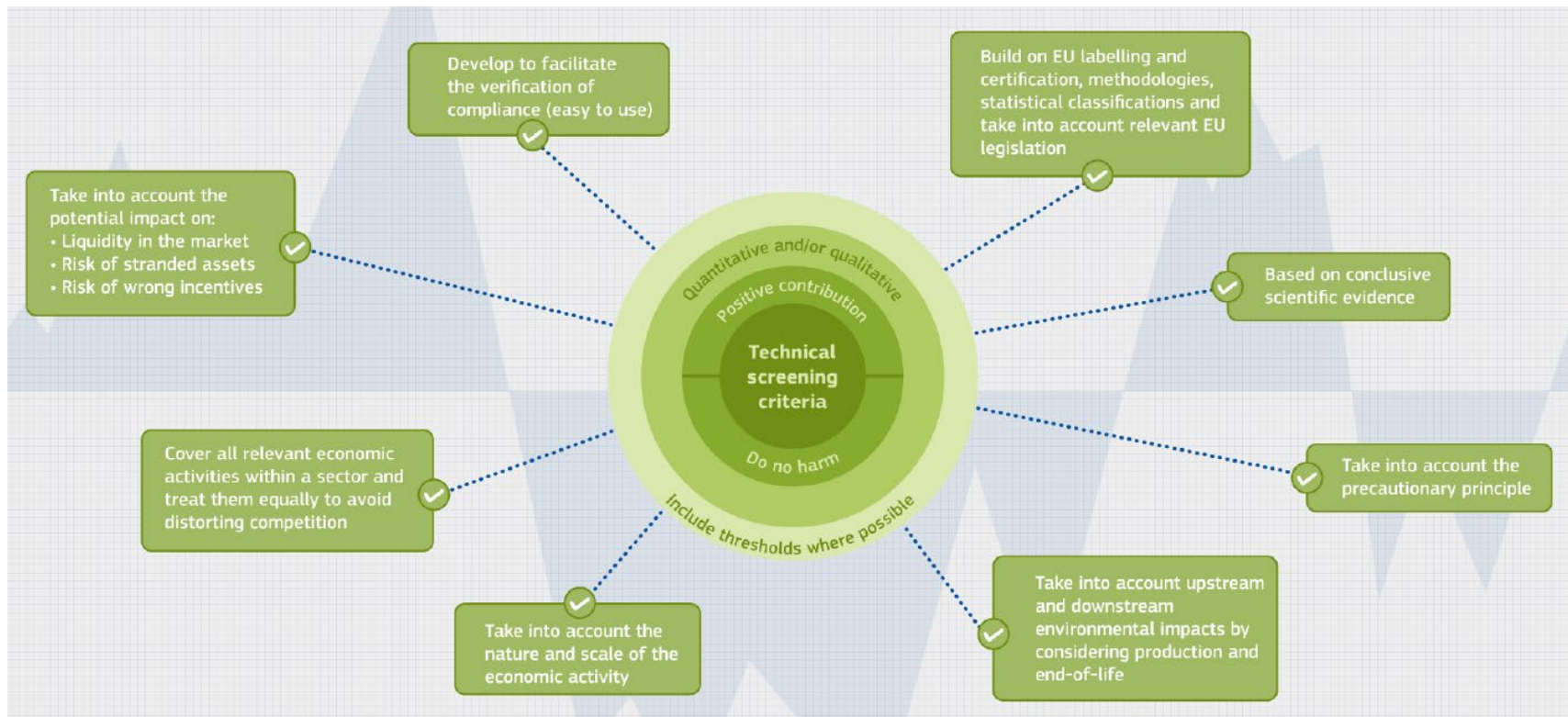


Pollution prevention and control



Protection of healthy ecosystems

„Sustainability“: EC proposal



„Sustainability“: Taxonomy

18 June 2019:

TEG's [Technical report on EU taxonomy](#).

- technical screening criteria for 67 activities across 8 sectors
- a methodology and examples
- guidance and case studies for investors preparing to use the taxonomy.

TEG's [supplementary report on using the taxonomy](#).

provides investors and companies with a concise and clear explanation of why the taxonomy is needed, what it looks like, and its ease of use.

„Sustainability“: Taxonomy

EU Taxonomy Regulation + Implementing Acts

„Sustainability“: Benchmarks

- To amend existing Benchmark Regulation
- Two new benchmarks for easier tracking of Sustainability criteria

„Sustainability“: Transparency

- Promote market discipline discouraging greenwashing
 - Increase level and quality of market information
 - Increase awareness
 - To be integrated in: Marketing Materials, Websites and ...
- ⇒ Pre-contractual information (!)
- Investment and « advisory » policies
 - Impact on returns of financial products
 - Remuneration policies

§ 3

Policy Actions with a view to Investment Law

SRD II

- Long-termism as direction
 - Impact: reporting, remuneration
- ⇒ Vague Terminology
- ⇒ Legal Uncertainty vs Ideology

Final Report

ESMA's technical advice to the European Commission on integrating sustainability risks and factors in the UCITS Directive and AIFMD

On 30 April 2019 ESMA published its propositions to amend and add provisions in relevant legislation with the aim that ESG considerations and sustainable risks are taken into account.

- ESMA will work with European Commission to transform advice into delegated acts.

ESMA Report

Extract from the Commission's request for advice (mandate)

“Organisational requirements in delegated acts adopted under Articles 12(3) and 14(2) of the UCITS Directive (i.e. Commission Directive 2010/43/EU), [...] Articles 12(3) and 18(2) of AIFMD (i.e. Commission Delegated Regulation (EU) 231/2013, [...]) do not currently explicitly require the integration of sustainability risks. Where necessary for the achievement of consistency across sectors, EIOPA and ESMA are invited to also consider Article 135(1)(a) of the Solvency II Directive for potential new level 2 measures.

ESMA

- *tasks and the role of the risk-management function or procedures for risk assessment, the compliance function, the internal control function or system, the internal audit function and/or the actuarial function in the system of governance and tasks or responsibilities of bodies that undertake the management and supervisory functions in the corporate governance in relation to sustainability risk limits and overseeing their implementation;*
- *steps of procedures and processes to ensure the effectiveness and adequacy of sustainability risk integration;*
- *skill, expertise and knowledge required for the assessment of sustainability risks;*
- *regular reviews of the mechanisms put in place to integrate sustainability risks and regular internal reporting;*
- *adequate support to (e.g. analysis, research and legal advice), and resources across, all relevant functions and where several functions are involved in the integration of sustainability risks, the requirements on cooperation with each other; and.*
- *measures and policies specifically considering types of conflict of interest that might arise in relation to sustainability considerations and the steps to identify, prevent, manage and disclose them.*

SF Disclosures

On 18 April 2019 the EU Parliament agreed on the text for a regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 (IORP II). Expected to enter into force in 2020

On 18 June 2019 the Commission published a supplement to its Guidelines on the Non-financial reporting directive (2014/95/EU) related to reporting climate-related information

AIFMD II

- KPMG report endorsed by EC
- « sustainability » all over the place

§ 4

Remaining Challenges

« Pre-contractual Information »? Beyond disclosures

- « Investment and « advisory » policies »
⇒ additional disclosures in MiFID Product Governance Rules, KIID, Prospectus
- « Impact on returns of financial products »
 - ⇒ Additional disclosure on (considered or unconsidered) risks?
 - ⇒ [Additional prudential measures]
- « Remuneration Policies »
 - ⇒ Longer term assessment periods?
 - ⇒ Penalties for AMs that do not invest in SF products?
 - ⇒ Mandate SF investments?

Organisation of AMs & AOs

- Organisational requirements
- Operating conditions
- Risk managements
- Identifying investors' profile & preferences

=> How in detail? A practical example

Measures focus on disclosures, but

- Short-term profit vs. « sustainability »: a conflict?
- Amending existing investment strategies?
- Sustainable Finance & FinTech: How do these fit together?

§ 5

Conclusions

§ 5 – Conclusion & Thesis

- Disclosure approach: more or less costless
 - Interfering with organization etc. costly
 - Mandating SF investments: even potentially more costly
 - Doing nothing: very costly
- ⇒ Conflict between short-term pensions and long-term sustainability unsolved
- ⇒ Transformation to be smoothed by politics

Thanks!

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Recommended Readings

TechFin / Data-driven Finance

www.ssrn.com/abstract=2959925



Regulatory Sandboxes

www.ssrn.com/abstract=3018534



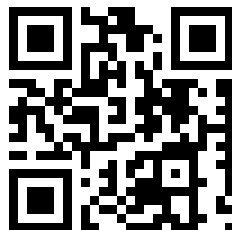
FT4FI Roadmap

www.ssrn.com/abstract=3245287



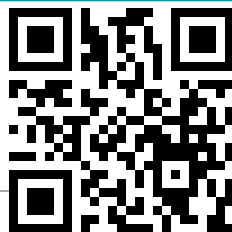
Corporate Technologies (AI etc.)

www.ssrn.com/abstract=3392321



Regulating Libra

www.ssrn.com/abstract=3414401



Future of Data-Driven Finance

www.ssrn.com/abstract=3359399



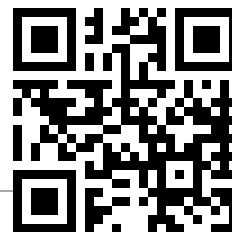
Rise of Tech Risk

www.ssrn.com/abstract=3478640



ICO Gold Rush

www.ssrn.com/abstract=3072298



Distributed Ledgers / Blockchain

www.ssrn.com/abstract=3018214



eID / KYC Utilities

www.ssrn.com/abstract=3224115



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