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SUMMER 2024

ESG Hot Topics

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Welcome to the summer issue of our ESG Hot Topics newsletter. We have collected articles from thought leaders from across the firm highlighting some of the emerging issues in ESG. Should you have any questions about any of the topics discussed herein, please do not hesitate to contact any of the authors of this publication or your regular contact at Hunton Andrews Kurth LLP.

Hunton Andrews Kurth LLP's interdisciplinary sustainability and ESG practice provides strategic counseling to boards, management teams and investors on a broad range of ESG issues. We support our clients in setting and meeting their sustainability goals. As a component of this practice, and in coordination with sustainability strategy-setting, we help our clients identify and manage ESG risks associated with regulatory requirements and increasing pressure from investors and private litigants. Rather than advise on isolated legal issues, our team works with our clients on core business strategy and sustainability goals, and we collaborate across practice groups to provide integrated, strategic advice.

What's Next for California Climate Disclosure and Accountability Laws?

On August 31, 2024, both houses of the California legislature approved a bill (SB 219) making targeted changes to the SB 253 and 261 climate disclosure obligations. These changes are much narrower than those previously proposed in a trailer bill that was posted on the California Department of Finance website in June. Whereas the June trailer bill would have pushed all SB 253 and 261 implementation and compliance deadlines back by two years, SB 2019 *does not adjust the 2026 and 2027 reporting deadlines* that were originally enacted in SB 253 and 261.

This development presents challenges for companies with reporting obligations. In order to prepare for Scope 1 and 2 reporting in 2026, reporting entities will need to begin tracking GHG emissions in January 2025, months before CARB's rulemaking deadline. SB 219's clarification that reporting may occur at the parent level is helpful. However, we expect there will be other questions about the mechanics of reporting that will not be answered in short order. Meanwhile, litigation challenging the constitutionality of SB 253 and SB 261 is ongoing. We will continue to monitor any developments that may impact reporting entities' substantive obligations under SB 253 and 261, including their timing, and are available to assist with developing a reporting strategy in light of continuing regulatory uncertainty.

EXTENSION OF CARB DEADLINE TO ADOPT IMPLEMENTING REGULATIONS

Under SB 253, CARB was originally required to promulgate implementing regulations by January 1, 2025. SB 219 extends this deadline to July 1, 2025.

CONSOLIDATED SB 253 REPORTING AT PARENT COMPANY LEVEL

SB 219 amends the California Health & Safety Code section 38532 to allow emissions disclosure reports to be consolidated at the parent company level, and to specify that if a subsidiary of a parent company qualifies as a reporting entity under SB 253, it is not required to prepare a separate report.

POTENTIAL PHASED APPROACH TO SCOPE 3 EMISSIONS REPORTING

SB 219 amends SB 253 to substitute a requirement that Scope 3 emissions be reported "on a schedule specified by [CARB]," rather than the current requirement that Scope 3 emissions be reported 180 days after the reporting of Scope 1 and 2 emissions. Arguably this change would give CARB the latitude to enact regulations requiring phased reporting of different Scope 3 emission categories.

OPTIONAL USE OF NONPROFIT EMISSIONS REPORTING ORGANIZATION

SB 253 requires CARB to contract with a nonprofit "emissions reporting organization" (ERO) to receive emissions disclosures and to make them public on a digital platform, among other things. SB 261 requires CARB to contract with the ERO to biennially prepare a public report that assimilates reported climate-related financial risk data. SB 219 amends these provisions to authorize rather than require CARB to contract with the ERO to perform these functions. If CARB does not contract with an ERO, it will be directly responsible for creating the digital platform and preparing the biennial report.

SB 253 AND SB 261 LITIGATION

SB 253 and 261 are also being challenged in litigation filed by various industry groups in the U.S. District Court for the Central District of California. *See U.S. Chamber of Commerce et al. v. CARB et al.*, Case No. 2:24-cv-00801 (C.D. Cal.). Plaintiffs assert in this case that the legislation is unconstitutional because it violates First Amendment prohibitions on government-compelled speech, among other things. The parties have filed and briefed dispositive motions in the case (specifically, CARB's motion to dismiss two of the Plaintiffs' constitutional claims and Plaintiffs' motion for summary judgment on their First Amendment claim), and oral arguments on motions for summary judgment are set to take place next week.

SB 1306 – VOLUNTARY CARBON OFFSETS

In addition to the amendments to SB 253 and 261, we are tracking another legislative proposal that reflects California legislators' heightened interest in the integrity of Voluntary Carbon Offsets (VCOs). SB 1036 (introduced in February 2024 and amended in May 2024) would impose new requirements on entities that issue and market/sell VCOs, as well as anyone who verifies offset projects for purposes of issuing VCOs.

Specifically, SB 1036 would add a new chapter to the California Business and Professions Code to specifically address VCOs, intended to reduce the risk of these types of offsets being used to make misleading environmental claims. The proposed new provisions would make it unlawful to verify an offset project, certify or issue VCOs, maintain a VCO on a registry, or market or sell VCOs if the person knows or should know that the GHG reductions related to the project or offset are unlikely to be quantifiable, real, and additional. They would also prohibit marketing or selling VCOs as being physically equivalent to the climate impact of CO2 emissions: (1) if the marketer or seller knows or should know that the atmospheric lifetime of the non-CO2 GHGs associated with the VCO's GHG reductions or GHG removal enhancements is less than 1,000 years; or (2) there is more than a negligible risk of reversal of the VCO's GHG impact over a period of at least 1,000 years at the end of the durability commitment related to the VCO.

If passed by the legislature and signed into law, these new requirements would have the overall effect of raising the bar for the generation, registration, marketing, and selling of VCO, potentially reducing their availability in California.

SB 1036 passed the State Senate in May and was referred to the State Assembly's committee on Natural Resources last month, but the July 1 hearing on the bill was cancelled at the request of its author. We will continue monitoring progress of this bill if it is picked back up in the legislature.

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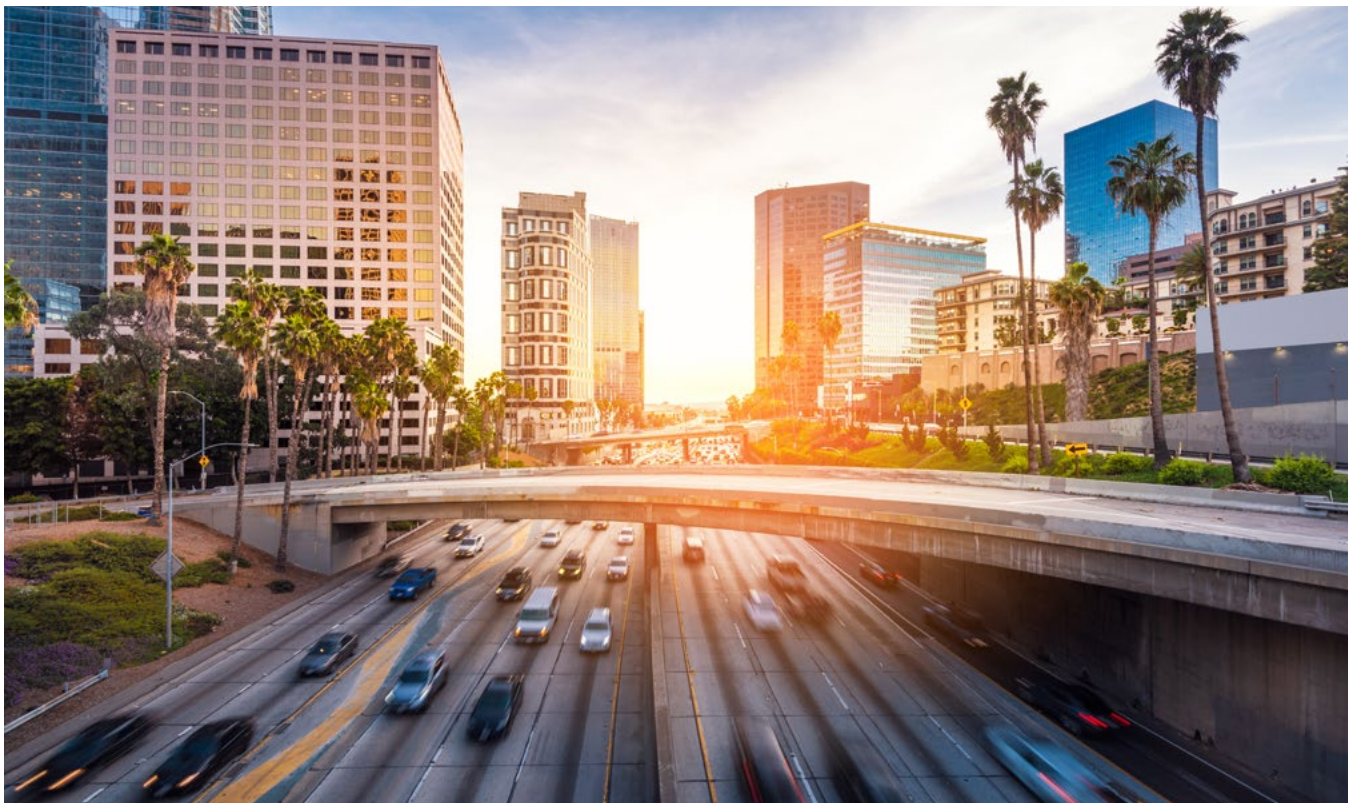


When ESG Went Nuclear

The advantages of ESG offerings to issuers have been generally twofold: (1) provide access to a larger investor base than would otherwise be available (i.e., those investors with ESG-focused criteria, including investors in Europe) and (2) provide evidence of good corporate citizenship regarding certain of the issuer's projects. ESG encompasses three individual (but highly overlapping) elements: environmental criteria, social criteria and governance. The environmental element has been a mainstay of the capital markets since the late 2000s and has steadily increased since the International Capital Market Association (ICMA) first published its "Green Bond Principles" in 2014 and last updated them in June 2021.[1] Debt issued in this category is designed to support specific climate-related or environmental projects and includes investments related to clean energy or pollution reduction. The social criteria, described in the "Social Bond Principles" [2] published by ICMA and last updated in June 2023, focuses on projects "that address or mitigate a specific social issue and/or seek to achieve positive social outcomes." The third criteria of ESG is governance—the internal system of rules, policies and procedures that govern the management of a company.

FRAMEWORKS BEGIN

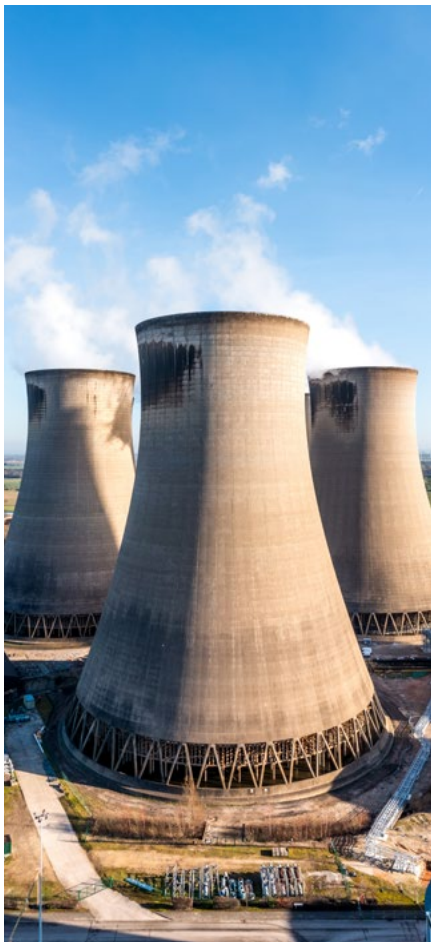
Several years ago, many US issuers had executed ESG transactions on a "one-off" basis, wherein the proceeds were dedicated to a specific project or projects. And many issuers elected not to retain an independent second-party to opine on the offering's alignment with the respective set of ESG-focused principles. But over the past five years or more, many US issuers increasingly opted to set up an ESG framework in advance of future offerings and obtain a second party to opine on such framework at the outset. While more time consuming at the outset, such structure provided additional flexibility, as well as independent ESG verification on future offerings.

Both ICMA's Green Bond Principles and Social Bond Principles provide guidance on the same four components: (1) use of proceeds, (2) process for project evaluation and selection, (3) management of proceeds, and (4) reporting. Note that the use of proceeds, reporting and any second party opinions do not form part of the terms and conditions of the bonds and typically do not create specific contractual obligations. However, these elements are referenced in the disclosure documents.

Counsel to the issuer and underwriters will often be involved in drafting the framework, working closely with the issuer's investor relations and finance teams, along with ESG specialists at the underwriters. An issuer's framework will reside on its website—typically found on the investor relations page—and will follow the four components of the Green Bond Principles and Social Bond Principles. The framework is often posted on the issuer's website prior to marketing an ESG bond transaction. The second party opinion with respect to the framework will reside on the website of the second party opinion provider for investors to review. Subsequent opinions are often not provided for each issuance of bonds from the framework "shelf." Note also that the second party opinion is in addition to the other reporting the issuer will provide, such as a website detailing the use of proceeds, management's assertion as to the use of any remaining proceeds and an attestation from the issuer's independent auditor regarding the use of such proceeds.

NUCLEAR FITS THE BILL

When the "framework" method for issuing ESG debt first became popular, US issuers with nuclear assets did not include "nuclear" as a possible use of proceeds and, in many cases, explicitly excluded "nuclear" as a category. But on February 2, 2022, the European Commission adopted a Complementary Climate Delegated Act listing specific gas and nuclear activities as "environmentally sustainable" for purposes of the EU



1 International Capital Market Association, Green Bond Principles: Voluntary Process Guidelines for Issuing Green Bonds (June 2021).

2 International Capital Market Association, Social Bond Principles: Voluntary Process Guidelines for Issuing Social Bonds (June 2023).

Taxonomy Regulation (subject to certain criteria). The decision acknowledged the contribution of nuclear to net zero and alignment with energy policies in several jurisdictions.

In Canada, Ontario Power Generation (Ontario Power) updated its Green Bond Framework in July 2022 to include eligible nuclear projects. Ontario Power subsequently issued a CAD300 million green bond to finance projects at its Darlington nuclear power plant.

The French utility Électricité de France SA (EDF) a long-time issuer of green bonds, included nuclear and new builds, in its revised green framework, implying a growing acceptance of nuclear energy as "green."

CONSTELLATION

On March 12, 2024, Constellation Energy Generation, LLC (Constellation) priced a $900 million 30-year green senior unsecured notes offering. This was Constellation's inaugural green bond offering. In February 2024, Constellation obtained a second party opinion from Sustainalytics on its Green Financing Framework. This was the first green bond in the USD taxable market to include nuclear as the eligible green use of proceeds. Constellation described the nuclear use of proceeds as follows:

Clean Generation Fleet—Nuclear Power

Investments in nuclear power projects:

- Acquisition, operation, increased capacity through uprates and maintenance of existing reactors, including lifecycle extensions
- Research, development, demonstration and deployment of innovative reactors that produce energy from nuclear processes with minimal waste from the fuel cycle
- Nuclear fuel purchases to support continued operation of zero carbon nuclear assets

OGLETHORPE

On June 18, 2024, Oglethorpe Power Corp (Oglethorpe) priced a $350 million 30-year green first mortgage bond. Like Constellation's offering earlier in the year, this was Oglethorpe's first green bond offering. Oglethorpe retained S&P Global Ratings, an independent second party opinion provider, to provide the Second Party Opinion on the environmental benefits of its June 2024 framework, as well as the alignment to the green bond principles. Oglethorpe described the nuclear use of proceeds as follows:

Nuclear Energy

- Long-term financing and refinancing of development, construction, testing and other pre- operational expenditures, including interest during construction, related to our interest in Vogtle Units No. 3 and No. 4, two new advanced-design nuclear units that will provide our members with approximately 660 megawatts of emission-free baseload generating capacity (Vogtle Units No. 3 and No. 4)
- Refinancing outstanding commercial paper issued to finance expenditures related to our interest in Vogtle Units No. 3 and No. 4, including Department of Energy guaranteed loan repayments made

TAKEAWAYS

It appears, then, that the only domestic power issuers with nuclear fleets which have issued ESG bonds with "nuclear" proceeds are two issuers which very recently put in place their inaugural frameworks. Time will tell whether other power issuers (with nuclear assets) will revise their frameworks to permit this in the future.

One issue of which issuers should be aware when looking to launch an ESG bond offering is the timing for posting their framework and second party opinion or other guidance to their websites. While some issuers already regularly disclose ESG-focused information on their website, including an annual sustainability report, other issuers might not have previously disseminated such information publicly. Issuers pursuing a registered offering should be mindful of Rule 168 in order to get comfortable that any information posted to their websites immediately prior or during the offering regarding their framework or attestation, *including any updates thereto*, will fall within the safe harbor and not be considered part of the offering.

While some issuers likely wrestled with the Rule 168 analysis when first implementing a framework, it seems likely that the *modification* of an existing framework to permit a nuclear use of proceeds may prove an easier analysis under Rule 168. One of the conditions to the Rule 168 exemption is that the issuer "has previously released or disseminated information of the type described in this section in the ordinary course of its business." To the extent the issuer has already made public a financing framework, this condition arguably becomes easier to satisfy.

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Privacy and ESG

Data privacy and ESG are terms commonly referred to in the context of businesses governance programs globally but they are not commonly referred to in conjunction with each other. Data privacy regulation has grown substantially over recent years and has become a key element of the compliance and governance strategy for many businesses, but it has yet to become an ESG pillar, particularly when considered in the context of ESG scoring and certifications.

However, this may be set to change and those responsible for data privacy compliance within businesses should take note. ESG rating agencies are starting to consider data privacy. For example, Standard and Poor and Sustainalytics' both now include data privacy in their assessments, and the Global Reporting Initiative has developed certain data privacy related standards. When developing data privacy compliance assessments and standards, rating agencies are looking to data privacy principles that are common to laws on a global scale, such as those relating to lawful processing and data minimization. This makes sense and the approach is likely to be followed. If an assessment or standard is too focused on a particular jurisdiction or law, the argument is that it could have of limited use to certain businesses, particularly those with a global presence.

For businesses seeking to assess data privacy compliance in line with ESG considerations and prepare for the emerging standards set by rating agencies, attention will need to be given to certain areas of their privacy programs. These include, by way of example:

- Data minimization: A principle well understood in the context of data privacy compliance, data minimization has a clear connection with ESG. The growth of data storage, with extensive use of data centers, has had, and continues to have, a negative impact on the environment. Therefore, from an ESG perspective, businesses will likely be expected to show that they only collect, and store, personal data required for justifiable purposes and in an environmentally friendly manner, in support of the "environmental" element of the scoring.
- Retention and disposal: Further to and supporting data minimization, there will likely be a focus on thoughtful personal data retention. Similarly, a well-established principle of data privacy compliance meaning that personal data should only be retained for as long as is necessary for the relevant purpose. As soon as the personal data is no longer required, it should be disposed of in a way that is efficient and environmentally conscious which, again, supports the "environmental" element of the scoring.
- Strength of governance program: Privacy programs are, of course, an essential part of corporate compliance governance programs and clearly align with the "governance" element of ESG. However, it is important that any such program is effective and can stand up to scrutiny through an ESG assessment. Businesses should test the strength of their existing privacy programs to identify and remediate any gaps which may score negatively.

Additionally, businesses should look to establish connections between those in the business responsible for data privacy and those handling ESG, to identify synergies as to how the teams operate, their responsibilities and their goals, and ensure alignment.

While privacy standards in ESG scoring are not expected to become a staple in the immediate future, it is an area that is expected to evolve and is arguably something businesses should consider as best practice. In any event, in view of the evolution and with some rating agencies already including data privacy in their assessments, businesses should be considering where action can be taken now to ensure the business is in a strong position for reporting purposes.

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Recent Developments in Legal Frameworks for Zero Emissions Buildings

In June, the US Department of Energy (DOE) released the first National Definition of a Zero-Emissions Building. DOE intends for this definition to set forth "standardized, consistent, and measurable minimum criteria" that can be adopted by public and private entities to support the transition for buildings toward zero emissions. The release of the definition follows on the heels of DOE's National Blueprint for the Buildings Sectors, published in April. The Blueprint sets forth actions with the aim of reducing greenhouse gas emissions from US buildings by 65 percent by 2035 and 90 percent by 2050 from a 2005 baseline, with cross-cutting goals of equity, affordability and resilience. While this definition serves only as non-binding guidance, it may influence other regulatory and industry standards as buildings move toward decarbonization.

At this stage, DOE has released only Part I of the definition, which requires that buildings with zero operational emissions from energy use meet three criteria:

- **Energy efficiency:** The building must either obtain an Energy Star score of 75 or higher, have an energy use intensity that is at least 35 percent or better than the median intensity for buildings of that category, or have an energy use intensity less than the one specified in the ANSI/ASHRAE/IES Standard 100 for buildings of that type and location. Additionally, the building must have an energy use at least 10 percent below the model code, be designed to achieve an Energy Star score of 90 or higher, or be certified to meet the Energy Star Residential New Construction program or Zero Energy Ready Homes program.
- **Free of on-site emissions from energy use:** Direct greenhouse gas emissions from energy use must be equal to zero, with the exception of use of backup emergency generators.
- **Powered solely from clean energy:** All of the energy (on-site and off-site) used to power the building must be obtained from clean energy sources, meaning the energy meets the requirements of either the ANSI/ASHRAE Standard 228, the Partnership Requirements for the US Environmental Protection Agency's Green Power Partnership, the Green-e Renewal Energy Standard for Canada and the United States, or the Implementing Instructions for Executive Order 14057.

mportantly, DOE's definition does not provide verification standards, and the agency will not itself certify whether a building meets the criteria under this definition. Instead, where an entity employs the definition, it should determine how the criteria must be documented and verified.

This federal definition of a zero emissions building was released against the backdrop of states and municipalities taking legislative action to require or encourage building decarbonization through building performance standards which limit energy use or emissions. In Maryland, for example, a 2022 law requires covered buildings (those over 35,000 square feet) to achieve net zero greenhouse gas emissions and energy use intensity standards by 2040, with an incremental target of achieving 20 percent reduction in net direct greenhouse gas emissions by 2030. New York City's Local Law 97, sets emissions limits for buildings over 25,000 square feet in New York City, which covers around 50,000 buildings and 50 percent of the City's building emissions. The compliance period began in January 2024, and there are incrementally more stringent requirements for compliance over time. While emissions limits will not require any buildings to become zero emissions in the near term, all covered buildings must demonstrate compliance with an emissions factor of zero beginning in 2050. In Massachusetts, a 2022 law requires improved building efficiency and mandatory reporting of energy usage for buildings of a certain size. This law, combined with a grant program to assist with a transition to higher performance buildings, lays the groundwork for the state to promulgate net-zero building performance standards in the future.

We may see state and local laws begin to coalesce around building performance standards incorporating the new federal definition for zero emissions buildings. Similarly, various voluntary green building certifications, which often lack consistency across frameworks, have agreed to align with DOE's new definition. This includes the most commonly used LEED Certification from the US Green Building Council. Thus, this newly established federal definition of zero emissions buildings developed with input from thousands of stakeholders may drive both industry and regulators toward a more standardized framework for assessing building energy and emissions performance.

It is noteworthy that DOE's criteria for buildings with zero operational emissions from energy use comprise only "Part I" of the definition. The guidance suggests that future parts of the definition may address considerations that fall outside the scope of operational emissions, including embodied carbon and refrigerant use. Additionally, it acknowledges the myriad factors outside of greenhouse gas emissions that could have positive climate, environmental and health impacts from buildings, such as resiliency, walkability, healthy materials, electric vehicle support and others. Future incorporation of these types of factors into the definition have the potential to influence building design and broader development efforts over time.

Companies seeking to comply with state and local net zero requirements or making voluntary net zero claims should begin to evaluate their sustainability performance in light of DOE's definition.

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Insurance Coverage for ESG-Related Supply Chain Risks

Robust supply chains are an integral part of many businesses' ordinary operations. Monitoring and managing environmental, social and governance (ESG) risks that may impact these supply chains is critical to enhancing and safeguarding their functionality and reliability, since a single point of failure can bring operations to a grinding halt and lead to severe financial and reputational losses. It is no surprise, therefore, that those in the logistics and supply space often say that the strength of a supply chain is only as strong as its weakest link. Our goal is to ensure that ESG is not your weakest link.

Here, we explore the risks posed by ESG to supply chains and logistics, and offer insight into how companies might use insurance to mitigate those risks.

ESG-RELATED SUPPLY CHAIN RISKS

Examples of ESG-related risks that can impact supply chains include: environmental and weather threats (climate change); geo-political and government-related disruptions (war, corruption); transformative technological innovations (artificial intelligence (AI)); social unrest (riots); cyber vulnerabilities (phishing, hacking); employee health and safety concerns (viruses, new regulations); labor problems (strikes); production-process issues (assembly line malfunctions); misleading statements and advertising about corporate capabilities and outputs (exaggerated capabilities (green-washing; AI-washing)); and financial disruptions (supplier solvencies), among many others.

Given the diverse and serious risks that can impact supply chains, their disruption will affect different businesses in different ways. Fortunately, different lines of insurance afford coverage in different ways.

CONTINGENT BUSINESS INTERRUPTION COVERAGE

When a supply chain-related loss occurs, prudent policyholders will generally already be familiar with their commercial property policies and the extent to which that line of coverage will respond to their loss. In particular, policyholders will want to look to their contingent business interruption (CBI) coverage, which protects against lost profits that result from an interruption of business caused by "physical damage" to the property of a key supplier, customer or business partner. CBI coverage also may be available for losses caused by damage to a property on which the insured business is dependent for its normal business operations. Such "dependent property" might be a distribution center or a transit system. CBI coverage, likewise, typically extends to "attraction properties" that the policyholder relies on to bring customers to the area of the insured business, like a theme park, stadium or airport. Coverage for each of these types of CBI loss will typically include the "extra expenses" a policyholder incurs to continue its operations despite the loss of its key supplier, customer or chain of distribution. Extra expenses can include, for example, increased transportation costs, additional labor costs and logistical costs.

As is often the case, however, insurance policy forms can vary, particularly as it concerns CBI coverage. For instance, policies differ on the tiers of suppliers triggering coverage; some policies only cover damage suffered by direct suppliers, while others include indirect suppliers, and there also can be different sublimits for different types and tiers of suppliers. In addition, policyholders should examine potentially applicable exclusions that insurers can claim apply to foreclose coverage for particular risks.

CYBER COVERAGE

Cyber insurance protects against the costs of cybercrime and digital threats. It covers organizations from risks that include first-party losses, such as business interruption, restoration and crisis communications, as well as third-party losses, such as data breaches, network interruption, breach notification expenses and more. Policyholders must be mindful, however, that cyber insurance generally covers risks that affect or originate from the policyholder directly. Yet, because supply chain risks often originate in third-party systems, these risks might not be covered.

DIRECTORS AND OFFICERS COVERAGE

Directors and officers (D&O) liability insurance protects corporate directors and officers if they are sued by employees, investors or other parties, for actual or alleged wrongful acts in managing a company. This type of coverage can help protect, for example, against shareholder lawsuits after a business delivers disappointing results because of supply chain woes.

CREDIT RISK COVERAGE

Credit risk is another potential source of supply chain disruption and the exposure has increased with rising borrowing costs. Trade credit insurance (TCI) mitigates these supply chain risks by compensating policyholders for unpaid debt up to the applicable coverage limits.

SUPPLY CHAIN COVERAGE

The growing risks posed by today's global supply chain have also led to a specialty type of insurance: "supply chain insurance" (SCI). While there is no "standard" form for "supply chain insurance," this insurance is available as an "all risks"-type coverage. Besides covering disruptions caused by property damage to a supplier or a dependent property, supply chain insurance can be customized to cover losses caused by specific types of risks applicable to the policyholder. This coverage can also be added in some instances as a business interruption endorsement and the "physical damage" element might not be a requirement depending on the specific language used.

TAKEAWAYS

The recent COVID-19 pandemic, ongoing conflicts in Europe and the Middle East, and natural disasters around the world, have exposed the ESG vulnerabilities of global supply chains and how supply chain disruptions can impact businesses of all sizes. Given these risks, policyholders must understand how to manage the unique risks associated with supply chain-related claims and have a plan to maximize their coverage options if a loss occurs.

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Sustainability, ESG and Crisis Management

Companies today face an increasingly complex and evolving global risk landscape. Unexpected crisis events—including both external events, such as a natural disaster or global pandemic, and internal events, such as an environmental spill or a compliance misstep—can lead to significant legal and reputational consequences. While some crises may be unavoidable, companies that effectively manage ESG issues may be better able to prevent certain types of crises on the front end and be more resilient in the face of a crisis when it happens.

Effective management of ESG issues is closely tied to effective risk management more generally. Companies that integrate ESG into their risk management practices are able to evaluate and determine which ESG risks are financially material to their business and take a proactive approach to mitigating those risks. Moreover, companies with strong corporate governance may be better able to proactively identify and mitigate risks. This is because effective corporate governance typically includes strong compliance processes, such as whistleblower systems and due diligence measures, which can serve as early warning systems.

Effective management of ESG risk often involves regular engagement with stakeholders through, for example, surveys and interviews frequently conducted as part of periodic materiality assessments. Regular and open dialogue with stakeholders not only keeps the companies informed about which issues are materially important to their stakeholders, but also works to build trust and credibility with stakeholders prior to a crisis event. Companies with ESG-focused risk management also may be better attuned to adjust to the changing regulatory landscape, allowing them to respond to stakeholder demands before they become serious grievances.

Incidents occur even at the most well-managed companies and, as COVID-19 highlights, some crises are unavoidable and unforeseeable. Yet companies that effectively manage ESG issues may be more resilient in the face of a crisis. According to a Harvard Business School paper, companies that scored high on ESG-based measures were associated with 1.4 to 2.7 percent higher stock returns during the initial market reaction to COVID-19.

Companies that have developed strong relationships with stakeholders may be in a better position to take quick action to address and minimize the impact of a crisis. In confronting a crisis, it is important to be transparent and communicate authentically with stakeholders in order to create a foundation to reestablish trust. To the extent an incident seems at odds with the company's publicly-stated ESG values or commitments, the company may find it more challenging to rebuild trust with stakeholders. For this reason, sustainability efforts and communications should be carefully coordinated with the company's compliance and risk management processes, and public communications should be rooted in fact and supported by the company's actions. If a company makes aspirational statements about its values or commitments, the company should also be clear if there are any challenges or gaps associated with achieving these values or commitments. If the company's public communications about sustainability efforts are rooted in truth and the company's actions reflect that, the company may find it easier to respond to and rebuild trust with stakeholders in the event of an ESG-related crisis.

Companies are sometimes reticent to communicate publicly in the event of a crisis, which can complicate the need to maintain and rebuild trust with stakeholders. In communicating following a crisis, companies should strike a balance between demonstrating that the company is working to remedy effects of the crisis while also preserving the company's ability to pursue a full investigation as to the cause.

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