

Sustainability & ESG

Quarterly Roundup

Weil

September 2023

In this quarterly newsletter, we highlight key developments relating to environmental, social and governance (“ESG”) topics over the past four months, with a focus on developments of interest to U.S. public and private companies, and companies operating in the United Kingdom and European Union. We also provide links to significant ESG developments that are expected in the near future. Our previous newsletter is available [here](#).

As described below, this Quarterly Roundup addresses significant developments relating to:

- Emissions disclosure and environmental regulation
- Diversity, equity and inclusion
- Greenwashing
- Fiduciary duties and compensation clawbacks
- ESG and the 2023 proxy season
- Cybersecurity
- Pro-ESG and anti-ESG at the US state level
- International ESG disclosure frameworks

Key Quarterly Developments

- **California Poised to Enact Laws Requiring GHG Emissions Disclosures.** On May 30, 2023, the California Senate passed [SB 253](#), which would require entities (corporations, partnerships, limited liability companies and other business entities) formed in the U.S. that have total annual revenues exceeding \$1 billion and that do business in California to publicly disclose, starting in 2026, their annual scope 1 and scope 2 greenhouse gas (“GHG”) emissions, and, starting in 2027, their annual scope 3 GHG emissions. Such disclosures would also need to be verified by an independent auditor. Also on May 30, 2023, the California Senate passed [SB 261](#), which would require entities (corporations, partnerships, limited liability companies and other business entities) formed in the U.S. that have total annual revenues exceeding \$500 million and that do business in California to annually disclose a report disclosing the entity’s climate-related financial risk and measures adopted to reduce and adapt to climate-related financial risk. Under both bills, disclosure would be required by public and private companies. Both bills are now before the California Assembly.
- **Supreme Court Strikes Down College Affirmative Action Programs; Corporate DEI Programs Under Scrutiny.** On June 29, 2023, in [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, No. 20-1199 \(U.S. June 29, 2023\)](#), the U.S. Supreme Court held that college admissions programs at Harvard College and the University of North Carolina that expressly factor race into the decision whether to admit a student violate the Equal Protection Clause of the Fourteenth Amendment. The Court held that college admissions programs that gave preferential weight to members of certain racial minorities are unconstitutional, because the schools failed to justify their race-based classifications under the strict scrutiny standard. For more information, see [Weil’s SCOTUS Term in Review](#). The decision was followed by a [letter](#) sent July 13, 2023 to Fortune 100 CEOs by thirteen Republican state attorneys general (from Alabama, Arkansas, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, South Carolina, Tennessee and West Virginia)

warning of heightened scrutiny of corporate diversity, equity and inclusion (“DEI”) programs and that “[c]ompanies that engage in racial discrimination should and will face serious legal consequences.” On July 14, 2023, the chairs of the Democratic Attorneys General Association released a [statement](#) condemning that letter and broadly expressing support for corporate DEI programs. On August 22, 2023, The American Alliance for Equal Rights, founded by the same person who founded the plaintiff group in the Supreme Court action described above, filed complaints in federal courts in [Texas](#) and [Florida](#) against two law firms, challenging the lawfulness of diversity fellowships offered by the firms.

- **Final SEC Cybersecurity Disclosure Rules.** On July 26, 2023, the SEC adopted [final rules](#) that will require U.S. public companies to disclose material cybersecurity incidents on Form 8-K within four business days after determining that such incident is material, and foreign private issuers to furnish on Form 6-K information about material cybersecurity incidents that they disclose or otherwise publicize to a stock exchange or security holders (beginning December 18, 2023). Companies will also be required to disclose the company’s cybersecurity risk management, strategy and governance (beginning with Form 10-Ks and Form 20-Fs for the fiscal year ending on or after December 15, 2023). For more information, see our prior alert, [SEC Adopts Cybersecurity Disclosure Rules as Security Incidents Become More Frequent](#).
- **First Set of European Sustainability Reporting Standards Required for CSRD Compliance.** On July 31, 2023, the European Commission approved a [delegated regulation](#) and the [first set of European Sustainability Reporting Standards](#) (“ESRS”) and related [glossary](#), which companies subject to the new [Corporate Sustainability Reporting Directive](#) (“CSRD”) will need to comply with. The first set of ESRS include two general standards that address topics such as double materiality and assurance, and ten standards covering disclosures on environmental, social and governance topics. This set of ESRS is subject to approval or objection (but not amendment) by the European Parliament and the Council (co-legislators) in the next several months. The first companies will have to apply the new rules for the first time in the 2024 financial year, for reports published in 2025.
- **New IFRS Sustainability Disclosure Standards.** On June 26, 2023, the International Sustainability Standards Board (“ISSB”) [published](#) its inaugural IFRS Sustainability Disclosure Standards, [IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information](#) and [IFRS S2 Climate-related Disclosures](#). IFRS S1 requires disclosure of material information about sustainability-related risks and opportunities that could reasonably be expected to affect the entity’s prospects. IFRS S2 requires disclosure of information about specific climate-related risks and opportunities. IFRS S1 and IFRS S2 will become effective for annual reporting periods beginning or on after January 1, 2024 (assuming adoption by regulators in markets that require IFRS reporting). IFRS S1 and IFRS S2 incorporate the recommendations of the Task Force on Climate-related Financial Disclosures (“TCFD”), as illustrated in a [comparison](#) issued by the IFRS. The TCFD will be [disbanded](#) after its next progress report is published in September 2023. On July 25, 2023, the International Organization of Securities Commissions (“IOSCO”) announced its [endorsement](#) of IFRS S1 and IFRS S2, and called on its 130 member jurisdictions (which include the US) to consider ways in which they might adopt, apply or otherwise be informed by these standards within the context of their jurisdictional arrangements. On July 31, 2023, the ISSB [announced](#) that the European Commission together with EFRAG and the ISSB will work on interoperability guidance material to assist entities that will apply both ESRS and ISSB standards in navigating between the standards and to understand where there are incremental disclosures required by only one set of standards. On May 11, 2023, the ISSB announced a [proposal](#) to enhance international applicability of corporate disclosure standards issued by the former Sustainability Accounting Standards Board, which standards are now governed by the ISSB.

United States

Emissions, Climate Change & Public Health

- **EPA Rulemaking.** The U.S. Environmental Protection Agency (“EPA”) has engaged in extensive rulemaking activity over the past several months relating to emissions and public health measures, including:
 - On July 31, 2023, the EPA proposed [amendments](#) to emissions standards for hazardous air pollutants for integrated iron and steel manufacturing facilities. Comments are due September 14, 2023.
 - On July 12, 2023, the EPA announced a [proposal](#) to strengthen requirements for the removal of lead-based paint hazards in pre-1978 buildings and childcare facilities. Comments are due October 2, 2023.
 - On July 6, 2023, the EPA announced a [proposal](#) to amend reporting requirements to improve the accuracy of reported GHG emissions from applicable petroleum and natural gas facilities. As proposed, reporters would need to implement most of the changes beginning with reports prepared for the 2025 reporting year and submitted by March 31, 2026. Comments are due October 2, 2023.
 - On June 8, 2023, the EPA proposed a [ban](#) on all consumer uses of perchloroethylene, while allowing for many industrial/commercial uses to continue only where strict workplace controls could be implemented, including uses related to national security, aviation and other critical infrastructure.
 - On May 11, 2023, the EPA proposed new [standards](#) regulating GHG emissions for coal and natural gas-fired power plants.
- **EPA Enforcement and Compliance Initiatives.** On August 17, 2023, the EPA announced its [National Enforcement and Compliance Initiatives for 2024-2027](#), including for the first time initiatives to mitigate climate change, address exposure to PFAS contamination, and protect communities from coal ash. The EPA also will integrate environmental justice considerations into each of its National Enforcement and Compliance Initiatives.
- **Proposed Federal Government Sustainable Products and Services Procurement Rule.** On August 1, 2023, the Biden-Harris Administration proposed the [Sustainable Products and Services procurement rule](#), which as proposed would direct Federal buyers to purchase sustainable products and services to the maximum extent possible. Comments are due October 2, 2023.

Diversity, Equity & Inclusion, Labor & Human Rights

- **Supreme Court Clarification of Religious Accommodation Standard.** On June 29, 2023, in [Groff v. DeJoy, No.22-174 \(U.S. June 29, 2023\)](#), the U.S. Supreme Court clarified and augmented the standard pursuant to which employers may invoke the “undue hardship” defense in denying requests for religious accommodations under Title VII of the Civil Rights Act of 1964. The case involved a USPS worker who was refused a religious accommodation to avoid work on the Sabbath. Under the new standard, an employer may establish an “undue hardship” only if the burden is “substantial” “in relation to the conduct of its particular business”; showing “more than a de minimis cost” is no longer sufficient to establish an “undue hardship.” See our prior alert, [Supreme Court Clarifies and Augments Title VII Religious Accommodation Standard: De Minimis No More](#).
- **NLRB Developments Relating to Non-Compete Agreements and Employee Conduct Policies.** On May 30, 2023, the General Counsel of the National Labor Relations Board (“NLRB”) issued a [memorandum](#) to senior staff setting forth her view that proffering, maintaining and enforcing non-compete provisions in employment contracts and severance agreements violates the National Labor Relations Act (“NLRA”) except in limited circumstances. On August 2, 2023, the NLRB issued a decision overturning its previous standard that several types of work rules were categorically lawful for employers to maintain, such as rules requiring workplace civility and rules prohibiting employees from using cameras at work. Under the new standard adopted by the NLRB in [Stericycle, Inc. and Teamsters Local 628. Case 04-CA-137660 \(2023\)](#), the NLRB will interpret work rules from

the perspective of an employee who is economically-dependent on the employer, when determining whether a rule has a reasonable tendency to chill employees from exercising their rights under the NLRA, such as the right to organize. For such a rule to be valid, the employer must prove that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule.

- **SEC Sample Comment Letter Regarding China-Specific Disclosures.** On July 17, 2023, the U.S. Securities and Exchange Commission (“SEC”) issued new guidance in the form of a [sample comment letter](#) regarding the disclosure obligations of companies based in or with a majority of their operations in China. The sample letter focuses on disclosure obligations under the Holding Foreign Companies Accountable Act, material risks relating to the role of the Chinese government in the operations of China-based companies, and material impacts of certain laws, including the Uyghur Forced Labor Prevention Act, which among other matters, prohibits the import of goods from the Xinjiang Uyghur Autonomous Region of China.
- **New York City Law Prohibiting Size Discrimination.** On May 26, 2023, the Mayor of New York City signed into law [Intro. 209-A](#), which amends the Administrative Code of New York City to prohibit discrimination on the basis of a person’s height or weight in employment, housing and public accommodations, with some exceptions. The law goes into effect November 22, 2023.

ESG-Related Enforcement & Greenwashing

- **California Attorney General Greenwashing Settlement.** On August 14, 2023, the California Attorney General announced a [settlement](#) against Southern California Gas Company in connection with numerous environmental marketing claims the company made in 2019 that natural gas is “renewable.” The claims were made in a wide range of mediums, such as print, electronic media, informative displays, backdrops and promotional swag. The settlement resolves allegations that the company violated California’s consumer protection laws, including the Unfair Competition Law and the False Advertising Law.

Fiduciary Duty of Oversight & Corporate Compliance

- **Fiduciary Duty of ESG Oversight Developments.** On April 26, 2023, the Delaware Court of Chancery denied a motion to dismiss breach of fiduciary claims against Walmart’s officers and directors relating to their oversight of Walmart’s compliance with its obligations under an agreement with the U.S. Drug Enforcement Agency and as a dispenser of opioids through its retail pharmacies ([Ontario Provincial Council of Carpenters’ Pension Trust Fund, et. al. v Walton, et. al. No. 2021-0827-JTL \(Del. Ch. April 26, 2023\)](#)). The court granted the motion to dismiss as to claims relating to Walmart’s compliance with its obligations as a wholesale distributor of opioids for its retail pharmacies. The court was critical of the use of heavy redactions in books and records, noting that “Walmart laid the foundation for the plaintiffs to seek damaging inferences by redacting documents extensively...so when there are no indications of non-privileged discussions, the plaintiffs are entitled to an inference that the discussions and decisions did not occur.” On June 27, 2023, the Delaware Court of Chancery rejected the plaintiff’s books and records request relating to a claim that Disney’s officers and directors breached their fiduciary duties by opposing Florida’s bill limiting classroom discussion of sexual orientation and gender identity ([Simeone v. The Walt Disney Company, No. 2022-1120-LWW \(Del. Ch. June 27, 2023\)](#)). The court held that the plaintiff had not demonstrated a proper purpose to inspect books and records, because business decisions made without disabling conflicts cannot provide a credible basis to suspect potential mismanagement.

- **PCAOB Proposal to Enhance Auditor Obligations Related to a Company's Noncompliance with Laws and Regulations.** On June 6, 2023, the Public Company Accounting Oversight Board ("PCAOB") issued a [proposal](#) that would amend several PCAOB auditing standards related to the auditor's responsibility for considering a company's noncompliance with laws and regulations, including fraud, in the performance of an audit. If adopted, the amendments would add new requirements on auditors to identify, evaluate and communicate possible or actual noncompliance with laws and regulations. If adopted, these new tasks could expand the types of information needed by auditors from their issuer-clients and present a risk to an audit client's legal privileges.

Compensation Clawbacks

- **NYSE and Nasdaq Clawback Rules Approved.** On June 9, 2023, the [New York Stock Exchange](#) and [Nasdaq](#) filed, and the SEC approved, amendments to proposed listing standards relating to executive compensation clawbacks. The amendments go into effect on October 2, 2023 and require listed companies to develop and implement by December 1, 2023 a policy providing for the recovery (or clawback), in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where such compensation is based on the erroneously reported financial information. The stock exchanges will prohibit the initial or continued listing of any security of an issuer that is not in compliance. For more information, see our prior alert, [NYSE and Nasdaq Propose Compensation Clawback Listing Standards](#).
- **Clawback Claim Denied in Federal District Court.** On June 26, 2023, in an unpublished opinion ([The Hertz Corp. v Frissora, No. 19cv08927 \(EP\) CLW \(D.N.J. June 26, 2023\)](#)), a federal district court judge in New Jersey held that Hertz's former CEO did not need to return compensation to the company in the context of misconduct causing a restatement because the company's clawback policy was not an enforceable contract.

Cybersecurity / Technology

- **National New Security Program Targeting Investment into Chinese Technology Sector.** On August 9, 2023, President Biden issued an [Executive Order](#) establishing a new national security program that will govern certain direct or indirect transactions by U.S. persons in a portion of the Chinese technology sector. The program will restrict certain outbound U.S. investments to address national security threats posed by countries of concern (identified as China and its regions Hong Kong and Macau) that seek to develop and exploit sensitive or advanced technologies and products for military, intelligence, surveillance, or cyber-enabled capabilities. For more information, see our prior alert, [President Biden Creates a National Security Program that will Impact Outbound U.S. Investments Involving Countries of Concern](#).

ESG / Sustainability Stakeholder Views

- **Lower Support for E&S Shareholder Proposals in 2023.** The 2023 proxy season saw declining support for shareholder proposals focused on environmental and social ("E&S") issues. According to data as of June 30, 2023 included in the [Alliance Advisors 2023 U.S. Proxy Season Review](#), while the number of E&S proposals submitted in 2023 is higher than for 2022 (600 as at June 30, 2023 compared to 590 for full year 2022), fewer proposals have gone to a vote in 2023 and fewer have received majority support. Out of 322 E&S proposals voted on as at June 30, 2023, only seven received majority support, compared to 288 E&S proposals voted on for the full year 2022 and 35 that received majority support. Lower support from large institutional investors contributed to these lower levels, often because proposals were overly prescriptive, already implemented or otherwise conferring insufficient benefit. According to BlackRock's [Overview of the 2022-2023 Proxy Year](#), BlackRock globally supported approximately 6.5% of proposals on climate and natural capital and company impacts on people, compared to about 20% in [2022](#). As described in its [U.S. Regional Brief](#) for the proxy season July 1, 2022 to June 30, 2023, Vanguard funds supported just 2% of E&S proposals (down from 12% the prior

year). See also our prior alert, [The Big Three & ESG: A Guide to BlackRock, State Street & Vanguard Proxy Voting Policies & Guidance on Key ESG Issues](#).

- **ISS and Glass Lewis Launch Policy Surveys.** In August 2023, [Institutional Shareholder Services](#) (ISS) and [Glass Lewis](#) launched surveys to help guide their policy updates for 2024. The surveys include several questions relating to sustainability topics. The Glass Lewis survey, its first such survey, closes September 15, 2023. The ISS survey closes September 21, 2023.
- **Changes to ISS E&S QualityScore Factors.** On June 8, 2023, ISS [announced enhancements to its Environmental & Social Disclosure QualityScore Methodology](#). More than 150 factors underlying the scoring will be given increased emphasis, close to 50 factors will be retired, and more than 60 new factors will be added. Topics and enhancements in scope include, but are not limited to, more in-depth assessments of labor relations and occupational health disclosures, workforce diversity and equality, gender pay gap factors, human rights disclosures, natural resources and climate-related disclosures.

Other ESG / Sustainability

- **Supreme Court Upholds California Ballot Initiative Regarding Freedom of Movement for Breeding Pigs.** On May 11, 2023, in [National Pork Producers Council v. Ross No. 21-468 \(U.S. May 11, 2023\)](#), the U.S. Supreme Court held that a California ballot initiative prohibiting the instate sale of pork from a pig that had been “confined in a cruel manner” did not violate the Dormant Commerce Clause. California has adopted a law prohibiting the sale of pork in California where breeding pigs were not able to lie down, stand up, fully extend limbs or turn around freely. Out-of-state pork producers sued, arguing that the law violated the Dormant Commerce Clause because it effectively operated a extraterritorial regulation of the breeding of pigs nationwide. See [Weil's SCOTUS Term in Review](#).

Pro-ESG – Selected State Developments

- **Colorado.** On May 11, 2023, the Governor signed into law [SB 23-016](#) that requires, among other things, the public employees’ retirement association to include in its annual investment stewardship report a description of climate-related investment risks, impacts and strategies.
- **Illinois.** On July 28, 2023, the Governor signed into law [HB 2782](#) that requires investment managers working with public agencies, pension funds, retirement systems or governmental units in Illinois to disclose the process through which the manager prudently integrates sustainability factors into its investment decision-making.
- **Montana.** On August 14, 2023, in [Held et. al. v. State of Montana, et. al., No. CDV-2020-307 \(Montana, August 14, 2023\)](#), a State District Court in Montana held that laws prohibiting state agencies from considering climate change when approving fossil fuel projects was invalid under Montana’s constitution. The case was brought on behalf of a group of young people in Montana. The State has appealed the decision. The case concerned language in the state constitution guaranteeing “the right to a clean and healthful environment,” and stipulating that the state and individuals are responsible for maintaining and improving the environment “for present and future generations.” Rights to a clean environment are also contained in state constitutions in only a [few other states](#) (New York, Illinois, Massachusetts, Pennsylvania and Hawaii).

Anti-ESG – Selected State Developments

- **Alabama.** On June 6, 2023, the Governor signed into law [SB 261](#), providing, among other things, that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that the company will not engage in boycotts of companies in the fossil fuel, timber, mining, agriculture, firearms, or ammunition industries, or boycotts of companies that do not meet certain environmental standards or other ESG criteria.

- **Indiana.** On May 4, 2023, the Governor signed into law [HB 1008](#), prohibiting the board of trustees of the Indiana public retirement system from making ESG commitments with respect to system assets and from making investment decisions with the purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation for nonfinancial purposes.
- **New Hampshire.** On June 30, 2023, the Governor signed into law [HB 457](#), which requires state funds to be managed by the fiduciary duty to maximize benefits.
- **North Carolina.** On June 27, 2023, after the Governor's veto was overridden, [H 750](#) was signed into law, prohibiting state agencies from considering ESG factors in employment decisions or in awarding state contracts, and requiring the state treasurer to consider only pecuniary factors in investment decisions.
- **Oklahoma.** On August 15, 2023, the Oklahoma State Treasurer updated its [list](#) of financial companies (now six, down from 13 under the [prior list](#) published May 3, 2023) that are considered energy firm "boycotters" which are subject to divestment by state governmental entities pursuant to the Oklahoma Energy Discrimination Elimination Act of 2022.

UK / EU

- **Plans for New UK Sustainability Disclosure Standards.** On August 2, 2023, the UK Department for Business and Trade announced [plans](#) to create UK Sustainability Disclosure Standards ("UK SDSs") that will be used in future requirements to disclose sustainability and climate-related risks and opportunities, by July 2024. According to an August 10, 2023 [update](#) by the Financial Conduct Authority, the UK SDSs will be based on the new sustainability and climate-related disclosure standards issued by the ISSB, discussed above. These will apply to fiscal years beginning on or after January 1, 2025, with reporting beginning in 2026.
- **Proposed Amendments to UK Corporate Governance Code.** On May 24, 2023, the UK Financial Reporting Council ("UK FRC") issued a [consultation document](#) setting forth proposed amendments to the UK Corporate Governance Code. The proposed revisions relate to, among other topics, risk management, internal controls, sustainability reporting and assurance. As proposed, the revised Code would apply to accounting years commencing on or after January 1, 2025. Comments are due September 13, 2023.
- **Review of ESG Data Handling and Climate Reporting Metrics.** On July 19, 2023, the UK FRC released two reports centered on ESG reporting and climate-related metric evaluations. The [first report](#) focuses on three constituent elements of ESG data utilization: motivation (why investors collect ESG data); method (modes of collection) and meaning (integration of ESG data into the investment process). The [second report](#) is a thematic review of climate-related metrics and targets. It evaluates 20 premium and standard listed companies across four sectors, offering cross-sectoral insights and sector-specific suggestions to enhance TCFD reporting.
- **English High Court Rejects Fiduciary Duty Claim Regarding Climate Change.** On July 24, 2023, the English High Court [rejected a claim](#) brought by small shareholder ClientEarth that Shell's directors had breached their fiduciary duties by failing to effectively address risks of climate change. The court made it clear that the imposition of additional ESG-related fiduciary duties would cut across the basic principle that when deciding how to act in the company's best interests, it is for the directors themselves to determine the weight to be attached to a range of factors, one of which was the impact of Shell's operations on the surrounding community and environment.
- **New EU Pay Transparency Directive.** On June 7, 2023, the new [EU Pay Transparency Directive](#) became effective. EU countries have up to three years to transpose the directive into national law. Under the Directive, EU companies will be required to inform job candidates about starting salary or pay range of advertised positions, and share information about how much they pay women and men for work of equal value. Companies with more than 250 employees will be required to report annually on the gender pay gap in their company; smaller companies (with over 150 employees) will be able to report every three years. Companies that have a

gender pay gap exceeding 5% that cannot be justified by objective, gender-neutral criteria will be required to take action in the form of a joint pay assessment in cooperation with workers' representatives.

- **European Supervisory Authorities' Report on Greenwashing.** On June 1, 2023, the European Supervisory Authorities ("ESAs") [published](#) their Progress Reports on greenwashing in the financial sector. The ESAs understand "greenwashing" as a practice that may mislead consumers, investors or other market participants "where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services."
- **Sustainability Disclosures in Prospectuses.** On July 11, 2023, the European Securities and Markets Authority ("ESMA") released a [statement](#) discussing the sustainability disclosure expected to be included in prospectuses, emphasizing the importance of including material sustainability information disclosed pursuant to the Non-Financial Reporting Directive or the forthcoming CSRD.
- **Amendments to EU Regulations Setting Emissions Targets.** On June 5, 2023, amendments to the EU [Emissions Trading System Directive](#) entered into force. This Directive reduces the amount of emission allowances, allocates fewer allowances for free, extends the emissions trading system ("ETS") to maritime transport, and establishes a new ETS for fuel distribution for road transport and buildings. On May 16, 2023, amendments to the EU [Effort-sharing Regulation](#) entered into force. Amendments to the Regulation establish new collective and national binding targets and set up annual GHG emissions allocations for each member state for the 2021-2030 period. The Regulation covers emissions from fuels used for road transport, energy used for heating and cooling in buildings, animal digestion and fertilizers used in agriculture, waste treatment, and small industries, and other sources of emissions not covered by the EU ETS. On May 15, 2023, amendments to the [EU Regulation setting CO2 emission performance standards for passenger cars and light commercial vehicles](#) entered into force. As revised, this Regulation sets more ambitious 2030 targets for reducing the CO2 emissions of new cars and vans.
- **New EU Batteries Regulation.** On August 17, 2023, a new EU [Regulation concerning batteries](#) entered into force. The new Regulation applies to the entire life cycle of batteries – from production to reuse and recycling – to ensure that they are safe, sustainable and competitive, and applies to all batteries including all waste portable batteries, electric vehicle batteries, industrial batteries, starting, lightning and ignition batteries and batteries for light means of transport.
- **EU Strategy for Sustainable and Circular Textiles.** On June 1, 2023, the European Parliament adopted [recommendations](#) for the EU strategy for sustainable and circular textiles that would require textile products sold in the EU to be more durable, easier to reuse, repair and recycle.
- **European Commission guidelines on the applicability of EU antitrust law to sustainability agreements.** On June 1, 2023, the European Commission adopted [revised Horizontal Guidelines](#) to help businesses to assess the compatibility of their competitor collaborations with EU antitrust rules. The guidelines include new guidance dedicated to sustainability agreements to clarify that the EU antitrust rules do not stand in the way of competitor collaborations which pursue a sustainability objective. Notably, the guidelines list various examples of sustainability agreements that will generally fall outside of the EU antitrust rules, and provide a soft safe harbor for sustainability standardization agreements that meet certain conditions. The guidelines also seek to remind businesses that they can request informal guidance from the Commission in order to ensure the compliance of their proposed cooperation with the EU antitrust rules.

International

- **Proposed ISSB Sustainability Disclosure Taxonomy.** On July 27, 2023, the ISSB published a [proposed IFRS Sustainability Taxonomy](#), designed to facilitate digital consumption of sustainability-related financial information and make it easier for investors to extract, compare and analyze sustainability information. This differs from the EU Taxonomy established to classify economic activities as environmentally sustainable. Comments are due September 26, 2023.
- **Proposed International Standard on Sustainability Assurance.** On August 2, 2023, the International Auditing and Assurance Standards Board published a [proposed International Standard on Sustainability Assurance \(ISSA\) 5000, General Requirements for Sustainability Assurance Engagements](#). As proposed, the standard would apply to sustainability information reported across any sustainability topic and prepared under multiple frameworks, including the recently released IFRS Sustainability Disclosure Standards S1 and S2 discussed above. The proposed standard is profession agnostic, supporting its use by both professional accountants and non-accountant assurance practitioners. Comments are due December 1, 2023.
- **Updated OECD Corporate Governance Guidelines and Responsible Business Conduct Guidelines.** At a meeting held July 17-18, 2023, G20 Finance Ministers and Central Bank Governors endorsed the revised [G20/OECD Principles of Corporate Governance](#), which include revisions relating to sustainability and resilience. On June 8, 2023, the Organisation for Economic Co-operation and Development (“OECD”) published an updated version of its [Guidelines for Multinational Enterprises on Responsible Business Conduct](#). This version of the Guidelines provides updated recommendations for responsible business conduct across key areas, such as climate change, biodiversity, technology, business integrity and supply chain due diligence.
- **Draft UN Business and Human Rights Treaty.** In July 2023, the [open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights](#) of the United Nations (“UN”) issued a [draft legally binding instrument](#) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, to be discussed at the working group’s next session in October 2023.

ESG Developments On the Radar

Listed below are significant forthcoming ESG-related rulemaking and other developments that are expected in the near future. We have provided links to current materials to facilitate real-time tracking. Dates (where provided) reflect current guidance and are subject to change.

United States

- **SEC rulemaking:**
 - Final rules on [climate change disclosure](#) (2023)
 - Final rules on [investment company names](#) (2023)
 - Final rules on [enhanced disclosures by certain investment advisers and investment companies about ESG investment practices](#) (2023)
 - Proposed rules on [human capital disclosure](#) (2023)
 - Proposed rules on [board diversity disclosure](#) (2024)
- **Other federal agency rulemaking:**
 - Final [Federal Supplier Climate Risk and Resilience Rule](#)
 - Final [Federal Sustainable Products and Services procurement rule](#)
 - Final EPA standards on [car and truck emissions](#)
 - Final EPA [drinking water](#) regulation
 - Final EPA standards limiting [power plant GHG emissions](#)
 - Final U.S. Federal Trade Commission (“FTC”) rules on [non-compete clauses](#) (2024)
 - Revised FTC [Guides for the Use of Environmental Marketing Claims](#) (“Green Guides”)
 - Final Federal Reserve [Principles for Climate-Related Financial Risk Management for Large Financial Institutions](#)
- [U.S. Court of Appeals for the Fifth Circuit](#) decision on challenge to Nasdaq board diversity rules filed by Alliance for Fair Board Recruitment and the National Center for Public Policy Research v. SEC (Case 21-60626)
- **State legislation:**
 - California [SB 253](#)
 - California [SB 261](#)

UK/EU

- Final UK Competition and Markets Authority [Guidance on Environmental Sustainability Agreements](#) (2023)
- Final UK Financial Conduct Authority policy statement on [sustainability disclosure requirements and investment labels](#) (Q4 2023)
- Proposed UK Sustainability Disclosure Standards and [consultation](#) (Q1 2024)

- Final EU [Corporate Sustainability Due Diligence Directive](#)
- Draft [sector-specific](#) and foreign parent-specific European Sustainability Reporting Standards
- Final EU [Green Bond Standard](#) (2023)
- Final EU [Green Claims Directive](#)
- Final [IFRS Sustainability Disclosure Taxonomy](#)
- Final EU [Regulatory Technical Standards under the Sustainable Finance Disclosure Regulation](#)
- Final European Securities and Markets Authority [guidelines on funds' names using ESG or sustainability-related terms](#)
- Draft report to implement EU regulation [prohibiting products made using forced labor](#), including products made in the EU for domestic consumption and export, and imported products

International

- Final [Taskforce on Nature-related Financial Disclosures framework](#) (September 2023)
- Final [UN Business and Human Rights Treaty](#)
- Final [International Standard on Sustainability Assurance \(ISSA\) 5000, General Requirements for Sustainability Assurance Engagements](#) (2024)

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