



Editor's Note: Welcome to the inaugural issue of Katten *ESG Guidepost*. Each month, *ESG Guidepost* will highlight the latest news, legal and regulatory developments involving environmental, social and governance matters.

SEC's ESG Task Force Racks Up Another Win — Dam Collapse Becomes \$55 Million Securities Fraud

By Johnjerica Hodge, Ryan Meyer, India Williams, Alexa Warner

The Securities and Exchange Commission's (SEC) Climate and ESG Task Force has scored another victory [quickly on the heels of its recent settlement with Activision](#). On March 28, the SEC announced a settlement with the publicly traded Brazilian mining company, Vale S.A. (Vale), related to charges arising from allegedly misleading disclosures about the safety of its dams. [Read about the SEC's enforcement action.](#)



Increasing International Focus on Greenwashing to Investors

By Johnjerica Hodge, India Williams, Nikita Yogeshwarun

Greenwashing is an evolving issue involving exaggerated or misleading claims about the sustainability or environmental benefits of a product, service, or business. Due to increased pressure from consumer advocates, investors, and stakeholders, a heightened focus is being placed on greenwashing globally. International companies with an Asian presence are increasingly looking to greenwashing regulations within these jurisdictions to guide them in conducting business. The global environmental, social and governance (ESG) landscape is developing and countries are responding to ESG risks with various regulatory strategies. [Read about global greenwashing challenges.](#)

Spring Greens in Fashion – From Runway to Regulation

By Sarah Simpson, Tegan Miller-McCormack, Chris Cole

Green is also back in vogue in London, not just in the fashion world, but in the legal and political world, too. With commitments to [lower carbon emissions by 45 percent in 2023 and to reach net](#)

[zero by 2050](#) in accordance with the [United Nations' Climate Action](#), the UK government and European Commission (EC) are tackling climate change head on, with a particular focus on the fashion and retail industries. Fashion brands from couture to mass market have answered this call to action by claiming they have reached "green targets," often using green labels to amplify this claim. As a result, brands are trying to entice shoppers with ESG crusades that give the appearance of implementing environmentally-friendly manufacturing lines, providing better working environments and pay for workers, and using sustainably-sourced materials. [Read Katten's advisory.](#)



President Biden's First Veto Frustrates Anti-ESG Coalition

*By Allison Clark**

On March 20, President Joe Biden used his first presidential veto to block a GOP-sponsored anti-ESG bill from taking effect. The bill would have eliminated a Department of Labor (DOL) rule that allows ERISA retirement fund managers to take ESG factors into account when evaluating potential investments. The Republican-controlled

House attempted to override President Biden's veto but failed to gather the necessary two-thirds votes. [Read about the DOL rule challenges.](#)

Certifications Matter

By Chris Cole

Third-party environmental certifications are under misguided civil litigation attacks that will be counterproductive to environmental and social progress. In the last year, a variety of putative consumer class actions and other lawsuits have been filed against brands that rely on certifiers to provide third-party validation of environmental claims. The contagion now seems to be spreading to the certifiers themselves. This is highly unfortunate. [Read about the Green Guides.](#)

How Proactive Racial Equity Audits Can Increase Company Profits

By Johnjerica Hodge, Ally Jordan

Racial equity audits are one of the latest tools companies are using to gauge their compliance with the social component of ESG. Recently, a growing number of companies are facing shareholder proposals requesting that a racial equity audit be performed. This Bloomberg Law article delved into the benefits of companies performing these audits before facing a shareholder proposal. Those benefits include, among other things, reducing the risk of liability, increased profitability, improved stakeholder relationships and greater strategic control. [Read Katten's Bloomberg Law article.](#)

What Happens If Companies Miss Carbon Targets?

By Chris Cole

The [Wall Street Journal published an excellent article](#) today regarding corporate net zero pledges, referring as well to data published in the [Corporate Climate Responsibility Monitor 2023](#), which looked at the progress made by 24 major companies that "put themselves forward as climate leaders." The report aims to "distinguish between real climate leadership and unsubstantiated greenwashing." [Read about carbon offset issues.](#)

Half of all States Sue DOL over ESG Rule, Foreshadowing Challenges to the SEC's ESG Agenda

By Johnjerica Hodge, Danette Edwards, Ifedapo Benjamin



On January 26, 2023, twenty-five states, plus a publicly traded energy company with a subsidiary that is a fiduciary and trustee under ERISA, a trade association for the oil and gas industry, and a participant in an ERISA plan sued the DOL and its Secretary in connection with DOL's recent ESG rulemaking. *Utah v. Walsh*, N.D. Tex., No. 2:23-cv-0016-Z. The suit asserts claims under the Administrative Procedure Act stemming from

alleged ERISA violations as well as an argument that DOL's new ESG rule is arbitrary and capricious. The plaintiffs seek a preliminary and permanent injunction, and have asked the court to set aside the rule as unlawful. [Read about the DOL's rule.](#)

ESG Litigation Heats Up in Marketing, Climate Pollution, and DEI

By Chris Cole, Johnjerica Hodge, India Williams, Ally Jordan

Published by *Bloomberg Law*, this article looks at the growing trends in ESG-related litigation. An increase in shareholder derivative lawsuits, consumer protection litigation, suits by environmental advocacy groups, employment discrimination claims — individual and class — and other private action litigation driven by topics such as green washing, climate pollution and diversity, equity and inclusion (DEI) matters will factor big in 2023. [Read Katten's article in Bloomberg Law.](#)

How Companies Can Reduce Risk of DEI-Related Enforcement Actions

By Johnjerica Hodge, Danette Edwards, Ryan Meyer, Ifedapo Benjamin

This article, published by *Bloomberg Law*, highlights how companies' DEI initiatives are drawing heightened government scrutiny, Katten attorneys predict a rise in government enforcement actions alleging fraud in DEI initiatives and outline several steps to mitigate the risk of investigations. [Read Katten's Bloomberg Law article.](#)

Whistleblower Complaint Capitalizes on SEC Interest in Sustainability Fraud

By Chris Cole, Danette Edwards

Multiple news outlets recently reported that the activist group Mighty Earth filed a whistleblower tip, which it styled as an informal complaint, urging the SEC to investigate whether a multinational food company (the "offeror") fraudulently misled investors in connection with multiple offerings of more than \$3 billion worth of so-called "green bonds." The SEC investigates whistleblower tips privately, and thus the public usually never hears about them. Mighty Earth described the complaint on its website, however, making it one of the first "greenwashing" complaints known to have been lodged with the SEC. [Read about sustainability fraud.](#)

* Allison Clark, a Litigation associate and candidate for admission to the Illinois Bar, wrote this article.

CONTACTS

For questions about developments in the ESG space, please contact any of the following Katten attorneys and *ESG Guidepost* editors.



Johnjerica Hodge

Partner and Co-Chair, ESG Risk
and Investigations
[vCard](#)



India Williams

Partner and Co-Chair, ESG Risk
and Investigations
[vCard](#)



Christopher Cole

Partner and Chair, Advertising,
Marketing and Promotions
[vCard](#)



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