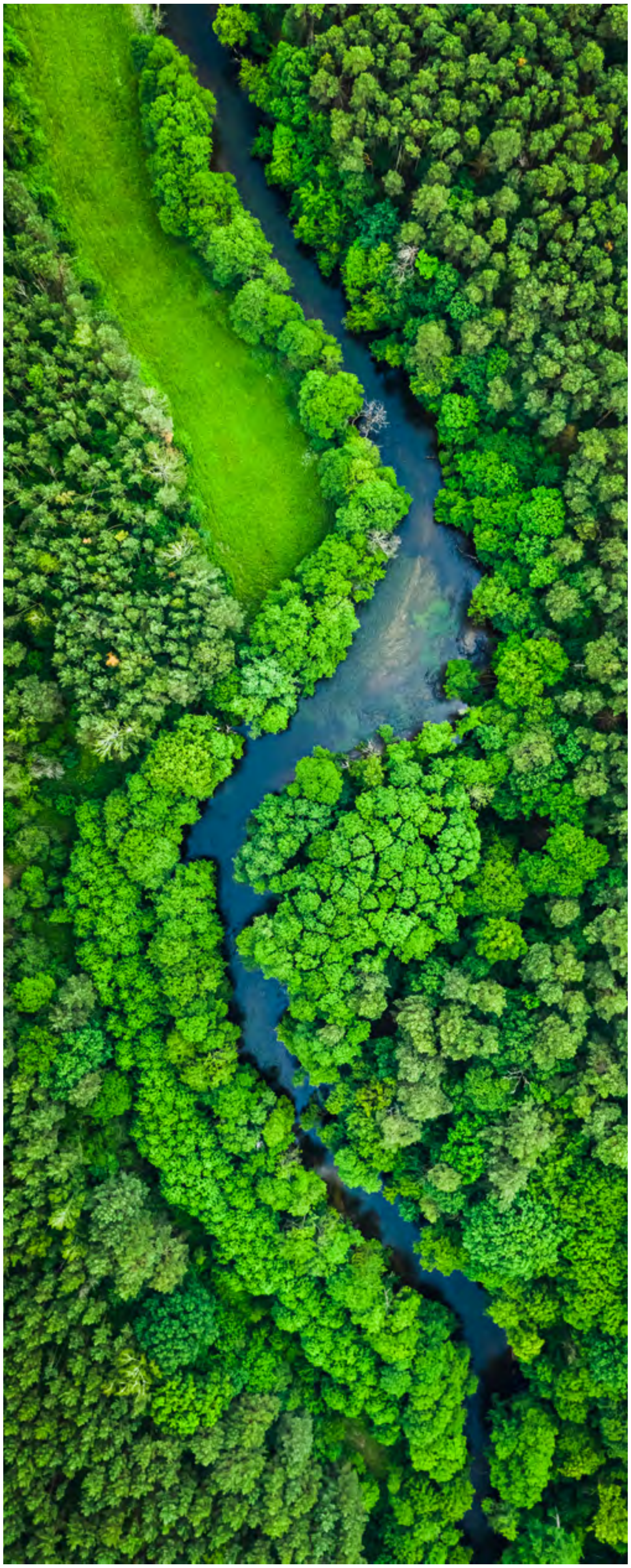
HUNTON

Sustainability Hot Topics

Summer 2026



Welcome to the summer issue of our Sustainability Hot Topics newsletter. We have collected articles by thought leaders from across the firm highlighting some of the emerging issues in sustainability and 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.

Hunton's interdisciplinary sustainability practice provides strategic counseling to boards, management teams, and investors on a broad range of ESG issues. As a component of this practice, and in coordination with sustainability strategy-setting, we help our clients identify and manage sustainability and ESG risks associated with regulatory requirements and increasing pressure from regulators, governments, investors, and private litigants. Rather than advising on isolated legal issues, our team works with our clients to address risk and compliance obligations across a complex and evolving legal landscape and align legal strategy with core business strategy and sustainability goals. We collaborate across practice groups to provide integrated, strategic advice.

Product Stewardship Round-Up

Regulatory requirements addressing environmental impacts across the product lifecycle are in flux as federal regulations contract and states step in to fill the gap. Below is a round-up of what product manufacturers and retailers need to know to stay compliant and manage risk in 2026.

PFAS and Chemicals

- In November 2025, the US Environmental Protection Agency (EPA) proposed revising a Biden-era per- and polyfluoroalkyl substances (PFAS) reporting rule to exempt imported "articles" (objects that hold their shape) from reporting. The rule would eliminate federal reporting obligations for importers of finished goods such as clothing, electronics, cookware, and other products. EPA is expected to finalize the rule in July.
- At the same time, PFAS requirements are expanding at the state level. At least 18 states have adopted PFAS bans or reporting and disclosure requirements. Significant upcoming developments include Minnesota's initial PFAS reporting deadline of September 15, 2026, and a New Mexico rule requiring reporting and labeling all products sold in the state that contain intentionally added PFAS beginning January 1, 2027.
- Beyond PFAS, EPA is conducting risk evaluations under the Toxic Substances Control Act (TSCA) of chemicals used in numerous consumer products. These evaluations may result in bans or other restrictions, affecting materials sourcing and product development, particularly for private-label retailers. A ban on phenol, isopropylated phosphate (PIP (3:1)), an anti-wear additive, plasticizer, and flame retardant found in apparel, footwear, and other products, will take effect on October 31, 2026.

Fashion Accountability and Supply Chain Due Diligence

- During the 2026 legislative session, which closed in early June, New York once again considered legislation to impose supply-chain monitoring and annual disclosure obligations on large fashion sellers. Assembly Bill 4631B and its Senate counterpart, S9740, would apply to fashion sellers with over $100 million in gross receipts and would require supply chain mapping and disclosure, alignment with the Organization for Economic Co-operation and Development (OECD) due diligence guidelines, monitoring of certain suppliers' environmental impacts, and tracking and disclosure of greenhouse gas emissions. Fashion sellers should continue to monitor this legislation in 2027.

Climate Disclosures

- Enforcement of California's climate-related financial risk reporting law, Senate Bill (SB) 261, remains stayed by the US Court of Appeals for the Ninth Circuit.
- In February, the California Air Resources Board (CARB) transmitted to the Office of Administrative Law an initial rulemaking on implementation fees and program applicability for both SB 261 and SB 253, California's greenhouse gas disclosure law. In June 2026, CARB announced that it plans to propose minor changes to the pending rulemaking and defer the initial SB 253 reporting deadline from August 10, 2026, to November 10, 2026. CARB is also working on a second rulemaking addressing the mechanics of reporting under SB 253.
- A corporate greenhouse gas emissions disclosure bill remains active in New Jersey, whose legislative session runs to the end of the calendar year.
- Climate disclosure legislation failed to pass before the end of this year's legislative sessions in both New York and Illinois.

Extended Producer Responsibility (EPR)

- Seven states—California, Colorado, Maine, Maryland, Minnesota, Oregon, and Washington—have passed EPR laws for packaging that require companies that sell covered products to report sales and pay fees to fund recycling infrastructure.
- After repeated delays, California finalized its packaging EPR regulations in early May. Under the new regulations, producers were required to satisfy one of three compliance options by May 31, 2026: (1) register with the approved responsibility organization (PRO), Circular Action Alliance; (2) register with CalRecycle and apply to be an independent producer; or (3) register with CalRecycle and apply for a small producer exemption. Producers were also required to submit three sets of data by May 31: (1) 2023 baseline data, (2) 2025 annual data, and (3) an annual source reduction report for 2025. Producers will be required to submit source reduction plans by August 1, 2026.
- In 2024, California finalized the nation's first textile EPR law, SB 707. SB 707 will require annual reporting of sales data and payment of fees for producers with at least $1 million in aggregate global turnover. California has selected Landbell USA as the PRO, and producers were required to register with Landbell USA by July 1, 2026.

Both Oregon's and California's packaging EPR laws are currently being challenged in federal court on Due Process and Dormant Commerce Clause grounds, among others.

Recyclability and Compostability

- California's Truth in Recycling Law (SB 343) renders use of the chasing-arrows symbol on packaging a violation of state consumer protection laws unless statewide recycling metrics are met. A coalition of trade associations is challenging SB 343 in federal court, arguing that the law is unconstitutionally vague and unlawfully infringes on First Amendment commercial speech. On July 14, 2026, US District Court for the Southern District of California enjoined the California attorney general and "all those acting in privity or concert" with him from enforcing SB 343, finding that the plaintiffs are likely to succeed on the merits of their constitutional claims. The preliminary injunction likely applies only to the plaintiff organizations and their members such that companies that are not members of the plaintiff organizations are still subject to the upcoming October 2026 compliance deadline.
- Starting in June 2027, California's "compostable" labeling standard will prohibit certain products from being labeled as "compostable," even if they are ASTM-certified.
- The above developments are particularly important in light of California's packaging EPR law, which will require covered products to be either recyclable or compostable, consistent with SB 343's standards, by 2032.

Greenwashing

- Plaintiffs are increasingly filing suit under state consumer protection laws challenging environmental and sustainability marketing. Key areas of focus include PFAS-related claims alleging that marketing statements are incompatible with the presence of PFAS; recyclability claims asserting that products are not recycled in practice; and challenges to company-wide sustainability targets based on alleged failure to take sufficient steps to meet them.

Although federal deregulation may suggest simplicity for product manufacturers and retailers, increased state activity is leading to a fragmented regulatory landscape. These risks can be managed through proactive regulatory tracking, effective advocacy, and strong compliance management processes.


Rachel Saltzman
Partner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ESG and Antitrust

Corporate initiatives to pursue broader responsibilities and impacts beyond financial performance have drawn the attention of certain antitrust enforcers in the US. Opponents of ESG have used antitrust as a basis to challenge and investigate initiatives that these enforcers do not agree with politically.

Background Antitrust Issues with ESG Policies

Antitrust law is designed to promote competition by preventing anticompetitive conduct such as price-fixing, monopolization, and other practices that limit market choice. ESG policies are aimed at aligning corporate behavior with broader social and environmental goals. Although those objectives are distinct, antitrust risk can arise when companies collaborate or align their ESG efforts in ways that could affect pricing, output, suppliers, financing, or other competitive decisions.

Our last newsletter highlighted several recurring antitrust theories that may be implicated by ESG activity, including collusion and price-fixing, market division or boycott concerns, merger-related issues, and collective action or information sharing among industry participants. Those concerns remain prevalent in enforcement actions and investigations focused on ESG-related commitments.

Recent Developments in ESG-Related Antitrust Challenges

Net Zero Insurance Alliance

In 2021, insurers and re-insurers, many of them competitors, launched the Net Zero Insurance Alliance and committed to transition their underwriting portfolios to net-zero greenhouse gas emissions by 2050. In 2023, a coalition of 23 Republican state attorneys general sent letters to the alliance and its members asserting that the alliance's collective action had contributed to increased insurance costs and higher gas prices. Those letters stated that the alliance's targets and requirements appeared to violate established antitrust laws, and the alliance has since disbanded.

Texas Attorney General Versus Large Asset Managers

In 2024, the Texas attorney general and 10 other Republican state attorneys general sued several large asset managers based on their participation in the Net Zero Asset Managers Initiative and Climate Action 100+, alleging that the firms coordinated shareholder influence across competing coal producers to limit production and artificially inflate coal prices. The complaint alleged that the firms used their combined influence over the coal market to pressure coal companies to accommodate green energy goals and reduce coal output by more than half by 2030. In 2025, the DOJ and FTC filed a Statement of Interest backing the plaintiff states, and in February 2026 one settled for $29.5 million. The others are still in litigation.

FTC Investigation into Heavy Vehicle Engine Makers

In 2025 the FTC closed its investigation into an agreement among several truck and automotive manufacturers, and the California Air Resources Board to limit greenhouse gas emissions under the Clean Truck Partnership Act. The companies committed not to abide by the Clean Truck Partnership. FTC Chair Andrew Ferguson described the arrangement as an example of companies agreeing to eliminate competition and reduce output under the guise of ESG objectives.

Science Based Targets Initiative (SBTi)

In 2025, Iowa led a coalition of 23 Republican state attorneys general in sending a letter to the SBTi expressing concern about its Financial Institutions Net-Zero Standard. According to the document, that standard requires financial institutions to cease financing fossil fuel, coal, oil, and gas activities and pursue a net-zero transition for portfolio energy activities by 2050. The letter asserted that SBTi and financial institutions committing to its standards risk violating federal and state antitrust laws, as well as state consumer protection laws, and the Florida Attorney General had earlier announced an investigation into SBTi.

State Attorney General Letters on Plastic Waste Targets

In 2025, the Florida attorney general, joined by Republican attorneys general in Texas, Iowa, Nebraska, and Montana, sent letters to the US Plastics Pact, Consumer Goods Forum, and Green Blue Institute expressing concern that those groups were coordinating major corporations to impose anticompetitive recycling practices in violation of state and federal antitrust laws. In 2026, the Florida attorney general, joined by several other state attorneys general, issued letters to 80 companies associated with the US Plastics Pact, the Consumer Goods Forum, or the Sustainable Packaging Coalition raising similar concerns about policies, targets, and compliance frameworks promoted by those organizations. The letters asserted that uniform production and packaging targets, along with rules dictating which materials are considered recyclable, may reduce competition, limit consumer choice, and degrade product quality.

Practical Takeaways

Recent matters reflect a consistent enforcement theme: ESG initiatives may attract scrutiny when they involve coordination among competitors to achieve a common goal. Companies therefore should assess not only the stated sustainability objective of a program, but also whether the structure or implementation could be characterized as restraining competition.

Based on the recent antitrust enforcement activity against certain ESG programs, certain conduct appears to raise antitrust risk including collective agreements to meet industry-wide targets. Alternatively, companies can mitigate their antitrust risk by unilaterally setting their own aspirational targets that are not binding on, or commitments to, other industry participants. This field is rapidly evolving, so companies considering participation in ESG collaborations should consult antitrust counsel when evaluating program design, commitments, and information-sharing protocols.

Kevin Hahm
Partner

Bennett Sooy
Counsel

EU Green Bond Standard Developments

As the European Green Bond Standard has gained traction as a voluntary but highly regulated green bond issuance framework, a key supervisory transition for external reviewers took effect in June 2026.

The European Green Bond Standard (EU GBS), formally established under Regulation (EU) 2023/2631, is a voluntary framework developed by the European Commission to foster a more transparent and credible green bond market within the EU. First entering into force on December 20, 2023, the standard became fully applicable on December 21, 2024. At its core, the EU GBS links the green bond market directly to the EU Taxonomy—the classification system for environmentally sustainable economic activities—establishing for the first time a legally grounded, regulated definition of what qualifies as a "green" bond.

Early market uptake has been modest but promising. More than €30 billion in issuances have received the EU GBS label in the first year and a half of the new framework, spanning more than 30 transactions. According to research from the Institute for Energy Economics and Financial Analysis, every EU GBS-labeled issuance through February 2026 has been oversubscribed, signaling robust investor appetite. The standard has drawn participation from a wide variety of issuer types, including sovereign governments, municipalities, commercial banks and corporates. Several marquee transactions have helped define the early market:

- Italian utility A2A became the first corporate issuer to adopt the EU GBS, raising €500 million in January 2025 to finance energy transition and circular economy projects.
- Shortly thereafter, Île-de-France Mobilités became the first public sector issuer under the standard, raising €1 billion—six times oversubscribed—to fund certain sustainable transportation initiatives, including electric buses.
- The European Investment Bank issued a landmark €3 billion climate awareness bond in April 2025 aligned with the EU GBS as a supranational issuer, which attracted demand exceeding €40 billion.

- The Kingdom of Denmark's DKK 7 billion (approximately €940 million) issuance in September 2025 provided a further milestone as the first sovereign transaction under the standard, offering a potential blueprint for other EU member states.
- In July 2026, the transmission system operator TenneT Germany executed a €3.5 billion multi-tranche issuance, the largest EU GBS corporate offering to date.

European Green Bond Requirements:

To use the European Green Bond (EuGB) designation, issuers must satisfy four principal requirements:

- **EU Taxonomy Alignment** All proceeds from a European Green Bond must be allocated, in full and prior to maturity, to economic activities that are aligned with the EU Taxonomy Regulation. A limited flexibility pocket of up to 15 percent is available for sectors not yet fully covered by the Taxonomy or for certain specific activities.
- **Comprehensive Disclosure** Issuers are required to provide full transparency on how bond proceeds are allocated. A pre-issuance factsheet must detail the use of the bond's proceeds to establish a clear connection with climate change goals. Post-issuance verification of the allocations is necessary, as well as annual reporting through the maturity of the bond.
- **External Review** All bonds receiving the EuGB label must be assessed by an independent external reviewer prior to and following issuance. The pre-issuance review evaluates whether the bond meets the EU GBS requirements, while the post-issuance review confirms that proceeds have been allocated in accordance with the standard.
- **ESMA Supervision of External Reviewers:** External reviewers who assess EU Green Bonds are supervised by the European Securities and Markets Authority (ESMA). This layer of regulatory oversight is a direct response to "greenwashing" concerns in green bonds and sustainability-linked lending and is designed to ensure the quality and reliability of external reviews, thereby protecting investor interests and maintaining market integrity.

Recent Regulatory Updates

A significant regulatory change took effect on June 21, 2026. Until that date, firms seeking to provide independent external reviews of EU Green Bonds were permitted to offer their services simply by notifying ESMA. As of June 21, 2026, that transitional arrangement has ended, and any firm wishing to review EU

Green Bonds must be formally registered with ESMA rather than merely notifying it. The European Commission finalized the technical rules underpinning this new supervision system in advance of the deadline, establishing standard forms, templates, and procedures for reviewer registration applications. This change is intended to strengthen investor protections and elevate the credibility of external reviews as the EU GBS market continues to grow. The European Commission has also recently published updated guidance on how bond proceeds may be allocated to capital expenditure incurred before a bond's issuance, a development that has provided practical comfort to potential issuers navigating the standard's requirements.

Key Takeaways

For issuers, the benefits of adopting the EU GBS are compelling but potentially costly. The label signals the highest level of green bond credibility currently available in European markets, and indeed probably the world, offering enhanced transparency and reliability that distinguishes EU Green Bonds from the broader universe of green bonds that operate under voluntary, market-led frameworks such as the ICMA Green Bond Principles. Strong and consistent oversubscription across early transactions suggests that the EuGB label commands meaningful investor recognition and demand. For investors, the standard reduces greenwashing risk by anchoring proceeds to the legally defined requirements of the EU Taxonomy and by subjecting issuers to ESMA-supervised external review.

For issuers who are not yet in a position to meet the EU GBS's requirements—particularly the full EU Taxonomy alignment obligation, which remains a data-intensive undertaking—green, social and sustainability bonds can still be issued without the EuGB label. There remains a significant market for such bonds not issued under the EU GBS framework, although investors may increasingly disfavor such issuances over time. Sustainability-linked bonds (SLBs) also represent a meaningful alternative. Unlike use-of-proceeds instruments such as the EU Green Bond, SLBs tie the financial terms of the bond (typically the coupon rate) directly to the issuer's achievement of predefined sustainability performance targets.

As the EU Taxonomy matures and taxonomy-aligned data becomes more widely available, the EU GBS is expected to draw an expanding pool of issuers from across sectors, reinforcing its role as a cornerstone of sustainable finance architecture.

Jane Hopwood
Counsel

ESG Issues for ERISA Plans: New Guidance and Developments

The question of how retirement plan fiduciary requirements overlap with ESG-related considerations has been a subject of attention in recent years. This scrutiny appears to be accelerating in 2026, with both Congress and the Department of Labor (DOL) weighing in on questions around ESG-related issues in retirement plans, and it appears that the attention to this area is unlikely to abate any time soon.

Retirement plans offered by most non-governmental employers, such as 401(k) plans and pension plans, are required to comply with administrative and fiduciary requirements under the Employee Retirement Income Security Act of 1974 (ERISA). In particular, ERISA holds plan fiduciaries to high standards of prudence and loyalty, the latter meaning that they must act only in the best interest of plan participants and beneficiaries. This obligation applies to the administration of the plan as well as the selection and monitoring of service providers and plan investments.

Recent government guidance and commentary regarding ESG in ERISA plans has focused on two interrelated topics. The first is the question of whether plan fiduciaries can incorporate ESG-related factors into their investment selection decisions. The second relates to the voting of proxies and whether proxy advisory firms are acting as fiduciaries.

ESG Investments

To better understand the current state of the rules, it's necessary to look back a few years. In 2020, the DOL issued guidance addressing ESG-related investing and proxy voting. That guidance distinguished between pecuniary and non-pecuniary factors in investments, indicating that the evaluation of an investment must be based **solely** on pecuniary factors. Subsequently, in 2022 the DOL under the Biden administration issued amended rules that relaxed this standard, allowing increased flexibility for plan fiduciaries to consider additional factors, including ESG considerations. In 2025, the DOL indicated its intent to return to the earlier standard, most notably by issuing a letter on a Fifth Circuit case indicating that it would no longer defend the 2022 rule in court and intended to engage in a new rulemaking on this subject.

More recently, in January 2026, the US House of Representatives passed the Protecting Prudent Investment of Retirement Savings Act (House Bill). The legislation is currently pending review in the Senate. The House Bill states that a fiduciary to an ERISA plan is deemed to be acting in the best interest of plan participants and beneficiaries with respect to the selection of investments "only if the fiduciary's action with respect to such investment or investment course of action is based solely on pecuniary factors." The only exception to this is if the fiduciary is unable to distinguish between or among investment alternatives based on pecuniary factors alone—in which case non-pecuniary factors may be considered, but the use of such factors must be documented in detail.

While it's not currently clear whether this legislation will come up for a vote in the Senate (or whether it has sufficient support to pass), it is notable as a new step taken by the legislative branch to address the issue of ESG investing in retirement plans.

Proxy Voting

In addition to ESG investments, the DOL and Congress have also focused on the role of proxy advisors and proxy voting in pursuing ESG-related initiatives. In the retirement plan context, it is common for proxy firms such as Institutional Shareholder Services (ISS) and Glass Lewis to advise large defined benefit pension plans with regard to proxy voting. The role of these advisors in the retirement plan context has recently come under increased scrutiny.

In December 2025, President Trump issued an Executive Order directing the DOL to revise current guidance to address the fiduciary status of proxy advisors under ERISA. Consistent with that EO, in April 2026, the DOL's Employee Benefits Security Administration (EBSA) issued Technical Release 2026-01, stating that proxy advisors can be fiduciaries under ERISA. The guidance emphasizes that voting and other shareholder rights with respect to shares held by ERISA plans are considered "plan assets," and that the decision of whether and how to vote proxies is a fiduciary act.

In the Technical Release, the DOL asserted that depending on the facts and circumstances, the proxy advisors could satisfy the test to be considered plan fiduciaries. The DOL also stated that management of proxy voting rights "is fiduciary in nature and must be undertaken for the exclusive purpose of maximizing risk-adjusted return on investment"—indicating that the status of proxy advisors as potential plan fiduciaries could open them up to scrutiny of their voting practices, particularly if those practices consider ESG factors.

The House Bill from January 2026 includes provisions stating that a plan fiduciary exercising shareholder rights may not prioritize "any non-pecuniary objective" over financial benefits, and may not "promote non-pecuniary benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries." As such, both the House Bill and the DOL guidance indicate an intent to focus on whether proxy advisors consider ESG-related factors for purposes of proxy voting.

More to Come

The DOL has indicated that a rewrite of the 2022 rules is on its agenda in the near term. In addition, at an industry meeting in early May, Daniel Aronowitz, the head of EBSA, stated that the agency intends to focus its enforcement efforts on individuals and entities who "acting in bad faith, misappropriate assets" in retirement plans. He indicated that this includes "disloyal pursuits of ESG, or its sister acronym DEI." As such, it appears that the focus on ESG-related issues will continue.

Implications for Retirement Plan Fiduciaries

Plan fiduciaries should consider an assessment of their current practices in order to assess where they stand with regard to ESG investments and proxy voting. In addition, it is important to ensure that plan fiduciaries understand their obligations both with respect to ESG issues and as a general matter. Finally, the recent guidance underscores the importance of documenting plan fiduciaries' decision-making processes (whether ESG-related or otherwise) in case they are subject to scrutiny in the future.

Jessica Agostinho
Partner

The SEC's Climate Disclosure Rule May Be Gone, but Reporting Obligations and Risk Mitigation for REITs Remain

The US Securities and Exchange Commission's (SEC) climate disclosure rule faces all-but-certain elimination just two years after its adoption. The SEC formally proposed rescinding the rule in May 2026 after abandoning its defense in March 2025. But REITs should not necessarily view this as a mandate to abandon climate disclosure efforts.

The SEC's Retreat

The SEC's rule would have required publicly traded companies to disclose material climate risks and Scope 1 and 2 emissions, among other disclosures. After facing litigation from business groups and Republican-led states, and hostility from the administration toward regulation generally and environmental regulation particularly, the SEC voluntarily stayed implementation and, following SEC Chairman Paul Atkins's appointment, abandoned its defense entirely.

Why CEOs Must Still Care

- **California's laws remain in effect.** SB 253 and SB 261 require companies doing business in California with revenues exceeding $1 billion and $500 million, respectively, to disclose emissions and climate-related financial risks. While SB 261 implementation is currently paused pending Ninth Circuit consideration of an appeal from a district court's denial of a preliminary injunction, SB 253 remains in effect with first reports due in 2026 covering Scope 1 and Scope 2 emissions. While litigation may eventually narrow their scope, these laws effectively establish a national standard for large corporations.
- **Liability risks persist.** Directors and officers face potential liability for failing to prepare their companies for climate-related risks. Boards may be judged not on today's political climate, but on whether they adequately addressed supply chain resilience, physical climate exposure and long-term business adaptability.
- **Investor demand continues.** Companies that provide additional reporting could gain competitive advantage in capital markets. Major institutional investors and asset managers continue to request climate risk disclosures from portfolio companies, independent of regulatory requirements. Such investors and managers based in the

EU, where pressure from clients or investment policies can influence recommendations that evaluate adherence to granular assessment frameworks, can add pressure on US companies with no EU nexus at all to record, track and disclose data not required by the SEC or any US state.

Challenges for All, but Especially REITs

REITs face unique disclosure challenges that persist regardless of federal regulatory changes, particularly regarding Scope 3 emissions from third-party operators and tenants.

- **Lodging REITs**, which must use independent hotel operators to manage and run their hotel properties, must obtain emissions data from those management companies, which may lack tracking systems or resist sharing proprietary operational information.
- **Retail REITs** face challenges aggregating tenant energy use when shopping centers host dozens or hundreds of tenants, each controlling their own HVAC and lighting systems. Legacy lease structures may not provide access to utility data.
- **Office REITs** must account for tenant operations and employee commuting patterns, which are increasingly complex as hybrid work arrangements continue to evolve.
- **Healthcare REITs** face similar challenges as lodging REITs. Third-party operators may view emissions data as proprietary information despite the REITs owning the underlying real estate or may simply lack adequate tracking systems.
- **Data Center REITs**--for which energy intensity, resilience, and power sourcing are central to the business model--face customers and regulators, and investors, who expect a focus on energy procurement, efficiency, backup systems, and climate resilience as a matter of operational excellence. Companies outside mandatory disclosure reporting requirements may still find strategic value in voluntary alignment where it supports access to capital and competitive positioning.

Recommendations

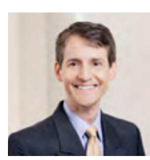
CEOs and boards should consider taking action:

- **Assess exposure.** Determine whether your company is subject to California disclosure laws based on revenue thresholds and business presence.
- **Build data infrastructure.** Collecting emissions data, particularly covering Scope 3, takes time. For REITs, establish data-sharing protocols with operators and tenants now.
- **Strengthen governance.** Ensure board-level oversight of climate risks and document management's risk assessment processes for liability protection.
- **Consider voluntary disclosure.** Investors continue to demand climate-related information. Voluntary, accurate disclosure can, in some cases, provide competitive advantage and demonstrate proactive risk management, but it should be weighed against the risks of heightened scrutiny by diverse stakeholders.
- **Negotiate data rights.** Amend management agreements, leases and service contracts to secure rights to emissions and other environmental-related data from third-party operators.

Conclusion

The SEC's retreat does not eliminate the business imperative to manage climate-related risks. California's disclosure requirements ensure continuing obligations for large companies operating in the nation's largest state economy. More fundamentally, directors who fail to prepare their companies for climate impacts may face future liability regardless of the current regulatory environment.

For REITs, the technical challenges of data collection demand attention. Whether driven by California law, investor demand or operational prudence, companies continue to need robust systems to track and report climate impacts across complex value chains. The current federal regulatory pull-back is not necessarily a reason to stop climate disclosure efforts. Instead, it presents an opportunity to build sustainable systems that will serve business needs regardless of political shifts.



Mark Wickersham
Partner

SEC Climate Rule Rescission: Less Uniformity, Not Less D&O Risk

The US Securities and Exchange Commission's (SEC) effort to rescind its 2024 climate disclosure rules marks a significant change in federal ESG regulation, but it should not be mistaken for a retreat from climate-related disclosure risk.

Background

On May 29, 2026, the SEC formally proposed rescinding its climate-related disclosure rules adopted in March 2024. The agency also told the Eighth Circuit in a litigation challenging the 2024 rules that it does not intend to renew its defense of the rules. For companies and boards, however, the practical lesson is not that climate disclosure exposure has disappeared.

Even without specific SEC climate rules, existing antifraud principles still apply to ESG- and climate-related statements in securities filings, earnings materials, investor presentations, websites, and sustainability reports. If anything, the loss of a single federal framework may increase judgment calls about what is material, how allegations should be framed, and where disclosures should appear. That may create more room, not less, for securities litigation based on perceived criticism or inconsistencies.

Shifting Regulatory Landscape and Ongoing D&O Risks

Fragmentation remains. Many companies now face overlapping or potentially conflicting expectations across SEC filings, voluntary sustainability reporting, investor communications, and US and European climate change laws.

Compounding the issue is that some of those regimes remain subject to legal challenge or political uncertainty. The absence of a uniform federal baseline may make it harder to maintain coherence across channels, and plaintiffs' lawyers and regulators may test gaps between what a company says across different forums.

But those potential directors and officers (D&O) exposures are not limited to issuer-level securities claims. ESG governance and climate-risk oversight can also

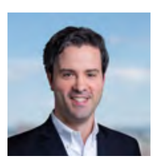
implicate board-level fiduciary and derivative risks. Boards and management can still face individual claims from regulators and private litigants that need to be defended. The broader ESG environment has also generated substantial litigation and regulatory activity, underscoring that these issues remain active notwithstanding the SEC's recent efforts to walk back proposed rules.

D&O Insurance Protections Remain

D&O liability insurance can be an important risk-transfer tool for these risks. Policies can step up to provide critical defense for ESG-related shareholder litigation, securities claims, derivative suits, regulatory investigations focused on disclosures or governance, and allegations of board or officer oversight failures.

But claims are not always straightforward. Potential threats to D&O coverage include pollution and bodily injury exclusions, narrow definitions of claim and loss, and limitations on protections for entities. Insurers are also paying closer attention to ESG risk in underwriting, and stronger ESG governance may improve terms or pricing, while weak practices may do the opposite. Companies therefore should review D&O wording carefully, assess possible coverage gaps, and coordinate with brokers and coverage counsel.

Companies should treat the SEC climate rule rollback as a change in landscape, as opposed to a marked shift in potential sources of D&O exposures. The good news is that risk transfer solutions for ESG-related risks remain, but only if policyholders take a proactive approach to assess and improve their current coverage to maximize recovery in the event of a claim.



Geoffrey B. Fehling
Partner

ESG's Shift into Governance: Insights from the 2026 Proxy Season

The 2026 proxy season suggests that ESG is entering a new phase. While environmental and social shareholder proposals have declined in volume, investors continue to focus on many of the same underlying issues. Increasingly, they are evaluating those issues through governance, board oversight, disclosure, and shareholder accountability rather than as standalone or "traditional" ESG initiatives.

For public companies, this shift has practical implications. The relevant question is no longer simply whether a company receives ESG-related shareholder proposals. Instead, boards and management teams should consider how investors evaluate the governance frameworks through which environmental, social, and reputational risks are identified, managed, and disclosed.

ESG Proposal Activity Continues to Decline

Recent proxy data indicates a continued decline in ESG-related shareholder proposals. According to publicly reported data, shareholder proposal submissions fell from 929 in 2024 to 802 in 2025, with declines across environmental and social proposals, as well as civic engagement and executive compensation.[1] Early 2026 reporting points in the same direction. As You Sow's 2026 Proxy Preview reported 184 environmental, social, and sustainable governance-related shareholder resolutions filed as of its reporting cutoff, which it characterized as a 47 percent reduction from the prior year.[2]

The decline is not limited to climate-related proposals. Social proposals have also decreased, including proposals relating to workplace diversity and inclusion. At the same time, anti-ESG proposals, while increasingly visible, generally continue to receive relatively low levels of shareholder support.

1 BDO, *2026 Shareholder Meeting Agenda: Proxy Season Guide*.

2 As You Sow and Proxy Impact, *2026 Proxy Preview*; As You Sow, *2026 Proxy Preview* press release.

At first glance, these trends may suggest declining investor interest in ESG-related issues. However, investors remain engaged on climate-related risks, workforce issues, political spending, supply-chain management, and other topics historically associated with ESG. The decline in proposal volume more likely reflects a shift in how these issues are being framed and assessed.

Governance Is Increasingly the Lens for ESG Issues

One notable development of the current proxy season is the extent to which governance has become the primary framework through which investors evaluate environmental and social issues.

As environmental and social proposal activity has slowed, governance proposals continue to attract meaningful investor attention and support. Common topics include declassified boards, simple majority voting standards, independent board leadership, special meeting rights, written consent rights, and political-spending disclosure.[3]

This trend does not necessarily mean that investors are losing interest in climate, workforce, or other ESG-related matters. Rather, many of these concerns are increasingly being framed as governance questions. A climate-related proposal, for example, may be less about broad environmental policy and more about whether the board is overseeing financially significant risk.

A similar pattern appears in human capital management, workforce diversity, supply-chain oversight, and corporate responsibility. Increasingly, investors are focusing not only on substantive outcomes, but also on whether boards have appropriate oversight structures, reporting mechanisms, and decision-making processes for addressing these issues.

Evolving Shareholder Engagement and Oversight

The governance-focused framing of ESG issues is occurring against a broader evolution in shareholder engagement.

One notable development has been the SEC Staff's revised approach to Rule 14a-8 no-action requests. With the Staff generally providing fewer substantive responses, companies may face greater uncertainty when evaluating whether to seek exclusion of shareholder proposals. Early indications suggest that many companies have responded cautiously, allowing more proposals to proceed to a vote rather than pursuing exclusion.

3 BDO, *2026 Shareholder Meeting Agenda: Proxy Season Guide*; AB, *Proxy Voting Outlook: Spotlight Turns to Governance in Transition Year; Top Governance & Stewardship Trends*.

At the same time, proxy voting practices also continue to evolve. ISS and Glass Lewis have indicated a greater emphasis on case-specific analysis in evaluating governance and sustainability-related matters, reflecting a shift away from more standardized voting policies. In parallel, some large institutional investors have reduced reliance on proxy advisor recommendations or expanded internal voting analysis capabilities.

For companies, this means voting assumptions based on historical proxy advisor frameworks may be less reliable and harder to predict, making early engagement and clear, targeted disclosure to address investor concerns more important.

Beyond Shareholder Proposals

These dynamics are also visible outside the Rule 14a-8 process, including activism campaigns, meeting-floor proposals, and other solicitation tactics, such as so-called "zero-slate" tactics. Recent developments indicate that activist campaigns continue to gain attention and remain an important feature of the governance landscape. The 2026 proxy season likewise reflects the continued prominence of shareholder activism. Market participants continue to evolve campaign approaches, including shareholder messaging, proxy advisor engagement, and targeted focus areas at the board and company level.

Litigation and disclosure-related scrutiny also remain an important overlay, with plaintiffs' firms continuing to focus on proxy statement disclosures, voting mechanics, and governance-related representations, particularly where sustainability disclosures and governance narratives may be viewed as inconsistent. Together, these developments reinforce that proposal-related decisions should be evaluated not only for technical Rule 14a-8 considerations, but also for broader annual meeting dynamics and escalation risk.

Key Takeaways

The 2026 proxy season does not suggest that ESG has become irrelevant. Rather, it suggests that many ESG-related concerns are increasingly being incorporated into broader governance analysis. Investors continue to focus on climate-related risks, workforce issues, political spending, corporate responsibility, and other matters traditionally associated with ESG, but are increasingly evaluating those issues through governance structures and board oversight mechanisms.

For boards, the challenge is not simply responding to ESG proposals, but demonstrating that the company has credible governance processes for identifying, overseeing, and disclosing the environmental, social, reputational, and strategic risks that investors increasingly view as part of core corporate governance.

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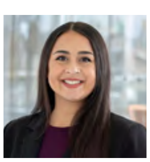

Chloe Dupre
Associate

Government Relations and Environmental Policy: Navigating the Crosscurrents

Many of the developments discussed in this issue—from PFAS regulations and climate disclosure requirements to ESG-related enforcement and proxy season trends—are shaped as much by legislative and regulatory processes as by the legal frameworks they produce. Hunton's government relations and environmental policy practice helps clients engage proactively in those processes, combining technically rigorous legal counsel with strategic federal and state advocacy.

Elizabeth Horner brings more than 15 years of experience at the intersection of environmental law, energy policy, and government affairs. Before joining Hunton, she served as Chief Counsel on the US Senate Committee on Environment and Public Works, where she played a central role in negotiating and enacting major energy and environmental legislation, including carbon capture provisions, the AIM Act, and significant PFAS-related measures in the Toxic Substances Control Act and CERCLA. Her practice focuses on regulatory counseling and advocacy for clients in the energy, manufacturing, and transportation sectors, with particular depth in Clean Air Act compliance, PFAS policy, permitting, and energy tax and infrastructure matters.

For clients tracking the issues highlighted in this newsletter—whether managing product stewardship obligations, evaluating climate disclosure exposure, or assessing the antitrust implications of sustainability commitments—Elizabeth and the government relations team can provide a complementary perspective on the legislative and regulatory forces driving these developments. Please feel free to contact Elizabeth or your regular Hunton contact to discuss how these trends may affect your business.

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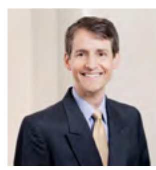

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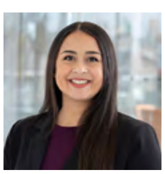

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