



Speaking Sustainability

Sustainability/ESG Policy and Regulatory Update



October 2024

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Akin's newsletter on environmental, social, and corporate governance (ESG) policy and regulatory developments, provides a timely digest of ESG topics, news items and other relevant information regarding significant ESG policy headlines and debates concerning each ESG pillar. We also keep you up to date on activities in the state legislatures across the country. This newsletter is a companion to our existing weekly Climate Policy Update, which you can find at our [Speaking Sustainability](#) site.

Key ESG Topics

The United Kingdom's Financial Conduct Authority (FCA) [announced](#) it is providing limited temporary flexibility for firms to comply with the "naming and marketing" rules set forth in the FCA's Sustainability Disclosure Requirements.

- The FCA is providing temporary relief from the "naming and marketing" requirements related to the use of sustainability- and ESG-related terms in the marketing of certain products (i.e., ESG 4.3.2R to ESG 4.3.8R of the [FCA's ESG Sourcebook](#)). The rules were adopted to ensure that a fund is responsibly using ESG-related labels and "pursues ESG/sustainability characteristics, themes, or outcomes in a way that is substantive and material to the fund's objectives, investment policy and strategy."
- The FCA's decision acknowledges that efforts and progress made by firms towards sustainability requirements has taken longer than anticipated, particularly in relation to firms that want to use sustainability labeling.
- The FCA initially introduced the Sustainability Disclosure Requirements (SDR), including the anti-greenwashing rule, in November 2023, which came into force May 31, 2024. These anti-greenwashing rules were scheduled to be enforced beginning in December; however, under the temporary relief, the compliance deadline has been extended to April 2025.

ISS Governance recently released the results of its annual global benchmark policy survey.

- According to the announcement, the "policy survey is designed to gather feedback from a wide range of stakeholders to give ISS guidance on where to set policy in areas that are

shifting or emerging. Results of the policy survey will underpin ISS' 2025 benchmark voting policy."

- ISS's release indicates that the 2024 survey covered several governance and sustainability topics at global, national and regional levels, including poison pills, disclosure of Scope 3 Greenhouse Gas (GHG) emissions, climate-related shareholder proposals and executive compensation. The results of ISS's survey may be found [here](#).
- ISS will now draft and release key voting policy updates for 2025 and open a public comment period for market stakeholders regarding proposed changes. ISS expects to announce final policy updates in late November/early December, with its voting guidance to be given effect for shareholder meetings that convene on or after February 1, 2025. Consistent with past practice, Akin will prepare and circulate a client alert covering the updated voting guidance published by ISS and Glass Lewis.

On September 27, 2024, Governor Newsom (D-CA) signed into law Senate Bill 219 (SB 219) providing a six month extension, among other technical adjustments, for the California Air Resources Board (CARB) to issue implementing regulations for the state's GHG disclosure requirements described below. Akin wrote about California's climate disclosure statutes, which remain subject to legal challenges in federal court, [here](#).

- The California Assembly approved [Senate Bill 219](#) on August 31, 2024, which introduced technical amendments to the state's climate disclosure requirements set forth in Senate Bill 253 (SB 253; concerning disclosures related to greenhouse gas emissions) and Senate Bill 261 (SB 261; concerning disclosures related to climate-related financial risk). SB 219 extends the deadline for CARB to issue implementing regulations for SB 253 by an additional six months, now set for July 1, 2025, among other adjustments.
- The reporting deadlines established by both laws remain unchanged. The technical amendments provide covered entities with more clarity regarding the timeline and expectations for implementation guidance, although impacted companies will remain in a holding pattern pending issuance of the disclosure regulations.
- Consistent with the amendments, the requirement for disclosing Scope 3 emissions under SB 253 remains set for 2027, but SB 219 provides CARB with more discretion to determine the specific deadline within that year, rather than adhering to the initial compliance timeframe of 180 days following the disclosure of Scope 1 and Scope 2 emissions.
- Emissions disclosure under SB 253 can be consolidated at the parent company level, allowing subsidiaries that individually fall under the scope of SB 253 to avoid submitting separate reports.
- Companies reporting under either law will no longer be required to pay annual fees at the time of filing their reports.

The Securities and Exchange Commission (SEC) [recently disbanded](#) its Enforcement Division's Climate and ESG Task Force after three years in operation. A spokesperson for the agency said it will return its attention to greenwashing if it sees another spike in risk.

- The ESG Task Force was originally formed to "enhance its focus on climate-related disclosure in public company filings," as well as address the issue of greenwashing when the agency perceived it as an "emerging risk."
- A spokesperson for the agency stated that the expertise developed by its members had been effectively allocated across the Enforcement Division and that such expertise can

now be deployed relying on the SEC's customary allotment of resources.

- According to the SEC's website, the agency may release its final rulemaking on enhanced ESG disclosures and is reportedly drafting proposed rulemaking on human capital management disclosure; however, given the imminent presidential election, it is unclear whether these rulemaking initiatives will be released and, if they are, they most certainly will be subjected to legal challenge prior to going into effect.

Key Environmental Developments

This Week's Climate Policy Update | September 30 - October 4, 2024 (Akin)

A weekly digest of legal and regulatory developments relevant to climate policy.

Global Banks Slammed in Review Scrutinizing Their CO2 Emissions (BNN Bloomberg)

A recent report issued by the World Resources Institute found that global financial institutions are not meeting targets to cut financing of activities that contribute to climate change.

Major Oil and Gas Firms Ramp Up Voluntary ESG Reporting (ESG Dive)

A new report finds approximately 80% of the largest oil and gas companies in the United States voluntarily report Scope 1 and Scope 2 greenhouse gas emissions metrics.

States, Industry Amplify Calls for High Court Review of California Waiver (Inside EPA)

Conservative groups and GOP-led states are increasing calls for the U.S. Supreme Court to overturn the U.S. Environmental Protection Agency's federal preemption waiver for California's model year 2017-2025 vehicle greenhouse gas standards.

The E of ESG, the Environment, Is Top of Mind for Asset Owners in 2024 (Equities)

Climate change was ranked as the top financial concern for asset managers across North America, following an annual Morningstar survey, with 64% of asset owners in the U.S. and Canada indicating environmental factors have become more of a material risk over the past year.

Key Social Developments

What's Next For The FTC's Non-Compete Rule (Akin)

The latest edition of the firm's LaborSpeak series discusses the recent Texas federal court ruling setting aside the Federal Trade Commission's (FTC) nationwide non-compete ban.

Activists' Campaign Against DEI Programs Shifts to Medical Care (Wall Street Journal)

Anti-ESG activists are arguing that healthcare providers cannot use racial and ethnic demographics to target treatment, patient education or preventative care.

For Anti-DEI Groups Swarming Annual Meetings, Even a Loss is a Win (BNN Bloomberg)

The growing presence of anti-ESG and diversity, equity and inclusion (DEI) shareholder proposals at corporate annual meetings is suggested to be interpreted as a positive, as it potentially disrupts management plans and generate headlines, even if the proposals are voted down.

Shifting ESG Landscape and Misconduct Allegations Present New Frontier For Investigations in the United States (Global Investigations Review)

Many sources of ESG-related risks can be present at various stages of a company's operations. This review summarizes those common risks and provides recommendations for navigating ESG-related matters and associated investigations.

Key Governance Developments

Deep Dive - Investors Plead Patience for Enduring ESG Growing Pains as it "Figures Out What It Wants to be When it Grows Up" (Investment Week)

Investors' attitude towards ESG investing has undergone a significant change since the 2020 green stock boom. Challenges have arisen to keep up with its evolution that this article provides suggestions to counter.

10 Top ESG Reporting Frameworks Explained and Compared (TechTarget)

Does the alphabet soup of ESG reporting frameworks confound you? Have a look at this article which provides an overview of ten ESG reporting frameworks and standards that companies can use to file disclosures on ESG-related risks and opportunities.

What Directors Can Learn from Cyber Incident Disclosures (NACD)

Corporate directors are recommended to take action now to fortify defenses against cyber incidents, particularly in light of the SEC's cyber incident disclosure rules.

AI Crisis Preparedness: Key Roles for Boards and Internal Audit (NACD)

The expanded use of artificial intelligence (AI) technologies across business operations has led to an evolving role of Boards and internal audits in relation to overseeing the evolving AI risk landscape.

10 Top ESG Reporting Frameworks Explained and Compared (TechTarget)

An overview is provided of ten ESG reporting frameworks and standards that companies can use to file disclosures on ESG-related risks and opportunities.

The Goldilocks Approach to SEC Cybersecurity Disclosures - Combine Regulatory Guidance with AI Analysis to Get it "Just Right" (NACD)

Public companies are struggling to disclosure cybersecurity incidents accurately and utilizing artificial intelligence to analyze disclosure trends by the SEC.

Upcoming ESG Events

CDR
San Francisco, CA
October 24-25, 2024

at Scale
GreenBiz
San Jose, CA
October 29-31, 2024

Fortune Global Forum 2024

Fortune
New York, NY
November 11-12, 2024

The Scope 3 Innovation Forum USA

Innovation Forum
Arlington, VA
December 3-4, 2024

Akin's ESG Practice

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