ESG UPDATE

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Global ESG Disclosure Regimes

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EXECUTIVE SUMMARY

GENERAL

- Bloomberg Law reports that a growing number of major companies are voluntarily reporting – or at least referencing – their Scope 3 greenhouse gas emissions in their annual SEC filings. Fifty-four companies in the S&P 500 mentioned Scope 3 emissions in their 10-K reports to the Securities and Exchange Commission this year, up from 17 in 2021. The form of the Scope 3 disclosures and references varied considerably, however, with some companies disclosing totals while others merely referencing the Scope 3 issue.
- Calls are increasing for ESG data and ratings providers to be regulated amid growing concerns about greenwashing in the asset management sector. The European Securities and Markets Authority (ESMA) has also noted concerns about transparency and consistency of ESG ratings. In June, the UK's Financial Conduct Authority noted a "clear rationale" for regulatory oversight of certain ESG data and rating providers.

EUROPEAN UNION

- On June 30, the European Council published Corporate Sustainability Reporting Directive text provisionally agreed between the European Commission, the Council and the European Parliament. Brussels aims to adopt the final text of the CSRD in late 2022. Following final adoption, Member States will have 18 months to translate the Directive into national law.
- On July 4, the European Financial Reporting Advisory Group (EFRAG) released sets of slides in support of public outreach activities on the European Sustainability Reporting Standards (ESRS). Noting that the draft ESRS "may need to be adjusted to meet the requirements of the final CSRD," EFRAG provided an anticipated timeline of activities leading up to and following the closure of the public comment period on August 8.
- A guest piece published in *Forbes* calls into question the picture painted by EFRAG of a smooth deliberative process moving towards consensus on the development of ESRS. Some participants described the process as "a hot mess" and criticized efforts from leadership to press individual agendas and paper over fundamental disagreements.

- An effort in the European Parliament to exclude nuclear power and natural gas from the EU Taxonomy failed. The Taxonomy Delegated Act enters into force on January 1, 2023.
- The European Central Bank (ECB) released the results of its *2022 climate risk stress test*. While noting that, “banks have made considerable progress with respect to their climate stress-testing capabilities,” the ECB added that, “the exercise also revealed many deficiencies, data gaps and inconsistencies across institutions.”
- On July 11, the European Council, Parliament and Commission held a first session of “Trilogue” negotiations on the proposed Carbon Border Adjustment Mechanism (CBAM). EU officials expect at least 4 more Trilogue meetings this year, with a stretch goal of reaching consensus ahead of COP27 this November.

United States

- On June 30, the United States Supreme Court ruled that the U.S. Environmental Protection Agency had exceeded its authority under the Clean Air Act by regulating carbon emissions from power plants. The ruling could have major implications for the U.S. Securities and Exchange Commission (SEC) proposed Climate Disclosure Rule.
- The SEC is reviewing thousands of public comments received in response to the Commission’s proposed Climate Disclosure Rule. According to the Commission’s latest rulemaking agenda, the SEC is looking to finalize the Climate Disclosure Rule in October. Opponents are signaling the foundations of their expected legal challenges.
- Two new SEC Commissioners have been seated since the proposed Climate Disclosure Rule was released for public comment. Democrats will continue to enjoy a 3-2 advantage on the Commission, but the new Democratic Commissioner has yet to reveal his position on the specific elements of the proposed Rule.
- Officials in several GOP-led states have acted to thwart consideration of ESG factors in state investment decisions; to ban state investments in businesses that cut ties with the oil and gas industry; and, to exclude financial institutions that allegedly have stopped supporting the coal industry from conducting business with the state. More states seemed poised to take action against financial institutions that are accused of abandoning fossil fuels.

United Kingdom

- On July 18, Britain's High Court for Justice ruled that the government's Net Zero Strategy (NZS) was "unlawful" in that it failed to satisfy statutory requirements under the Climate Change Act of 2008. The Court ordered the government "to prepare a report explaining how the policies outlined in the net zero strategy would contribute towards emissions reductions, and to present it to Parliament by April 2023.
- In June, the UK Climate Change Committee (UK CCC) issued a 619-page report, *Progress in reducing emissions: 2022 Report to Parliament*. The Report concluded that "credible plans" are in place to achieve only 39% of the required emissions reductions under the government's Sixth Carbon Budget. The Report highlighted the importance of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

IFRS-ISSB

- On July 29, the comment deadline closed for the ISSB Exposure Drafts (EDs) on *General Requirements for Disclosure of Sustainability-related Financial Information* and on *Climate-related Disclosures*. The ISSB received over 500 comment letters on each ED. Next, IFRS-ISSB staff plan to provide a summary of feedback from the outreach and comment letters at the September 2022 ISSB meeting.

Other Jurisdictions

California

- The Climate Corporate Accountability Act (SB260) is scheduled to be considered in August by the Assembly Appropriations Committee. The measure may face opposition from the state Department of Finance, which is concerned about ongoing costs of new mandates as California's finances are expected to decline in the next two budget years.

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