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2024 Has Been a Momentous Year for ESG

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Over the course of 2024, there have been significant developments in the environmental, social and governance landscape — including new legislation, evolving global frameworks, continued litigation and enforcement actions, and US Supreme Court decisions with the potential to affect ESG initiatives.

In this article, we delve into a selection of these major developments.

Federal ESG Rule Challenges

The US Securities and Exchange Commission's climate-related disclosures rule was one of the most anticipated ESG-related rulemakings in the United States.

As currently drafted, that rule requires covered companies to disclose detailed climate-related data, including, but not limited to, greenhouse gas emissions, climate-related risks, impacts on their business, board and management oversight of climate-related risks, and other relevant metrics.[1]

Given the large number of comments the rule garnered during the rulemaking process, it is unsurprising that the rule attracted a significant number of legal challenges. Whereas some of the challengers argued that the rule was not aggressive enough, other challengers attacked the rule as overly aggressive.

For now, the rule has been stayed, and two legal challenges — *Iowa v. SEC* and *Liberty Energy Inc. v. SEC* — remain pending in the US Court of Appeals for the Eighth Circuit.[2] Many expect a shift in the SEC's guidance on ESG-related issues after the change in presidential administrations next year.

The SEC is not alone in facing challenges to its ESG rules. The US Department of Labor's ESG rule, which would allow, but not compel, retirement plan fiduciaries to take into account ESG-related considerations when assessing plan investments, is also embroiled in legal challenges in Texas.

These include *Federation of Americans for Consumer Choice Inc. v. Department of Labor*, in the US District Court for the Eastern District of Texas; *American Council of Life Insurers v. Department of Labor*, in the US District Court for the Northern District of Texas; and *State of Utah v. Su*, in the US Court of Appeals for the Fifth Circuit.

Although the DOL had originally succeeded in defending the rule in the Northern District of Texas, the Fifth Circuit remanded that case back to the district court, because the district court's initial decision relied on the DOL receiving deference under the now-defunct Chevron doctrine — a subject that we will discuss in greater detail below.[3]

Furthermore, in an en banc decision earlier this month, the Fifth Circuit struck down the Nasdaq board diversity rule in *Alliance for Fair Board Recruitment v. SEC*, finding that the rule did not align with the purposes of federal securities law, such as protecting investors or promoting competition.[4]

The court's majority argued that requiring companies to disclose board diversity data or explain its absence was irrelevant to the Securities Exchange Act's objectives, emphasizing that companies can voluntarily disclose such information if desired.[5]

California's Continued Active Role in Climate Legislation

As federal ESG initiatives have faced roadblocks, such as the legal challenges discussed above, states are increasingly issuing ESG-related laws and regulations.

California has remained at the forefront of this effort with three significant pieces of legislation — S.B. 253, S.B. 261 and A.B. 1305.

Under S.B. 253, the California Air Resources Board, which oversees air quality and climate programs for the state, must establish regulations requiring certain entities doing business in the state to disclose Scope 1 emissions (direct emissions from sources owned or controlled by the entity at issue), Scope 2 emissions (indirect emissions from acquired or purchased electricity, steam, heating and cooling that is consumed by the entity's operations) and Scope 3 emissions (an entity's other indirect emissions, aside from Scope 2 emissions).[6]

S.B. 219 amended S.B. 253, which resulted in an extension of CARB's deadline to issue regulations to July 1, 2025. That said, the amendment did not alter the date by which covered entities must make their reports under S.B. 253.[7]

Entities covered by the law must begin making disclosures in 2026 for Scope 1 and Scope 2 emissions.[8] However, for the initial reporting cycle, CARB announced that it would not pursue enforcement action for incomplete reporting if entities make a good faith effort to retain all data related to emissions reporting for the previous fiscal year.[9]

As for S.B. 261, covered entities generating over $500 million in annual revenue and operating in California must prepare climate-related financial risk reports.[10] These reports, due by Jan. 1, 2026, and biennially thereafter, must detail both risks and mitigation measures.[11]

Lastly, A.B.1305 addresses voluntary carbon market disclosures, imposing additional disclosure obligations on entities that make certain claims, or purchase, use, sell or market voluntary carbon offsets. Under the law, covered entities must disclose, among other things, information on the methodology used, characteristics related to the voluntary carbon offsets and details regarding the verification method used.[12]

Other states have followed California's example, and we expect more to do so, particularly in the absence of comprehensive federal legislation.

For instance, New York proposed the Climate Corporate Accountability Act, S.B. 897A, requiring annual emissions disclosures.[13] New York also proposed S.B. 5437, which mirrors California's approach to climate-related financial risk reporting.[14] Illinois has introduced similar legislation, the Climate Corporate Accountability Act, which would mandate emissions reporting.[15]

European ESG Regulatory Developments

European regulations continued to set the standard for sustainability issues this year, particularly with respect to supply chains.

Although there were a number of ESG-related developments this year, three laws garnered a significant amount of attention — the Corporate Sustainability Due Diligence Directive, or CSDDD; the Corporate Sustainability Reporting Directive, or CSRD; and the European Union Deforestation Regulation, or EUDR.

Under the CSDDD, certain EU and non-EU companies must address the adverse and potential adverse impacts of their operations on human rights and the environment. This law is not limited to covered companies' direct operations; it also covers their subsidiaries and business partners. In addition, companies must implement climate change mitigation plans.[16]

This year, additional guidance continued to be issued related to the CSRD. Under the CSRD, covered companies must disclose material, sustainability-related impacts stemming from their operations and value chain.

The European Sustainability Reporting Standards provides 12 standards for companies to follow when making their disclosures. Those standards include, among others, climate change, pollution, water and marine resources, biodiversity and ecosystems, the company's workforce, value chain workers, communities, and consumers.[17]

There have been discussions about consolidating the various disclosure regimes in the EU, such as the CSDDD and the CSRD, but it remains to be seen what the final result of that consolidation may be.

As for the EUDR, it imposes comprehensive due diligence requirements for operators and traders when handling commodities linked to deforestation risks. This regulation will require businesses to map supply chains to mitigate exposure to deforestation-related risks and make the necessary disclosures.[18]

Although the EUDR originally contemplated an effective date of 2024, the European Commission has endorsed a one-year delay in implementing the regulation.

Enforcement and Litigation Trends

The ESG enforcement and litigation landscape has also been quite active across several key areas, including environmental disclosures, climate change, greenwashing, and diversity, equity and inclusion. Numerous lawsuits and enforcement actions have heightened the compliance challenges for companies.

PFAS Litigation

Litigation involving per- and polyfluoroalkyl substances continued to be prevalent in 2024. In some lawsuits, plaintiffs have alleged that companies advertised or sold products containing PFAS despite the dangers stemming from the compounds.[19]

Take, for example, *Toxin Free USA and Beyond Pesticides v. Saatva Inc.*, a lawsuit filed in August in the Superior Court of the District of Columbia, in which the plaintiffs alleged that Saatva engaged in false advertising of its products because they contain PFAS.[20]

Other PFAS litigation, such as *Michigan v. Ox Paperboard WP LLC*, filed in the Michigan Circuit Court's 30th Judicial Circuit in October, stems from allegations that a company improperly discharged wastewater containing PFAS.[21]

Climate-Related Litigation

Climate litigation continued to expand, particularly regarding fossil fuel companies. For example, Michigan's attorney general sought attorneys to submit proposals to take on the role of special assistant attorneys general to file climate change lawsuits against fossil fuel companies over the impact climate change has had on various Michigan businesses.[22]

Although the announcement from the attorney general did not identify any fossil fuel companies by name, the announcement shared that the potential claims to be pursued could include, among other things, constitutional, tort and statutory claims stemming from the companies' alleged awareness of the impact their operations had on the environment.[23]

Likewise, cities have sued fossil fuel companies, alleging that their products have contributed to climate change while concealing that impact from the public. One such lawsuit, *City of Annapolis, Maryland v. BP PLC*, in the Circuit Court of Anne Arundel County, Maryland, survived a motion to dismiss in May.[24]

Greenwashing Litigation

In addition, recent court decisions have continued to shape the landscape for greenwashing claims. For example, in *Dorris v. Danone Waters of America*, greenwashing claims were brought against Evian last month in the US District Court for the Southern District of New York for its labeling of its bottled water as carbon-neutral.[25]

Although the case initially appeared as if it would proceed, the court reasoned that it would be reasonable for consumers to consult the entirety of the information provided by Evian on its products, which included a link to its website where consumers could obtain additional information on the carbon-neutral claim.

Private plaintiffs are not the only parties bringing these types of claims, especially with respect to certain industries, such as those with high emissions. For instance, in *People v. JBS USA Food Company and JBS USA Food Company Holdings*, the New York attorney general sued JBS USA in February in the Supreme Court of the State of New York, New York County, over the company's GHG emissions claims.[26]

Specifically, the attorney general took issue with the company's emissions claims when viewed in conjunction with its plans to increase production. Those production plans rendered the company's claims false and misleading, according to the attorney general.

DEI-Related Litigation

Shortly after *Students for Fair Admissions v. Harvard*, the Supreme Court's 2023 ruling on affirmative action, which posed a significant blow to race-conscious admissions programs, a number of lawsuits were filed challenging various DEI initiatives in the private sector.[27]

One such challenge garnered a lot of attention — *American Alliance for Equal Rights v. Fearless Fund Management LLC et al.*, brought in the U.S. Court of Appeals for the Eleventh Circuit in June. This lawsuit challenged Fearless Fund's Strivers Grant Contest, which focused on Black women.

The plaintiff in that lawsuit argued that the grant was illegal because it discriminated on the basis of race. The lawsuit settled earlier this year, and as part of the settlement, the fund stopped the grant program at issue.[28]

SEC ESG Enforcement Actions

Although the SEC disbanded its ESG task force earlier this year, it continues to announce ESG-related enforcement actions.

For example, the commission issued a $1.5 million civil penalty against Keurig Dr Pepper Inc. in September, for inaccurate recyclability claims about K-Cup pods.[29] And in October, the commission charged WisdomTree Asset Management Inc. for misstatements regarding ESG-marketed funds' investment criteria.[30]

Implications of Supreme Court Decisions on ESG Initiatives

In addition, the Supreme Court issued several decisions this year that may affect the viability and structure of ESG regulations.

One of the most discussed decisions in that group is *Loper Bright Enterprises v. Raimondo*, issued in June, which overruled the Chevron doctrine — a long-standing doctrine that required courts to defer to federal agencies' reasonable interpretations of ambiguous statutes.[31]

As noted above with respect to the legal challenge to the DOL's ESG rule, the overruling of the Chevron doctrine has already affected how courts have viewed some ESG challenges.

Conclusion

Of course, there are other ESG-related developments that happened over the course of 2024. The sheer number of developments that could have been discussed in this article reinforces the breadth of the ESG landscape.

That breadth highlights the opportunities and challenges for businesses, especially given the impact of the upcoming administration change on the federal government's approach to ESG issues. But even though the federal government may experience some flux in this sector, companies will continue to have to grapple with state-level initiatives, international disclosure regimes, and stakeholder pressures and demands.

Put simply, in 2025, companies will continue to face competing legal requirements and pressures with respect to ESG. Those competing demands make it imperative that companies maintain a comprehensive view of their legal obligations — both current and prospective — and establish holistic compliance programs that remain abreast of these legal requirements, and that are sufficiently flexible to satisfy the evolving legal landscape.

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1 Farzad F. Damania, Christopher A. Cole & Ryan A. Lilley, SEC Finalizes Much-Anticipated Climate Disclosure Rules, Katten Muchin Rosenman LLP (March 8, 2024), https://katten.com/sec-finalizes-much-anticipated-climate-disclosure-rules.

2 Matthew Bultman, SEC Climate Rule Pause Creates Path for Faster Court Decision, *Bloomberg Law* (April 8, 2024), https://news.bloomberglaw.com/securities-law/sec-climate-rule-pause-creates-path-for-faster-court-decision.

3 Jan M. Folena, Sara P. Crovitz and Katrina L. Berishaj, Fifth Circuit Sends DOL's ESG Rule Back to District Court, Stradley Ronon (July 24, 2024), https://www.stradley.com/insights/publications/2024/07/fifth-circuit-sends-dols-esg-rule-back-to-court.

4 Lauren Berg, 5th Cir. Tosses SEC's OK of Nasdaq's Board Diversity Rule, *Law360* (Dec. 11, 2024), https://www.law360.com/texas/articles/2272844/5th-circ-tosses-sec-s-ok-of-nasdaq-s-board-diversity-rule.

5 *Id.*

6 California Air Resources Board, About, https://ww2.arb.ca.gov/about (last visited Nov. 26, 2024).

7 Farzad F. Damania and Ryan A. Lilley, SB 219 Makes Important Updates to California Climate Disclosure Regime, Katten Muchin Rosenman LLP (Oct. 7, 2024), https://katten.com/sb-219-makes-important-updates-to-california-climate-disclosure-regime.

8 Jordan Wolman, California to Grant One-year Reprieve from Corporate Emissions Reporting Penalties, Politico (Dec. 10, 2024), https://subscriber.politicopro.com/article/2024/12/california-to-grant-one-year-reprieve-from-corporate-emissions-reporting-penalties-00193468?site=pro&prod=alert&prodname=alertmail&linktype=article&source=email.

9 *Id.*

10 SB 261, 2023-2024 Reg. Sess. (Cal. 2024), available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB261.

[11](#) *Id.*

[12](#) A.B. 1305, 2023-2024 Leg., Reg. Sess. (Cal. 2023).

[13](#) S. 897A, 2023 Leg., Reg. Sess. (N.Y. 2023).

[14](#) S. 5437, 2023 Leg., Reg. Sess. (N.Y. 2023).

[15](#) Illinois HB 4268, 103rd Gen. Assem. (2023), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4268&GAID=17&DocTypeID=HB&LegId=151108&SessionID=112&GA=103.

[16](#) European Commission, Corporate Sustainability Due Diligence, European Commission, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en (last visited Nov. 26, 2024).

[17](#) European Commission, Corporate Sustainability Reporting, European Commission, https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en (last visited Nov. 26, 2024); IBM, Corporate Sustainability Reporting Directive, IBM, https://www.ibm.com/topics/csrd (last visited Nov. 26, 2024).

[18](#) Press Release, European Commission, Commission Strengthens Support for EU Deforestation Regulation Implementation and Proposes Extra 12 Months of Phasing-in time, Responding to calls by Global Partners (Oct. 1, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5009.

[19](#) Chris Cole, State Law Requiring PFAS Disclosure Leads to Class Action Lawsuit, Katten Muchin Rosenman LLP (Nov. 16, 2023), https://quickreads.ext.katten.com/post/102j9in/state-law-requiring-pfas-disclosure-leads-to-class-action-lawsuit; infra notes 20 and 21.

[20](#) Toxin Free USA and Beyond Pesticides sue Saatva on PFAS Tainted Crib Mattresses, *PR Newswire* (Aug. 20, 2024), https://www.prnewswire.com/news-releases/toxin-free-usa-and-beyond-pesticides-sue-saatva-on-pfas-tainted-crib-mattresses-302225740.html.

[21](#) Tom Lotshaw, Mich. AG Hits Paper Company with PFAS Discharge Suit, *Law360* (Nov. 1, 2024), https://www.law360.com/trials/articles/2255206.

[22](#) Johnjerica Hodge, India Williams and Andrew Zavaleta, Another Expansion in Climate Change Litigation Risk, Katten Muchin Rosenman LLP (May 28, 2024), https://quickreads.ext.katten.com/post/102j8of/another-expansion-in-climate-change-litigation-risk.

23 Press Release, Michigan Department of Attorney General, AG Nessel Requests Proposals from Attorneys to Pursue Litigation Against Fossil Fuel Industry for Climate Impact (May 9, 2024), https://www.michigan.gov/ag/news/press-releases/2024/05/09/ag-nessel-requests-proposals-from-attorneys-to-pursue-litigation-against-fossil-fuel-industry.

24 *City of Annapolis v. BP p.l.c.*, No. C-02-CV-21-000250 (Md. Cir. Ct. May 16, 2024).

25 Catherine O'Brien, What the Evian "Carbon-Neutral" Ruling Means for Advertisers, Katten Muchin Rosenman LLP (Nov. 25, 2024), https://quickreads.ext.katten.com/post/102jpgf/what-the-evian-carbon-neutral-ruling-means-for-advertisers.

26 Chris Cole, New York Attorney General Sues JBS for Alleged Greenwashing, Katten Muchin Rosenman LLP (March 4, 2024), https://quickreads.ext.katten.com/post/102j1t6/new-york-attorney-general-sues-jbs-for-alleged-greenwashing?news.

27 Johnjerica Hodge, India D. Williams and Allison Clark, ESG Foes Will Find Reinforcement in Affirmative Action Decision, Katten Muchin Rosenman LLP (July 13, 2023), https://katten.com/esg-foes-will-find-reinforcement-in-affirmative-action-decision.

28 Alexandra Olson, Fearless Fund Drops Grant Program for Black Women Business Owners in Lawsuit Settlement, *AP News* (Sept. 11, 2024), https://apnews.com/article/fearless-fund-dei-lawsuit-ed-blum-227a457ded5460061b4300a7ad16d18a.

29 Press Release, SEC, SEC Charges Keurig with Making Inaccurate Statements Regarding Recyclability of K-Cup Beverage Pod (Sept. 10, 2024), https://www.sec.gov/newsroom/press-releases/2024-122.

30 Press Release, SEC, SEC Charges Advisory Firm WisdomTree with Failing to Adhere to its Own Investment Criteria for ESG-Marketed Funds (Oct. 21, 2024), https://www.sec.gov/newsroom/press-releases/2024-173.

31 Johnjerica Hodge, India Williams and Nicholas Gervasi, Loper Bright Creates ESG Regulatory Speedbumps for Companies, Bloomberg Law (July 19, 2024), https://news.bloomberglaw.com/us-law-week/loper-bright-creates-esg-regulatory-speedbumps-for-companies.

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